

Chapter 179

2007 EDITION

Administration of State Institutions

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GENERAL PROVISIONS

179.010 “Institutions” defined. As used in this chapter, unless the context requires otherwise, “institutions” means the institutions designated in ORS 179.321. [Amended by 1969 c.597 §17; 1969 c.706 §62; 1971 c.301 §14; 1987 c.320 §106; 1987 c.321 §11; 2001 c.900 §26; 2003 c.14 §73]

179.020 [Repealed by 1969 c.199 §59]

179.030 [Amended by 1961 c.271 §1; repealed by 1969 c.199 §59]

179.040 General powers and duties. (1) The Department of Corrections and the Department of Human Services shall:

(a) Govern, manage and administer the affairs of the public institutions and works within their respective jurisdictions.

(b) Enter into contracts for the planning, erection, completion and furnishings of all new buildings or additions at their respective institutions.

(c) Subject to any applicable provisions of ORS 279A.125, 279A.255, 279A.275, 279A.280, 279A.285, 279A.290, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280 and 283.110 to 283.395, enter into contracts for the purchase of supplies for their respective institutions.

(d) Make and adopt rules, not inconsistent with law, for the guidance of the Department of Corrections or the Department of Human Services and for the government of their respective institutions.

(2) The Department of Corrections and the Department of Human Services, respectively, may:

(a) Sue and plead in all courts of law and equity.

(b) Perform all legal and peaceful acts requisite and necessary for the successful management and maintenance of the institutions within their respective jurisdictions. [Amended by 1967 c.419 §57; 1969 c.597 §18; 1969 c.706 §63; 1987 c.320 §107; 2001 c.900 §27; 2003 c.794 §200]

179.045 Reports on convictions; forms; confidentiality. (1) The clerk of a circuit or county court shall cause a report to be made to the Department of Corrections on each offender convicted of a felony or misdemeanor in the court and on each juvenile found to be within the jurisdiction of the court by reason of a ground set forth in ORS 419B.100 (1)(a) or 419C.005 (1).

(2) The Department of Corrections shall prescribe forms for the reports required under subsection (1) of this section. Information required may include the name, age, sex, crime or action and disposition of the offender or juvenile and such other information as the department by rule may require. Such reports are confidential and may not be used in evidence. [1967 c.635 §1; 1969 c.597 §14; 1987 c.320 §108; 1993 c.33 §317]

179.050 Authority to hold property. The Department of Corrections and the Department of Human Services may receive, take and hold property, both real and personal, for any institution within their respective jurisdictions. Title shall be taken in the name of the state. [Amended by 1969 c.597 §21; 1971 c.615 §11; 1987 c.320 §109; 2001 c.900 §28]

179.055 Disposition of income from property; maintenance of property. (1) The revenue from the rental or lease of property administered by an institution governed or managed by the Department of Corrections or the Department of Human Services, except dormitory and housing rentals at institutions governed by either department, shall be deposited in the account of the respective department for use by the respective department to pay for the cost of administration, taxes, repairs and improvements on the property.

(2) The Department of Corrections or Department of Human Services may request the Oregon Department of Administrative Services to make necessary repairs and improvements on the property described in subsection (1) of this section to be paid for by the Department of Corrections or Department of Human Services from the proceeds derived from such rental or lease of the property or from appropriations otherwise available. [1961 c.652 §2(1),(2); 1969 c.597 §22; 1969 c.706 §64; 1971 c.615 §12; 1981 c.106 §10; 1983 c.599 §1; 1987 c.320 §110; 2001 c.900 §29]

179.060 [Repealed by 1969 c.597 §281]

179.065 Furnishing utilities for institutions. The Department of Corrections and the Department of Human Services shall have the same powers with respect to furnishing heat, light, power, sewage, fire protection and communications facilities to institutions under their respective jurisdictions as is granted to the Oregon Department of Administrative Services under ORS 276.210 to 276.228, 276.234 to 276.244, 276.250 and 276.252. The powers shall be exercised in accordance with and subject to the provisions of such sections. [1969 c.597 §20; 1987 c.320 §111; 2001 c.900 §30]

179.070 [Repealed by 1969 c.199 §59]

179.080 [Repealed by 1969 c.199 §59]

179.090 [Amended by 1965 c.476 §9; 1967 c.2 §1; repealed by 1969 c.199 §59]

179.100 [Repealed by 1969 c.199 §59]

179.105 Acceptance of federal or other assistance to carry out general powers and duties; legislative or Emergency Board approval prior to expenditure. (1) For a purpose of ORS 179.040, including aid and support of research in any of the institutions, the Department of Corrections and the Department of Human Services may in their respective discretions accept from the

United States or any of its agencies financial assistance and grants in the form of money or labor, or from any other source any donation or grant of land or gift of money or any other thing. Funds accepted in accordance with the provisions of this section and ORS 179.110 shall be deposited with the State Treasurer and, subject to subsection (2) of this section, are continuously appropriated to the Department of Corrections or Department of Human Services, as appropriate, and may be expended by the department according to the conditions and terms of the grant or donation.

(2) Funds received under subsection (1) of this section or ORS 179.110 shall be expended subject to expenditure limitations imposed on the Department of Corrections or Department of Human Services by the Legislative Assembly or, in the absence of such limitations, only after approval of the Legislative Assembly or of the Emergency Board, if approval is required during the interim between sessions of the Legislative Assembly.

(3) In any case where prior approval of the authority to expend any funds available under subsection (1) of this section or ORS 179.110 is imposed as a term or condition of receipt of such funds, the Legislative Assembly or the Emergency Board may approve expenditures of such funds prior to their receipt. [1961 c.651 §4; 1967 c.55 §1; 1969 c.597 §23; 1987 c.320 §112; 2001 c.900 §31; 2003 c.14 §74; 2005 c.755 §2]

179.110 Use of federal grants; cooperation with federal agencies; disposition of balances of appropriations. Subject to the approval of the Director of the Oregon Department of Administrative Services, the Department of Corrections and the Department of Human Services, respectively, may accept and receive grants of funds from the United States or any of its agencies for the construction, equipment and betterment of any of the institutions under its jurisdiction and may cooperate with the United States or its agencies in such construction, equipment and betterment. Any balances of appropriations for capital outlay for any institution resulting from the use of funds so received shall be placed in a common fund. The Department of Corrections and the Department of Human Services are authorized and empowered in their discretion to expend such common fund or any portion thereof in the construction, equipment or betterment of any institution under its jurisdiction. [Amended by 1961 c.651 §1; 1969 c.597 §24; 1987 c.320 §113; 2001 c.900 §32]

179.115 [1957 c.602 §2; repealed by 1969 c.199 §59]

179.120 [Amended by 1961 c.651 §2; repealed by 1967 c.55 §2]

179.122 [1959 c.290 §13; 1965 c.616 §87; renumbered 423.070]

179.130 Institutional petty cash fund; creation; reimbursement from appropriation for institution. (1) The executive head of each institution may execute a claim voucher against the Institutional Betterment Fund to the credit of the institution, in favor of the executive head of the institution, in such amount as shall be approved by the Director of the Oregon Department of Administrative Services, for use by the institution as a revolving fund in paying the petty claims and incidental expenses arising in the proper conduct of the institution. The executive head may establish petty cash funds within the revolving fund by drawing checks upon the revolving fund payable to the custodians. Petty cash funds established to disburse funds to residents shall be kept separate from petty cash funds established to pay incidental expenses of the institution.

