Chapter 427

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GENERAL PROVISIONS

427.005 Definitions. As used in this chapter:

(1) "Adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(2) "Care" means supportive services, including, but not limited to, provision of room and board; supervision; protection; and assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

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

(4) "Developmental period" means the period of time between birth and the 18th birthday.

(5) "Director of the facility" means the superintendent of a state training center, or the person in charge of care, treatment and training programs at other facilities.

(6) "Facility" means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facility or program as the department approves to provide necessary services to mentally retarded persons.

(7) "Incapacitated" means a person is unable, without assistance, to properly manage or take care of personal affairs or is incapable, without assistance, of self-care.

(8) "Independence" means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(9) "Integration" means use by persons with mental retardation or developmental disabilities of the same community resources that are used by and available to other persons and participation in the same community activities in which nondisabled persons participate, together with regular contact with nondisabled persons, and residence by persons with developmental disabilities in homes or in home-like settings which are in proximity to community resources, together with regular contact with nondisabled persons in their community.

(10) "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

(11) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered mentally retarded if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency, 1977 Revision. Mental retardation is synonymous with mental deficiency.

(12) "Minor" means an unmarried person under 18 years of age.

(13) "Physician" means a person licensed by the Board of Medical Examiners for the State of Oregon to practice medicine and surgery.

(14) "Productivity" means engagement in income-producing work by a person with mental retardation or developmental disabilities which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or developmental disabilities in work contributing to a household or community.

(15) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the department.

(16) "Significantly subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(17) "State training center" means Eastern Oregon Training Center and any other facility operated by the department for the care, treatment and training of the mentally retarded.

(18) "Training" means the systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or the planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual and social growth.

(19) "Treatment" means the provision of specific physical, mental, social interventions and therapies which halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions. [1959 c.331 §10; 1961 c.706 §27; 1965 c.339 §1; subsection (2) enacted as 1965 c.595 §5; 1967 c.299 §1; 1979 c.683 §2; 1985 c.463 §1; 1985 c.565 §69; 1991 c.67 §111; 2001 c.900 §126]

427.007 Policy; Department of Human Services to plan and facilitate community services. (1) The Legislative Assembly finds and declares that a significant number of persons with mental retardation or other developmental disabilities currently reside in state-operated hospitals and training centers or lack needed services simply because appropriate community-based services, including residential facilities, day programs, home

care and other support, care and training programs, do not exist. The Legislative Assembly further finds that families are the major providers of support, care, training and other services to their members with mental retardation or other developmental disabilities who live at home, and many of these families experience exceptionally high financial outlays and extraordinary physical and emotional challenges due to the unavailability of appropriate family support services. Such services pertain to the needs of the person with disabilities, the needs of other family members related to their care-giving and nurturing capacity, and specialized needs for environmental accommodation to reduce dependency of the family member with mental retardation or other developmental disabilities. Therefore, the Department of Human Services is directed to facilitate the development of appropriate community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, in an orderly and systematic manner. The role of state-operated hospitals and training centers in Oregon shall be as specialized back-up facilities to a primary system of community-based services for persons with mental retardation or other developmental disabilities.

(2) In carrying out the directive in subsection (1) of this section, the department shall develop a biennial plan in conjunction with the budgeting process for review by each Legislative Assembly. In developing this plan, the department shall meet with and consider the input of representatives from the following constituencies: Consumer organizations, parent-family organizations, advocacy organizations, unions representing workers in state-operated hospitals and training centers, community provider organizations, state and local education officials and community mental health departments or programs. Such plans shall include, where appropriate:

(a) Proposals for the decrease in the number of persons with mental retardation or other developmental disabilities to be served in state-operated hospitals and training centers at a steady and planned rate until such time that the Legislative Assembly shall determine that each person served in programs or facilities operated or supported by the department is being served according to the best contemporary professional practices in the least restrictive environment, with preference given to the community-based setting over the institutional. However, no person shall be moved from any facility until a comprehensive assessment of the person's medical, treatment, training and support service needs has been completed, the move determined to be in the person's best interest and appropriate service alternatives procured.

(b) Proposals for the orderly development of community-based services, including family support, residential facilities, day programs, home care and other necessary support, care and training programs, to accommodate persons coming out of state-operated hospitals and training centers and to serve persons already in the community waiting for services. The proposals shall include services developed for persons in the community waiting for services that are at least equal in number to those services developed for those coming out of state-operated hospitals and training centers, and shall include services for all persons who are leaving the public education system, in order to further prevent unnecessary institutionalization of persons with mental retardation or other developmental disabilities. Funding for these services shall be commensurate with individual need. These proposals may include provisions for an array of both publicly and privately operated services and shall include specific implementation plans requiring that new services developed are designed to significantly increase the independence, productivity and integration into the community of persons with mental retardation and developmental disabilities.

(c) Proposals for the location of community-based services for persons with mental retardation or other developmental disabilities in proximity to family, friends, supportive services and home communities whenever possible.

(3) In further carrying out the directive in subsection (1) of this section, the department shall develop monitoring and evaluation systems which insure competent management, program quality and cost-effectiveness of community-based services. Such systems shall include, where appropriate:

(a) A comprehensive system of case management which assures an orderly movement of persons with mental retardation or other developmental disabilities from state-operated hospitals and training centers to community-based services, and between community-based service alternatives, and assures an effective system of service delivery to persons with mental retardation or other developmental disabilities living in the community, based on individualized planning and close cooperation with consumers, families and guardians.

(b) An annual progress assessment of every person with mental retardation or other developmental disabilities served in programs or facilities operated or supported by the department. This assessment shall measure the

degree to which a family with a member with mental retardation or other developmental disabilities demonstrates enhanced caregiving and nurturing capacities, and the degree to which the independence, productivity and integration into the community of each person with mental retardation or other developmental disabilities has been increased as a result of receiving such services. The overall results of these assessments shall annually be aggregated and analyzed for each program or facility operated or supported by the department, and shall be made available for public inspection and review by the Legislative Assembly.

