Enrolled
Senate Bill 158

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CHAPTER .....

AN ACT

Relating to health care; creating new provisions; amending ORS 65.800, 127.646, 192.517, 192.660, 409.720, 432.500, 435.254, 441.015, 441.020, 441.022, 441.025, 441.030, 441.055, 441.057, 441.060, 441.062, 441.065, 441.624, 441.990, 442.015, 442.425, 442.430, 442.700, 443.005, 443.015, 443.025, 443.035, 443.045, 443.075, 443.085, 443.090, 443.315, 443.325, 677.290, 677.805, 677.812, 678.730 and 678.780 and section 1, chapter 736, Oregon Laws 2003; repealing ORS 441.017 and 441.085; and appropriating money.

Be It Enacted by the People of the State of Oregon:

SECTION 1. Sections 2 and 3 of this 2009 Act are added to and made a part of ORS chapter 441.

SECTION 2. (1) An ambulatory surgical center shall evaluate all of a patient's risk factors before permitting a surgical procedure to be performed on the patient in the facility.

(2) An ambulatory surgical center shall post a notice in the facility, in a prominent place and in prominent font size, advising patients of the manner in which patients may express concerns regarding the ambulatory surgical center and services provided at the ambulatory surgical center. The posting must include but need not be limited to the address and telephone number for contacting the Department of Human Services to express the concerns.

(3) The department shall adopt rules classifying ambulatory surgical centers in three categories:

(a) Certified ambulatory surgical centers, which must comply with federal Centers for Medicare and Medicaid Services rules, 42 C.F.R. 416 and rules adopted by the department;

(b) High complexity noncertified ambulatory surgical centers, which must comply with rules adopted by the department; and

(c) Moderate complexity noncertified ambulatory surgical centers, which must comply with rules adopted by the department and which may use only conscious sedation and analgesia.

SECTION 3. (1) As used in this section:

(a) "Facility" means a hospital, ambulatory surgical center or freestanding birthing center.

(b) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(c) "Health practitioner" means a physician, podiatric physician and surgeon, dentist, direct entry midwife or licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner.

(d) "Physician" has the meaning given that term in ORS 677.010.

(2) If a health practitioner refers a patient for treatment at a facility in which the health practitioner or an immediate family member has a financial interest, the health practitioner shall inform the patient orally and in writing of that interest at the time of the referral.

(3) In obtaining informed consent for treatment that will take place at a facility, a health practitioner shall disclose the manner in which care will be provided in the event that complications occur that require health services beyond what the facility has the capability to provide.

SECTION 4. ORS 441.020 is amended to read:

441.020. [*(1) Licenses for health care facilities including long term care facilities, as defined in ORS 442.015, shall be obtained from the Department of Human Services.*]

(1) A health care facility must obtain a license from the Department of Human Services.

(2) Applications shall be upon such forms and shall contain such information as the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS [*441.055*] **441.025**.

(3) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.

(4) Except as otherwise provided in subsection [*(5)*] **(7)** of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be $750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be $1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.

(e) Two hundred or more beds, the annual license fee shall be $3,400.

(5) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(6) The department may charge a reduced hospital fee or hospital satellite fee if the department determines that charging the standard fee constitutes a significant financial burden to the facility.

[*(5)*] **(7)** For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to $120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to $175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to $350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to $450.

(e) Two hundred beds or more, the annual license fee shall be up to $580.

[*(6) For special inpatient care facilities with:*]

[*(a) Fewer than 26 beds, the annual license fee shall be $750.*]

[*(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.*]

[*(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be $1,900.*]

[*(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.*]

[*(e) Two hundred beds or more, the annual license fee shall be $3,400.*]

[*(7)*] **(8)** For ambulatory surgical centers, the annual license fee shall be [*$1,000*]**:**

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

[*(8)*] **(9)** For birthing centers, the annual license fee shall be [*$250*] **$750**.

[*(9)*] **(10)** For outpatient renal dialysis facilities, the annual license fee shall be [*$1,500*] **$2,000**.

[*(10)*] **(11)** During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

[*(11)*] **(12)** Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed. **The department may include hospital satellites on a hospital's license in accordance with rules adopted by the department.**

[*(12)*] **(13)** Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(14) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the Department of Human Services by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 4a. ORS 441.020, as amended by section 4 of this 2009 Act, is amended to read:

441.020. (1) A health care facility must obtain a license from the Department of Human Services.

(2) Applications shall be upon such forms and shall contain such information as the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

(3) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.

(4) Except as otherwise provided in subsection (7) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be [*$750*] **$1,250**.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be [*$1,000*] **$1,850**.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be [*$1,900*] **$3,800**.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be [*$2,900*] **$6,525**.

(e) Two hundred or more beds, **but fewer than 500 beds,** the annual license fee shall be [*$3,400*] **$8,500**.

(f) **Five hundred or more beds, the annual license fee shall be $12,070.**

(5) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(6) The department may charge a reduced hospital fee or hospital satellite fee if the department determines that charging the standard fee constitutes a significant financial burden to the facility.

(7) For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to $120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to $175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to $350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to $450.

(e) Two hundred beds or more, the annual license fee shall be up to $580.

(8) For ambulatory surgical centers, the annual license fee shall be:

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

(9) For birthing centers, the annual license fee shall be $750.

(10) For outpatient renal dialysis facilities, the annual license fee shall be $2,000.

(11) During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

(12) Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed. The department may include hospital satellites on a hospital's license in accordance with rules adopted by the department.

(13) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(14) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the Department of Human Services by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 4b. (1) In addition to an annual fee, the Department of Human Services may charge a hospital a fee for:

(a) Complaint investigation, in an amount not to exceed $850.

(b) Full compliance survey, in an amount not to exceed $7,520.

(c) On-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $225.

(d) Off-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $85.

(2) During one calendar year, the department may charge to all hospitals a total amount not to exceed:

(a) $91,000 for complaint investigations.

(b) $15,000 for full compliance surveys.

(c) $6,700 for follow-up surveys.

(3)(a) The department shall apportion the total amount charged under subsection (2) of this section among hospitals at the end of each calendar year based on the number of complaint investigations, full compliance surveys and follow-up surveys performed at each hospital during the calendar year.

(b) The department may not include investigations of employee complaints in a hospital's total number of complaint investigations.

(c) A hospital that was licensed in 2008 may not be charged fees under this subsection for more complaint investigations than the number of complaint investigations that occurred at the hospital in 2008.

(d) A hospital that was not licensed in 2008 may be charged fees under this subsection for an unlimited number of complaint investigations.

(4) As used in this section, "full compliance survey" means a survey conducted by the department following a complaint investigation to determine a hospital's compliance with the Centers for Medicare and Medicaid Services Conditions of Participation.

SECTION 5. ORS 441.022 is amended to read:

441.022. In determining whether to license a health care facility pursuant to ORS 441.025, the Department of Human Services shall consider only factors relating to the health and safety of individuals to be cared for therein and **the ability of the operator of the health care facility to safely operate the facility, and** shall not consider whether the health care facility is or will be a governmental, charitable or other nonprofit institution or whether it is or will be an institution for profit.

SECTION 6. ORS 441.025 is amended to read:

441.025. (1) Upon receipt of an application and the license fee, the Department of Human Services shall **review the application and conduct an on-site inspection of the health care facility. The department shall** issue a license if it finds that the applicant and health care facility comply with ORS 441.015 to 441.063[*, 441.085*] and 441.087 and the rules of the department provided that it

does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(2) Each license, unless sooner suspended or revoked, shall be renewable annually for the calendar year upon payment of the fee, provided that a certificate of noncompliance has not been issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(3) Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable.

(4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the department.

(5) No license shall be issued or renewed for any health care facility or health maintenance organization [*that offers or proposes to develop a new health service unless a certificate of need has first been issued therefor pursuant to ORS 442.340 (1987 Replacement Part) or approval has been granted under ORS 442.315 or section 9, chapter 1034, Oregon Laws 1989.*] **that is required to obtain a certificate of need under ORS 442.315 until a certificate of need has been granted. An ambulatory surgical center is not subject to the certificate of need requirements in ORS 442.315.**

(6) No license shall be issued or renewed for any skilled nursing facility or intermediate care facility, [*as defined in ORS 442.015,*] unless the applicant has included in the application the name and such other information as may be necessary to establish the identity and financial interests of any person who has incidents of ownership in the facility representing an interest of 10 percent or more thereof. If the person having such interest is a corporation, the name of any stockholder holding stock representing an interest in the facility of 10 percent or more shall also be included in the application. If the person having such interest is any other entity, the name of any member thereof having incidents of ownership representing an interest of 10 percent or more in the facility shall also be included in the application.

(7) A license may be denied to any applicant for a license or renewal thereof or any stockholder of any such applicant who has incidents of ownership in the facility representing an interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility, if during the five years prior to the application the applicant or any stockholder of the applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has divested that interest after receiving written notice from the department of intention to suspend or revoke the license or to decertify the home from eligibility to receive payments for services provided under this section.

(8) No license shall be issued or renewed for any long term care facility, [*as defined in ORS 442.015,*] unless the applicant has included in the application the identity of any person who has incident of ownership in the facility who also has a financial interest in any pharmacy, as defined in ORS 689.005.

(9) The department shall adopt rules for each type of health care facility to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

(a) Establishing classifications and descriptions for the different types of health care facilities that are licensed under ORS 441.015 to 441.087; and

(b) Standards for patient care and safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records.

(10) The department may not adopt a rule requiring a health care facility to serve a specific food as long as the necessary nutritional food elements are present in the food that is served.

(11) A health care facility licensed by the department may not:

(a) Offer or provide services beyond the scope of the license classification assigned by the department; or

(b) Assume a descriptive title or represent itself under a descriptive title other than the classification assigned by the department.

(12) A health care facility must reapply for licensure to change the classification assigned or the type of license issued by the department.

SECTION 7. ORS 441.030 is amended to read:

441.030. (1) The Department of Human Services **may assess a civil penalty and**, pursuant to ORS 479.215, shall deny, suspend or revoke a license**,** in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The department may **assess a civil penalty or** deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063[*, 441.085*] or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063[*, 441.085*] or 441.087.

(3) The department may **assess a civil penalty or** suspend or revoke a license issued under ORS 441.025 for failure to comply with a department order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166 or the rules adopted under ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166[*, or*]**. The department may suspend or revoke a license issued under ORS 441.025** for failure to pay a civil penalty imposed under ORS 441.170 or 441.710.

(4) The department may order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063 or 441.084 to 441.087 and the rules adopted under ORS 441.015 to 441.063 or 441.084 to 441.087.

(5) Any long term care facility that has been ordered to restrict the admission of patients pursuant to subsection (4) of this section shall post a notice of the restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

SECTION 8. ORS 441.055 is amended to read:

441.055. [*(1) The Department of Human Services shall adopt such rules with respect to the different types of health care facilities as may be designed to further the accomplishment of the purposes of ORS 441.015 to 441.087. No rules shall require any specific food so long as the necessary nutritional food elements are present.*]

[*(2) Rules describing care given in health care facilities shall include, but not be limited to, standards of patient care or patient safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records. The department may in its discretion accept certificates by the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with acceptable standards.*]

[*(3)*] **(1)** The governing body of each health care facility shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(a) Ensure that all health care personnel for whom state licenses, registrations or certificates are required are currently licensed, registered or certified;

(b) Ensure that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Ensure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to assure their conformity to applicable law;

(d) Ensure that physicians admitted to practice in the facility are organized into a medical staff in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care; and

(e) Ensure that a physician is not denied medical staff membership or privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility.

[*(4)*] **(2)** The physicians organized into a medical staff pursuant to subsection [*(3)*] **(1)** of this section shall propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited to the following:

(a) Procedures for physicians admitted to practice in the facility to organize into a medical staff pursuant to subsection [*(3)*] **(1)** of this section;

(b) Procedures for ensuring that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or remove officers and other persons to carry out medical staff activities with accountability to the governing body;

(d) Procedures for ensuring that physicians admitted to practice in the facility are currently licensed by the Oregon Medical Board;

(e) Procedures for ensuring that the facility's procedures for granting, restricting and terminating privileges are followed and that such procedures are regularly reviewed to assure their conformity to applicable law; and

(f) Procedures for ensuring that physicians provide services within the scope of the privileges granted by the governing body.

[*(5)*] **(3)** Amendments to medical staff bylaws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of the institution.

[*(6)*] **(4)** The Oregon Medical Board may appoint one or more physicians to conduct peer review for a health care facility upon request of such review by all of the following:

(a) The physician whose practice is being reviewed.