(2) The executive head shall reimburse the revolving fund by drawing upon funds appropriated for the expenses of the institution or, when funds have been disbursed to a resident, by drawing upon the trust account created in ORS 179.510. [Amended by 1969 c.597 §15; 1999 c.829 §1]

179.140 Auditing and paying claims; approval of vouchers. Subject to any applicable provision of ORS 279A.125, 279A.255, 279A.275, 279A.280, 279A.285, 279A.290, 279B.025, 279B.240, 279B.270, 279B.275, 279B.280, 283.110 to 283.395 and 291.232 to 291.260, all claims for supplies or materials furnished or services rendered to institutions shall be audited and approved as provided by law, upon the presentation of duly verified vouchers therefor, approved in writing by the Director of the Department of Corrections or by the Director of Human Services, or by their designees. [Amended by 1971 c.63 §1; 1973 c.248 §1; 1987 c.320 §114; 2001 c.900 §33; 2003 c.794 §201]

179.150 Interest in contracts prohibited. No officer of the Department of Corrections or the Department of Human Services or officer, employee or other person connected with an institution shall be pecuniarily interested in any contract for supplies or services furnished or rendered to an institution, other than the services of regular employment. [Amended by 1971 c.63 §2; 1987 c.320 §115]

179.160 [1955 c.242 §1; subsection (2) enacted as 1961 c.652 §2 (3); 1969 c.597 §25; 1971 c.615 §13; 1981 c.106 §11; repealed by 1983 c.599 §10]

CLAIM FOR INJURY OR DAMAGE

179.210 Claim for injury or damage; conditions. (1) The Department of Human Services, the Department of Corrections and the Superintendent of Public Instruction may audit, allow and pay a claim for damage to property made by an employee of one of those agencies if:

(a) The damage to property arises out of the claimant's employment at one of the institutions or facilities operated by the Department of Human Services or the Department of Corrections, or one of the schools operated by the Superintendent of Public Instruction under ORS 346.010; and

(b) The employee files a written claim with the employee's employer within 180 days after the employee discovers or should have discovered the damage.

(2) No claim under subsection (1) of this section shall be paid:

(a) That exceeds, in the aggregate with payments of other claims, the moneys appropriated for such purpose.

(b) To the extent that the person incurring damage has been or may be compensated by liability insurance or otherwise.

(c) If the Department of Human Services, the Department of Corrections or the Superintendent of Public Instruction determines the cause or occasion of the accident resulting in damage is chargeable to the conduct or negligence of the party damaged. [1965 c.476 §§2,3; 1967 c.454 §89; 1969 c.597 §29; 1971 c.301 §15; 1987 c.320 §116; 1995 c.452 §1; 2007 c.858 §57]

179.220 [1965 c.476 §4; 1969 c.597 §30; repealed by 1995 c.452 §5]

179.230 Rejection of claim final and not reviewable. The decision of the Department of Human Services, the Department of Corrections or the Superintendent of Public Instruction to reject any claim filed under ORS 179.210 is final, and is not subject to review under ORS chapter 183, or by any other agency or court. The provisions of this section do not affect any other remedy that may be available to the claimant under law. [1965 c.476 §5; 1967 c.454 §90; 1969 c.597 §31; 1987 c.410 §6; 1995 c.452 §2]

179.240 Procedure where award due person owing debt to state. (1) If any person owes a debt to this state or a state agency, and the debt has been fixed by final judgment of a court of competent jurisdiction or is no longer subject to judicial review, the Department of Corrections or the Department of Human Services shall deduct the amount of the debt from any award made to that person under ORS 179.210.

(2) The Department of Corrections or the Department of Human Services shall request the State Treasurer to transfer to the appropriate fund or account to which the debt is owed, an amount equal to the amount deducted from the award under subsection (1) of this section, for use during that biennium in accordance with law by the state agency administering the fund or account to which the debt is owed. The State Treasurer shall evidence the transfer by proper bookkeeping

entries. If the Department of Corrections, Department of Human Services or State Treasurer cannot determine the appropriate fund or account, the amount shall be transferred to the General Fund for general governmental purposes.

(3) Any debt owed by a person to this state or a state agency is satisfied, upon the completion of a transfer made pursuant to subsection (2) of this section, to the extent of the amount so transferred. [1965 c.476 §6; 1987 c.320 §117; 1995 c.452 §3; 2001 c.900 §34]

179.250 [1965 c.476 §7; 1969 c.597 §32; repealed by 1995 c.452 §5]

SUPERVISION OF STATE INSTITUTIONS (Superintendent)

179.310 "Superintendent" defined. When used in ORS 179.010 to 179.495, unless the context otherwise requires, "superintendents" means the executive heads of the institutions listed in ORS 179.321.

179.320 [Amended by 1955 c.651 §2; 1955 c.660 §25; 1959 c.588 §17; 1963 c.632 §5; repealed by 1965 c.616 §78 (179.321 enacted in lieu of 179.320)]

179.321 Responsibility to supervise state institutions. (1) The Department of Human Services shall operate, control, manage and supervise the Blue Mountain Recovery Center, the Eastern Oregon Training Center and the Oregon State Hospital.

(2) The Department of Corrections shall operate, control, manage and supervise those institutions defined as Department of Corrections institutions in ORS 421.005. [1965 c.616 §79 (enacted in lieu of 179.320); 1969 c.597 §38; 1971 c.212 §5; 1971 c.301 §16; 1971 c.401 §82; 1983 c.505 §12; 1983 c.740 §43; 1987 c.320 §118; 2001 c.900 §35; 2007 c.14 §4]

179.323 [1967 c.346 §§1,2; repealed by 1969 c.199 §59]

179.325 Change in use of institution for persons with mental illness or mental retardation. The Department of Human Services may order the change, in all or part, of the purpose and use of any state institution being used as an institution for the care and treatment of persons with mental illness or mental retardation in order to care for persons committed to its custody whenever the department determines that a change in purpose and use will better enable the state to meet its responsibilities to persons with mental illness or mental retardation. In determining whether to order the change, the department shall consider changes in the number and source of the admissions of persons with mental illness or mental retardation. [1965 c.595 §1; 1969 c.597 §39; 1979 c.683 §3; 2007 c.70 §41]

179.330 [Amended by 1963 c.471 §1; repealed by 1965 c.616 §80 (179.331 enacted in lieu of 179.330)]

179.331 Appointment, suspension and removal of superintendents. (1) The superintendents shall be appointed and, whenever the public service requires such action, may be removed, suspended or discharged, as follows:

(a) Superintendents of institutions described in ORS 179.321 (1), by the Director of Human Services.

(b) Superintendents of Department of Corrections institutions as defined in ORS 421.005, by the Director of the Department of Corrections.

(2) For purposes of the State Personnel Relations Law, the superintendents are assigned to the unclassified service. [1965 c.616 §81 (enacted in lieu of 179.330); 1969 c.597 §26; 1971 c.301 §17; 1987 c.320 §119; 2003 c.14 §75]

179.340 Salaries and expenses of superintendents. (1) The annual salaries of the superintendents shall be fixed, within the respective appropriations therefor and the limitations otherwise fixed by law by their respective appointing authorities.

(2) The superintendents shall receive no fees, emoluments or compensation other than salaries fixed under subsection (1) of this section, but shall receive their actual traveling expenses when traveling in the service of the state. [Amended by 1963 c.471 §2; 1965 c.616 §82; 1969 c.597 §27]

179.350 [Amended by 1969 c.597 §28; repealed by 1987 c.320 §246]

179.360 Powers and duties of superintendents. (1) Each superintendent shall:

(a) Have custody of the residents of the institution under jurisdiction of the superintendent.

(b) Direct the care, custody and training of the residents unless otherwise directed by law or by rule.

(c) Adopt sanitary measures for the health and comfort of the residents.

(d) Promote the mental, moral and physical welfare and development of the residents.

(e) Enjoy the other powers and privileges and perform the other duties that are prescribed by law or by rule or that naturally attach themselves to the position of superintendent.

(f) Designate a physician licensed by the Oregon Medical Board to serve as chief medical officer as provided in ORS 426.020 and 427.010, who will be directly responsible to the superintendent for administration of the medical treatment programs at the institution and assume such other responsibilities as are assigned by the superintendent.

(2) The Director of the Department of Corrections or the Director of Human Ser-

VICES shall prescribe for their respective institutions:

(a) The duties of the superintendents where the duties are not prescribed by law.

(b) The additional duties, beyond those prescribed by law, that the Director of the Department of Corrections or the Director of Human Services considers necessary for the good of the public service. [Amended by 1969 c.391 §14; 1969 c.597 §34; 1979 c.683 §4; 1987 c.320 §120; 2001 c.900 §36]

179.370 Residence of superintendents at institutions. The Director of the Department of Corrections or the Director of Human Services may require that a superintendent reside in state-provided housing at the institution under the jurisdiction of the superintendent. The rental shall be determined pursuant to ORS 182.425. [Amended by 1959 c.80 §1; 1969 c.597 §35; 1977 c.583 §1; 1987 c.320 §120a; 1989 c.171 §21]

(Staff)

179.375 Chaplaincy services. (1) The Department of Corrections and the Department of Human Services shall insure that adequate chaplaincy services, including but not limited to Protestant and Roman Catholic, are available at their respective institutions.

(2) Chaplains serving the various institutions shall, with respect to the inmates or patients at such institutions:

(a) Provide for and attend to their spiritual needs.

