

**CHAPTER 441
(Resident Abuse)**

441.630 Definitions for ORS 441.630 to 441.680 and 441.995. As used in ORS 441.630 to 441.680 and 441.995:

(1) "Abuse" means:

(a) Any physical injury to a resident of a long term care facility which has been caused by other than accidental means.

(b) Failure to provide basic care or services, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity.

(c) Sexual contact with a resident caused by an employee, agent or other resident of a long term care facility by force, threat, duress or coercion.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person.

(e) Verbal or mental abuse as prohibited by federal law.

(f) Corporal punishment.

(g) Involuntary seclusion for convenience or discipline.

(2) "Abuse complaint" means any oral or written communication to the department, one of its agents or a law enforcement agency alleging abuse.

(3) "Department" means the Department of Human Services or a designee of the department.

(4) "Facility" means a long term care facility, as defined in ORS 442.015.

(5) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(6) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Licensed practical nurse or registered nurse.

(c) Employee of the Department of Human Services, a community developmental disabilities program or a long term care facility or person who contracts to provide services to a long term care facility.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech and occupational therapists.

(i) Legal counsel for a resident or guardian or family member of the resident. [1979 c.770 §1; 1981 c.470 §7; 1981 c.784 §22; 1987 c.428 §26; 1989 c.721 §53; 1993 c.759 §1; 2001 c.104 §180; 2009 c.442 §41; 2009 c.595 §737]

441.635 Legislative finding. The Legislative Assembly finds that for the purpose of preventing abuse, safeguarding and enhancing the welfare of residents and assuring the dignity and care to which residents are entitled, it is necessary and in the public interest to require mandatory reports and investigations of allegedly abused residents. [1979 c.770 §2; 1993 c.759 §2]

441.637 Rules; submission of rules to advisory group. (1) The Department of Human Services shall implement the provisions of ORS 441.630 to 441.680 and 441.995 and shall adopt such rules as are reasonably necessary for the enforcement of ORS 441.630 to 441.680 and 441.995.

(2) Prior to proceeding with the procedures for notice prescribed under ORS 183.335, the department shall submit any proposed rules to an advisory group consisting of representatives of long term care providers, long term care advocates, relevant licensing boards and the

department. The department shall consider and respond to the comments of the advisory group that pertain to any proposed rules before the department adopts the rules.

[1993 c.759 §10(1),(2)]

Note: 441.637, 441.676, 441.677, 441.678 and 441.679 were added to and made a part of 441.630 to 441.680 by legislative action but were not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

441.640 Report of suspected abuse of resident required. Any public or private official having reasonable cause to believe that any resident in a long term care facility, with whom the official comes in contact while acting in an official capacity, has suffered abuse, or that any person with whom the official comes in contact while acting in an official capacity has abused a resident in a long term care facility, shall report or cause a report to be made in the manner required in ORS 441.645. [1979 c.770 §3; 1993 c.759 §3]

441.645 Oral report to area agency on aging, department or law enforcement agency. (1) An oral report shall be made immediately by telephone or otherwise to the local office of the area agency on aging or of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the resident and any persons responsible for the care of the resident, the nature and the extent of the abuse, including any evidence of previous abuse, the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report is received by the area agency or department, the area agency or the department may notify the law enforcement

agency having jurisdiction within the county where the report was made. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not and the local office of the area agency or the department in the county where the report was made. [1979 c.770 §4; 1985 c.651 §4; 1993 c.759 §4]

441.650 Investigation of abuse complaint; initial status report; content; distribution of report; duties of investigator; investigation report. (1)

Upon receipt of the oral or written report required under ORS 441.640, or of an abuse complaint, the area agency on aging, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced as follows:

(a) Within two hours, if the complaint alleges that a resident's health or safety is in imminent danger or that the resident has recently died, been hospitalized or been treated in an emergency room; or

(b) Prior to the end of the next working day, if the complaint alleges that circumstances exist that could result in abuse and that the circumstances could place a resident's health or safety in imminent danger.