(b) The executive committee of the health care facility's medical staff.

(c) The governing body of the health care facility.

[*(7)*] **(5)** The physicians appointed pursuant to subsection [*(6)*] **(4)** of this section shall be deemed agents of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall conduct peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care facility.

[*(8)*] **(6)** Any person serving on or communicating information to a peer review committee shall not be subject to an action for damages for action or communications or statements made in good faith.

[*(9)*] **(7)** All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the peer review committee in connection with a peer review are confidential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS 41.675.

[*(10)*] **(8)** Notwithstanding subsection [*(9)*] **(7)** of this section, a written report of the findings and conclusions of the peer review shall be provided to the governing body of the health care facility who shall abide by the privileged and confidential provisions set forth in subsection [*(9)*] **(7)** of this section.

[*(11)*] **(9)** Procedures for peer review established by subsections [*(6) to (10)*] **(4) to (8)** of this section are exempt from ORS chapter 183.

[*(12)*] **(10)** The department shall adopt by rule standards for rural hospitals, as defined in ORS 442.470, that specifically address the provision of care to postpartum and newborn patients so long as patient care is not adversely affected.

[*(13)*] **(11)** For purposes of this section, "physician" has the meaning given the term in ORS 677.010.

SECTION 9. ORS 441.057 is amended to read:

441.057. (1) Rules adopted by the Department of Human Services pursuant to ORS [*441.055*] **441.025** shall include procedures for the filing of complaints as to the standard of care in any health care facility and provide for the confidentiality of the identity of any complainant.

(2) No health care facility, or person acting in the interest of the facility, shall take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health care facility administration before notifying the department or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the department under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health care facility employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health care facility or to the department or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.172, who claims to be aggrieved by a violation of ORS 441.174 committed by a hospital.

(7) Information obtained by the department during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any patient at the health care facility. The department may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a health care facility, and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 676.160 as that information pertains to a licensee of the board.

SECTION 10. ORS 441.060 is amended to read:

441.060. (1) The Department of Human Services shall make or cause to be made [*such inspections as it may deem necessary*] **on-site inspections of licensed health care facilities at least once every three years**.

(2) The Department of Human Services may prescribe by rule that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, either prior to or after receiving a certificate of need pursuant to ORS [*442.340 (1987 Replacement Part)*] **442.315**, if required, submit plans and specifications therefor to the department for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS [*441.055*] **441.025** and 443.420 and for compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified. The department may require by rule payment of a fee for project review services at a variable rate, dependent on total project cost. For health care facilities, the department shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program. The fee for project review of residential care facilities shall equal two-thirds that required of health care facilities. The department may also conduct an on-site review of projects as a prerequisite to licensure of new facilities, major renovations and expansions. The department shall, at least annually, with the advice of facilities covered by this review, present proposed rule changes regarding facility design and construction to such agencies for their consideration. The department shall also publish a state submissions guide for health and residential care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

SECTION 11. ORS 441.062 is amended to read:

441.062. (1) In conducting inspections for the purpose of licensing health care facilities under ORS 441.020, the Department of Human Services shall avoid unnecessary facility disruption by coordinating inspections performed by the department with inspections performed by other federal, state and local agencies that have responsibility for health care facility licensure.

(2) Whenever possible, the department shall avoid duplication of inspections by accepting inspection reports or surveys prepared by other state agencies that have responsibility for health care facility licensure for purposes of the inspection required for licensure.

(3) In lieu of an on-site inspection as required by ORS 441.025 and 441.060, the department may accept a certification or accreditation from a federal agency or an accrediting body approved by the department that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the department as addressing the standards and condition of participation requirements of the Centers for Medicare and Medicaid Services and other standards set by the department;

(b) The health care facility notifies the department to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The health care facility provides copies of all documentation concerning the certification or accreditation requested by the department.

[*(3)*] **(4)** The department shall adopt all rules necessary to implement this section.

SECTION 12. ORS 441.990, as amended by section 9, chapter 602, Oregon Laws 2007, is amended to read:

441.990. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of not more than $100 for the first violation and not more than $500 for each subsequent violation. Each day of continuing violation after a first conviction shall be considered a subsequent violation.

(2) Any person who willfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Department of Human Services in the lawful carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

(3) The removal of the notice required by ORS 441.030 (5) by any person other than an official of the department is a Class C misdemeanor.

(4) In addition to the penalties under this section, the department may assess civil penalties against any health care facility or health maintenance organization under ORS 441.030 or for a violation of ORS 441.015 (1). A civil penalty imposed under this section may not exceed $5,000.

(5) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(6) Civil penalties recovered under this section shall be paid into the State Treasury and credited to the Department of Human Services Account. Moneys credited to the account under this section are continuously appropriated to the department for the administration of ORS 441.015 to 441.087.

SECTION 13. ORS 442.015 is amended to read:

442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

(1) "Acquire" or "acquisition" means obtaining equipment, supplies, components or facilities by any means, including purchase, capital or operating lease, rental or donation, with intention of using such equipment, supplies, components or facilities to provide health services in Oregon. When equipment or other materials are obtained outside of this state, acquisition is considered to occur when the equipment or other materials begin to be used in Oregon for the provision of health services or when such services are offered for use in Oregon.

[*(2) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.*]

[*(3)*] **(2)** "Affected persons" has the same meaning as given to "party" in ORS 183.310.

[*(4) "Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.*]

[*(5) "Audited actual experience" means data contained within financial statements examined by an independent, certified public accountant in accordance with generally accepted auditing standards.*]

(3)(a) "Ambulatory surgical center" means a facility or portion of a facility that operates exclusively for the purpose of providing surgical services to patients who do not require hospitalization and for whom the expected duration of services does not exceed 24 hours following admission.

(b) "Ambulatory surgical center" does not mean:

(A) Individual or group practice offices of private physicians or dentists that do not contain a distinct area used for outpatient surgical treatment on a regular and organized basis, or that only provide surgery routinely provided in a physician's or dentist's office using local anesthesia or conscious sedation; or

(B) A portion of a licensed hospital designated for outpatient surgical treatment.

[*(6)*] **(4)** "Budget" means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators.

[*(7) "Case mix" means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital's mix of cases compared to a state or national mix of cases.*]

[*(8)*] **(5)** "Commission" means the Oregon Health Policy Commission.

[*(9) "Department" means the Department of Human Services of the State of Oregon.*]

[*(10)*] **(6)** "Develop" means to undertake those activities that on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

[*(11) "Director" means the Director of Human Services.*]

[*(12)*] **(7)** "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a donation or grant in lieu of an expenditure but not including any interest thereon.

[*(13)*] **(8)** "Freestanding birthing center" means a facility licensed for the primary purpose of performing low risk deliveries.

[*(14)*] **(9)** "Governmental unit" means the state, or any county, municipality or other political subdivision, or any related department, division, board or other agency.

[*(15)*] **(10)** "Gross revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue. "Gross revenue" does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

[*(16)(a)*] **(11)(a)** "Health care facility" means [*a hospital, a long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient renal dialysis facility.*]**:**

(A) A hospital;

(B) A long term care facility;

(C) An ambulatory surgical center;

(D) A freestanding birthing center; or

(E) An outpatient renal dialysis center.

(b) "Health care facility" does not mean:

[*(A) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or*]

(A) A residential facility licensed by the Department of Human Services under ORS 443.415;

(B) An establishment furnishing primarily domiciliary care[.] **as described in ORS 443.205;**

(C) A residential facility licensed or approved under the rules of the Department of Corrections;

(D) Facilities established by ORS 430.335 for treatment of substance abuse disorders; or

(E) Community mental health and developmental disabilities programs established under ORS 430.620.

[*(17)*] **(12)** "Health maintenance organization" or "HMO" means a public organization or a private organization organized under the laws of any state that:

(a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

(i) Usual physician services;

(ii) Hospitalization;

(iii) Laboratory;

(iv) X-ray;

(v) Emergency and preventive services; and

(vi) Out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(C) Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

[*(18)*] **(13)** "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

[*(19)*] **(14)** "Hospital" means**:**

(a) A facility with an organized medical staff[*, with*] **and a** permanent [*facilities*] **building** that [*include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for patients with mental illness or to provide treatment in special inpatient care facilities.*] **is capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury and that provides at least the following health services:**

(A) Medical;

(B) Nursing;

(C) Laboratory;

(D) Pharmacy; and

(E) Dietary; or

(b) A special inpatient care facility as that term is defined by the Department of Human Services by rule.

[*(20)*] **(15)** "Institutional health services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

[*(21)*] **(16)** "Intermediate care facility" means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.

[*(22)*] **(17)** "Long term care facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the director, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

[*(23) "Major medical equipment" means medical equipment that is used to provide medical and other health services and that costs more than $1 million. "Major medical equipment" does not include*

medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.]

[*(24) "Net revenue" means gross revenue minus deductions from revenue.*]

[*(25)*] **(18)** "New hospital" means a facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services. "New hospital" also includes any replacement of an existing hospital that involves a substantial increase or change in the services offered.

[*(26)*] **(19)** "New skilled nursing or intermediate care service or facility" means a service or facility that did not offer long term care services on a regular basis by or through the facility within the prior 12-month period and is initiating or proposing to initiate such services. "New skilled nursing or intermediate care service or facility" also includes the rebuilding of a long term care facility, the relocation of buildings that are a part of a long term care facility, the relocation of long term care beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

[*(27)*] **(20)** "Offer" means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services.

[*(28) "Operating expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes.*]

[*(29)*] **(21)** "Outpatient renal dialysis facility" means a facility that provides renal dialysis services directly to outpatients.

[*(30)*] **(22)** "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation, of a state.

[*(31)*] **(23)** "Skilled nursing facility" means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of individuals who are injured or sick or who have disabilities.

[*(32) "Special inpatient care facility" means a facility with permanent inpatient beds and other facilities designed and utilized for special health care purposes, including but not limited to a rehabilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Department of Human Services, after determination of the need for such classification and the level and kind of health care appropriate for such classification.*]

[*(33) "Total deductions from gross revenue" or "deductions from revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.*]

SECTION 14. ORS 443.005 is amended to read:

443.005. As used in ORS 443.005 to 443.095:

(1) "Caregiver registry" means an agency that prequalifies, establishes and maintains a list of qualified private contractor caregivers that is provided to a client for caregiver services within the client's place of residence.

[*(1)*] **(2)** "Department" means the Department of Human Services.

[*(2)*] **(3)** "Home health agency" means a public or private agency providing coordinated home health services on a home visiting basis. "Home health agency" does not include:

(a) Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with the tenets and practices of a recognized church or religious denomination.

(b) Those home health services offered by county health departments outside, and in addition to, programs formally designated and funded as home health agencies.

[*(3)*] **(4)** "Home health services" means items and services furnished to an individual by a home health agency, or by others under arrangements with such agency, on a visiting basis, in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(5) "Referral agency" means an agency that prequalifies, coordinates and arranges for home health services within a client's place of residence.

SECTION 14a. Sections 14b and 14c of this 2009 Act are added to and made a part of ORS 443.005 to 443.095.

SECTION 14b. A person may not establish, conduct or maintain a referral agency or caregiver registry, or represent to the public that the person is a referral agency or caregiver registry, without first obtaining a referral agency license or caregiver registry license from the Department of Human Services.

SECTION 14c. The Department of Human Services may adopt rules governing referral agencies and caregiver registries, including but not limited to:

(1) The minimum qualifications of individuals whose services are offered through a referral agency or caregiver registry;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records;

(4) Requirements for contractual arrangements for professional and ancillary services;

(5) Requiring criminal background checks on individuals placed on a caregiver or referral list by a referral agency or caregiver registry or on individuals placed in a client's place of residence by a referral agency or caregiver registry;

(6) Procedures for complaints against referral agencies and caregiver registries; and

(7) Procedures for inspection of referral agencies and caregiver registries.

SECTION 15. ORS 443.015 is amended to read:

443.015. [*No public or private agency or person shall*] **A person may not** establish[*, conduct or maintain*] a home health agency or organization providing home health services for compensation, or [*hold itself out to the public as*] **purport to manage or operate** a home health agency or organization, without first obtaining a license [*therefor*] from the Department of Human Services. The license shall be renewable annually and is not transferable.

SECTION 15a. ORS 443.025 is amended to read:

443.025. [*Any*] **A** hospital licensed under ORS 441.015 may provide home health services [*without paying a separate licensing fee and*] without maintaining a separate governing body and administrative staff so long as the services provided meet the requirements of ORS 443.005 to 443.095 **and the hospital pays the home health licensing fee under ORS 443.035**.