(b) Visit them for the purpose of giving religious and moral instruction.

(c) Participate in the rehabilitation programs affecting them. [1963 c.554 §2; 1987 c.320 §121]

179.380 Employment of staff; oaths and bonds. (1) The Department of Corrections and the Department of Human Services shall authorize the employment of all necessary physicians, attendants, nurses, engineers, messengers, clerks, guards, cooks, waiters and other officers and employees not specifically authorized by law and necessary to the successful maintenance of their respective institutions. The amounts expended for the services of such officers and employees shall not exceed the amounts provided therefor in the biennial appropriations for the institution.

(2) The Department of Corrections and the Department of Human Services shall designate in their respective rules which employees shall be officers, and shall require all officers to take and subscribe to an oath of office and, if the circumstances require it, to furnish bonds. [Amended by 1969 c.597 §36; 1987 c.320 §122; 1999 c.59 §35; 2001 c.900 §37]

179.385 Scholarship programs to train personnel for institutions; rules. The Department of Corrections and the Department of Human Services, respectively, may establish scholarship programs to provide assistance in securing qualified personnel at state institutions governed by them. Scholarships authorized by this section shall be granted in accordance with rules and regulations adopted respectively by the departments. [1961 c.363 §2; 1987 c.320 §123; 2001 c.900 §38]

179.390 Appointment, suspension, removal and salaries of assistants, officers and employees; contract services. (1) The superintendent of an institution other than an institution within the jurisdiction of the Department of Human Services shall, subject to the approval of the Director of Human Services or the Director of the Department of Corrections, appoint in the manner provided by law all assistants, officers and other employees at the institution under the jurisdiction of the superintendent. The superintendent may suspend or remove an assistant, officer or other employee in the manner provided by law, reporting all acts of suspension or removal to the Director of Human Services or Director of the Department of Corrections for approval or disapproval. The Director of Human Services or Director of the Department of Corrections shall fix the salaries of assistants, officers and employees where their salary is not fixed by law. The Director of Human Services or Director of the Department of Corrections shall, subject to any applicable provisions of the State Personnel Relations Law, suspend or discharge any subordinate of a superintendent when public service requires such action.

(2) The Director of Human Services or a designee at each facility under jurisdiction of the Department of Human Services shall, as provided by law, appoint, suspend or discharge an employee of the department. The Director of Human Services may designate up to three employees at each facility to act in the name of the director in accordance with ORS 240.400.

(3) In addition to or in lieu of employing physicians, the Director of the Department of Corrections or the designee thereof may contract for the personal services of physicians licensed to practice medicine by the Oregon Medical Board to serve as medical advisors for the Department of Human Services. Advisors under such contracts shall be directly responsible for administration of medical treatment programs at penal and correctional institutions, as defined in ORS 421.005. [Amended by 1969 c.597 §37; 1973 c.807 §1; 1987 c.78 §1; 1987 c.320 §123a; 2001 c.900 §39]

179.400 Rentals to officers and employees at institution. The superintendent of an institution may rent state-provided housing located at the institution under the jurisdiction of the superintendent to state officers and employees or others. The rental shall be determined pursuant to ORS 182.425. [Amended by 1977 c.583 §2]

179.405 License required for teachers at institution. No Department of Corrections institutions, youth correction facilities as defined in ORS 420.005 and institutions listed in ORS 427.010 shall employ persons regularly as teachers who are not licensed. [Formerly 342.174; 2001 c.295 §16]

Note: 179.405 was added to and made a part of ORS chapter 179 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

179.410 [Repealed by 1969 c.597 §281]

179.420 [Repealed by 1969 c.597 §281]

179.430 [Repealed by 1969 c.597 §281]

(Work at Institution)

179.440 Work in production of articles and performance of labor for state. In order to minimize the cost of maintaining the institutions, all wards of the state who are capable of a reasonable amount of work without physical or mental injury to themselves shall be used as fully as possible in the production and manufacture of articles for the use of the state and in the performance of labor for the state.

179.450 Work on state-owned land. The Department of Corrections may direct the employment of able-bodied persons at the Department of Corrections institutions and the Department of Human Services may direct the employment of able-bodied persons at institutions for persons with mental illness or mental retardation, in the performance of useful work upon land owned by the state if it does not compete with free labor. Work may not be performed upon any such land except by consent and approval of the agency of the state having management of the land. [Amended by 1955 c.660 §26; 1965 c.616 §86; 1987 c.320 §124; 2007 c.70 §42]

179.460 Sale and exchange of surplus products of institutions; rules; State Institutional Betterment Fund. (1) In order to encourage industry and thereby increase productiveness in the institutions, the Department of Corrections and the Department of Human Services shall prescribe rules and regulations for the sale and exchange of surplus products of each.

(2) The funds derived from the sale of the surplus products shall be paid into the State Treasury and become a part of a fund to be known as the State Institutional Betterment Fund, which fund shall be expended by the

Department of Corrections and the Department of Human Services, respectively, for the benefit of the institutions in proportion to the amount earned by each.

(3) The provisions of this section apply to schools operated under ORS 346.010. [Amended by 1971 c.301 §18; 1987 c.320 §125; 2001 c.900 §40; 2007 c.858 §58]

179.470 [Repealed by 1969 c.597 §281]

(Transfer Procedures)

179.471 Definitions for ORS 179.473 and 179.478. As used in ORS 179.473 and 179.478, unless the context requires otherwise:

(1) "Youth correction facility" has the meaning given that term in ORS 420.005.

(2) "Youth offender" has the meaning given that term in ORS 419A.004. [1999 c.110 §1]

Note: 179.471 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 179 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

179.473 Transfers between institutions; rules. (1) Whenever the health and welfare of the person and the efficient administration of the institution require the transfer of an inmate of a Department of Corrections institution or a youth offender in a youth correction facility to another institution:

(a) The Department of Corrections or the Oregon Youth Authority, with the consent of the Department of Human Services, may transfer a person at any institution under its jurisdiction to an institution for persons with mental retardation, or, with the consent of the Oregon Health and Science University, to the Oregon Health and Science University.

(b) The Department of Corrections may transfer an inmate of a Department of Corrections institution to a state mental hospital listed in ORS 426.010 for evaluation and treatment pursuant to rules adopted jointly by the Department of Corrections and the Department of Human Services.

(c) The Oregon Youth Authority may transfer a youth offender or other person confined in a youth correction facility to a hospital or facility designated by the Department of Human Services for evaluation and treatment pursuant to rules adopted jointly by the Oregon Youth Authority and the Department of Human Services.

(d) Except as provided in subsection (2) of this section, the Department of Corrections or the Oregon Youth Authority may make a transfer of a person from any institution under the jurisdiction of the depart-

ment or authority to any other institution under the jurisdiction of the department or authority.

(2) A youth offender in a youth correction facility may not be transferred to a Department of Corrections institution under subsection (1) of this section. A youth offender in a youth correction facility who has been transferred to another institution may not be transferred from such other institution to a Department of Corrections institution.

(3) The rules adopted under subsection (1)(b) and (c) of this section must:

(a) Provide the inmate or youth offender with the rights to which persons are entitled under ORS 179.485.

(b) Provide that a transfer of an inmate or a youth offender to the Department of Human Services for stabilization and evaluation for treatment may not exceed 30 days unless the transfer is extended pursuant to a hearing required by paragraph (c) of this subsection.

(c) Provide for an administrative commitment hearing if:

(A) The Department of Human Services determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the Department of Human Services needs more than 30 days to stabilize or evaluate the inmate or youth offender for treatment; and

(B) The inmate or youth offender does not consent to the administrative commitment or an extension of the transfer.

(d) Provide for, at a minimum, all of the following for the administrative commitment hearing process:

(A) Written notice to the inmate or youth offender that an administrative commitment to a state mental hospital listed in ORS 426.010 or a hospital or facility designated by the Department of Human Services or an extension of the transfer is being considered. The notice required by this subparagraph must be provided far enough in advance of the hearing to permit the inmate or youth offender to prepare for the hearing.

(B) Disclosure to the inmate or youth offender, at the hearing, of the evidence that is being relied upon for the administrative commitment or the extension of the transfer.

(C) An opportunity, at the hearing, for the inmate or youth offender to be heard in person and to present documentary evidence.