(2) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify in writing the local office of the area agency or the department as appropriate. Except in cases where the investigation is part of nursing facility surveyor activity pursuant to federal law, the area agency or the department shall complete an initial status report within two working days of the start of the investigation that includes:

(a) A summary of the complaint that identifies each alleged incident or problem;

(b) The status of the investigation;

(c) Whether an abuse complaint was initially filed at the direction of the administration of the facility;

(d) A determination of whether protection of the resident is needed and whether the facility must take action;

(e) The name and telephone number of the investigator; and

(f) The projected date that the investigation report will be completed and a statement that the report will be available upon request after the department issues a letter of determination.

(3) The initial status report described in subsection (2) of this section shall be provided either in person or by mail to the following individuals as soon as practicable, but no later than two working days after its completion:

(a) The complainant, unless the complainant waives the requirement;

(b) If the complaint involves a specific resident, the resident or a person designated to receive information concerning the resident;

(c) A representative of the Long Term Care Ombudsman, upon request; and

(d) The long term care facility.

(4) The initial status report described in subsection (2) of this section shall be available for public inspection.

(5) When copies of the initial status report described in subsection (2) of this section are made available to individuals listed in subsection (3) of this section, the names of the resident involved, the complainant and any individuals interviewed by the investigator shall be deleted from the copies.

(6) In investigating an abuse complaint, the investigator shall:

(a) Make an unannounced visit to the facility, except as provided by ORS

441.690, to determine the nature and cause of the abuse of the resident;

(b) Interview all available witnesses identified by any source as having personal knowledge relevant to the abuse complaint, such interviews to be private unless the witness expressly requests the interview not to be private;

(c) Make personal inspection of all physical circumstances that are relevant and material and that are susceptible to objective observation; and

(d) Write an investigation report that includes:

(A) The investigator's personal observations;

(B) A review of documents and records;

(C) A summary of all witness statements; and

(D) A statement of the factual basis for the findings for each incident or problem alleged in the complaint.

(7) Within five working days of completion of the investigation and not later than 60 days from completion of the initial status report described in subsection (2) of this section, the investigator shall provide the department with the written report required by subsection (6) of this section. The department shall make the investigation report available upon request after the letter of determination is complete. When copies of the report are made available, the names of the resident involved, the complainant and any individuals interviewed by the investigator shall be deleted from the copies. [1979 c.770 §5; 1987 c.428 §29; 1993 c.759 §5]

441.655 Immunity provided reporter of abuse. (1) Anyone participating in good faith in the making of a report pursuant to ORS 441.630 to 441.650 and who has reasonable grounds for the making thereof, shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed with respect to the making or

content of such report. Any such participant shall have the same immunity with respect to participating in any judicial proceeding resulting from such report.

(2) Anyone who makes a report pursuant to ORS 441.630 to 441.650 shall not be subjected to any retaliation by any official or employee of a long term care facility for making a report, including but not limited to restriction of otherwise lawful access to the facility or to any resident thereof, or, if an employee, to dismissal or harassment. [1979 c.770 §6]

441.660 Photographing resident; photograph as record. (1) In carrying out its duties under ORS 441.650, the law enforcement agency, the Department of Human Services or the area agency on aging may photograph or cause to have photographed any resident subject of the investigation for purposes of preserving evidence of the condition of the resident at the time of the investigation.

(2) Notwithstanding the provisions of ORS 192.410 to 192.505, photographs taken under authority of subsection (1) of this section shall not be considered records. [1979 c.770 §7; 1981 c.470 §6; 1987 c.428 §30; 1993 c.759 §8; 2005 c.268 §1]

441.665 Record of reports; classification of investigation report. (1) A proper record of reports under ORS 441.640, 441.645 and 441.676 on residents in long term care facilities shall be maintained by the Department of Human Services. Each problem or incident alleged in a report shall be determined to be abuse, other licensing violation or no violation. Each incident of abuse or other licensing violation alleged in a report shall be classified as substantiated, unsubstantiated or unable to substantiate or recorded as under appeal by the facility.