SECTION 16. ORS 443.035 is amended to read:

443.035. (1) The Department of Human Services may grant a license to a home health agency**, referral agency or caregiver registry** for a calendar year, may annually renew a license and may allow for a change of ownership, upon payment of a fee as follows:

(a) For a new home health agency:

(A) [*$1,000*] **$1,600**; and

(B) An additional [*$1,000*] **$1,600** for each subunit of a parent home health agency.

(b) For renewal of a **home health agency** license:

(A) [*$600*] **$850**; and

(B) An additional [*$600*] **$850** for each subunit of a parent home health agency.

(c) For a change of ownership **of a home health agency** at a time other than the annual renewal date:

(A) $500; and

(B) An additional $500 for each subunit of a parent home health agency.

(d) For a new referral agency or caregiver registry:

(A) $1,500; and

(B) An additional $750 for each subunit of a referral agency or caregiver registry.

(e) For renewal of a referral agency or caregiver registry license:

(A) $750; and

(B) An additional $750 for each subunit of a referral agency or caregiver registry.

(f) For a change of ownership of a referral agency or caregiver registry at a time other than the annual renewal date:

(A) $350; and

(B) An additional $350 for each subunit of a referral agency or caregiver registry.

(2) Notwithstanding subsection (1)(c) **or (f)** of this section, the fee for a change in ownership shall be $100 if a change in ownership does not involve:

(a) The majority owner or partner; or

(b) The administrator operating the agency **or registry**.

(3) All fees received pursuant to subsection (1) of this section shall be paid over to the State Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously to the Department of Human Services for the administration of ORS 443.005 to 443.095.

SECTION 17. Section 18 of this 2009 Act is added to and made a part of ORS 443.005 to 443.095.

SECTION 18. (1) The Department of Human Services shall conduct an on-site inspection of a home health agency, referral agency and caregiver registry prior to licensure and at least once every three years thereafter.

(2) In lieu of an on-site inspection, the department may accept a certification or accreditation from a federal agency or an accrediting body approved by the department that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the department as addressing the standards and conditions of participation requirements of the Centers for Medicare and Medicaid Services and any additional standards set by the department;

(b) The agency or registry notifies the department to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The agency or registry provides copies of all documentation concerning the certification or accreditation requested by the department.

SECTION 19. (1) Rules adopted by the Department of Human Services pursuant to ORS 443.085 and 443.340 shall include procedures for the filing of complaints as to the care or services provided by home health agencies, in-home care agencies, referral agencies or caregiver registries that ensure the confidentiality of the identity of the complainant.

(2) An employee or contract provider with knowledge of a violation of law or rules of the department shall use the reporting procedures established by the home health agency, in-home care agency, referral agency or caregiver registry before notifying the department or other state agency of the inappropriate care or violation, unless the employee or contract provider:

(a) Believes a patient's health or safety is in immediate jeopardy; or

(b) Files a complaint in accordance with rules adopted under subsection (1) of this section.

(3) Information obtained by the department during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any client of the home health agency, in-home care agency, referral agency or caregiver registry. The department may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a home health agency, in-home care agency, referral agency or caregiver registry.

(4) As used in this section:

(a) "Caregiver registry" has the meaning given that term in ORS 443.005.

(b) "Home health agency" has the meaning given that term in ORS 443.005.

(c) "In-home care agency" has the meaning given that term in ORS 443.305.

(d) "Referral agency" has the meaning given that term in ORS 443.005.

SECTION 20. ORS 443.045 is amended to read:

443.045. (1) The Department of Human Services may deny, suspend or revoke the license of**, or assess a civil penalty against,** any **individual,** home health agency**, referral agency or caregiver registry** for failure to comply with ORS 443.005 to 443.095 or with the rules of the department as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, **assessment of civil penalties,** adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183.

(3) A civil penalty imposed under this section may not exceed $1,000 per violation and may not total more than $2,000.

(4) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the Department of Human Services Account. Moneys credited to the account under this section are continuously appropriated to the department for the administration of ORS 443.005 to 443.095 and 443.305 to 443.350.

NOTE: Section 21 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 22. ORS 443.075 is amended to read:

443.075. [*The following services and supplies may be prescribed by a physician or a nurse practitioner in accordance with a plan of treatment which must be established and periodically reviewed by the physician or nurse practitioner*] **(1) A home health agency must have an order for treatment and plan of treatment from a physician or nurse practitioner for the following services and supplies**:

[*(1)*] **(a)** Home nursing care provided by or under the supervision of a registered nurse;

[*(2)*] **(b)** Physical, occupational or speech therapy, medical social services or other therapeutic services;

[*(3)*] **(c)** Home health aide services; and

[*(4)*] **(d)** Medical supplies, other than drugs and biologicals, and the use of medical appliances.

(2) A home health agency shall have each plan of treatment reviewed by the physician or nurse practitioner periodically, in accordance with rules adopted by the Department of Human Services.

SECTION 23. ORS 443.085 is amended to read:

443.085. The Department of Human Services shall adopt rules [*relating to the home health agencies licensed under*] **to implement** ORS 443.005 to 443.095[*, governing*] **including, but not limited to**:

(1) The qualifications of professional and ancillary personnel in order to adequately furnish home health services;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records; [*and*]

(4) Provision for contractual arrangements for professional and ancillary health services[.]**; and**

(5) Complaint and inspection procedures.

SECTION 24. ORS 443.090 is amended to read:

443.090. **(1)** Notwithstanding ORS 443.305 to 443.350, a home health agency licensed under ORS 443.015 that provides personal care services that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services, is not required to be licensed as an in-home care agency under ORS 443.315.

(2) A licensed home health agency that provides personal care services shall comply with all laws and rules concerning in-home care services except for the licensing requirements.

SECTION 25. ORS 443.315 is amended to read:

443.315. (1) A person may not **establish, manage or** operate [*or maintain*] an in-home care agency or purport to **manage or** operate [*or maintain*] an in-home care agency without obtaining a license from the Department of Human Services.

(2) The department shall establish requirements and qualifications for licensure under this section by rule. The department shall issue a license to an applicant that has the necessary qualifications and meets all requirements established by rule, including the payment of required fees. An in-home care agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.

(3) Application for a license required under subsection (1) of this section shall be made in the form and manner required by the department by rule and shall be accompanied by any required fees.

(4) A license may be granted, or may be renewed annually, upon payment of a fee as follows:

(a) For the initial licensure of an in-home care agency:

(A) $1,500; and

(B) An additional $750 for each subunit.

(b) For renewal of a license:

(A) $750; and

(B) An additional $750 for each subunit.

(c) For a change of ownership at a time other than the annual renewal date:

(A) $350; and

(B) An additional $350 for each subunit.

(5) A license issued under this section is valid for one year. A license may be renewed by payment of the required renewal fee and by demonstration of compliance with requirements for renewal established by rule.

(6) A license issued under this section is not transferable.

(7) The department shall conduct an on-site inspection of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement for licensing.

(8) In lieu of the on-site inspection required by subsection (7) of this section, the department may accept a certification or accreditation from a federal agency or an accrediting body approved by the department that the state licensing standards have been met, if the in-home care agency:

(a) Notifies the department to participate in any exit interview conducted by the federal agency or accrediting body; and

(b) Provides copies of all documentation concerning the certification or accreditation requested by the department.

SECTION 26. ORS 443.325 is amended to read:

443.325. The Department of Human Services may impose a civil penalty [*in the manner provided in ORS 183.745*] and **may** deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder. A failure to comply with ORS 443.305 to 443.350 includes, but is not limited to:

(1) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(2) Failure to provide the contracted in-home care services; or

(3) Failure to correct deficiencies identified during a department inspection.

NOTE: Sections 27 and 28 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 29. ORS 65.800 is amended to read:

65.800. For purposes of ORS 65.803 to 65.815:

(1) "Hospital" means a hospital as defined in ORS 442.015 [*(19)*].

(2) "Noncharitable entity" means any person or entity that is not a public benefit or religious corporation and is not wholly owned or controlled by one or more public benefit or religious corporations.

SECTION 30. ORS 127.646 is amended to read:

127.646. As used in ORS 127.646 to 127.654:

(1) "Health care organization" means a home health agency, hospice program, hospital, long term care facility or health maintenance organization.

(2) "Health maintenance organization" has the meaning given that term in ORS 750.005, except that "health maintenance organization" includes only those organizations that participate in the federal Medicare or Medicaid programs.

(3) "Home health agency" has the meaning given that term in ORS 443.005.

(4) "Hospice program" has the meaning given that term in ORS 443.850.

(5) "Hospital" has the meaning given that term in ORS 442.015**.** [*(19), except that*] "Hospital" does not include a special inpatient care facility.

(6) "Long term care facility" has the meaning given that term in ORS 442.015, except that "long term care facility" does not include an intermediate care facility for individuals with mental retardation.

SECTION 31. ORS 192.517 is amended to read:

192.517. (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition or age is unable to authorize such access;

(B) If the individual does not have a legal guardian or other legal representative, or the state or a political subdivision of this state is the legal guardian of the individual; and

(C) If a complaint regarding the rights or safety of the individual has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system shall have access to the name, address and telephone number of any legal guardian or other legal representative of an individual.

(3) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the services, except as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806) as in effect on January 1, 2003.

(4) The system shall have reasonable access to facilities, including the residents and staff of the facilities.

(5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 [*(9)*] **(7)**.

SECTION 32. ORS 192.660, as amended by section 1, chapter 602, Oregon Laws 2007, is amended to read:

192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from holding executive session during a regular, special or emergency meeting, after the presiding officer has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

(2) The governing body of a public body may hold an executive session:

(a) To consider the employment of a public officer, employee, staff member or individual agent.

(b) To consider the dismissal or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member or individual agent who does not request an open hearing.

(c) To consider matters pertaining to the function of the medical staff of a public hospital licensed pursuant to ORS 441.015 to 441.063[*, 441.085, 441.087 and 441.990 (2)*] including, but not limited to, all clinical committees, executive, credentials, utilization review, peer review committees and all other matters relating to medical competency in the hospital.

(d) To conduct deliberations with persons designated by the governing body to carry on labor negotiations.

(e) To conduct deliberations with persons designated by the governing body to negotiate real property transactions.

(f) To consider information or records that are exempt by law from public inspection.

(g) To consider preliminary negotiations involving matters of trade or commerce in which the governing body is in competition with governing bodies in other states or nations.

(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed.

(i) To review and evaluate the employment-related performance of the chief executive officer of any public body, a public officer, employee or staff member who does not request an open hearing.

(j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding proposed acquisition, exchange or liquidation of public investments.

(k) If the governing body is a health professional regulatory board, to consider information obtained as part of an investigation of licensee or applicant conduct.

(L) If the governing body is the State Landscape Architect Board, or an advisory committee to the board, to consider information obtained as part of an investigation of registrant or applicant conduct.

(m) To discuss information about review or approval of programs relating to the security of any of the following:

(A) A nuclear-powered thermal power plant or nuclear installation.

(B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal power plant or nuclear installation.

(C) Generation, storage or conveyance of:

(i) Electricity;

(ii) Gas in liquefied or gaseous form;

(iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

(iv) Petroleum products;

(v) Sewage; or

(vi) Water.

(D) Telecommunication systems, including cellular, wireless or radio systems.

(E) Data transmissions by whatever means provided.

(3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides request that negotiations be conducted in executive session. Labor negotiations conducted in executive session are not subject to the notification requirements of ORS 192.640.

(4) Representatives of the news media shall be allowed to attend executive sessions other than those held under subsection (2)(d) of this section relating to labor negotiations or executive session held pursuant to ORS 332.061 (2) but the governing body may require that specified information be undisclosed.

(5) When a governing body convenes an executive session under subsection (2)(h) of this section relating to conferring with counsel on current litigation or litigation likely to be filed, the governing body shall bar any member of the news media from attending the executive session if the member of the news media is a party to the litigation or is an employee, agent or contractor of a news media organization that is a party to the litigation.

(6) No executive session may be held for the purpose of taking any final action or making any final decision.

(7) The exception granted by subsection (2)(a) of this section does not apply to:

(a) The filling of a vacancy in an elective office.

(b) The filling of a vacancy on any public committee, commission or other advisory group.

(c) The consideration of general employment policies.

(d) The employment of the chief executive officer, other public officers, employees and staff members of a public body unless:

(A) The public body has advertised the vacancy;

(B) The public body has adopted regular hiring procedures;

(C) In the case of an officer, the public has had the opportunity to comment on the employment of the officer; and

(D) In the case of a chief executive officer, the governing body has adopted hiring standards, criteria and policy directives in meetings open to the public in which the public has had the opportunity to comment on the standards, criteria and policy directives.