(D) An opportunity, at the hearing, for the inmate or youth offender to present the testimony of witnesses and to confront and cross-examine witnesses called by the state. The opportunity required by this subpara-

graph may be denied upon a finding by the decision maker of good cause for not permitting the inmate or youth offender to present the testimony of witnesses or confront or cross-examine witnesses called by the state.

(E) An independent decision maker for the hearing.

(F) A written statement by the decision maker of the evidence relied upon by the decision maker and the reasons for administratively committing the inmate or youth offender or extending the transfer.

(G) A qualified and independent assistant for the inmate or youth offender to be provided by the state if the inmate or youth offender is financially unable to provide one.

(H) Effective and timely notice of the procedures required by subparagraphs (A) to (G) of this paragraph.

(e) Provide that an inmate or a youth offender may not be administratively committed involuntarily unless the independent decision maker finds by clear and convincing evidence that the inmate or youth offender is a mentally ill person as defined in ORS 426.005.

(f) Provide that the duration of an administrative commitment pursuant to an administrative commitment hearing be no more than 180 days unless the administrative commitment is renewed in a subsequent administrative commitment hearing. Notwithstanding this paragraph, an administrative commitment may not continue beyond the term of incarceration to which the inmate was sentenced or beyond the period of time that the youth offender may be placed in a youth correction facility. [1965 c.616 §84 (enacted in lieu of 179.474); 1969 c.597 §40; 1975 c.662 §1; 1977 c.601 §1; 1987 c.320 §126; 1997 c.249 §52; 1999 c.110 §2; 2005 c.439 §§1,2; 2007 c.70 §43]

179.474 [1957 c.160 §1; repealed by 1965 c.616 §83 (179.473 enacted in lieu of 179.474)]

179.475 [1977 c.601 §3; 1987 c.320 §127; 1999 c.110 §3; repealed by 2005 c.439 §5]

179.476 [1957 c.160 §2; 1965 c.616 §85; 1969 c.597 §41; 1975 c.662 §2; repealed by 1977 c.601 §8]

179.477 [1977 c.601 §4; 1979 c.408 §6; 1985 c.242 §6; 1987 c.320 §128; 1999 c.110 §4; 2001 c.104 §59; repealed by 2005 c.439 §5]

179.478 Examination for mental retardation; commitment hearing; transfer to hospital or training center for persons with mental retardation; termination of sentence. (1) If the person, a relative, guardian or friend, or institution staff have probable cause to believe that an inmate or youth offender is a person with mental retardation to such a degree that the inmate or youth offender cannot adjust to or benefit from the Department of Corrections institution or youth correction facility, the super-

intendent of the institution shall request that a diagnostic assessment be performed by the Department of Human Services or its designee. If there is probable cause to believe that the inmate or youth offender is a person with mental retardation and otherwise eligible for admission to a state training center pursuant to ORS 427.010 and other applicable statutes and rules of the Department of Human Services, the person shall be entitled to a commitment hearing.

(2) If the inmate or youth offender is by clear and convincing evidence determined by the court to be a person with mental retardation, the person shall be committed and transferred to a training center designated by the Department of Human Services as soon as space in an appropriate unit is available, and any sentence to a Department of Corrections institution or commitment to the youth correction facility shall be terminated. [1977 c.601 §5; 1979 c.683 §35; 1987 c.320 §129; 1999 c.110 §5; 2001 c.900 §41; 2007 c.70 §44]

179.479 Conveyance of inmates from institution to physician or hospital for treatment; rules. (1) The superintendent or other chief executive officer of an institution described in ORS 179.321 may, when authorized by regulation or direction of the Department of Corrections or Department of Human Services, convey an inmate to a physician, clinic or hospital, including the Oregon Health and Science University, for medical, surgical or dental treatment when such treatment cannot satisfactorily be provided at the institution. An inmate conveyed for treatment pursuant to this section shall be kept in the custody of the institution from which the inmate is conveyed.

(2) The Department of Corrections and the Department of Human Services each shall prescribe rules and regulations governing conveyances authorized by this section. [1957 c.160 §3; 1969 c.597 §42; 1975 c.693 §1; 1987 c.320 §130; 1999 c.59 §36; 2001 c.900 §42]

179.480 [Amended by 1955 c.86 §1; repealed by 1957 c.160 §6]

179.483 Time spent pursuant to transfer or conveyance counted as part of sentence. Any time spent by an inmate of a Department of Corrections institution pursuant to a transfer or conveyance shall be counted as part of the sentence being served by the inmate. [1957 c.160 §4; 1987 c.320 §131]

179.485 Rights of person transferred to institution for persons with mental illness or mental retardation. Persons transferred to a state institution for persons with mental illness or mental retardation under ORS 179.473, 179.478 and 420.505 shall be entitled to the same legal rights as any other persons admitted to those institutions. [1977 c.601 §6; 2007 c.70 §45]

179.486 Payment of costs in connection with transfers and conveyances; medical reports to accompany certain inmates. (1) The institution from which a transfer or conveyance is made shall pay from its appropriation the cost of such of the following items as may be incurred in a particular case:

(a) Transportation and other expenses incidental to the transfer or conveyance, including the expenses of attendants where an attendant is directed to accompany the inmate.

(b) Hospital expenses incurred at the Oregon Health and Science University.

(c) Examination, treatment and hospital expenses incurred in favor of a physician, clinic or hospital, other than the Oregon Health and Science University.

(2) An inmate transferred or conveyed to the Oregon Health and Science University shall be accompanied by a report made by the physician in charge of the institution from which the transfer or conveyance is made, or by another physician designated by the physician in charge. The report shall contain the history of the case and the information required by blanks prepared by the School of Medicine or School of Dentistry, as the case may be. [1957 c.160 §5]

(Medical Care)

179.490 Authorization and payment of cost of emergency and necessary operations. In the case of a necessary or emergency operation, requiring the services of a specialist, and where the relatives or guardians, in the judgment of the Department of Corrections or Department of Human Services, are unable to pay a part or the whole cost of the operation, either department, in its discretion, may have the operation performed, the cost of the operation to be payable from the funds of the institution concerned. [Amended by 1987 c.320 §132; 2001 c.900 §43]

179.492 Dispensing of brand-name mental health drugs. (1) The Department of Human Services or the Department of Corrections shall dispense as written a prescription for a brand-name mental health drug prescribed for a person while the person is in the custody of an institution described in ORS 179.321 if the prescription specifies "dispense as written" or contains the notation "D.A.W." or other words of similar meaning.

(2) If, at the time of commitment to the custody of an institution described in ORS 179.321, a person has a prescription for a specified brand-name mental health drug and the prescription specifies "dispense as writ-

ten" or contains the notation "D.A.W." or other words of similar meaning, the Department of Human Services or the Department of Corrections shall ensure that the person is prescribed the specified brand-name drug until a licensed health professional with prescriptive privileges evaluates the person and becomes responsible for the treatment of the person. [2005 c.691 §7]

Note: 179.492 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 179 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

(Records)

179.495 Disclosure of inmate written accounts; penalty. (1) Written accounts of the inmates of any Department of Corrections institution as defined in ORS 421.005, maintained in the institution by the officers or employees of the institution who are authorized to maintain written accounts within the official scope of their duties, are not subject to disclosure unless the disclosure is permitted or authorized by the Department of Corrections in compliance with ORS 179.505 (3), (4), (6), (7), (9), (11), (12), (14), (15), (16) or (17) or 179.508 or upon order of a court of competent jurisdiction. The restriction contained in this section does not apply to disclosure of written accounts made under ORS 179.505 (3) with the authorization of the individual or a personal representative of the individual.

(2) Except as authorized under subsection (1) of this section, any person who discloses or any person who knowingly obtains information from a written account referred to in subsection (1) of this section commits a Class B violation.

(3) As used in this section, "disclosure," "personal representative" and "written account" have the meanings given those terms in ORS 179.505. [1955 c.452 §1; 1969 c.597 §44; 1973 c.736 §3; 1977 c.812 §5; 1987 c.320 §133; 1991 c.807 §2; 1999 c.1051 §165; 2003 c.14 §76; 2003 c.88 §1; 2005 c.498 §4]

179.500 [Repealed by 1969 c.597 §281]

179.505 Disclosure of written accounts by health care services provider. (1) As used in this section:

(a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any other manner of information outside the health care services provider holding the information.

(b) "Health care services provider" means:

(A) Medical personnel or other staff employed by or under contract with a public provider to provide health care or maintain written accounts of health care provided to individuals; or

(B) Units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts of health care provided to individuals.