(c) The development of specific standards for each component within the array of services, for persons with mental retardation or other developmental disabilities, either operated or supported by the department and assure the competent management, program quality and cost-effectiveness of such services.

(4) Subject to available funds, the department shall insure that each family with a member with mental retardation or other developmental disabilities has access to family support services, and that each person with mental retardation or developmental disabilities living in the community, including those leaving the public education system, has access to community-based services necessary to enable the person to strive to achieve independence, productivity and integration. Specific services proposed for the person shall be identified in an individual habilitation plan or in a family support service plan.

(5) Subject to available funds, the department shall determine the content of individual habilitation plans and family support service plans, and the process whereby such plans are developed and updated.

(6) The department shall establish grievance procedures for mediation of disputes concerning eligibility for or appropriateness of services in individual cases. [1981 c.287 §1; 1985 c.463 §2; 1987 c.353 §1; 1987 c.609 §1; 1989 c.505 §1; 2001 c.900 §127]

Note: 427.007 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 427 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

427.009 [1987 c.870 §1; repealed by 2001 c.900 §261]

EASTERN OREGON TRAINING CENTER

427.010 Eastern Oregon Training Center; care provided; fees; superintendent. (1) Except as otherwise ordered by the Department of Human Services pursuant to ORS 179.325, the Eastern Oregon Training Center in Pendleton, Umatilla County, shall be used for the care, treatment and training of such mentally retarded persons as are assigned to the care of the institution by the department according to procedures defined in ORS 427.185 or who were residents on October 3, 1979.

(2) Upon receipt of an application approved by the department or its designee, pursuant to its rules, a mentally retarded person may be entitled to admission to the state training center for emergency, respite or part-time care. Part-time care means presence of the person at the facility less than 24 hours per day and may include day or night care. Admission for emergency care or respite care shall in no case exceed 90 days. Admission for part-time care may exceed 90 days. The fee schedule for such care, training and treatment in the training center shall be established by the department in the same manner as for other residents. The fees shall be charged and collected by the department in the same manner as charges are collected under ORS 179.610 to 179.770.

(3) The superintendent of the training center named in subsection (1) of this section shall be a person the department considers qualified to administer the training center. If the superintendent of the training center is a physician licensed by the Board of Medical Examiners for the State of Oregon, the superintendent shall serve as chief medical officer. If not a physician, the superintendent shall appoint a physician to serve as chief medical officer who shall be in the unclassified service. [Amended by 1953 c.155 §7; 1965 c.339 §2; 1965 c.595 §3; 1969 c.391 §9; 1971 c.75 §1; 1973 c.262 §1; 1973 c.807 §3; 1979 c.683 §6; 1983 c.505 §2; 1983 c.740 §150; 2001 c.900 §128]

427.012 [Formerly 428.548; repealed by 1979 c.683 §37]

427.015 [1961 c.661 §2; 1967 c.534 §21; repealed by 1979 c.683 §37]

427.020 Review of plan of care for residents; certification for continued care and training; notice to resident. (1) State training centers shall annually review the plan of care for each resident and certify the resident's eligibility and need for continued residential care and training and shall present each certification with clear and convincing justification for continued residential care and training to the State Training Center Review Board for review and action pursuant to this section. If the board does not approve of the certification or, if the resident objects to continued residential care and training, the resident shall be released pursuant to ORS 427.300 or, if the Department of Human Services considers release not to be in the best interest of the resident, the superintendent of the state training center where the person is a resident shall initiate

commitment proceedings pursuant to ORS 427.235 to 427.270, 427.280 and 427.285. The board may require the physical presence of any resident during the review. However, the board shall require the physical presence of each resident at least once every three years of residence in a state training center.

(2) The plan of care for each resident shall include, but not be limited to, the following:

(a) Current diagnosis;

(b) Level of functioning;

(c) Current habilitation and health programs in which the resident is participating;

(d) Statement as to continued eligibility and continued need for residential care;

(e) Statement of long-term and short-term goals for the resident; and

(f) Verification that the person has been advised of the facility's statement of rights and the policies governing the immediate living area of the person.

(3) The state training center shall notify the resident orally. In addition, the resident, the resident's parent, guardian or person entitled to custody shall be notified by certified mail of the intent to certify the need for the resident's continued commitment. The notification shall include the following:

(a) Time, place and location of the hearing of the State Training Center Review Board;

(b) Explanation of the possible consequences of the proceedings; and

(c) Explanation of the resident's right to appear before the board on the resident's own behalf or to be represented at the proceeding by the resident's parent, guardian, the person entitled to custody or other person, including counsel, of the resident's choosing.

(4) In the event the resident, because of severe disability, is unable to receive and acknowledge the communication required by subsection (3) of this section, that fact shall be documented in the resident's record and conveyed to the board. [1979 c.683 §28]

427.025 [1961 c.661 §3; 1965 c.339 §3; 1967 c.534 §22; repealed by 1979 c.683 §37]

427.030 [Amended by 1953 c.155 §7; 1957 c.403 §6; 1959 c.331 §7; repealed by 1961 c.661 §20]

427.031 Rights of residents. (1) Every resident shall have the right to exercise all civil rights in the same manner, and with the same effect, as one not admitted to a state training center, including, but not limited to, the right to dispose of property, execute instruments, make purchases, enter contractual relationships, and vote, unless the resident has been adjudicated incompetent and has not been restored to legal capacity.

(2) Pursuant to rules of the Department of Human Services, a statement of rights guaranteed to residents admitted to state training centers shall be prominently posted in all facilities housing such residents. Each resident shall be encouraged and assisted to understand and exercise these rights which shall include, but not be limited to, the right to:

(a) Communicate freely in person by sending and receiving sealed mail and by reasonable access to telephones;

(b) Wear the resident's own clothing;

(c) Keep personal possessions, including toilet articles;

(d) Religious freedom;

(e) A private storage area with free access thereto;

(f) Be furnished with a reasonable supply of writing materials and stamps;

(g) Be represented by counsel whenever the substantial rights of the resident may be affected;

(h) Petition for a writ of habeas corpus;

(i) Not be required to perform labor tasks of the facility except those essential for treatment and training; and

(j) Be given reasonable compensation for all work performed other than personal housekeeping duties.