(8) A governing body may not use an executive session for purposes of evaluating a chief executive officer or other officer, employee or staff member to conduct a general evaluation of an agency goal, objective or operation or any directive to personnel concerning agency goals, objectives, operations or programs.

(9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

(a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of licensee or applicant conduct investigated by a health professional regulatory board.

(b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to the substance and disposition of registrant or applicant conduct investigated by the State Landscape Architect Board or an advisory committee to the board.

SECTION 33. ORS 409.720 is amended to read:

409.720. (1) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705 (1).

(b) "Health care facility" has the meaning given that term in ORS 442.015 [*(16)*].

(c) "Residential facility" has the meaning given that term in ORS 443.400 (6).

(2) Every adult foster home, health care facility and residential facility licensed or registered by the Department of Human Services shall:

(a) Adopt a plan to provide for the safety of persons who are receiving care at or are residents of the home or facility in the event of an emergency that requires immediate action by the staff of the home or facility due to conditions of imminent danger that pose a threat to the life, health or safety of persons who are receiving care at or are residents of the home or facility; and

(b) Provide training to all employees of the home or facility about the responsibilities of the employees to implement the plan required by this section.

(3) The department shall adopt by rule the requirements for the plan and training required by this section. The rules adopted shall include, but are not limited to, procedures for the evacuation of the persons who are receiving care at or are residents of the adult foster home, health care facility or residential facility to a place of safety when the conditions of imminent danger require relocation of those persons.

SECTION 34. Section 1, chapter 736, Oregon Laws 2003, is amended to read:

Sec. 1. As used in sections 1 to 9**, chapter 736, Oregon Laws 2003** [*of this 2003 Act*]:

(1) "Charity care" means costs for providing inpatient or outpatient care services free of charge or at a reduced charge because of the indigence or lack of health insurance of the patient receiving the care services.

(2) "Contractual adjustments" means the difference between the amounts charged based on the hospital's full established charges and the amount received or due from the payor.

(3) "Hospital" has the meaning given that term in ORS 442.015**.** [*but*] **"Hospital"** does not include special inpatient care facilities.

(4) "Net revenue":

(a) Means the total amount of charges for inpatient or outpatient care provided by the hospital to patients, less charity care, bad debts and contractual adjustments;

(b) Does not include revenue derived from sources other than inpatient or outpatient operations, including but not limited to interest and guest meals; and

(c) Does not include any revenue that is taken into account in computing a long term care facility assessment under sections 15 to 22**, chapter 736, Oregon Laws 2003** [*of this 2003 Act*].

(5) "Waivered hospital" means a type A or type B hospital, as described in ORS 442.470, a hospital that provides only psychiatric care or a hospital identified by the Department of Human Services as appropriate for inclusion in the application described in section 4**, chapter 736, Oregon Laws 2003** [*of this 2003 Act*].

SECTION 35. ORS 432.500 is amended to read:

432.500. As used in ORS 432.510 to 432.550 and 432.900:

(1) "Clinical laboratory" means a facility where microbiological, serological, chemical, hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative cytological, histological, pathological or other examinations are performed on material derived from the human body, for the purpose of diagnosis, prevention of disease or treatment of patients by physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

(2) "Department" means the Department of Human Services or its authorized representative.

(3) "Health care facility" means a hospital, as defined in ORS 442.015 [*(19)*], or an ambulatory surgical center, as defined in ORS 442.015.

(4) "Practitioner" means any person whose professional license allows the person to diagnose or treat cancer in patients.

SECTION 36. ORS 435.254 is amended to read:

435.254. (1) A hospital providing care to a female victim of sexual assault shall:

(a) Promptly provide the victim with unbiased, medically and factually accurate written and oral information about emergency contraception;

(b) Promptly orally inform the victim of her option to be provided emergency contraception at the hospital; and

(c) If requested by the victim and if not medically contraindicated, provide the victim with emergency contraception immediately at the hospital, notwithstanding section 2, chapter 789, Oregon Laws 2003.

(2)(a) In collaboration with victim advocates, other interested parties and nonprofit organizations that provide intervention and support services to victims of sexual assault and their families, the Department of Human Services shall develop, prepare and produce informational materials relating to emergency contraception for the prevention of pregnancy in victims of sexual assault for distribution to and use in all hospital emergency departments in the state, in quantities sufficient to comply with the requirements of this section.

(b) The Director of Human Services, in collaboration with community sexual assault programs and other relevant stakeholders, may approve informational materials developed, prepared and produced by other entities for the purposes of paragraph (a) of this subsection.

(c) All informational materials must:

(A) Be clearly written and easily understood in a culturally competent manner; and

(B) Contain an explanation of emergency contraception, including its use, safety and effectiveness in preventing pregnancy, including but not limited to the following facts:

(i) Emergency contraception has been approved by the United States Food and Drug Administration as an over-the-counter medication for women 18 years of age or older and is a safe and effective way to prevent pregnancy after unprotected sexual intercourse or after contraceptive failure, if taken in a timely manner.

(ii) Emergency contraception is more effective the sooner it is taken.

(iii) Emergency contraception will not disrupt an established pregnancy.

(3) The department shall respond to complaints of violations of ORS 435.256 in accordance with ORS 441.057.

(4) The department shall incorporate the requirements of this section in rules adopted pursuant to ORS [*441.055*] **441.025** that prescribe the care to be given to patients at hospitals.

(5) The director shall adopt rules necessary to carry out the provisions of this section.

(6) Information required to be provided under subsection (1) of this section is medically and factually accurate if the information is verified or supported by the weight of research conducted in compliance with accepted scientific methods and based upon:

(a) Reports in peer-reviewed journals; or

(b) Information that leading professional organizations, such as the American College of Obstetricians and Gynecologists, and agencies with expertise in the field recognize as accurate and objective.

SECTION 37. ORS 441.015 is amended to read:

441.015. (1) No person or governmental unit, acting severally or jointly with any other person or governmental unit, shall establish, conduct, maintain, manage or operate a health care facility or health maintenance organization, as defined in ORS 442.015, in this state without a license.

(2) Any health care facility or health maintenance organization which is in operation at the time of promulgation of any applicable rules or minimum standards under ORS [*441.055*] **441.025** or 731.072 shall be given a reasonable length of time within which to comply with such rules or minimum standards.

SECTION 38. ORS 441.065 is amended to read:

441.065. (1) ORS 441.015 to 441.063[*, 441.085, 441.087*] or the rules adopted pursuant thereto do not authorize the supervision, regulation or control of the remedial care or treatment of residents or patients in any home or institution that is described under subsection (2) of this section and is conducted for those who rely upon treatment solely by prayer or spiritual means, except as to the sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment. This section does not exempt such a home or institution from the licensing requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463.

(2) To qualify under subsection (1) of this section, a home or institution must:

(a) Be owned by an entity that is registered with the Secretary of State as a nonprofit corporation and that does not own, hold a financial interest in, control or operate any facility, wherever located, of a type providing medical health care and services; and

(b) Provide 24 hour a day availability of nonmedical care and services.

(3) As used in this section:

(a) "Medical health care and services" means medical screening, examination, diagnosis, prognosis, treatment and drug administration. "Medical health care and services" does not include counseling or the provision of social services or dietary services.

(b) "Nonmedical care and services" means assistance or services, other than medical health care and services, provided by attendants for the physical, mental, emotional or spiritual comfort and well being of residents or patients.

SECTION 39. ORS 441.624 is amended to read:

441.624. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073, [*441.085,*] 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.367, 441.600, 441.610, 441.630, 441.650 to 441.665, 441.685, 441.690, 441.703 and 441.705 to 441.720 address the consolidation of the regulatory functions of licensing, certification, inspection of care, utilization review, abuse reporting and abuse investigation.

(2) It is legislative intent that:

(a) The Department of Human Services focus administrative effort on the integration and consistent application and interpretation of the regulatory functions at the nursing facility level;

(b) Surveys and other reports, especially with respect to client assessment, be consistently and reliably performed throughout the state;

(c) Positive and negative findings and sanctions be proportional to the strengths and problems identified, within the limits of federal statute and regulations; and

(d) The interpretation of regulatory criteria be independent of influence from budgetary limitations.

SECTION 40. ORS 442.425 is amended to read:

442.425. (1) The Administrator of the Office for Oregon Health Policy and Research by rule may specify one or more uniform systems of financial reporting necessary to meet the requirements of ORS 442.400 to 442.463. Such systems shall include such cost allocation methods as may be prescribed and such records and reports of revenues, expenses, other income and other outlays, assets and liabilities, and units of service as may be prescribed. Each facility under the administrator's jurisdiction shall adopt such systems for its fiscal period starting on or after the effective date of such system and shall make the required reports on such forms as may be required by the administrator. The administrator may extend the period by which compliance is required upon timely application and for good cause. Filings of such records and reports shall be made at such times as may be reasonably required by the administrator.

(2) Existing systems of reporting used by health care facilities shall be given due consideration by the administrator in carrying out the duty of specifying the systems of reporting required by ORS 442.400 to 442.463. The administrator insofar as reasonably possible shall adopt reporting systems and requirements that will not unreasonably increase the administrative costs of the facility.

(3) The administrator may allow and provide for modifications in the reporting systems in order to correctly reflect differences in the scope or type of services and financial structure between the various categories, sizes or types of health care facilities and in a manner consistent with the purposes of ORS 442.400 to 442.463.

(4) The administrator may establish specific annual reporting provisions for facilities that receive a preponderance of their revenue from associated comprehensive group-practice prepayment health care service plans. Notwithstanding any other provisions of ORS [*441.055 and*] 442.400 to 442.463, such facilities shall be authorized to utilize established accounting systems and to report costs and revenues in a manner consistent with the operating principles of such plans and with generally accepted accounting principles. When such facilities are operated as units of a coordinated group of health facilities under common ownership, the facilities shall be authorized to report as a group rather than as individual institutions, and as a group shall submit a consolidated balance sheet, income and expense statement and statement of source and application of funds for such group of health facilities.

SECTION 41. ORS 442.430 is amended to read:

442.430. (1) Whenever a further investigation is considered necessary or desirable by the Office for Oregon Health Policy and Research to verify the accuracy of the information in the reports made by health care facilities, the office may make any necessary further examination of the facility's records and accounts. Such further examinations include, but are not limited to, requiring a full or partial audit of all such records and accounts.

(2) In carrying out the duties prescribed by ORS [*441.055 and*] 442.400 to 442.463, the office may utilize its own staff or may contract with any appropriate, independent, qualified third party. No such contractor shall release or publish or otherwise use any information made available to it under its contractual responsibility unless such permission is specifically granted by the office.

SECTION 42. ORS 442.700 is amended to read:

442.700. As used in ORS 442.700 to 442.760:

(1) "Board of governors" means the governors of a cooperative program as described in ORS 442.720.

(2) "Cooperative program" means a program among two or more health care providers for the purpose of providing heart and kidney transplant services including, but not limited to, the sharing, allocation and referral of physicians, patients, personnel, instructional programs, support services,

facilities, medical, diagnostic, laboratory or therapeutic services, equipment, devices or supplies, and other services traditionally offered by health care providers.

(3) "Director" means the Director of Human Services.

(4) "Health care provider" means a hospital, physician or entity, a significant part of whose activities consist of providing hospital or physician services in this state. For purposes of the immunities provided by ORS 442.700 to 442.760 and 646.740, "health care provider" includes any officer, director, trustee, employee, or agent of, or any entity under common ownership and control with, a health care provider.

(5) "Hospital" means a hospital, [*as defined in ORS 442.015 (19), or*] a long term care facility or an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under ORS 441.015 to 441.089. "Hospital" includes community health programs established under ORS 430.610 to 430.695.

(6) "Order" means a decision issued by the director under ORS 442.710 either approving or denying an application for a cooperative program and includes modifications of an original order under ORS 442.730 (3)(b) and ORS 442.740 (1) and (4).

(7) "Party to a cooperative program agreement" or "party" means an entity that enters into the principal agreement to establish a cooperative program and applies for approval under ORS 442.700 to 442.760 and 646.740 and any other entity that, with the approval of the director, becomes a member of a cooperative program.

(8) "Physician" means a physician defined in ORS 677.010 (13) and licensed under ORS chapter 677.