(c) “Individually identifiable health information” means any health information that is:

(A) Created or received by a health care services provider; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(d) “Personal representative” includes but is not limited to:

(A) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions; and

(C) A person appointed as a personal representative under ORS chapter 113.

(e) “Psychotherapy notes” means notes recorded in any medium:

(A) By a mental health professional, in the performance of the official duties of the mental health professional;

(B) Documenting or analyzing the contents of conversation during a counseling session; and

(C) That are maintained separately from the rest of the individual’s record.

(f) “Psychotherapy notes” does not mean notes documenting:

(A) Medication prescription and monitoring;

(B) Counseling session start and stop times;

(C) Modalities and frequencies of treatment furnished;

(D) Results of clinical tests; or

(E) Any summary of the following items:

(i) Diagnosis;

(ii) Functional status;

(iii) Treatment plan;

(iv) Symptoms;

(v) Prognosis; or

(vi) Progress to date.

(g) “Public provider” means:

(A) The state institutions for the care and treatment of individuals with mental illness or developmental disabilities operated by the Department of Human Services;

(B) Department of Corrections institutions as defined in ORS 421.005;

(C) A contractor of the Department of Human Services or the Department of Corrections that provides health care to individuals residing in a state institution operated by the Department of Human Services or the Department of Corrections;

(D) A community mental health and developmental disabilities program as described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to provide mental health or developmental disabilities programs or services;

(E) A program or service provided under ORS 431.250, 431.375 to 431.385 or 431.416;

(F) A program or service licensed, approved, established, maintained or operated by or contracted with the Department of Human Services under ORS 430.630 for individuals with developmental disabilities and individuals with mental or emotional disturbances;

(G) A program or facility providing an organized full-day or part-day program of treatment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance; or

(H) A program or service providing treatment by appointment that is licensed, approved, established, maintained or operated by or contracted with the Department of Human Services for alcoholism, drug addiction or mental or emotional disturbance.

(h) “Written account” means records containing only individually identifiable health information.

(2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16) and (17) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to ac-

cess and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

(3) If the individual or a personal representative of the individual provides an authorization, the content of any written account referred to in subsection (2) of this section must be disclosed accordingly, if the authorization is in writing and is signed and dated by the individual or the personal representative of the individual and sets forth with specificity the following:

(a) Name of the health care services provider authorized to make the disclosure, except when the authorization is provided by recipients of or applicants for public assistance to a governmental entity for purposes of determining eligibility for benefits or investigating for fraud;

(b) Name or title of the persons or organizations to which the information is to be disclosed or that information may be disclosed to the public;

(c) Name of the individual;

(d) Extent or nature of the information to be disclosed; and

(e) Statement that the authorization is subject to revocation at any time except to the extent that action has been taken in reliance thereon, and a specification of the date, event or condition upon which it expires without express revocation. However, a revocation of an authorization is not valid with respect to inspection or records necessary to validate expenditures by or on behalf of governmental entities.

(4) The content of any written account referred to in subsection (2) of this section may be disclosed without an authorization:

(a) To any person to the extent necessary to meet a medical emergency.

(b) At the discretion of the responsible officer of the health care services provider, which in the case of any Department of Human Services facility or community mental health and developmental disabilities program shall be the Director of Human Services, to persons engaged in scientific research, program evaluation, peer review and fiscal audits. However, individual identities may not be disclosed to such persons, except when the disclosure is essential to the research, evaluation, review or audit and is consistent with state and federal law.

(c) To governmental agencies when necessary to secure compensation for services rendered in the treatment of the individual.

(5) When an individual's identity is disclosed under subsection (4) of this section, a health care services provider shall prepare, and include in the permanent records of the health care services provider, a written statement indicating the reasons for the disclosure, the written accounts disclosed and the recipients of the disclosure.

(6) The content of any written account referred to in subsection (2) of this section and held by a health care services provider currently engaged in the treatment of an individual may be disclosed to officers or employees of that provider, its agents or cooperating health care services providers who are currently acting within the official scope of their duties to evaluate treatment programs, to diagnose or treat or to assist in diagnosing or treating an individual when the written account is to be used in the course of diagnosing or treating the individual. Nothing in this subsection prevents the transfer of written accounts referred to in subsection (2) of this section among health care services providers, the Department of Human Services, the Department of Corrections or a local correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

(7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents, upon request, or the subsequent disclosure to a court, administrative hearings officer, arbitrator or other administrative decision maker.

(8)(a) When an action, suit, claim, arbitration or proceeding involves the Department of Human Services or an institution operated by the department, nothing in this section prohibits the disclosure of any written account referred to in subsection (2) of this section to the Department of Justice, Oregon Department of Administrative Services, or their agents.

(b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750 and ORS

chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed under this paragraph.

(c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel action taken against staff is limited to written accounts directly relating to alleged action or inaction by staff for which the personnel action was imposed.

(9)(a) The copy of any written account referred to in subsection (2) of this section, upon written request of the individual or a personal representative of the individual, shall be disclosed to the individual or the personal representative of the individual within a reasonable time not to exceed five working days. The individual or the personal representative of the individual shall have the right to timely access to any written accounts.

(b) If the disclosure of psychiatric or psychological information contained in the written account would constitute an immediate and grave detriment to the treatment of the individual, disclosure may be denied, if medically contraindicated by the treating physician or a licensed health care professional in the written account of the individual.

(c) The Department of Corrections may withhold psychiatric or psychological information if:

(A) The information relates to an individual other than the individual seeking it.

(B) Disclosure of the information would constitute a danger to another individual.

(C) Disclosure of the information would compromise the privacy of a confidential source.

(d) However, a written statement of the denial under paragraph (c) of this subsection and the reasons therefor must be entered in the written account.

(10) A health care services provider may require a person requesting disclosure of the contents of a written account under this section to reimburse the provider for the reasonable costs incurred in searching files, abstracting if requested and copying if requested. However, an individual or a personal representative of the individual may not be denied access to written accounts concerning the individual because of inability to pay.

(11) A written account referred to in subsection (2) of this section may not be used to initiate or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by federal, state or local authorities against the individual or to conduct any investigations of the individual. If

the individual, as a party to an action, suit or other judicial proceeding, voluntarily produces evidence regarding an issue to which a written account referred to in subsection (2) of this section would be relevant, the contents of that written account may be disclosed for use in the proceeding.

(12) Information obtained in the course of diagnosis, evaluation or treatment of an individual that, in the professional judgment of the health care services provider, indicates a clear and immediate danger to others or to society may be reported to the appropriate authority. A decision not to disclose information under this subsection does not subject the provider to any civil liability. Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760, 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

(13) The prohibitions of this section apply to written accounts concerning any individual who has been treated by any health care services provider irrespective of whether or when the individual ceases to receive treatment.

(14) Persons other than the individual or the personal representative of the individual who are granted access under this section to the contents of a written account referred to in subsection (2) of this section may not disclose the contents of the written account to any other person except in accordance with the provisions of this section.

(15) Nothing in this section prevents the Department of Human Services from disclosing the contents of written accounts in its possession to individuals or agencies with whom children in its custody are placed.

(16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS 192.515, as provided in ORS 192.517.

(17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider must obtain an authorization from an individual or a personal representative of the individual to disclose psychotherapy notes.

(b) A health care services provider may use or disclose psychotherapy notes without obtaining an authorization from the individual or a personal representative of the individual to carry out the following treatment, payment and health care operations:

(A) Use by the originator of the psychotherapy notes for treatment;

(B) Disclosure by the health care services provider for its own training program in which students, trainees or practitioners in mental health learn under supervision to

practice or improve their skills in group, joint, family or individual counseling; or

(C) Disclosure by the health care services provider to defend itself in a legal action or other proceeding brought by the individual or a personal representative of the individual.

(c) An authorization for the disclosure of psychotherapy notes may not be combined with an authorization for a disclosure of any other individually identifiable health information, but may be combined with another authorization for a disclosure of psychotherapy notes. [1973 c.736 §2; 1977 c.812 §3; 1981 c.326 §2; 1985 c.219 §1; 1987 c.320 §134; 1987 c.322 §1; 1989 c.81 §1; 1991 c.175 §1; 1991 c.807 §1; 1993 c.262 §3; 1993 c.546 §101; 2001 c.900 §44; 2003 c.88 §2; 2005 c.498 §5]

179.507 Enforcement of ORS 179.495 and 179.505; actions; venue; damages. (1) Any individual, a person appointed as a personal representative under ORS chapter 113 or the legal guardian of the individual may commence an action for equitable relief in the circuit court for the county in which the individual resides or in which the written accounts referred to in ORS 179.505 (2) are kept for the purpose of requiring compliance with ORS 179.495 and 179.505. In an action brought under this section, the court shall order payment of reasonable attorney fees at trial and on appeal and actual costs and disbursements to the prevailing party.