(2) All reports shall be cataloged under the name of the long term care facility associated with the complaint. [1979 c.770 §8; 1987 c.428 §31; 1993 c.759 §9]

441.670 [1979 c.770 §9; repealed by 1981 c.470 §1 (441.671 enacted in lieu of 441.670)]

441.671 Confidentiality of reports; when available. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of complainants and residents compiled under the provisions of ORS 441.640 to 441.660 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make the information available to any law enforcement agency, to any public agency which licenses or certifies long term care facilities or licenses or certifies the persons practicing the healing arts therein and to the Long Term Care Ombudsman.

(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505 apply to all records and reports compiled under ORS 441.640 to 441.665. [1981 c.470 §2 (enacted in lieu of 441.670); 1993 c.759 §11]

441.675 Certain evidentiary privileges inapplicable. In the case of abuse of a resident in a long term care facility, the privileges extended under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the abuse of a resident, or the cause thereof, in any judicial proceeding resulting from a report made pursuant to ORS 441.640. [1979 c.770 §10; 1983 c.740 §158; 1993 c.759 §12]

441.676 Investigation of licensing violations; powers of investigator. (1) For complaints of licensing violations other than abuse, the Department of Human Services shall cause an investigation to be completed within 90 days of the receipt of the complaint.

(2) Except in cases where the investigation is part of nursing facility surveyor activity pursuant to federal law, an investigator investigating a complaint other than a complaint of abuse shall:

(a) Make an unannounced visit to the facility, while complying with ORS 441.690;

(b) Interview all available witnesses identified by any source as having personal knowledge relevant to the complaint, such interviews to be private unless the witness expressly requests the interview not to be private;

(c) Make personal inspection of all physical circumstances that are relevant and material and that are susceptible to objective observation; and

(d) Write an investigation report that includes:

(A) The investigator's personal observations;

(B) A review of documents and records;

(C) A summary of all witness statements; and

(D) A statement of the factual basis for the findings for each incident or problem alleged in the complaint. [1993 c.759 §6]

Note: See note under 441.637.

441.677 Letter of determination; determination rules; distribution of letter; notice to nursing assistant; right to contested case hearing; rules. (1) Within 60 days of receipt of the investigation documents and the written report described in ORS 441.650 (6)(d) and 441.676 (2)(d), the Department of Human Services shall prepare a written letter of determination that states the department's determinations concerning each incident or problem alleged in the complaint. The department shall determine whether the alleged incident or problem was substantiated or unsubstantiated or whether the department was unable to substantiate the alleged incident or problem. The department shall adopt by rule definitions for the terms "substantiated," "unsubstantiated" and "unable to substantiate." If the department determines that an incident or problem alleged in the complaint is substantiated, the

letter of determination shall state whether the substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of determination shall state whether the facility or an individual, or both, was responsible. The department shall adopt by rule criteria for determining responsibility for substantiated abuse.

(2) A copy of the letter of determination shall be placed in the facility's complaint file. Copies shall be sent to the facility, the complainant and the local office of the department. The facility and the complainant receiving the letter of determination shall be given 10 days to respond with additional information and shall be informed of the appeals process.

(3) If the department determines that an individual who holds a license or certificate for a health occupation is directly responsible for the abuse, the department shall send a copy of its letter of determination and investigation report to the state agency responsible for licensing or certifying the individual in the health occupation. In instances involving conduct of a nursing assistant, the department shall give the nursing assistant 10 days to respond with additional information. The department also shall notify by mail the nursing assistant implicated in the investigation of:

(a) The nature of the allegations;

(b) The date and time of occurrence;

(c) The right to a contested case hearing conducted in accordance with ORS chapter 183;

(d) The department's obligation to report the substantiated findings in the registry maintained under ORS 441.678 after the nursing assistant has had an opportunity for a contested case hearing; and

(e) The fact that the nursing assistant's failure to request a contested case hearing within 30 days from the date of the notice will result in the department's reporting the

substantiated findings in the registry maintained under ORS 441.678.