(3) Every resident shall have the right to the least hazardous treatment procedures available in the least restrictive state training center living area according to personal need and provisions of law.

(4) Mechanical restraints shall not be applied to a resident of a state training center unless it is determined by the chief medical officer of the facility or the designee of the chief medical officer to be required for the safety and welfare of the person or the safety of others. Every use of a mechanical restraint and the reasons therefor shall be made a part of the clinical record of the person over the signature of the chief medical officer of the facility or the designee of the chief medical officer. [1979 c.683 §29]

427.035 [1961 c.661 §4; 1965 c.339 §4; repealed by 1979 c.683 §37]

427.040 [Amended by 1953 c.155 §7; repealed by 1961 c.661 §20]

427.041 Leave of absence for resident; damages caused by resident while on leave. The superintendent of a state training center for the care, treatment and training of the mentally retarded may grant a temporary leave of absence to any resident of the state training center pursuant to the rules

of the Department of Human Services. The state training center, the superintendent and the chief medical officer thereof, and the Director of Human Services shall not be liable for a resident's expenses while on temporary leave of absence nor shall they be liable for any damages whatsoever that are sustained by a person on account of the actions or misconduct of a resident while on leave of absence. [Formerly 427.150]

427.045 [1961 c.661 §§5,6; 1965 c.339 §5; repealed by 1979 c.683 §37]

427.050 [Amended by 1953 c.155 §7; 1957 c.388 §12; 1961 c.661 §11; renumbered 427.065]

427.051 Effect of admission to training center on competency. No person admitted to a state training center for the treatment and training of the mentally retarded shall be considered by virtue of the admission to be incompetent. [Formerly 427.305]

427.055 [1961 c.661 §§7,8; 1965 c.339 §6; repealed by 1979 c.683 §37]

427.059 [1961 c.661 §§9,10; 1965 c.339 §7; repealed by 1979 c.683 §37]

427.060 [Amended by 1961 c.661 §12; renumbered 427.067]

427.061 Payment for care and treatment in state training center. (1) If any mentally retarded person is admitted to and detained in a state training center under ORS 427.255, the Department of Human Services shall charge to and collect from appropriate persons the costs in the same manner as it would for other residents of the state training center under the provisions of ORS 179.610 to 179.770.

(2) If any person is adjudged mentally retarded as provided by ORS 427.255, and the person receives care, treatment and training in a state training center, the person, or other persons or agencies legally responsible for the support of the person, may be required to pay the cost of the care of the person at the state training center, as provided by ORS 179.610 to 179.770. [1979 c.683 §32]

427.062 [1969 c.632 §§2,3,4; repealed by 1979 c.683 §37]

427.065 [Formerly 427.050; 1965 c.339 §8; 1975 c.155 §4; 1979 c.683 §12; renumbered 427.195]

427.067 [Formerly 427.060; repealed by 1979 c.683 §37]

427.070 [Amended by 1961 c.661 §13; repealed by 1965 c.339 §27]

427.075 [1969 c.38 §2; repealed by 1979 c.683 §37]

427.080 [Repealed by 1961 c.661 §20]

427.085 [1961 c.661 §15; 1967 c.534 §23; 1969 c.591 §299; repealed by 1979 c.683 §37]

427.090 [Amended by 1961 c.661 §16; 1965 c.339 §9; repealed by 1979 c.683 §37]

427.100 [Amended by 1965 c.339 §10; repealed by 1979 c.683 §37]

DIAGNOSTIC EVALUATIONS

427.104 Developmental Disability Diagnosis and Evaluation Service; duties and powers. The Department of Human Services with funds appropriated for that purpose by the legislature, shall establish and operate a Developmental Disability Diagnosis and Evaluation Service for people with mental retardation or developmental disabilities. The Developmental Disability Diagnosis and Evaluation Service shall provide all or part of diagnostic evaluations, as defined in ORS 427.105, when complete evaluations are not available through community mental health and developmental disabilities programs, and the Developmental Disability Diagnosis and Evaluation Service shall:

(1) Provide consultation and training to community mental health and developmental disabilities programs in the development of local diagnosis and evaluation services;

(2) Develop and periodically revise department standards and procedures for diagnosis and evaluation services;

(3) Coordinate diagnostic evaluations statewide to minimize duplication of tests and examinations;

(4) Approve applications for admission to the training center;

(5) Provide necessary information to the State Training Center Review Board when a decision of the Developmental Disability Diagnosis and Evaluation Service regarding admission to the state training center is appealed by the person, the parents or legal guardian of the person;

(6) Provide consultation to appropriate agencies and individuals regarding persons evaluated; and

(7) Process and coordinate all placements of residents from the state training center. [1953 c.631 §1; 1965 c.339 §21; 1971 c.74 §1; 1979 c.683 §13; 2001 c.900 §129]

427.105 Diagnostic evaluations; contents; purpose. (1) Pursuant to rules of the Department of Human Services, a diagnostic evaluation shall include, but not be limited to, the following:

(a) A social history;

(b) A psychological evaluation, including an appropriate individual test of intellectual capacity, an academic achievement test, a social development assessment and an adaptive behavior assessment;

(c) A medical evaluation including prenatal, natal, early postnatal and other past and family history, a complete physical examination including tests of visual function, and any specialized examinations necessary;

(d) A speech and hearing screening; and

(e) A dental screening.

(2) The diagnostic evaluation shall also attempt to determine the existence of related conditions such as epilepsy, cerebral palsy, autism and specific learning disorders and to outline the most appropriate services for the treatment and training of the person, whether those services are immediately available or not.