NOTE: Section 43 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 44. ORS 677.290 is amended to read:

677.290. (1) All moneys received by the Oregon Medical Board under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Oregon Medical Board Account which is established. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

(2) Notwithstanding subsection (1) of this section, the board may maintain a revolving account in a sum not to exceed $50,000 for the purpose of receiving and paying pass-through moneys relating to peer review pursuant to its duties under ORS 441.055 [*(6) and (7)*] **(4) and (5)** and in administering programs pursuant to its duties under this chapter relating to the education and rehabilitation of licensees in the areas of chemical substance abuse, inappropriate prescribing and medical competence. The creation of and disbursement of moneys from the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account are continuously appropriated for purposes set forth in this subsection.

(3) Each year $10 shall be paid to the Oregon Health and Science University for each [*actively*] in-state [*registered*] physician [*under ORS 677.265*] **licensed under ORS chapter 677,** which amount is continuously appropriated to the Oregon Health and Science University to be used in maintaining a circulating library of medical and surgical books and publications for the use of practitioners of medicine in this state, and when not so in use to be kept at the library of the School of Medicine and accessible to its students. The balance of the money received by the board is appropriated continuously and shall be used only for the administration and enforcement of this chapter, but any part of the balance may, upon the order of the board, be paid into the circulating library fund.

SECTION 45. ORS 677.805 is amended to read:

677.805. As used in ORS 677.805 to 677.840:

(1) "Ankle" means the tibial plafond and its posterolateral border or posterior malleolus, the medial malleolus, the distal fibula or lateral malleolus, and the talus.

(2) "Board" means the Oregon Medical Board.

(3) "Podiatric physician and surgeon" means a podiatric physician and surgeon whose practice is limited to treating ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

(4) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital [*certified in the manner described in ORS 441.055 (2)*] **licensed under ORS 441.025** or in an ambulatory surgical center licensed by the Department of Human Services and is under the supervision of or in collaboration with a physician licensed to practice medicine by the Oregon Medical Board. "Podiatry" does not include the administration of general or spinal anesthetics or the amputation of the entire foot.

SECTION 46. ORS 677.812 is amended to read:

677.812. Surgery of the ankle as defined in ORS 677.805 must be conducted:

(1) In a hospital [*certified in the manner described in ORS 441.055 (2)*] or in an ambulatory surgical center licensed by the Department of Human Services **under ORS 441.025**; and

(2) By a podiatric physician and surgeon who meets the qualifications for ankle surgery established by rule of the Oregon Medical Board.

SECTION 47. ORS 678.730 is amended to read:

678.730. (1) Any individual is qualified for licensure as a nursing home administrator who:

(a) Meets the training or experience and other standards established by rules of the Board of Examiners of Nursing Home Administrators. The board shall accept one year of experience as an administrator serving a dual facility in lieu of any residency or intern requirement established pursuant to this paragraph; and

(b) Has passed an examination as provided in ORS 678.740.

(2) Each license as a nursing home administrator may be renewed by the board upon compliance by the licensee with the requirements of ORS 678.760 and by presenting evidence of the completion of the continuing education work required by the board. The board may require up to 50 hours of continuing education in any one-year period.

(3) In establishing educational standards pursuant to subsection (1)(a) of this section, the board shall require a baccalaureate degree from an accredited school of higher education. However, the educational requirement does not apply to any person who:

(a) Was a licensed administrator in any jurisdiction of the United States prior to January 1, 1983; or

(b) Was an administrator of a dual facility meeting the experience requirements pursuant to subsection (1)(a) of this section.

(4) Notwithstanding the requirements established under subsection (1) of this section, upon the request of the governing body of a hospital, as defined in ORS 442.015 [*(19)*], the board shall deem a health care administrator to have met the requirements for licensure as a nursing home administrator if the health care administrator possesses an advanced degree in management and has at least 10 years of experience in health care management.

SECTION 48. ORS 678.780 is amended to read:

678.780. (1) The sanctions authorized by subsection (2) of this section may be imposed upon the following grounds:

(a) The employment of fraud or deception in applying for or obtaining a nursing home administrator's license.

(b) Engaging in conduct in the course of acting as a nursing home administrator involving fraud, dishonesty, malfeasance, cheating or other conduct as the Board of Examiners of Nursing Home Administrators of the State of Oregon may prohibit by rule.

(c) Conviction of a crime involving circumstances that relate to the licensee's fitness to continue practicing as a nursing home administrator.

(d) Mistake or inadvertence in the issuance of the license by the board.

(e) Physical or mental incapacity that presents an unreasonable risk of harm to the licensee or to the person or property of others in the course of performing the duties of a nursing home administrator.

(f) Use of any controlled substance or intoxicating liquor in a manner that impairs the licensee's ability to conduct safely the practice for which the licensee is licensed.

(g) The licensee has engaged in conduct that would justify denying a license to an applicant.

(h) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2) or of any lawful rule or order of the board or continuous or substantial violations of the rules adopted under ORS [*441.055*] **441.025**.

(i) Discipline imposed by any other licensing body in this or any other state based on conduct that would be grounds for discipline under this section or rules adopted by the board.

(j) Incompetence in performing the duties of a nursing home administrator as demonstrated by evidence that the licensee either lacks or did not use the knowledge or skill necessary to perform the administrator's duties in a minimally adequate manner.

(k) Employing or otherwise assisting another person to act as a nursing home administrator with knowledge that the person does not hold a valid license to practice as a nursing home administrator.

(L) Failure to pay a civil penalty imposed against the licensee in a timely manner.

(m) Unprofessional conduct as defined in rules adopted by the board.

(2) Subject to ORS chapter 183, the board may impose any or all of the following sanctions:

(a) Suspend, revoke or refuse to renew any license required by ORS 678.720.

(b) A civil penalty not to exceed $1,000.

(c) Probation, with authority to limit or restrict a license.

(d) Participation in a treatment program for intoxicating liquor or controlled substances.

(3) Hearings under this section must be conducted by an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605.

(4) Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.

SECTION 49. ORS 441.017 and 441.085 are repealed.

SECTION 50. The amendments to ORS 441.020 by section 4a of this 2009 Act become operative on January 1, 2011.

SECTION 51. If House Bill 2009 becomes law, section 2 of this 2009 Act is amended to read:

Sec. 2. (1) An ambulatory surgical center shall evaluate all of a patient's risk factors before permitting a surgical procedure to be performed on the patient in the facility.

(2) An ambulatory surgical center shall post a notice in the facility, in a prominent place and in prominent font size, advising patients of the manner in which patients may express concerns regarding the ambulatory surgical center and services provided at the ambulatory surgical center. The posting must include but need not be limited to the address and telephone number for contacting the [*Department of Human Services*] **Oregon Health Authority** to express the concerns.

(3) The [*department*] **authority** shall adopt rules classifying ambulatory surgical centers in three categories:

(a) Certified ambulatory surgical centers, which must comply with federal Centers for Medicare and Medicaid Services rules, 42 C.F.R. 416 and rules adopted by the [*department*] **authority**;

(b) High complexity noncertified ambulatory surgical centers, which must comply with rules adopted by the [*department*] **authority**; and

(c) Moderate complexity noncertified ambulatory surgical centers, which must comply with rules adopted by the [*department*] **authority** and which may use only conscious sedation and analgesia.

SECTION 52. If House Bill 2009 becomes law and House Bill 2442 does not become law, section 4 of this 2009 Act (amending ORS 441.020) is repealed and ORS 441.020, as amended by section 720, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.020. (1) Licenses for health care facilities, except long term facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS [*441.055*] **441.025**.

(4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

(5) Except as otherwise provided in subsection [*(5)*] **(8)** of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be $750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be $1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.

(e) Two hundred or more beds, the annual license fee shall be $3,400.

(6) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

[*(6)*] **(8)** For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to $120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to $175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to $350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to $450.

(e) Two hundred beds or more, the annual license fee shall be up to $580.

[*(7) For special inpatient care facilities with:*]

[*(a) Fewer than 26 beds, the annual license fee shall be $750.*]

[*(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.*]

[*(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be $1,900.*]

[*(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.*]

[*(e) Two hundred beds or more, the annual license fee shall be $3,400.*]

[*(8)*] **(9)** For ambulatory surgical centers, the annual license fee shall be [*$1,000*]**:**

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

[*(9)*] **(10)** For birthing centers, the annual license fee shall be [*$250*] **$750**.

[*(10)*] **(11)** For outpatient renal dialysis facilities, the annual license fee shall be [*$1,500*] **$2,000**.

[*(11)*] **(12)** During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

[*(12)*] **(13)** Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed. **The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.**

[*(13)*] **(14)** Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(15) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 52a. If House Bill 2009 becomes law and House Bill 2442 does not become law, section 4a of this 2009 Act (amending ORS 441.020) and section 50 of this 2009 Act are repealed and ORS 441.020, as amended by section 720, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), and section 52 of this 2009 Act, is amended to read:

441.020. (1) Licenses for health care facilities, except long term facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

(4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

(5) Except as otherwise provided in subsection (8) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be [*$750*] **$1,250**.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be [*$1,000*] **$1,850**.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be [*$1,900*] **$3,800**.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be [*$2,900*] **$6,525**.

(e) Two hundred or more beds, **but fewer than 500 beds,** the annual license fee shall be [*$3,400*] **$8,500**.

(f) Five hundred or more beds, the annual license fee shall be $12,070.

(6) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

(8) For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to $120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to $175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to $350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to $450.

(e) Two hundred beds or more, the annual license fee shall be up to $580.

(9) For ambulatory surgical centers, the annual license fee shall be:

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

(10) For birthing centers, the annual license fee shall be $750.

(11) For outpatient renal dialysis facilities, the annual license fee shall be $2,000.

(12) During the time the licenses remain in force holders thereof are not required to pay inspection fees to any county, city or other municipality.

(13) Any health care facility license may be indorsed to permit operation at more than one location. In such case the applicable license fee shall be the sum of the license fees which would be applicable if each location were separately licensed. The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.

(14) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(15) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 52b. If House Bill 2009 becomes law and House Bill 2442 does not become law, the amendments to ORS 441.020 by section 52a of this 2009 Act become operative on January 1, 2011.

SECTION 53. If House Bill 2009, House Bill 2129 and House Bill 2442 all become law, section 4 of this 2009 Act (amending ORS 441.020) is repealed and ORS 441.020, as amended by section 720, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), and section 84, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

441.020. (1) Licenses for health care facilities, except long term facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS [*441.055*] **441.025**.

(4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. Except as provided in subsection [*(14)*] **(15)** of this section, if the license is issued, the fee shall be paid into the State Treasury to the credit of:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

(5) Except as otherwise provided in subsection [*(6)*] **(8)** of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be $750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be $1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.

(e) Two hundred or more beds, the annual license fee shall be $3,400.

(6) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

[*(6)*] **(8)** For long term care facilities with:

(a) One to 15 beds, the annual license fee shall be $180.

(b) Sixteen to 49 beds, the annual license fee shall be $260.

(c) Fifty to 99 beds, the annual license fee shall be $520.

(d) One hundred to 150 beds, the annual license fee shall be $670.

(e) More than 150 beds, the annual license fee shall be $750.

[*(7) For special inpatient care facilities with:*]

[*(a) Fewer than 26 beds, the annual license fee shall be $750.*]

[*(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,000.*]

[*(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be $1,900.*]

[*(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $2,900.*]

[*(e) Two hundred beds or more, the annual license fee shall be $3,400.*]

[*(8)*] **(9)** For ambulatory surgical centers, the annual license fee shall be [*$1,000*]**:**

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

[*(9)*] **(10)** For birthing centers, the annual license fee shall be [*$250*] **$750**.

[*(10)*] **(11)** For outpatient renal dialysis facilities, the annual license fee shall be [*$1,500*] **$2,000**.

[*(11)*] **(12)** During the time the licenses remain in force, holders are not required to pay inspection fees to any county, city or other municipality.

[*(12)*] **(13)** Any health care facility license may be indorsed to permit operation at more than one location. If so, the applicable license fee shall be the sum of the license fees that would be applicable if each location were separately licensed. **The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.**

[*(13)*] **(14)** Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

[*(14)*] **(15)** All moneys received pursuant to subsection [*(6)*] **(8)** of this section shall be deposited in the Quality Care Fund established in section 1, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2442).

(16) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 53a. If House Bill 2009, House Bill 2129 and House Bill 2442 all become law, section 4a of this 2009 Act (amending ORS 441.020) and section 50 of this 2009 Act are repealed and ORS 441.020, as amended by section 720, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), section 84, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2129), and section 53 of this 2009 Act, is amended to read:

441.020. (1) Licenses for health care facilities, except long term facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

(4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. Except as provided in subsection (15) of this section, if the license is issued, the fee shall be paid into the State Treasury to the credit of:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

(5) Except as otherwise provided in subsection (8) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be [*$750*] **$1,250**.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be [*$1,000*] **$1,850**.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be [*$1,900*] **$3,800**.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be [*$2,900*] **$6,525**.