(2) Any individual, a person appointed as a personal representative under ORS chapter 113 or the legal guardian of the individual may commence an action in the circuit court for the county in which the individual resides or in which the written accounts referred to in ORS 179.505 (2) are kept for damages for any violation of ORS 179.495 or 179.505 and to restrain future violations. If a violation of ORS 179.495 or 179.505 is proven, the person commencing the action shall recover actual damages or \$500, whichever is greater. Upon a showing of an intentional violation of ORS 179.495 or 179.505, the individual may receive punitive damages. The prevailing party in an action brought under this subsection shall receive reasonable attorney fees at trial and on appeal and costs and disbursements actually incurred. [1977 c.812 §4; 1979 c.284 §120; 1981 c.897 §39; 2003 c.88 §3]

179.508 Disclosure of individually identifiable health information about inmate. (1) The Department of Corrections may disclose individually identifiable health information without obtaining an authorization from an inmate or a personal representative of the inmate if disclosure of the information is necessary for:

(a) The provision of health care to the inmate;

(b) The health and safety of the inmate or other inmates;

(c) The health and safety of the officers or employees of or others at the Department of Corrections institution as defined in ORS 421.005 where the inmate is incarcerated;

(d) The health and safety of the inmate or officers or other persons responsible for transporting or transferring inmates from one setting to another;

(e) Law enforcement purposes on the premises of the correctional institution; or

(f) The administration and maintenance of the safety, security and good order of the correctional institution.

(2) As used in this section, “disclosure,” “individually identifiable health information” and “personal representative” have the meanings given those terms in ORS 179.505. [2003 c.88 §4]

Note: 179.508 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 179 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

179.509 Reports on deaths at institutions; compilation submitted to President and Speaker. (1) The superintendent of each state institution shall submit quarterly reports on the number of deaths, including the ages of the deceased, the causes of death and the disposition of the remains, within the institution to the Department of Human Services or to the Department of Corrections, as the case may be, having jurisdiction over the institution.

(2) The Department of Human Services or the Department of Corrections shall compile the reports described in subsection (1) of this section and submit them quarterly to the offices of the President of the Senate and of the Speaker of the House of Representatives. [1985 c.207 §26; 1987 c.320 §135; 2001 c.900 §45]

(Funds of Inmates or Patients)

179.510 “Funds” defined; deposit of funds of institution residents with State Treasurer. (1) The superintendent or state agency that possesses or controls funds that are the property of the residents of such institutions or that have been deposited for their use or for expenditure in their behalf shall deposit such funds, as they are received, together with any such funds as heretofore have accumulated, with the State Treasurer as a trust account, separate and distinct from the General Fund. Interest earned by the account shall be credited to the account.

(2) The word “funds” as used in ORS 179.510 to 179.530 shall include, but shall not be limited to, moneys deposited with the su-

perintendents or state agencies for medical care or assistance of residents, moneys derived from athletic activities, contributions for athletic, health, or recreation projects, and any other moneys received by the superintendents or state agencies that are not required by law to be credited to other state funds or accounts. [Formerly 179.710; 1969 c.597 §46; 1979 c.683 §5; 1989 c.966 §3; 1991 c.271 §1]

179.520 Authorization to receive funds of wards; separate accounts. The superintendent or state agencies are authorized to receive any of the funds referred to in ORS 179.510 to 179.530. The State Treasurer shall carry such funds in separate accounts for such institutions, or in a single account for all institutions operated by a single state agency, but shall not credit such funds or any part thereof to any state fund for governmental purposes. [Formerly 179.720; 1991 c.271 §2]

179.530 Disbursements from accounts; accountability. Disbursements from the accounts for the purposes for which the contributions or payments were made, and for payment to persons lawfully entitled thereto, may be made by the superintendent of the institution by which the funds were deposited, or by the state agency having jurisdiction over the institution, by checks or orders drawn upon the State Treasurer. The superintendent or state agency shall be accountable for the proper handling of the account. [Formerly 179.730; 1991 c.271 §3]

179.540 [Formerly 120.210; 1993 c.98 §11; repealed by 1997 c.87 §1]

179.545 [Formerly 120.220; repealed by 1997 c.87 §1]

179.550 [Formerly 120.230; repealed by 1997 c.87 §1]

RESPONSIBILITY FOR COST OF CARE OF PERSONS IN STATE INSTITUTIONS

179.610 Definitions for ORS 179.610 to 179.770. As used in ORS 179.610 to 179.770, unless the context requires otherwise:

(1) “Agency” means either the Department of Human Services for a person in a state institution described in ORS 179.321 (1) or the Department of Corrections for a person in a Department of Corrections institution as defined in ORS 421.005.

(2) “Authorized representative” means an individual or entity appointed under authority of ORS chapter 125, as guardian or conservator of a person, who has the ability to control the person’s finances, and any other individual or entity holding funds or receiving benefits or income on behalf of any person.

(3) “Care” means all services rendered by the state institutions as described in ORS 179.321 or by the Department of Human Services or the Department of Corrections on

behalf of those institutions. These services include, but are not limited to, such items as medical care, room, board, administrative costs and other costs not otherwise excluded by law.

(4) “Decedent’s estate” has the meaning given “estate” in ORS 111.005 (15).

(5) “Person,” “person in a state institution” or “person at a state institution,” or any similar phrase, means an individual who is or has been at a state institution described in ORS 179.321.

(6) “Personal estate” means all income and benefits as well as all assets, including all personal and real property of a living person, and includes assets held by the person’s authorized representative and all other assets held by any other individual or entity holding funds or receiving benefits or income on behalf of any person. [Subsections (1) and (2) enacted as 1959 c.652 §1; subsection (3) enacted as 1959 c.652 §3 (2); 1969 c.597 §43; 1971 c.411 §2; 1973 c.546 §1; 1973 c.806 §1; 1977 c.384 §4; 1989 c.348 §1; 1995 c.664 §89; 2001 c.487 §1; 2003 c.14 §77]

179.620 Liability of person or estate for cost of care. (1) A person and the personal estate of the person, or a decedent’s estate, is liable for the full cost of care. Full cost of care is established according to ORS 179.701.

(2) While the person is liable for the full cost of care, the maximum amount a person is required to pay toward the full cost of care shall be determined according to the person’s ability to pay. Ability to pay is determined as provided in ORS 179.640.

(3) Upon the death of a person, the decedent’s estate shall be liable for any unpaid cost of care. The liability of the decedent’s estate is limited to the cost of care incurred on or after July 24, 1979. The decedent’s estate shall not include assets placed in trust for the person by other persons. Collection of any amount from a decedent’s estate shall be pursuant to ORS 179.740.

(4) Regardless of subsection (1) of this section and ORS 179.610 (6), assets held in trust by a trustee for a person are subject to laws generally applicable to trusts.

(5) Notwithstanding subsections (1) and (3) of this section, neither the Department of Human Services nor the Department of Corrections may collect the cost of care from:

(a) Any assets received by or owing to a person and the personal estate of the person, or the decedent’s estate, as compensation from the state for injury, death or, if the collection is being made by the Department of Corrections, the false imprisonment of the person that occurred when the person was in a state institution listed in ORS 179.321 and

for which the state admits liability or is found liable through adjudication; and

(b) Any real or personal property of the personal estate of the person, or the decedent's estate, that the person or an authorized representative of the person can demonstrate was purchased solely with assets referred to in paragraph (a) of this subsection or partially with such assets, to the extent such assets were used in the purchase. [1959 c.652 §2; 1961 c.501 §1; 1973 c.823 §§122,158; 1979 c.684 §2; 1989 c.348 §2; 1999 c.159 §1; 2001 c.487 §2]

179.630 [1959 c.652 §3 (1); 1963 c.598 §1; 1967 c.549 §3; repealed by 1973 c.546 §13]

179.635 [1969 c.257 §§2,3,4,5; 1971 c.750 §3; repealed by 1973 c.546 §13 and 1973 c.806 §2a; amended by 1973 c.827 §22]

179.640 Determination of ability to pay; rules; financial information; notice; order; hearing; appeal. (1)(a) Both the Department of Human Services and the Department of Corrections shall establish rules for determining ability to pay for persons in their respective institutions. The rules adopted by each agency shall require, in addition to other relevant factors, consideration of the personal estate, the person's need for funds for personal support after release, and the availability of third-party benefits such as, but not limited to, Medicare or private insurance. Each agency may also consider the probable length of stay at the state institution. Nothing in this section requires the Department of Corrections to investigate a person's ability to pay or to issue an ability-to-pay order.