(3) A facility approved by the department to conduct diagnostic evaluations may contract with qualified persons to perform components of the evaluation. [1979 c.683 §14]

427.106 [1953 c.631 §2; 1965 c.339 §22; 1969 c.53 §1; repealed by 1979 c.683 §37]

427.108 Fee schedules for diagnosis and evaluation services. The Department of Human Services shall establish fee schedules for services under ORS 427.104. All fees collected under this section shall be deposited in the Mental Health and Developmental Disability Services Account. [1953 c.631 §3; 1977 c.384 §6; 1979 c.683 §15]

427.110 [Repealed by 1953 c.155 §7]

427.112 Certain facilities to charge for performing diagnostic evaluations. A general hospital, community mental health and developmental disabilities program, or other facility, except a state training center, providing diagnostic evaluations under ORS 427.105 shall charge to and collect from the person, third party payers, or other persons or agencies otherwise legally responsible therefor, the costs of the diagnostic evaluation or emergency care, custody and treatment, as the facility would for any other client or resident. [1979 c.683 §30]

427.120 [Amended by 1953 c.155 §7; 1959 c.331 §8; 1965 c.339 §11; repealed by 1979 c.683 §37]

427.130 [Amended by 1955 c.651 §10; repealed by 1957 c.160 §6]

427.140 [Repealed by 1957 c.388 §17]

427.150 [1953 c.155 §5; 1963 c.411 §1; 1965 c.339 §12; 1969 c.597 §93; 1979 c.683 §27; renumbered 427.041]

ADMISSION TO STATE TRAINING CENTER

427.175 Admission to training center. Pursuant to reasonable rules of the Department of Human Services and in conformity with ORS 427.180 to 427.190, the superintendent of a state training center shall admit as a resident and take custody of any person who meets the admission requirements set out in ORS 427.180. [Formerly 427.220]

427.180 Requirements for admission. (1) A person shall be admitted to a state training center only after:

(a) The person has either been committed to the Department of Human Services as a mentally retarded person under ORS 427.290, or an application for admission has been filed either by the person or by another in the manner set forth in ORS 427.185;

(b) The person has undergone a diagnostic evaluation as defined in ORS 427.105 and the completed evaluation has been provided to the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104; and

(c) Either the Developmental Disability Diagnosis and Evaluation Service or, upon appeal, the Director of Human Services finds that the person meets the requirements set out in subsection (2) of this section and approves the person for admission.

(2) A person shall be approved for admission under subsection (1)(c) of this section if the following conditions exist:

(a) The person is mentally retarded;

(b) Programs and services needed by the person are available in a training center and comparable services are not available in community mental health and developmental disabilities programs or other human service agencies;

(c) Admission to a state training center is the best available plan and in the best interest of the person, family of the person and the community; and

(d) Space is available or may become available within a reasonable time in an appropriate unit of a state training center. [1979 c.683 §8]

427.185 Application for admission; diagnostic evaluation; costs of transportation and maintenance during evaluation. (1) A person seeking admission to a state training center shall apply on forms and in the manner established by the Department of Human Services, to the community mental health and developmental disabilities program serving the area in which the applicant currently resides. If the person seeking admission is a minor or is incapacitated, the application shall be made by the person's parents or guardian or by the person entitled to custody.

(2) Upon receipt of an application, the community mental health and developmental disabilities program shall provide or arrange a diagnostic evaluation, meeting the requirements set forth in ORS 427.105, of the person on whose behalf the application for admission is made at a facility approved by the department. The community mental health and developmental disabilities program or its designee shall schedule a date for the diagnostic evaluation and notify the applicant or person having custody. No person shall be kept in residence in a training center for a diagnostic evaluation longer than 10 business days.

(3) The costs of transportation to the community mental health and developmental disabilities program or designated facility shall be paid by the applicant. The cost of maintenance for any period of residence in a training center shall be determined as provided for in ORS 179.610 to 179.770 and paid by the applicant or other persons or agencies legally responsible. [Formerly 427.225]

427.190 Determination of eligibility and priority for admission; notice of admission; appeal. (1) Upon receipt of a completed diagnostic evaluation, the community mental health and developmental disabilities program shall forward the completed application and the completed diagnostic evaluation to the Developmental Disability Diagnosis and Evaluation Service.

(2) Upon receipt of a completed application and diagnostic evaluation from the community mental health and developmental disabilities program, the Developmental Disability Diagnosis and Evaluation Service shall promptly determine the eligibility and priority for admission in accordance with ORS 427.180 and 427.195.

(3) When space in an appropriate unit of a training center becomes available for a person otherwise eligible for admission under ORS 427.180, the Developmental Disability Diagnosis and Evaluation Service shall notify the applicant or, if the person is committed, the director of the community mental health and developmental disabilities program in the county of the person's residence that the person has been accepted for admission. The notice shall establish the date when the admission is to be made. If the person does not appear at the designated training center within 15 days after the date established for admission, the application of the person may be canceled by the Developmental Disability Diagnosis and Evaluation Service.

(4) A person applying for admission to a state training center or, if the person is a minor or incapacitated, the person applying for admission on behalf of the minor or incapacitated person may appeal any decision of the Developmental Disability Diagnosis and Evaluation Service regarding admission to the Director of Human Services. The appeal shall be filed within 30 days of receipt of notice of the decision and shall set forth the reasons for the appeal. The director shall convene the State Training Center Review Board, established under ORS 427.205, within 30 days of receipt of the appeal. The board shall advise the director regarding disposition of the appeal, and the director shall make a decision on the appeal within 30 days of the meeting of the board. The decision of the director shall be final. [1979 c.683 §10]

427.195 Schedule of admissions; priority admissions; costs of transportation and maintenance. (1) Persons are entitled to admission to state training centers in the order in which completed applications are received and filed by the Developmental Disability Diagnosis and Evaluation Service, whether the person has been committed to the Department of Human Services or is voluntarily requesting admission. However, pursuant to rules of the department, persons may be admitted on a priority basis if their behavior or condition is a threat to their welfare or safety or to the safety of others.

(2) A person committed to the department and approved for admission by the Developmental Disability Diagnosis and Evaluation Service shall be conveyed to the designated training center by a member of the family of the person or other persons legally responsible for the person. The expense of the transportation of the person to the designated training center shall be paid by the county in which the petition of commitment is filed.

(3) The costs of transportation for a voluntary applicant to the designated training center shall be paid by the applicant or, if the applicant is a minor or incapacitated person, by the parents or person entitled to custody of the applicant.