(e) Two hundred or more beds, **but fewer than 500 beds,** the annual license fee shall be [*$3,400*] **$8,500**.

(f) Five hundred or more beds, the annual license fee shall be $12,070.

(6) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

(8) For long term care facilities with:

(a) One to 15 beds, the annual license fee shall be $180.

(b) Sixteen to 49 beds, the annual license fee shall be $260.

(c) Fifty to 99 beds, the annual license fee shall be $520.

(d) One hundred to 150 beds, the annual license fee shall be $670.

(e) More than 150 beds, the annual license fee shall be $750.

(9) For ambulatory surgical centers, the annual license fee shall be:

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

(10) For birthing centers, the annual license fee shall be $750.

(11) For outpatient renal dialysis facilities, the annual license fee shall be $2,000.

(12) During the time the licenses remain in force, holders are not required to pay inspection fees to any county, city or other municipality.

(13) Any health care facility license may be indorsed to permit operation at more than one location. If so, the applicable license fee shall be the sum of the license fees that would be applicable if each location were separately licensed. The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.

(14) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(15) All moneys received pursuant to subsection (8) of this section shall be deposited in the Quality Care Fund established in section 1, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2442).

(16) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 53b. If House Bill 2009, House Bill 2129 and House Bill 2442 all become law, the amendments to ORS 441.020 by section 53a of this 2009 Act become operative on January 1, 2011.

SECTION 54. If House Bill 2009 becomes law, section 4b of this 2009 Act is amended to read:

Sec. 4b. (1) In addition to an annual fee, the [*Department of Human Services*] **Oregon Health Authority** may charge a hospital a fee for:

(a) Complaint investigation, in an amount not to exceed $850.

(b) Full compliance survey, in an amount not to exceed $7,520.

(c) On-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $225.

(d) Off-site follow-up survey to verify compliance with a plan of correction, in an amount not to exceed $85.

(2) During one calendar year, the [*department*] **authority** may charge to all hospitals a total amount not to exceed:

(a) $91,000 for complaint investigations.

(b) $15,000 for full compliance surveys.

(c) $6,700 for follow-up surveys.

(3)(a) The [*department*] **authority** shall apportion the total amount charged under subsection (2) of this section among hospitals at the end of each calendar year based on the number of complaint investigations, full compliance surveys and follow-up surveys performed at each hospital during the calendar year.

(b) The [*department*] **authority** may not include investigations of employee complaints in a hospital's total number of complaint investigations.

(c) A hospital that was licensed in 2008 may not be charged fees under this subsection for more complaint investigations than the number of complaint investigations that occurred at the hospital in 2008.

(d) A hospital that was not licensed in 2008 may be charged fees under this subsection for an unlimited number of complaint investigations.

(4) As used in this section, "full compliance survey" means a survey conducted by the [*department*] **authority** following a complaint investigation to determine a hospital's compliance with the Centers for Medicare and Medicaid Services Conditions of Participation.

SECTION 55. If House Bill 2009 becomes law, section 5 of this 2009 Act (amending ORS 441.022) is repealed and ORS 441.022, as amended by section 721, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.022. In determining whether to license a health care facility [*or long term care facility*] pursuant to ORS 441.025, the Oregon Health Authority or the Department of Human Services shall consider only factors relating to the health and safety of individuals to be cared for therein and **the ability of the operator of the health care facility to safely operate the facility, and** may not consider whether the health care facility [*or long term care facility*] is or will be a governmental, charitable or other nonprofit institution or whether the facility is or will be an institution for profit.

SECTION 56. If House Bill 2009 becomes law, section 6 of this 2009 Act (amending ORS 441.025) is repealed and ORS 441.025, as amended by section 722, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.025. (1) Upon receipt of **a license fee and** an application to operate a health care facility [*and the license fee*] **other than a long term care facility**, the Oregon Health Authority shall **review the application and conduct an on-site inspection of the health care facility. The authority shall** issue a license if it finds that the applicant and health care facility comply with ORS 441.015 to 441.063 [*and 441.085*] and the rules of the authority provided that the authority does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(2) Upon receipt of **a license fee and** an application to operate a long term care facility [*and the license fee*], the Department of Human Services shall **review the application and conduct an on-site inspection of the long term care facility. The department shall** issue a license if the department finds that the applicant and long term care facility comply with ORS 441.015 to 441.063[*, 441.085*] and 441.087 and the rules of the department provided that it does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(3) Each license, unless sooner suspended or revoked, shall be renewable annually for the calendar year upon payment of the fee, provided that a certificate of noncompliance has not been issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

(4) Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable.

(5) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by rule of the authority or the department.

(6) No license shall be issued or renewed for any health care facility or health maintenance organization [*that offers or proposes to develop a new health service unless a certificate of need has first been issued therefor pursuant to ORS 442.340 (1987 Replacement Part) or approval has been*

granted under ORS 442.315 or section 9, chapter 1034, Oregon Laws 1989] **that is required to obtain a certificate of need under ORS 442.315 until a certificate of need has been granted. An ambulatory surgical center is not subject to the certificate of need requirements in ORS 442.315**.

(7) No license shall be issued or renewed for any skilled nursing facility or intermediate care facility, [*as defined in ORS 442.015,*] unless the applicant has included in the application the name and such other information as may be necessary to establish the identity and financial interests of any person who has incidents of ownership in the facility representing an interest of 10 percent or more thereof. If the person having such interest is a corporation, the name of any stockholder holding stock representing an interest in the facility of 10 percent or more shall also be included in the application. If the person having such interest is any other entity, the name of any member thereof having incidents of ownership representing an interest of 10 percent or more in the facility shall also be included in the application.

(8) A license may be denied to any applicant for a license or renewal thereof or any stockholder of any such applicant who has incidents of ownership in the health care facility [*or long term care facility*] representing an interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility, if during the five years prior to the application the applicant or any stockholder of the applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has divested that interest after receiving from the authority or the department written notice that the authority or the department intends to suspend or revoke the license or to decertify the facility from eligibility to receive payments for services provided under this section.

(9) The Department of Human Services may not issue or renew a license for a long term care facility, [*as defined in ORS 442.015,*] unless the applicant has included in the application the identity of any person who has incident of ownership in the long term care facility who also has a financial interest in any pharmacy, as defined in ORS 689.005.

(10) The authority shall adopt rules for each type of health care facility, except long term care facilities, to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

(a) Establishing classifications and descriptions for the different types of health care facilities that are licensed under ORS 441.015 to 441.087; and

(b) Standards for patient care and safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records.

(11) The department shall adopt rules for each type of long term care facility to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

(a) Establishing classifications and descriptions for the different types of long term care facilities that are licensed under ORS 441.015 to 441.087; and

(b) Standards for patient care and safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records.

(12) The authority or department may not adopt a rule requiring a health care facility to serve a specific food as long as the necessary nutritional food elements are present in the food that is served.

(13) A health care facility licensed by the authority or department may not:

(a) Offer or provide services beyond the scope of the license classification assigned by the authority or department; or

(b) Assume a descriptive title or represent itself under a descriptive title other than the classification assigned by the authority or department.

(14) A health care facility must reapply for licensure to change the classification assigned or the type of license issued by the authority or department.

SECTION 57. If House Bill 2009 becomes law, section 7 of this 2009 Act (amending ORS 441.030) is repealed and ORS 441.030, as amended by section 723, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.030. (1) The Oregon Health Authority or the Department of Human Services **may assess a civil penalty and**, pursuant to ORS 479.215, shall deny, suspend or revoke a license**,** in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The authority may:

(a) **Assess a civil penalty or** deny, suspend or revoke a [*health care facility's*] license **of a health care facility other than a long term care facility** in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063 [*and 441.085*] or the rules or minimum standards adopted under ORS 441.015 to 441.063 [*and 441.085; or*]**.**

(b) **Assess a civil penalty or** suspend or revoke a license issued under ORS 441.025 for failure to comply with an authority order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, [*441.085,*] 441.162 or 441.166 or the rules adopted under ORS 441.015 to 441.063, [*441.085,*] 441.162 or 441.166[*, or*]**.**

(c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty imposed under ORS 441.170.

(3) The department may:

(a) **Assess a civil penalty or** deny, suspend or revoke a long term care facility's license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063[*, 441.085*] or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063[*, 441.085*] or 441.087.

(b) **Assess a civil penalty or** suspend or revoke a long term care facility's license issued under ORS 441.025 for failure to comply with a department order arising from a long term care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063 or 441.084 to 441.087 or the rules adopted under ORS 441.015 to 441.063 or 441.084 to 441.087[*, or*]**.**

(c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty imposed under ORS 441.710.

[*(c)*] **(d)** Order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the department finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063 or 441.084 to 441.087 and the rules adopted under ORS 441.015 to 441.063 or 441.084 to 441.087.

(4) Any long term care facility that has been ordered to restrict the admission of patients pursuant to subsection [*(3)(c)*] **(3)(d)** of this section shall post a notice of the restriction, provided by the department, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

SECTION 58. If House Bill 2009 becomes law, section 8 of this 2009 Act (amending ORS 441.055) is repealed and ORS 441.055, as amended by section 726, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.055. [*(1) To fulfill the purposes of ORS 441.015 to 441.087:*]

[*(a) The Oregon Health Authority shall adopt rules with respect to the different types of health care facilities; and*]

[*(b) The Department of Human Services shall adopt rules with respect to long term care facilities.*]

[*(2) No rules shall require any specific food so long as the necessary nutritional food elements are present.*]

[*(3) Rules describing care given in health care facilities or long term care facilities must include, but need not be limited to, standards of patient care or patient safety, adequate professional staff organizations, training of staff for whom no other state regulation exists, suitable delineation of professional privileges and adequate staff analyses of clinical records. The authority or the department may*

accept certificates by the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with acceptable standards.]

[*(4)*] **(1)** The governing body of each health care facility [*or long term care facility*] shall be responsible for the operation of the facility, the selection of the medical staff and the quality of care rendered in the facility. The governing body shall:

(a) Ensure that all health care personnel for whom state licenses, registrations or certificates are required are currently licensed, registered or certified;

(b) Ensure that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Ensure that procedures for granting, restricting and terminating privileges exist and that such procedures are regularly reviewed to ensure their conformity to applicable law;

(d) Ensure that physicians admitted to practice in the facility are organized into a medical staff in such a manner as to effectively review the professional practices of the facility for the purposes of reducing morbidity and mortality and for the improvement of patient care; and

(e) Ensure that a physician is not denied medical staff membership or privileges at the facility solely on the basis that the physician holds medical staff membership or privileges at another health care facility.

[*(5)*] **(2)** The physicians organized into a medical staff pursuant to subsection [*(4)*] **(1)** of this section shall propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited to the following:

(a) Procedures for physicians admitted to practice in the facility to organize into a medical staff pursuant to subsection [*(4)*] **(1)** of this section;

(b) Procedures for ensuring that physicians admitted to practice in the facility are granted privileges consistent with their individual training, experience and other qualifications;

(c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or remove officers and other persons to carry out medical staff activities with accountability to the governing body;

(d) Procedures for ensuring that physicians admitted to practice in the facility are currently licensed by the Oregon Medical Board;

(e) Procedures for ensuring that the facility's procedures for granting, restricting and terminating privileges are followed and that such procedures are regularly reviewed to assure their conformity to applicable law; and

(f) Procedures for ensuring that physicians provide services within the scope of the privileges granted by the governing body.

[*(6)*] **(3)** Amendments to medical staff bylaws shall be accomplished through a cooperative process involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, repealed or amended when approved by the medical staff and the governing body. Approval shall not be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the failure to approve would subvert the stated moral or ethical purposes of the institution.

[*(7)*] **(4)** The Oregon Medical Board may appoint one or more physicians to conduct peer review for a health care facility upon request of such review by all of the following:

(a) The physician whose practice is being reviewed.

(b) The executive committee of the health care facility's medical staff.

(c) The governing body of the health care facility.

[*(8)*] **(5)** The physicians appointed pursuant to subsection [*(7)*] **(4)** of this section shall be deemed agents of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall conduct peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care facility.

[*(9)*] **(6)** Any person serving on or communicating information to a peer review committee shall not be subject to an action for damages for action or communications or statements made in good faith.

[*(10)*] **(7)** All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the peer review committee in connection with a peer review are confidential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS 41.675.

[*(11)*] **(8)** Notwithstanding subsection [*(10)*] **(7)** of this section, a written report of the findings and conclusions of the peer review shall be provided to the governing body of the health care facility who shall abide by the privileged and confidential provisions set forth in subsection [*(10)*] **(7)** of this section.