(b) When adopting rules under paragraph (a) of this subsection, the Department of Corrections shall consider the person's needs for funds to pay for the support of the person's children and to pay any monetary obligations imposed on the person as a result of the person's conviction.

(2) In determining a person's ability to pay, neither agency may consider as part of the personal estate of the person or the decedent's estate:

(a) Any assets received by or owing to the person and the personal estate of the person, or the decedent's estate, as compensation from the state for injury, death or, if the collection is being made by the Department of Corrections, the false imprisonment of the person that occurred when the person was in a state institution listed in ORS 179.321 and for which the state admits liability or is found liable through adjudication; and

(b) Any real or personal property that the person or an authorized representative of the person can demonstrate was purchased solely with assets referred to in paragraph (a) of this subsection or partially with such assets,

to the extent such assets were used in the purchase.

(3) A person and the authorized representative of the person, if any, shall provide all financial information requested by the agency that is necessary to determine the person's ability to pay. To determine ability to pay, the agency may use any information available to the agency, including information provided by the Department of Revenue from personal income tax returns pursuant to ORS 314.840, and elderly rental assistance claims. Upon request, the Department of Revenue shall release copies of tax returns to the agency. When the person or the person's authorized representative fails to provide evidence to demonstrate an inability to pay full cost of care, the agency may determine the person has the ability to pay the full cost of care.

(4) The agency shall provide actual notice to the person and any authorized representative, if known to the agency, of its determination by issuing an ability-to-pay order. The order shall state the person's full liability and the person's determined ability to pay. Actual notice means receipt by the person and the authorized representative of notice. The notice shall include a copy of the ability-to-pay order, a description of the person's appeal rights and the date upon which appeal rights terminate and state the address where a request for hearing may be mailed or delivered. At any time, the agency may reissue an ability-to-pay order to notify an authorized representative as provided by ORS 179.653 (4).

(5) At any time during the person's stay at the state institution or within 36 months from the date the person is released, if the agency receives new financial information that shows a change in the person's financial circumstances, the agency shall consider the changed circumstances and issue a new ability-to-pay order.

(6) Orders issued after the person is released may not require the person to make payments toward the cost of care for more than 36 consecutive months following release. However, the agency may collect beyond the 36-month period any payments that became due but were not paid within the 36 months following release. Any remaining balance of full cost of care shall be collected as provided in ORS 179.740.

(7) Notwithstanding ORS 183.315 (5), if a person or authorized representative disagrees with any ability-to-pay order issued pursuant to this section, the person or authorized representative may request a contested case hearing. To the extent practical, the hearing will be held at a location convenient to the person or the authorized representative. The

request must be postmarked within 60 days from the date of the mailing of the ability-to-pay order. If the person or the authorized representative makes a timely request for a contested case hearing, the hearing and any appeal of the final hearing order shall be governed by ORS 183.413 to 183.497. If the person or the authorized representative fails to make a timely request for a contested case hearing, the ability-to-pay order shall be final and not subject to judicial review, except as subsequently modified by the agency as provided in subsection (5) of this section.

(8) On appeal, regardless of other information presented, payment of the full cost of care may be ordered if the person or the authorized representative refuses to produce financial information that the Hearings Officer or administrative law judge determines is relevant and must be produced. [1959 c.652 §4; 1961 c.501 §2; 1967 c.549 §4; 1973 c.806 §3a; 1973 c.823 §§123,159; 1989 c.348 §3; 1997 c.170 §15; 1999 c.159 §2; 2001 c.487 §3; 2003 c.75 §86]

179.643 [1969 c.257 §8; 1973 c.546 §4; repealed by 1989 c.348 §16]

179.645 [1967 c.534 §32; repealed by 1973 c.806 §14]

179.650 [1959 c.652 §5; 1967 c.549 §5; 1969 c.591 §295; 1973 c.546 §5; 1973 c.806 §5a; repealed by 1989 c.348 §16]

179.653 Unpaid costs as lien on property; order; when appealable. (1) If any person or authorized representative refuses to pay for the cost of care as ordered by the Department of Human Services or the Department of Corrections under ORS 179.640, the amount unpaid plus interest shall be a lien in favor of the State of Oregon. The lien shall arise as each payment is due under the order and shall continue until the liability with interest is satisfied. The lien shall be upon the title to and interest in the real and personal property of the personal estate.

(2) Prior to the filing of a distraint warrant as provided in ORS 179.655 (2), the lien shall only be valid against:

(a) Property of the person;

(b) Assets held by any authorized representative bound by the ability-to-pay order; and

(c) Assets subject to lien held by any person or entity having actual knowledge of the ability-to-pay order or the lien.

(3) Regardless of any other provision of law or statute that provides a procedure for establishing obligations, including the claim and payment provisions of ORS chapter 125, an authorized representative who has received notice and had an opportunity to request a contested case hearing shall comply with an ability-to-pay order upon demand by

the agency. The agency may issue the demand any time after the order becomes final.

(4) An authorized representative who has not had an opportunity to request a contested case hearing, either because the authorized representative was not appointed at the time the ability-to-pay order became final, or was not given notice of the ability-to-pay order as required by ORS 179.640 (4), shall not be bound by the order of the agency. To bind the authorized representative, the ability-to-pay order must be reissued and notice provided to the authorized representative pursuant to ORS 179.640 (4). The authorized representative shall have the same appeal rights as if the order had originally been issued to the authorized representative. After the order becomes final, the authorized representative shall be bound as provided in subsection (3) of this section. The agency may not issue an execution of a lien or foreclose against property held by or in the control of the authorized representative until the authorized representative is bound by the order of the agency.

(5) An authorized representative who is a trustee shall only be bound to the extent that the final order specifically finds that the trust assets of a trust fund are subject to claim by the agency.

(6) If the authorized representative does not comply with the demand, the agency may file with the probate court a motion to require the authorized representative to comply. If the authorized representative is a conservator or guardian appointed under ORS chapter 125, the motion shall be filed in that proceeding. The motion shall be accompanied by an affidavit stating that the order is final, that demand has been made on the authorized representative and that the order has not been complied with.

(7) The authorized representative may object to the motion only on grounds that the order is not final, that the order is not binding on the authorized representative as provided in this section or that all required payments have been made. The objection must be by affidavit.

(8) If the authorized representative objects by affidavit, the court shall hear the motion. If the court determines that the ability-to-pay order is final and binding on the authorized representative and that all required payments have not been made, the court shall order the authorized representative to comply with the ability-to-pay order.

(9) If the authorized representative fails to object by affidavit within 15 days of the filing of the motion, the court shall order the authorized representative to comply with the order. An authorized representative who willfully fails or refuses to comply may be found in contempt of court and may be held personally responsible.

(10) Nothing in this section shall affect the requirement that the agency issue a new order in accordance with ORS 179.640 (5) if financial circumstances have changed. [1973 c.806 §9a; 1989 c.348 §4; 1995 c.664 §90; 1999 c.159 §3; 2001 c.487 §4]

179.655 Enforcement of lien; distraint warrant. (1) If any amount due the Department of Human Services or the Department of Corrections for the cost of care of a person is not paid within 30 days after it becomes due, and no provision is made to secure the payment by bond, deposit or otherwise, pursuant to rules adopted by the appropriate agency, the agency may issue a distraint warrant directed to any county of the state.

(2) After the receipt of the distraint warrant, the clerk of the county shall enter in the County Clerk Lien Record the name of the person, the amount for which the distraint warrant is issued and the date the distraint warrant is recorded. The amount of the distraint warrant shall become a lien upon the title to and interest in any property owned or later acquired by the debtor against whom it is issued, and it may be enforced by the agency in the same manner as a judgment of the circuit court.

(3) In the event that an ability-to-pay order issued under ORS 179.640 (4) or (5) becomes final, and supersedes a previous final ability-to-pay order on which a distraint warrant had been issued, the agency shall issue a new distraint warrant superseding the previous distraint warrant, and the lien shall conform to the new order.