(4) The cost of maintenance for the period of residence shall be determined as provided for in ORS 179.610 to 179.770 and paid by the appropriate persons or agencies, whether the resident was committed to the department or voluntarily applied for admission to the training center. [Formerly 427.065]

427.200 [1953 c.615 §1; repealed by 1957 c.202 §6]

427.205 State Training Center Review Board; appointment; terms; compensation and expenses; duties. (1) The Director of Human Services shall appoint a State Training Center Review Board composed of three members. The Oregon Association for Retarded Citizens, the Fairview Parents Association and the Oregon Developmental Disabilities Council or their successor organizations may each recommend three persons to the director. The director may select one person from each list to serve as a member of the board. Each board member shall have had at least five years of involvement and active interest in programs for mentally retarded persons. None shall be an employee of the Department of Human Services.

(2) The term of office of each member is two years. The director may remove any member for misconduct or neglect of duty. Replacement of board members shall be accomplished by the same procedure as that used in subsection (1) of this section for se-

lection. The director shall request a new list of three persons from the organization whose nominee for board member is to be replaced.

(3) A member of the board not otherwise employed full-time by the state shall be paid on a per diem basis an amount equal to four percent of the gross monthly salary of a member of the State Board of Parole and Post-Prison Supervision for each day during which the member is engaged in the performance of official duties, including necessary travel time. In addition, subject to ORS 292.220 to 292.250 regulating travel and other expenses of state officers and employees, the member shall be reimbursed for actual and necessary travel and other expenses incurred by the member in the performance of official duties.

(4) The board shall perform the following duties:

(a) Review decisions of the Developmental Disability Diagnosis and Evaluation Service regarding admissions to training centers that have been appealed by the applicant or, if a minor or incapacitated person, by the person applying on the behalf of the minor or incapacitated person and advise the director regarding the appropriateness for the admission.

(b) Review decisions of the department pursuant to ORS 427.300 (2) when the resident, parent of the resident, guardian or person entitled to custody has appealed the decision and advised the director regarding the appropriateness of the decision.

(c) Annually review state training center plans for continuing residential care and training of residents pursuant to ORS 427.020.

(5) The board shall operate pursuant to rules promulgated by the department. [1979 c.683 §11; 1989 c.1006 §3]

427.210 [1959 c.331 §1; 1965 c.339 §13; 1973 c.827 §44; repealed by 1979 c.683 §37]

INVOLUNTARY COMMITMENTS OF PERSONS WITH MENTAL RETARDATION

427.215 Definitions for ORS 427.061 and 427.235 to 427.290. As used in ORS 427.061 and 427.235 to 427.290, unless the context requires otherwise, "mentally retarded person" applies only to a person who, because of mental retardation, is or is alleged to be either:

(1) Dangerous to self or others; or

(2) Unable to provide for basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person. [1979 c.683 §16; 2001 c.104 §153]

427.220 [1959 c.331 §2; 1961 c.661 §17; 1965 c.339 §14; 1973 c.277 §1; 1979 c.683 §7; renumbered 427.175]

427.225 [1961 c.661 §19; 1965 c.339 §15; 1973 c.277 §2; 1979 c.683 §9; renumbered 427.185]

427.230 [1959 c.331 §6; 1965 c.339 §16; 1973 c.277 §3; repealed by 1979 c.683 §37]

427.235 Notice to court of need for commitment; investigation; report and recommendation. (1) Any two persons may notify the judge of the court having probate jurisdiction for the county or the circuit court, if it is not the probate court but its jurisdiction has been extended to include commitment of the mentally retarded under ORS 3.275, that a person within the county is a mentally retarded person in need of commitment for residential care, treatment and training. Such notice shall be in writing and sworn to before an officer qualified to administer an oath and shall set forth the facts sufficient to show the need for investigation. The circuit court shall forward notice to the community mental health and developmental disabilities program director in the county if it finds the notice sufficient to show the need for investigation. The director or the designee of the director shall immediately investigate to determine whether the person is in fact a mentally retarded person. However, if the petition for commitment is from a state training center, the duties of the community mental health and developmental disabilities program director under ORS 427.235 to 427.270, 427.280 and 427.285 shall be the responsibility of the superintendent of the state training center or the designee of the superintendent.

(2) Any person who acts in good faith shall not be held civilly liable for making of the notification under subsection (1) of this section.

(3) Any investigation conducted by the community mental health and developmental disabilities program director or the designee of the director under subsection (1) of this section shall commence with an interview or examination of the allegedly mentally retarded person, where possible, in the home of the allegedly mentally retarded person or other place familiar to the allegedly mentally retarded person. Further investigation if warranted shall include a diagnostic evaluation as defined in ORS 427.105 and may also include interviews with the allegedly mentally retarded person's relatives, neighbors, teachers and physician. The investigation shall also determine if any alternatives to commitment are available. The investigator shall also determine and recommend to the court whether the person is incapacitated and in need of a guardian or conservator.

(4) The investigation report shall be submitted to the court within 30 days of receipt of notice from the court. A copy of the investigation report and diagnostic evaluation,

if any, shall also be made available to the Developmental Disability Diagnosis and Evaluation Service and to the allegedly mentally retarded person and, where the allegedly mentally retarded person is a minor or incapacitated, to the parents of the allegedly mentally retarded person or guardian as soon as possible after its completion but in any case prior to a hearing held under ORS 427.245.

(5) Any person conducting an evaluation or investigation under this section shall in no way be held civilly liable for conducting the investigation or performing the diagnostic evaluation.

(6) If requested by a person conducting an investigation under this section, a physician who has examined the allegedly mentally retarded person may, with patient authorization or in response to a court order, provide any relevant information the physician has regarding the allegedly mentally retarded person. [1979 c.683 §17; 2003 c.89 §4]

427.240 [1959 c.331 §3; 1965 c.339 §17; 1969 c.391 §10; 1973 c.277 §4; repealed by 1979 c.683 §37]

427.245 Hearing to determine mental retardation; citation to appear; notice; right to legal counsel. (1) If the court, following receipt of an investigation report under ORS 427.235, concludes that there is probable cause to believe that the subject of the investigation is in fact a mentally retarded person, it shall, through the issuance of a citation as provided in subsection (2) of this section, cause the person to be brought before it at such time and place as it may direct for a hearing to determine whether the person is mentally retarded. The person shall be given the opportunity to appear at the hearing. If the person is detained pursuant to ORS 427.255, the court shall hold the hearing within seven judicial days.