[*(12)*] **(9)** Procedures for peer review established by subsections [*(7) to (11)*] **(4) to (8)** of this section are exempt from ORS chapter 183.

[*(13)*] **(10)** The **Oregon Health** Authority shall adopt by rule standards for rural hospitals, as defined in ORS 442.470, that specifically address the provision of care to postpartum and newborn patients so long as patient care is not adversely affected.

[*(14)*] **(11)** For purposes of this section, "physician" has the meaning given the term in ORS 677.010.

SECTION 59. If House Bill 2009 becomes law, section 9 of this 2009 Act (amending ORS 441.057) is repealed and ORS 441.057, as amended by section 727, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.057. (1) Rules adopted pursuant to ORS [*441.055*] **441.025** shall include procedures for the filing of complaints as to the standard of care in any health care facility [*or long term care facility*] and provide for the confidentiality of the identity of any complainant.

(2) A health care facility [*or a long term care facility*], or person acting in the interest of the facility, may not take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health care facility [*or long term care facility*] administration before notifying the Department of Human Services, Oregon Health Authority or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the department or the authority under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health care facility [*or long term care facility*] employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health care facility [*or long term care facility*] or to the department, authority or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.172, who claims to be aggrieved by a violation of ORS 441.174 committed by a hospital.

(7) Information obtained by the department or the authority during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department or the authority may publicly release a report of the department's or the authority's findings but may not include information in the report that could be used to identify the complainant or any patient at the health care facility. The department or the authority may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a health care facility, and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 676.160 as that information pertains to a licensee of the board.

SECTION 60. If House Bill 2009 becomes law, section 10 of this 2009 Act (amending ORS 441.060) is repealed and ORS 441.060, as amended by section 728, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.060. (1) The Oregon Health Authority and the Department of Human Services shall make or cause to be made [*such inspections as the authority or the department deem necessary*] **on-site inspections of licensed health care facilities at least once every three years**.

(2) The authority and the department may prescribe by rule that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, either prior to or after receiving a certificate of need pursuant to ORS [*442.340 (1987 Replacement Part)*] **442.315**, if required, submit plans and specifications therefor to the authority or the department for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS [*441.055*] **441.025** and 443.420 and for compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified.

(3) The authority or the department may require by rule payment of a fee for project review services at a variable rate, dependent on total project cost.

(4) For health care facilities, the authority shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program.

(5) For long term care facilities and residential care facilities, the department shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program. The fee for project review of residential care facilities shall equal two-thirds that required of health care facilities.

(6) The authority or the department may also conduct an on-site review of projects as a prerequisite to licensure of new facilities, major renovations and expansions. The authority and the department shall, at least annually, with the advice of the facilities covered by the review, present proposed rule changes regarding facility design and construction to such agencies for their consideration.

(7) The authority shall publish a state submissions guide for health care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

(8) The department shall publish a state submissions guide for long term care facility and residential care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

SECTION 61. If House Bill 2009 becomes law, section 11 of this 2009 Act (amending ORS 441.062) is repealed and ORS 441.062, as amended by section 729, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.062. (1) In conducting inspections for the purpose of licensing health care facilities [*and long term care facilities*] under ORS 441.020, the Oregon Health Authority and the Department of Human Services shall avoid unnecessary facility disruption by coordinating inspections performed by the authority or the department with inspections performed by other federal, state and local agencies that have responsibility for health care facility [*or long term care facility*] licensure.

(2) Whenever possible, the authority and the department shall avoid duplication of inspections by accepting inspection reports or surveys prepared by other state agencies that have responsibility for health care facility [*or long term care facility*] licensure for purposes of the inspection required for licensure.

(3) In lieu of an on-site inspection as required by ORS 441.025 and 441.060, the authority or the department may accept a certification or accreditation from a federal agency or an accrediting body approved by the authority or the department that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the authority or the department as addressing the standards and condition of participation requirements of the Centers for Medicare and Medicaid Services and other standards set by the authority or the department;

(b) The health care facility notifies the authority or the department to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The health care facility provides copies of all documentation concerning the certification or accreditation requested by the authority or the department.

[*(3)*] **(4)** The authority and the department shall adopt rules necessary to implement this section.

SECTION 62. If House Bill 2009 becomes law, section 12 of this 2009 Act (amending ORS 441.990) is repealed and ORS 441.990, as amended by section 9, chapter 602, Oregon Laws 2007, and section 746, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

441.990. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of not more than $100 for the first violation and not more than $500 for each subsequent violation. Each day of continuing violation after a first conviction shall be considered a subsequent violation.

(2) Any person who willfully prevents, interferes with, or attempts to impede in any way the work of any duly authorized representative of the Department of Human Services in the lawful carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

(3) The removal of the notice required by ORS 441.030 (4) by any person other than an official of the department is a Class C misdemeanor.

(4) In addition to the penalties under this section, the Oregon Health Authority, the Department of Human Services or the Department of Consumer and Business Services may assess civil penalties against any health care facility or health maintenance organization under ORS 441.030 or for a violation of ORS 441.015 (1). A civil penalty imposed under this section may not exceed $5,000.

(5) Civil penalties under this section shall be imposed in the manner provided by ORS 183.745.

(6) Civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund for general governmental purposes.

SECTION 63. If House Bill 2009 becomes law, section 13 of this 2009 Act (amending ORS 442.015) is repealed and ORS 442.015, as amended by section 749, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

(1) "Acquire" or "acquisition" means obtaining equipment, supplies, components or facilities by any means, including purchase, capital or operating lease, rental or donation, with intention of using such equipment, supplies, components or facilities to provide health services in Oregon. When equipment or other materials are obtained outside of this state, acquisition is considered to occur when the equipment or other materials begin to be used in Oregon for the provision of health services or when such services are offered for use in Oregon.

[*(2) "Adjusted admission" means the sum of all inpatient admissions divided by the ratio of inpatient revenues to total patient revenues.*]

[*(3)*] **(2)** "Affected persons" has the same meaning as given to "party" in ORS 183.310.

[*(4) "Ambulatory surgical center" means a facility that performs outpatient surgery not routinely or customarily performed in a physician's or dentist's office, and is able to meet health facility licensure requirements.*]

[*(5) "Audited actual experience" means data contained within financial statements examined by an independent, certified public accountant in accordance with generally accepted auditing standards.*]

(3)(a) "Ambulatory surgical center" means a facility or portion of a facility that operates exclusively for the purpose of providing surgical services to patients who do not require hospitalization and for whom the expected duration of services does not exceed 24 hours following admission.

(b) "Ambulatory surgical center" does not mean:

(A) Individual or group practice offices of private physicians or dentists that do not contain a distinct area used for outpatient surgical treatment on a regular and organized

basis, or that only provide surgery routinely provided in a physician's or dentist's office using local anesthesia or conscious sedation; or

(B) A portion of a licensed hospital designated for outpatient surgical treatment.

[*(6)*] **(4)** "Budget" means the projections by the hospital for a specified future time period of expenditures and revenues with supporting statistical indicators.

[*(7) "Case mix" means a calculated index for each hospital, based on financial accounting and case mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital's mix of cases compared to a state or national mix of cases.*]

[*(8)*] **(5)** "Develop" means to undertake those activities that on their completion will result in the offer of a new institutional health service or the incurring of a financial obligation, as defined under applicable state law, in relation to the offering of such a health service.

[*(9)*] **(6)** "Expenditure" or "capital expenditure" means the actual expenditure, an obligation to an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of a donation or grant in lieu of an expenditure but not including any interest thereon.

[*(10)*] **(7)** "Freestanding birthing center" means a facility licensed for the primary purpose of performing low risk deliveries.

[*(11)*] **(8)** "Governmental unit" means the state, or any county, municipality or other political subdivision, or any related department, division, board or other agency.

[*(12)*] **(9)** "Gross revenue" means the sum of daily hospital service charges, ambulatory service charges, ancillary service charges and other operating revenue. "Gross revenue" does not include contributions, donations, legacies or bequests made to a hospital without restriction by the donors.

[*(13)(a)*] **(10)(a)** "Health care facility" means [*a hospital, a long term care facility, an ambulatory surgical center, a freestanding birthing center or an outpatient renal dialysis facility.*]**:**

(A) A hospital;

(B) A long term care facility;

(C) An ambulatory surgical center;

(D) A freestanding birthing center; or

(E) An outpatient renal dialysis center.

(b) "Health care facility" does not mean:

[*(A) An establishment furnishing residential care or treatment not meeting federal intermediate care standards, not following a primarily medical model of treatment, prohibited from admitting persons requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human Services or the Department of Corrections; or*]

(A) A residential facility licensed by the Department of Human Services or the Oregon Health Authority under ORS 443.415;

(B) An establishment furnishing primarily domiciliary care[.] **as described in ORS 443.205;**

(C) A residential facility licensed or approved under the rules of the Department of Corrections;

(D) Facilities established by ORS 430.335 for treatment of substance abuse disorders; or

(E) Community mental health programs or community developmental disabilities programs established under ORS 430.620.

[*(14)*] **(11)** "Health maintenance organization" or "HMO" means a public organization or a private organization organized under the laws of any state that:

(a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

(b)(A) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services:

(i) Usual physician services;

(ii) Hospitalization;

(iii) Laboratory;

(iv) X-ray;

(v) Emergency and preventive services; and

(vi) Out-of-area coverage;

(B) Is compensated, except for copayments, for the provision of the basic health care services listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic rate basis; and

(C) Provides physicians' services primarily directly through physicians who are either employees or partners of such organization, or through arrangements with individual physicians or one or more groups of physicians organized on a group practice or individual practice basis.

[*(15)*] **(12)** "Health services" means clinically related diagnostic, treatment or rehabilitative services, and includes alcohol, drug or controlled substance abuse and mental health services that may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

[*(16)*] **(13)** "Hospital" means**:**

(a) A facility with an organized medical staff[*, with*] **and a** permanent [*facilities*] **building** that [*include inpatient beds and with medical services, including physician services and continuous nursing services under the supervision of registered nurses, to provide diagnosis and medical or surgical treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment for patients with mental illness or to provide treatment in special inpatient care facilities.*] **is capable of providing 24-hour inpatient care to two or more individuals who have an illness or injury and that provides at least the following health services:**

(A) Medical;

(B) Nursing;

(C) Laboratory;

(D) Pharmacy; and

(E) Dietary; or

(b) A special inpatient care facility as that term is defined by the Oregon Health Authority by rule.

[*(17)*] **(14)** "Institutional health services" means health services provided in or through health care facilities and includes the entities in or through which such services are provided.

[*(18)*] **(15)** "Intermediate care facility" means a facility that provides, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment that a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services above the level of room and board that can be made available to them only through institutional facilities.

[*(19)*] **(16)** "Long term care facility" means a facility with permanent facilities that include inpatient beds, providing medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services, to provide treatment for two or more unrelated patients. "Long term care facility" includes skilled nursing facilities and intermediate care facilities but may not be construed to include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

[*(20) "Major medical equipment" means medical equipment that is used to provide medical and other health services and that costs more than $1 million. "Major medical equipment" does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services, if the clinical laboratory is independent of a physician's office and a hospital and has been determined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and (11) of section 1861(s) of that Act.*]

[*(21) "Net revenue" means gross revenue minus deductions from revenue.*]

[*(22)*] **(17)** "New hospital" means a facility that did not offer hospital services on a regular basis within its service area within the prior 12-month period and is initiating or proposing to initiate such services. "New hospital" also includes any replacement of an existing hospital that involves a substantial increase or change in the services offered.

[*(23)*] **(18)** "New skilled nursing or intermediate care service or facility" means a service or facility that did not offer long term care services on a regular basis by or through the facility within the prior 12-month period and is initiating or proposing to initiate such services. "New skilled nursing or intermediate care service or facility" also includes the rebuilding of a long term care

facility, the relocation of buildings that are a part of a long term care facility, the relocation of long term care beds from one facility to another or an increase in the number of beds of more than 10 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

[*(24)*] **(19)** "Offer" means that the health care facility holds itself out as capable of providing, or as having the means for the provision of, specified health services.

[*(25) "Operating expenses" means the sum of daily hospital service expenses, ambulatory service expenses, ancillary expenses and other operating expenses, excluding income taxes.*]

[*(26)*] **(20)** "Outpatient renal dialysis facility" means a facility that provides renal dialysis services directly to outpatients.

[*(27)*] **(21)** "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation, of a state.