(4) The agency may direct a copy of the distraint warrant to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the taxpayer found within that county, for the payment of the amount due, with interest, collection charge and the sheriff's fee. The sheriff shall return the distraint warrant to the agency and pay to it the money collected not less than 60 days from the date the copy of the distraint warrant was directed to the sheriff.

(5) The agency may issue the directive provided in subsection (4) of this section to any agent of the agency. In executing the distraint warrant, the agent shall have the same powers conferred by law upon sheriffs. However, the agent is not entitled to any fee or compensation in excess of actual expenses incurred in the performance of this duty. [1973 c.806 §§10,11,12; 1983 c.696 §8; 1989 c.348 §5; 1999 c.159 §4; 2001 c.487 §5]

179.660 Guardian or conservator for estate of person in institution. If the Department of Human Services or the Department of Corrections believes a person at one of its state institutions needs a guardian or conservator, or both, and one has not been appointed, the agency may request that the district attorney institute proper proceedings for this appointment in the court having probate jurisdiction. The county of which the person is a resident, or was a resident at the time of admittance, shall be the basis for determining the appropriate district attorney to be contacted. [1959 c.652 §6; 1973 c.823 §124; 1989 c.348 §6; 2001 c.487 §6]

179.670 [1959 c.652 §7; 1969 c.591 §296; 1973 c.546 §6; repealed by 1973 c.806 §14]

179.680 [1959 c.652 §8; 1967 c.549 §6; 1973 c.546 §7; repealed by 1973 c.806 §14]

179.690 [1959 c.652 §9; repealed by 1973 c.546 §13]

179.700 [1959 c.652 §10; 1961 c.639 §1; 1965 c.182 §1; repealed by 1967 c.549 §1 (179.701 enacted in lieu of 179.700)]

179.701 Determination of cost-of-care rates. The cost-of-care rates for a person shall be determined by the Department of Human Services or the Department of Corrections, as appropriate. The rates established shall be reasonably related to current costs of the institutions as described in ORS 179.321. Current costs shall exclude costs of outpatient services as defined in ORS 430.010 (4) and any other costs not directly related to the care for a person at a state institution. [1967 c.549 §2 (enacted in lieu of 179.700); 1973 c.806 §6; 1989 c.348 §7; 2001 c.487 §7]

179.710 [1955 c.5 §1; renumbered 179.510]

179.711 Remittance of amounts due; refunds. (1) Remittance of amounts due for care of persons at state institutions as provided in ORS 179.610 to 179.770 shall be made to the Department of Human Services or the Department of Corrections, as appropriate.

(2) The agency shall refund any unearned payment for the care of a person at a state institution where payment has been made in advance and the person dies or is discharged before the end of the period for which pay-

ment was made. Any refund shall be paid to the person, to the authorized representative of the person or to the decedent's estate if the person has died. All claims for refunds approved by the agency shall be paid as provided in ORS 293.295 to 293.462. Any amounts necessary for payment of refunds are appropriated from the money collected by that agency under the provisions of ORS 179.610 to 179.770. [1959 c.652 §11; 1963 c.193 §1; 1973 c.546 §8; 1983 c.740 §44; 1989 c.348 §8; 2001 c.487 §8]

179.720 [1955 c.5 §2; renumbered 179.520]

179.721 [1959 c.652 §13; 1973 c.546 §9; repealed by 1989 c.348 §16]

179.730 [1955 c.5 §3; renumbered 179.530]

179.731 Waiver of collection of amount payable. If the Department of Human Services or the Department of Corrections determines that collection of the amount payable under ORS 179.610 to 179.770 for the cost of care of a person would be detrimental to the best interests of the person or the agency, the agency may waive the collection of part or all of the amount otherwise payable. [1959 c.652 §§16,17,18; 1961 c.501 §3; 1973 c.546 §10; 1973 c.806 §7a; 1989 c.348 §9; 2001 c.487 §9]

179.740 Collection from estates; settlement. (1) The Department of Human Services or the Department of Corrections, as appropriate, may file a claim against the decedent's estate for any unpaid charges under ORS 179.620 (3). This shall be done in the same manner as claims of creditors and with the priorities provided in ORS 115.125.

(2) If, within 90 days following the person's death, the person's estate is not otherwise being probated, the agency may petition any court of competent jurisdiction for the issuance of letters of administration or testamentary. This action would be for the purpose of collecting the full amount of unpaid cost of care as determined by ORS 179.701 and limited by ORS 179.620 (3). However, the agency may not file a petition under this subsection until at least 90 days after the death of the person who was at the state institution and then only in the event that the person's estate is not otherwise being probated.

(3) The agency may settle any claim against the decedent's estate during the pendency of the probate proceeding by accepting other security or in any other equitable manner. The agency may waive all or part of the claim if it finds collection of this amount due to be inequitable.

(4) The agency may not recover amounts that exceed the total cost of care of the de-

ceased person as computed under ORS 179.701 and limited by ORS 179.620 (3). [1959 c.652 §§16,17,18; 1961 c.501 §4; 1969 c.591 §297; 1973 c.546 §11; 1979 c.684 §4; 1989 c.348 §10; 2001 c.487 §10]

179.745 Title to and transfer of property. The State of Oregon, by and through the Department of Human Services or the Department of Corrections, may take title to real and personal property to carry out the provisions of ORS 179.620, 179.653, 179.655 and 179.740. With the written consent of the owner of real property or an authorized representative of the owner, the agency may transfer real property under the provisions of ORS 270.100 to 270.190. The agency may transfer personal property under rules adopted by the agency. The proceeds, less costs, of any real or personal property transferred by the agency under this section shall be credited to and deposited in the Mental Health and Developmental Disability Services Account established by ORS 430.180 or the Department of Corrections Account established by ORS 423.097, as appropriate. [1999 c.616 §2; 2001 c.487 §11]

DISCRIMINATION PROHIBITED

179.750 Equal care and services for persons in state institutions. (1) Discrimination may not be made in the admission, accommodation, care, education or treatment of any person in a state institution because the person does or does not contribute to the cost of the care.

(2) Discrimination may not be made in the provision of or access to educational facilities and services and recreational facilities and services to any person in the state institutions enumerated in ORS 420.005 or Department of Corrections institutions as defined in ORS 421.005 on the basis of race, religion, sex, marital status or national origin of the person. This subsection does not require combined domiciliary facilities at the state institutions to which it applies. [1959 c.652 §19; 1973 c.546 §12; 1977 c.363 §1; 1979 c.141 §1; 1989 c.348 §11; 1995 c.422 §134; 2003 c.14 §78]

Note: The amendments to 179.750 by section 20, chapter 100, Oregon Laws 2007, are the subject of a referendum petition that may be filed with the Secretary of State not later than September 26, 2007. If the referendum petition is filed with the required number of signatures of electors, chapter 100, Oregon Laws 2007, will be submitted to the people for their approval or rejection at the regular general election held on November 4, 2008. If approved by the people at the general election, chapter 100, Oregon Laws 2007, takes effect December 4, 2008. If the referendum petition is not filed with the Secretary of State or does not contain the required number of signatures of electors, the amendments to 179.750 by section 20, chapter 100, Oregon Laws 2007,

take effect January 1, 2008. 179.750, as amended by section 20, chapter 100, Oregon Laws 2007, is set forth for the user's convenience.

179.750. (1) Discrimination may not be made in the admission, accommodation, care, education or treatment of any person in a state institution because the person does or does not contribute to the cost of the care.

(2) Discrimination may not be made in the provision of or access to educational facilities and services and recreational facilities and services to any person in the state institutions enumerated in ORS 420.005 or Department of Corrections institutions as defined in ORS 421.005 on the basis of race, religion, sex, sexual orientation, national origin or marital status of the person. This subsection does not require combined domiciliary facilities at the state institutions to which it applies.

179.760 [1959 c.652 §15; repealed by 1973 c.546 §13]

RULES

179.770 Rules; employees. (1) In accordance with any applicable provisions of ORS chapter 183, both the Department of Human Services and the Department of Corrections may adopt any rules necessary to carry out ORS 179.610 to 179.770.

(2) Subject to any applicable provision of the State Personnel Relations Law, the agency may employ employees necessary to carry out ORS 179.610 to 179.770. [Subsections (1) and (2) enacted as 1959 c.652 §20; subsection (3) as 1959 c.652 §12; 1989 c.348 §12; 2001 c.487 §12]