(4) Notice sent to the nursing assistant's last-known address is sufficient to meet the requirements of subsection (3) of this section. [1993 c.759 §7; 2009 c.72 §1]

Note: See note under 441.637.

441.678 Review of finding that nursing assistant responsible for abuse; name placed in registry. (1) If a nursing assistant found by the Department of Human Services to be responsible for abuse does not respond to the department within 30 days after notice of the opportunity for a contested case hearing, the department shall place the abuse finding in the registry maintained under this section.

(2) If a nursing assistant is found to be responsible for abuse, the nursing assistant is entitled to a contested case hearing under ORS chapter 183. Upon a finding of abuse in a final order, the department shall place the finding in the registry maintained under this section.

(3) The department shall maintain a nursing assistant registry that contains, at a minimum, the information required by 42 C.F.R. 483.156. [1993 c.759 §16; 2001 c.900 §174; 2009 c.72 §2]

Note: See note under 441.637.

441.679 Preemployment inquiries; when employment prohibited. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant, a long term care facility shall contact the Oregon State Board of Nursing and inquire whether the person is currently licensed or certified by the board and whether there has been any disciplinary action against the person or substantiated abuse findings against a nursing assistant.

(2) A facility shall not employ or retain in employment any person found by a court of law to have abused, neglected or mistreated a person receiving long term care services, nor shall a facility employ or retain

in employment any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS 441.678. [1993 c.759 §15; 2009 c.72 §3]

Note: See note under 441.637.

441.680 Spiritual healing alone not considered abuse of resident. A resident who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered an abused resident within the meaning of ORS 441.630 to 441.680 and 441.995. [1979 c.770 §11; 1993 c.759 §13]

441.685 Monitors; designation; duties; peer review of facilities. (1) Upon receipt of a report under ORS 441.645 to 441.680 or upon receipt of a complaint by a resident or legal guardian of a resident, or other public or private official, as defined in ORS 441.630 by the Department of Human Services, the Director of Human Services may designate monitors who shall observe the activities of the facility and report to the director. The monitors may be designated without prior notice to the operator or owner of the facility. The monitors shall observe the operations of the facility for a period of not to exceed 10 days, assist the facility by advising it on how to comply with state requirements and shall submit a written report periodically to the director on the operation and condition of the facility.

(2) The monitors shall have access to the facilities to the extent necessary to carry out their duties. The monitors shall also have access to all records pertaining to the operation of the facility.

(3) Upon completion of their investigations, the monitors shall file a final report with the director and may:

(a) Find that problems in the facility have been resolved and recommend that further action by the department is unnecessary;

(b) Find that the problems in the facility are continuing but the facility owner, operator or other controlling person can resolve them within a period of not more than three months, and that during the three-month period the health and welfare of the residents of the facility are not jeopardized thereby; or

(c) Find that the problems of the facility have not been resolved and the department should take steps to obtain compliance with resident care standards and continue monitoring for an additional period.

(4) Associations representing long term care facilities may initiate a peer review process for any facility that is a member of the association and that is the subject of any complaint filed against it under ORS 441.630 to 441.685, 678.037 and 678.155 or any other provision of law. The report of the peer review process shall be submitted to the department. The peer review described in this subsection is in addition to and not in lieu of any other investigation, observation or report of the monitors otherwise required or authorized by ORS 441.630 to 441.685, 678.037 and 678.155. The association and persons conducting the peer review process acting in good faith shall not be subject to an action for civil damages as a result thereof.

(5) As used in this section:

(a) "Department" means the Department of Human Services.

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

(c) "Facility" means a long term care facility as defined in ORS 442.015.

(d) "Monitor" means an agent of the director designated by the director to observe the operation of a facility. [1979 c.770 §§12,13; 1987 c.428 §32; 1993 c.759 §14; 2001 c.900 §175]