[*(28)*] **(22)** "Skilled nursing facility" means a facility or a distinct part of a facility, that is primarily engaged in providing to inpatients skilled nursing care and related services for patients who require medical or nursing care, or an institution that provides rehabilitation services for the rehabilitation of individuals who are injured or sick or who have disabilities.

[*(29) "Special inpatient care facility" means a facility with permanent inpatient beds and other facilities designed and utilized for special health care purposes, including but not limited to a rehabilitation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other establishment falling within a classification established by the Oregon Health Authority, after determination of the need for such classification and the level and kind of health care appropriate for such classification.*]

[*(30) "Total deductions from gross revenue" or "deductions from revenue" means reductions from gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts, contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and adjustments and other such revenue deductions. The deduction shall be net of the offset of restricted donations and grants for indigent care.*]

SECTION 64. If House Bill 2009 becomes law, section 14b of this 2009 Act is amended to read:

Sec. 14b. A person may not establish, conduct or maintain a referral agency or caregiver registry, or represent to the public that the person is a referral agency or caregiver registry, without first obtaining a referral agency license or caregiver registry license from the [*Department of Human Services*] **Oregon Health Authority**.

SECTION 65. If House Bill 2009 becomes law, section 14c of this 2009 Act is amended to read:

Sec. 14c. The [*Department of Human Services*] **Oregon Health Authority** may adopt rules governing referral agencies and caregiver registries, including but not limited to:

(1) The minimum qualifications of individuals whose services are offered through a referral agency or caregiver registry;

(2) Standards for the organization and quality of patient care;

(3) Procedures for maintaining records;

(4) Requirements for contractual arrangements for professional and ancillary services;

(5) Requiring criminal background checks on individuals placed on a caregiver or referral list by a referral agency or caregiver registry or on individuals placed in a client's place of residence by a referral agency or caregiver registry;

(6) Procedures for complaints against referral agencies and caregiver registries; and

(7) Procedures for inspection of referral agencies and caregiver registries.

SECTION 66. If House Bill 2009 becomes law, section 18 of this 2009 Act is amended to read:

Sec. 18. (1) The [*Department of Human Services*] **Oregon Health Authority** shall conduct an on-site inspection of a home health agency, referral agency and caregiver registry prior to licensure and at least once every three years thereafter.

(2) In lieu of an on-site inspection, the [*department*] **authority** may accept a certification or accreditation from a federal agency or an accrediting body approved by the [*department*] **authority** that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the [*department*] **authority** as addressing the standards and conditions of participation requirements of the Centers for Medicare and Medicaid Services and any additional standards set by the [*department*] **authority**;

(b) The agency or registry notifies the [*department*] **authority** to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The agency or registry provides copies of all documentation concerning the certification or accreditation requested by the [*department*] **authority**.

SECTION 67. If House Bill 2009 becomes law, section 19 of this 2009 Act is amended to read:

Sec. 19. (1) Rules adopted by the [*Department of Human Services*] **Oregon Health Authority** pursuant to ORS 443.085 and 443.340 shall include procedures for the filing of complaints as to the care or services provided by home health agencies, in-home care agencies, referral agencies or caregiver registries that ensure the confidentiality of the identity of the complainant.

(2) An employee or contract provider with knowledge of a violation of law or rules of the [*department*] **authority** shall use the reporting procedures established by the home health agency, in-home care agency, referral agency or caregiver registry before notifying the [*department*] **authority** or other state agency of the inappropriate care or violation, unless the employee or contract provider:

(a) Believes a patient's health or safety is in immediate jeopardy; or

(b) Files a complaint in accordance with rules adopted under subsection (1) of this section.

(3) Information obtained by the [*department*] **authority** during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the [*department*] **authority** may publicly release a report of its findings but may not include information in the report that could be used to identify the complainant or any client of the home health agency, in-home care agency, referral agency or caregiver registry. The [*department*] **authority** may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a home health agency, in-home care agency, referral agency or caregiver registry.

(4) As used in this section:

(a) "Caregiver registry" has the meaning given that term in ORS 443.005.

(b) "Home health agency" has the meaning given that term in ORS 443.005.

(c) "In-home care agency" has the meaning given that term in ORS 443.305.

(d) "Referral agency" has the meaning given that term in ORS 443.005.

SECTION 68. If House Bill 2009 becomes law and House Bill 2442 does not become law, section 20 of this 2009 Act (amending ORS 443.045) is repealed and ORS 443.045, as amended by section 772, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

443.045. (1) The Oregon Health Authority may deny, suspend or revoke the license of**, or assess a civil penalty against,** any **individual,** home health agency**, referral agency or caregiver registry** for failure to comply with ORS 443.005 to 443.095 or with the rules of the authority as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, **assessment of civil penalties,** adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183.

(3) A civil penalty imposed under this section may not exceed $1,000 per violation and may not total more than $2,000.

(4) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the Oregon Health Authority Fund. Moneys credited to the fund under this section are continuously appropriated to the authority for the administration of ORS 443.005 to 443.095 and 443.305 to 443.350.

SECTION 69. If House Bill 2009, House Bill 2129 and House Bill 2442 all become law, section 20 of this 2009 Act (amending ORS 443.045) is repealed and ORS 443.045, as amended by

section 772, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), and section 86, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2129), is amended to read:

443.045. (1) The Oregon Health Authority may deny, suspend or revoke the license of**, or assess a civil penalty against,** any **individual,** home health agency**, referral agency or caregiver registry** for failure to comply with ORS 443.005 to 443.095 or section 6, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2442), or with the rules of the authority as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, **assessment of civil penalties,** adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183.

(3) A civil penalty imposed under this section may not exceed $1,000 per violation and may not total more than $2,000.

(4) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the Oregon Health Authority Fund. Moneys credited to the fund under this section are continuously appropriated to the authority for the administration of ORS 443.005 to 443.095 and 443.305 to 443.350.

SECTION 70. If House Bill 2009 becomes law, section 22 of this 2009 Act (amending ORS 443.075) is repealed and ORS 443.075 is amended to read:

443.075. [*The following services and supplies may be prescribed by a physician or a nurse practitioner in accordance with a plan of treatment which must be established and periodically reviewed by the physician or nurse practitioner*] **(1) A home health agency must have an order for treatment and plan of treatment from a physician or nurse practitioner for the following services and supplies**:

[*(1)*] **(a)** Home nursing care provided by or under the supervision of a registered nurse;

[*(2)*] **(b)** Physical, occupational or speech therapy, medical social services or other therapeutic services;

[*(3)*] **(c)** Home health aide services; and

[*(4)*] **(d)** Medical supplies, other than drugs and biologicals, and the use of medical appliances.

(2) A home health agency shall have each plan of treatment reviewed by the physician or nurse practitioner periodically, in accordance with rules adopted by the Oregon Health Authority.

SECTION 71. If House Bill 2009 becomes law, section 25 of this 2009 Act (amending ORS 443.315) is repealed and ORS 443.315, as amended by section 776a, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

443.315. (1) A person may not **establish, manage or** operate [*or maintain*] an in-home care agency or purport to **manage or** operate [*or maintain*] an in-home care agency without obtaining a license from the Oregon Health Authority.

(2) The authority shall establish requirements and qualifications for licensure under this section by rule. The authority shall issue a license to an applicant that has the necessary qualifications and meets all requirements established by rule, including the payment of required fees. An in-home care agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.

(3) Application for a license required under subsection (1) of this section shall be made in the form and manner required by the authority by rule and shall be accompanied by any required fees.

(4) A license may be granted, or may be renewed annually, upon payment of a fee as follows:

(a) For the initial licensure of an in-home care agency:

(A) $1,500; and

(B) An additional $750 for each subunit.

(b) For renewal of a license:

(A) $750; and

(B) An additional $750 for each subunit.

(c) For a change of ownership at a time other than the annual renewal date:

(A) $350; and

(B) An additional $350 for each subunit.

(5) A license issued under this section is valid for one year. A license may be renewed by payment of the required renewal fee and by demonstration of compliance with requirements for renewal established by rule.

(6) A license issued under this section is not transferable.

(7) The authority shall conduct an on-site inspection of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement for licensing.

(8) In lieu of the on-site inspection required by subsection (7) of this section, the authority may accept a certification or accreditation from a federal agency or an accrediting body approved by the authority that the state licensing standards have been met, if the in-home care agency:

(a) Notifies the authority to participate in any exit interview conducted by the federal agency or accrediting body; and

(b) Provides copies of all documentation concerning the certification or accreditation requested by the authority.

SECTION 72. If House Bill 2009 becomes law, section 31 of this 2009 Act (amending ORS 192.517) is repealed and ORS 192.517, as amended by section 165, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

192.517. (1) The system designated to protect and advocate for the rights of individuals shall have access to all records of:

(a) Any individual who is a client of the system if the individual or the legal guardian or other legal representative of the individual has authorized the system to have such access;

(b) Any individual, including an individual who has died or whose whereabouts are unknown:

(A) If the individual by reason of the individual's mental or physical condition or age is unable to authorize such access;

(B) If the individual does not have a legal guardian or other legal representative, or the state or a political subdivision of this state is the legal guardian of the individual; and

(C) If a complaint regarding the rights or safety of the individual has been received by the system or if, as a result of monitoring or other activities which result from a complaint or other evidence, there is probable cause to believe that the individual has been subject to abuse or neglect; and

(c) Any individual who has a legal guardian or other legal representative, who is the subject of a complaint of abuse or neglect received by the system, or whose health and safety is believed with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal representative:

(A) Has been contacted by the system upon receipt of the name and address of the legal guardian or other legal representative;

(B) Has been offered assistance by the system to resolve the situation; and

(C) Has failed or refused to act on behalf of the individual.

(2) The system shall have access to the name, address and telephone number of any legal guardian or other legal representative of an individual.

(3) The system that obtains access to records under this section shall maintain the confidentiality of the records to the same extent as is required of the provider of the services, except as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806) as in effect on January 1, 2003.

(4) The system shall have reasonable access to facilities, including the residents and staff of the facilities.

(5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055 [*(10)*] **(7)**.

SECTION 73. If House Bill 2009 becomes law, section 44 of this 2009 Act (amending ORS 677.290) is repealed and ORS 677.290, as amended by section 1052, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

677.290. (1) All moneys received by the Oregon Medical Board under this chapter shall be paid into the General Fund in the State Treasury and placed to the credit of the Oregon Medical Board Account which is established. Such moneys are appropriated continuously and shall be used only for the administration and enforcement of this chapter.

(2) Notwithstanding subsection (1) of this section, the board may maintain a revolving account in a sum not to exceed $50,000 for the purpose of receiving and paying pass-through moneys relating to peer review pursuant to its duties under ORS 441.055 [*(7) and (8)*] **(4) and (5)** and in administering programs pursuant to its duties under this chapter relating to the education and rehabilitation of licensees in the areas of chemical substance abuse, inappropriate prescribing and medical competence. The creation of and disbursement of moneys from the revolving account shall not require an allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account are continuously appropriated for purposes set forth in this subsection.

(3) Each year $10 shall be paid to the Oregon Health and Science University for each [*actively*] in-state [*registered*] physician [*under ORS 677.265*] **licensed under ORS chapter 677,** which amount is continuously appropriated to the Oregon Health and Science University to be used in maintaining a circulating library of medical and surgical books and publications for the use of practitioners of medicine in this state, and when not so in use to be kept at the library of the School of Medicine and accessible to its students. The balance of the money received by the board is appropriated continuously and shall be used only for the administration and enforcement of this chapter, but any part of the balance may, upon the order of the board, be paid into the circulating library fund.

SECTION 74. If House Bill 2243 becomes law, section 48 of this 2009 Act (amending ORS 678.780) is repealed and ORS 678.780, as amended by section 24, chapter ___, Oregon Laws 2009 (Enrolled House Bill 2243), is amended to read:

678.780. (1) In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health Licensing Agency may impose a form of discipline as specified in ORS 676.612 against any person practicing as a nursing home administrator for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 678.710 to 678.840, or the rules adopted under ORS 678.710 to 678.840.

(2) In addition to any discipline that may be imposed as provided by subsection (1) of this section, the agency may impose disciplinary sanctions against a person practicing as a nursing home administrator for any of the following causes:

(a) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.840 or of any rule or order of the agency;

(b) Any continuous or substantial violation of the rules adopted under ORS [*441.055*] **441.025**; or

(c) Discipline imposed by any other licensing body in this or any other state based on conduct that would be grounds for discipline under this section or rules adopted by the agency.

Passed by Senate June 17, 2009

Repassed by Senate June 29, 2009

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Secretary of Senate

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President of Senate

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Speaker of House

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