(2) Upon a determination under subsection (1) of this section that probable cause exists to believe that the person is in fact a mentally retarded person, the judge shall cause a citation to issue to the person or, if the person is a minor or incapacitated, to the parent or legal guardian of the person. The citation shall state the specific reasons the person is believed to be mentally retarded. The citation shall also contain a notice of the time and place of the commitment hearing, the right to legal counsel, the right to have legal counsel appointed if the person is unable to afford legal counsel, the right to have legal counsel appointed immediately if so requested, the right to subpoena witnesses in behalf of the person to testify at the hearing, the right to cross-examine all witnesses and such other information as the court may direct. The citation shall be served on the person by the community mental health and developmental disabilities program director or the designee of the director delivering a duly certified copy of the original to the person prior to the hearing. The person, the parents of the person or the legal guardian of the person shall have the opportunity to consult with legal counsel prior to being brought before the court. The community mental health and developmental disabilities program director or the designee of the director shall advise the person of the purpose of the citation and the possible consequences of the proceeding. [1979 c.683 §18; 1989 c.242 §1]

427.250 [1959 c.331 §4; 1965 c.339 §18; 1969 c.391 §11; repealed by 1979 c.683 §37]

427.255 Detention prior to investigation or hearing; care and maintenance while under custody. (1) If the court finds that there is probable cause to believe that failure to take an allegedly mentally retarded person into custody pending an investigation or hearing would pose an imminent and serious danger to the person or to others, the judge may issue a warrant of detention to either the community mental health and developmental disabilities program director or the sheriff of the county directing that the person or the designee of the person take the allegedly mentally retarded person into custody and produce the mentally retarded person at the time and place stated in the warrant. At the time the person is taken into custody, the person taking the person into custody shall advise the allegedly mentally retarded person or, if the allegedly mentally retarded person is incapacitated or a minor, the parents or guardian of the allegedly mentally retarded person of the person's right to counsel, to have legal counsel appointed if the allegedly mentally retarded person is unable to afford legal counsel, and, if requested, to have legal counsel appointed immediately.

(2) A person taken into custody under subsection (1) of this section shall be provided all care, custody, evaluation and treatment required for the mental and physical health and safety of the person and the director of the facility retaining custody shall report any care, custody, evaluation or treatment provided the person to the court as required by ORS 427.280. Any diagnostic evaluation performed on such person shall be consistent with Department of Human Services rules and ORS 427.105. Any prescription or administration of drugs shall be the sole responsibility of the treating physician. The allegedly mentally retarded person shall have the right to the least hazardous treatment procedures while in custody, and the treating physician shall be notified immediately of the use of any mechanical restraints on the person. A note of each use of

mechanical restraint and the reasons therefor shall be made a part of the person's clinical record over the signature of the treating physician. [1979 c.683 §19]

427.260 [1959 c.331 §5; 1965 c.339 §19; 1973 c.277 §5; repealed by 1979 c.683 §37]

427.265 Court to advise person of nature of proceeding and rights; appointment of legal counsel. (1) At the time the allegedly mentally retarded person is brought before the court, the court shall advise the person of the reason for being brought before the court, the nature of the proceedings and the possible results of the proceedings. The court shall also advise the allegedly mentally retarded person of the right to subpoena witnesses and to suitable legal counsel possessing skills and experience commensurate with the nature of the allegations and complexity of the case during the proceedings, and that if the person does not have funds with which to retain suitable legal counsel, the court shall appoint such legal counsel to represent the person. If the allegedly mentally retarded person does not request legal counsel, the legal guardian, relative or friend may request the assistance of legal counsel on behalf of the person.

(2) If no request for legal counsel is made, the court shall appoint suitable legal counsel.

(3) If the person is unable to afford legal counsel, the court, if the matter is before a county or justice court, or the public defense services executive director, if the matter is before the circuit court, shall determine and allow, as provided in ORS 135.055, the reasonable expenses of the person and compensation for legal counsel. The expenses and compensation so allowed by a county court shall be paid by the county of residence of the allegedly mentally retarded person. The expenses and compensation determined by the public defense services executive director shall be paid by the public defense services executive director from funds available for the purpose. In all cases legal counsel shall be present at the hearing and may examine all witnesses offering testimony, and otherwise represent the person.

(4) If the allegedly mentally retarded person, the legal counsel, parent, guardian, an examiner or the court requests, the court may, for good cause, postpone the hearing for not more than 72 hours in order to allow preparation for the hearing. The court may, for good cause, order the continuation of detention authorized under ORS 427.255, during a postponement. [1979 c.683 §20; 1979 c.867 §13; 1981 s.s. c.3 §135; 2001 c.962 §71]

427.270 Report of diagnostic evaluation; recommendations of examining facility; appointment of persons to conduct additional examination. (1) The examining facility conducting the diagnostic evaluation shall make its report in writing to the court. Where components of the diagnostic evaluation have been performed within the previous year according to Department of Human Services rules and ORS 427.105, and the records of the evaluation are available to the examining facility pursuant to ORS 179.505 and department rules, the results of such evaluation may be introduced in court in lieu of repetition of those components by the examining facility. If the facility finds, and shows by its report, that the person examined is a mentally retarded person, the report shall include a recommendation as to the type of treatment or training facility best calculated to habilitate the person. The report shall also advise the court whether in the opinion of the examining facility the mentally retarded person and, if the mentally retarded person is a minor or incapacitated, the parents or legal guardian of the mentally retarded person would cooperate with voluntary treatment or training and whether the person would benefit either from voluntary treatment or training or from appointment of a legal guardian or conservator.

(2) If the allegedly mentally retarded person or the parent, legal guardian or legal counsel of the allegedly mentally retarded person requests, the judge shall appoint an additional physician or psychologist, or both, to examine the person and make separate reports in writing to the court. However, the court shall not appoint more than one additional physician and one additional psychologist to examine the person. [1979 c.683 §21]

427.275 Fees of persons appointed by court to perform diagnostic evaluations; payment by counties; witnesses; fees; costs. (1) Any physician or psychologist employed by the judge to make a diagnostic evaluation of a person alleged to be mentally retarded shall be allowed a fee as the court in its discretion determines reasonable for the evaluation. The costs of the evaluation shall be paid by the county of residence of the person or, if the person has no residence within the state, by the county in which the person is taken into custody. The county shall not be held responsible for the costs of prior examinations or tests reported to the court, or of diagnostic evaluations performed or arranged by the community mental health and developmental disabilities program or Department of Human Services.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases and are subject to compul-

sory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of an allegedly mentally retarded person who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. [1979 c.683 §31; 1987 c.606 §10; 2001 c.962 §72]

427.280 Treatment given after citation issued; notice to court. The court shall be fully advised by the community mental health and developmental disabilities program director or, when the person has been detained under ORS 427.255, by the director of the facility retaining custody of all treatment known to have been administered to the allegedly mentally retarded person after a citation has been issued to the person. [1979 c.683 §22]

427.285 Witnesses required at hearing; cross-examination. The investigator and other appropriate persons or professionals as necessary shall appear at the hearing and present the evidence. The allegedly mentally retarded person shall have the right to cross-examine all witnesses, the investigator and the representative. [1979 c.683 §23]

427.290 Determination by court of mental retardation; discharge; conditional release; commitment; appointment of guardian or conservator. After hearing all of the evidence, and reviewing the findings of the investigation and other examiners, the court shall determine whether the person is mentally retarded and because of mental retardation is either dangerous to self or others or is unable to provide for the personal needs of the person and is not receiving care as is necessary for the health, safety or habilitation of the person. If in the opinion of the court the person is not mentally retarded, the person shall be discharged forthwith. If in the opinion of the court the person is, by clear and convincing evidence, mentally retarded, the court may order as follows:

(1) If the mentally retarded person can give informed consent and is willing and able to participate in treatment and training on a voluntary basis, and the court finds that the person will do so, the court shall order release of the person and dismiss the case.

(2) If a relative, a friend or legal guardian of the mentally retarded person requests that the relative, friend or legal guardian be allowed to care for the mentally retarded person for a period of one year in a place satisfactory to the judge and shows that the relative, friend or legal guardian is able to care for the mentally retarded person and that there are adequate financial resources available for the care of the mentally retarded person, the court may commit the mentally retarded person and order that the mentally retarded person be conditionally released and placed in the care and custody of the relative, friend or legal guardian. The order may be revoked and the mentally retarded person committed to the Department of Human Services for the balance of the year whenever, in the opinion of the court, it is in the best interest of the mentally retarded person.

(3) If in the opinion of the court voluntary treatment and training or conditional release is not in the best interest of the mentally retarded person, the court may order the commitment of the person to the department for care, treatment or training. The commitment shall be for a period not to exceed one year with provisions for continuing commitment pursuant to ORS 427.020.

(4) If in the opinion of the court the mentally retarded person may be incapacitated, the court may appoint a legal guardian or conservator pursuant to ORS chapter 125. The appointment of a guardian or conservator shall be a separate order from the order of commitment. [1979 c.683 §24; 1995 c.664 §97]

427.293 Record of proceedings; sealed records; disclosure. (1) The court shall cause to be recorded in the court records:

(a) A full account of all proceedings conducted under ORS 427.235 to 427.290;

(b) Reports submitted to the court under ORS 427.270;

(c) The judgments and orders of the court; and

(d) A copy of the judgments and orders issued.

(2) The account of the proceedings, including any transcript of testimony, and reports submitted to the court under ORS 427.270 shall be delivered to the court clerk or court administrator who shall cause them to be sealed. The account of the proceedings, the reports and any transcript of testimony may not be disclosed to any person except upon:

(a) Request of the person subject to the proceedings or the legal representative or attorney of the person; or

(b) Order of the court. [1999 c.82 §2]

427.295 Appeal of determination; appointment of legal counsel; costs. If a person determined by a court to be mentally

retarded appeals the determination or disposition based thereon, and is determined to be financially eligible for appointed counsel at state expense, the court, upon request of the person or upon its own motion, shall appoint suitable legal counsel to represent the person. The compensation for legal counsel and costs and expenses necessary to the appeal shall be determined and paid by the public defense services executive director as provided in ORS 135.055 if the circuit court is the appellate court or as provided in ORS 138.500 if the Court of Appeals or Supreme Court is the appellate court. The compensation, costs and expenses so allowed shall be paid as provided in ORS 138.500. [1979 c.867 §15; 1981 s.s. c.3 §136; 1985 c.502 §26; 2001 c.962 §73]

427.300 Assignment to appropriate facility; notice of transfer or discharge; appeal; hearing. (1) The Department of Human Services may, at its discretion, direct any court-committed mentally retarded person to the facility best able to treat and train the person. The authority of the department on such matters shall be final.

(2) At any time, for good cause and in the best interest of the mentally retarded person, the department may decide to transfer a resident from one facility to another or discharge a resident as no longer in need of residential care, treatment or training in a state training center. Fifteen days prior to department action, the department shall notify the resident and the parent, guardian or person entitled to custody of the resident by certified mail of its decision. The notice shall indicate the right of the aforementioned parties to appeal this decision to the State Training Center Review Board in writing within 10 days after receipt of notice. Within 30 days from the date the appeal is received by the department, the State Training Center Review Board shall hold a hearing at which the department and the person having filed the appeal shall present their case and shall communicate its recommendation to the Director of Human Services pursuant to ORS 427.205 (4)(b); and the director shall communicate the decision of the director by certified mail to the appealing party.

(3) The department, pursuant to its rules, may delegate to a community mental health and developmental disabilities program director the responsibility for assignment of mentally retarded persons to suitable facilities or transfer between such facilities under conditions which the department may define. Any voluntary client or resident shall be released from the treating or training facility within 15 business days of the request of the client or resident for release, unless commitment procedures are initiated under ORS 427.235. [1979 c.683 §25]

427.305 [1973 c.585 §2; 1979 c.683 §33; renumbered 427.051]

427.306 Confinement of mentally retarded persons in certain facilities prohibited; attendants required; least restrictive setting required. (1) No person, not incarcerated upon a criminal charge, who has been alleged or adjudged a mentally retarded person shall be confined in any prison, jail or other enclosure where those charged with a crime or a violation of a municipal ordinance are incarcerated.

(2) No person alleged or adjudged a mentally retarded person, not incarcerated on a criminal charge, shall be confined without an attendant in charge of the person. If not confined in a community hospital, the community mental health and developmental disabilities program director or sheriff having the person in custody shall select some suitable person to act as attendant in quarters suitable for the comfortable, safe and humane confinement of the person. The person shall be detained in the least restrictive setting consistent with the person's emotional and physical needs and the protection of others. [1979 c.683 §26]

427.310 [1973 c.585 §3; repealed by 1979 c.683 §37]

427.315 [1973 c.585 §6; repealed by 1979 c.683 §37]

427.320 [1973 c.585 §4; repealed by 1979 c.683 §37]

427.325 [1973 c.585 §5; repealed by 1979 c.683 §37]

COMMUNITY HOUSING

427.330 Definitions for ORS 427.330 to 427.345. As used in ORS 427.330 to 427.345:

(1) "Care provider" means an individual, family member or entity that provides care.

(2)(a) "Community housing" includes:

(A) Real property, including but not limited to buildings, structures, improvements to real property and related equipment, that is used or could be used to house and provide care for individuals with mental retardation or other developmental disability; and

(B) A single-family home or multiple-unit residential housing that an individual with mental retardation or other developmental disability shares with other inhabitants, including but not limited to family members, care providers or friends.

(b) "Community housing" does not include the Eastern Oregon Training Center.

(3) "Construct" means to build, install, assemble, expand, alter, convert, replace or relocate. "Construct" includes to install equipment and to prepare a site.

(4) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy or other neurological handicapping condition or severe physical impairment that requires training similar to

that required by mentally retarded persons, and the disability:

(a) Originates before the person attains the age of 22 years;

(b) Has continued or can be expected to continue indefinitely; and

(c) Constitutes a substantial handicap to the ability of the person to function in society.

(5) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or could be used to provide care in community housing.

(6) "Family member" means an individual who is related by blood or marriage to an individual with mental retardation or other developmental disability.

(7) "Financial assistance" means a grant or loan to pay expenses incurred to provide community housing.

(8) "Housing provider" means an individual or entity that provides community housing. [1999 c.753 §2; 2001 c.900 §130]

427.335 Authority of department to develop community housing; sale of community housing; conditions; financial assistance to providers. (1) The Department of Human Services may, through contract or otherwise, acquire, purchase, receive, hold, exchange, operate, demolish, construct, lease, maintain, repair, replace, improve and equip community housing for the purpose of providing care to individuals with mental retardation or other developmental disability.

(2) The department may dispose of community housing acquired under subsection (1) of this section in a public or private sale, upon such terms and conditions as the department considers advisable to increase the quality and quantity of community housing for individuals with mental retardation or other developmental disability. The department may include in any instrument conveying fee title to community housing language that restricts the use of the community housing to provide care for individuals with mental retardation or other developmental disability. Such restriction is not a violation of ORS 93.270. Any instrument conveying fee title to community housing under this subsection shall provide that equipment in the community housing is a part of and shall remain with the real property unless such equipment was modified or designed specifically for an individual's use, in which case such equipment shall follow the individual.

(3) The department may provide financial assistance to a housing provider or a care provider that wishes to provide community housing for individuals with mental retardation or other developmental disability under rules promulgated by the department.

(4) The department may transfer its ownership of equipment to care providers.

(5) When exercising the authority granted to the department under this section, the department is not subject to ORS 276.900 to 276.915 or 279A.250 to 279A.290 or ORS chapters 270 and 273. [1999 c.753 §3; 2003 c.794 §282]

427.340 Developmental Disabilities Community Housing Fund; Community Housing Trust Account; reports. (1) There is established a Developmental Disabilities Community Housing Fund in the State Treasury, separate and distinct from the General Fund. All moneys in the fund are continuously appropriated to the Department of Human Services to pay expenses incurred by the Department of Human Services in carrying out the provisions of ORS 427.330 and 427.335. Interest earned on moneys in the fund shall be credited to the fund.

(2) There is established within the fund a Community Housing Trust Account. Notwithstanding the provisions of ORS 270.150, the Department of Human Services shall negotiate with the Oregon Department of Administrative Services to apply the proceeds from the sale, transfer or lease of any surplus real property owned, operated or controlled by the Department of Human Services and used as a state training center to the account. The Department of Human Services may expend, for the purposes of ORS 427.330 to 427.345, any earnings credited to the account, including any income from the lease of surplus property and any interest earned on moneys deposited in the account, and up to five percent of any sale or transfer proceeds initially credited to the account by the Oregon Department of Administrative Services. At least 95 percent of all sale or transfer proceeds shall remain in the account in perpetuity.

(3) The fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly;

(b) Repayment of financial assistance provided to housing providers or care providers for community housing under ORS 427.335 (3);

(c) Proceeds from the account under subsection (2) of this section;

(d) Moneys reallocated from other areas of the Department of Human Services' budget; and

(e) Interest credited to the fund.

(4) The Department of Human Services shall provide a report of revenues to and expenditures from the fund as part of its budget

submission to the Governor and Legislative Assembly under ORS chapter 291. [1999 c.753 §4; 2001 c.954 §32]

427.345 Sale of state training center; fair market value; use of proceeds. (1) When the Department of Human Services sells any surplus real property owned by the department and used as a state training center, the sale price shall equal or exceed the fair market value of the property.

(2) The proceeds from the sale of any real property owned by the department and used as a state training center shall be applied under the provisions of ORS 427.340 (2). [1999 c.753 §5]