

CHAPTER 36

AN ACT

SB 22

Relating to services to individuals with developmental disabilities; creating new provisions; amending ORS 113.085, 116.253, 118.525, 132.090, 162.135, 179.010, 179.321, 179.325, 179.331, 179.360, 179.370, 179.375, 179.380, 179.385, 179.390, 179.405, 179.450, 179.460, 179.473, 179.478, 179.479, 179.490, 179.492, 179.505, 179.509, 179.610, 179.620, 179.640, 179.653, 179.655, 179.660, 179.701, 179.711, 179.731, 314.840, 314.865, 410.060, 412.094, 426.330, 427.005, 427.007, 427.104, 427.105, 427.215, 427.235, 427.290, 427.293, 427.300, 427.306, 427.330, 427.345, 427.400, 428.205, 428.210, 428.220, 428.230, 428.240, 428.260, 428.270, 428.320, 430.010, 430.021, 430.205, 430.210, 430.215, 430.216, 430.620, 430.662, 430.672 and 547.045; repealing ORS 427.010, 427.020, 427.031, 427.041, 427.051, 427.061, 427.108, 427.112, 427.175, 427.180, 427.185, 427.190, 427.195 and 427.205; and declaring an emergency.

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

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

(a) "Facility" means any of the following that are licensed or certified by the Department of Human Services or that contract with the department for the provision of services:

(A) A health care facility as defined in ORS 442.015;

(B) A domiciliary care facility as defined in ORS 443.205;

(C) A residential facility as defined in ORS 443.400; or

(D) An adult foster home as defined in ORS 443.705.

(b) "Person" means an individual who has a developmental disability as defined in ORS 427.005 and receives services from a program or facility.

(c) "Program" means a community developmental disabilities program as described in ORS 430.662 and agencies with which the department or the program contracts to provide services.

(d) "Service" means a community-based service described in ORS 427.007.

(2) While receiving developmental disability services, every person shall have the right to:

(a) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation.

(b) Be free from seclusion or personal, chemical or mechanical restraints unless an imminent risk of physical harm to the person or others exists and only for as long as the imminent risk continues.

(c) Not receive services without informed voluntary written consent except in a medical emergency or as otherwise permitted by law.

(d) Not participate in experimentation without informed voluntary written consent.

(e) A humane environment that affords reasonable privacy and the ability to engage in private communications with people of the individual's choosing through personal visits, mail, telephone or electronic means.

(f) Visit with family members, friends, advocates and legal and medical professionals.

(g) Participate regularly in the community and use community resources.

(h) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation.

(i) Seek a meaningful life by choosing from available services and enjoying the benefits of community involvement and community integration in a manner that is least restrictive to the person's liberty considering the person's preferences and age.

(j) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs.

(k) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations in a manner that ensures meaningful individual participation and the right to invite others of the person's choosing to participate in the plan for services.

(L) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure.

(m) Be informed at the start of services and annually thereafter of the rights guaranteed by this section, the contact information for the protection and advocacy system described in ORS 192.517 (1), and the procedures for filing grievances, hearings or appeals if services have been or are proposed to be reduced, eliminated or changed.

(n) Be encouraged and assisted in exercising all legal rights.

(o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure without any form of retaliation or punishment.

(p) Manage the person's own money and financial affairs unless that right has been taken away by court order or other legal procedure.

(q) Keep and use personal property and have a reasonable amount of personal storage space.

(3) The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of prop-

erty, enter into contracts and execute documents.

(4) A person who is receiving developmental disability services has the right under ORS 430.212 to be informed and to have the person's guardian and any representative designated by the person be informed that a family member has contacted the department to determine the location of the person, and to be informed of the name and contact information, if known, of the family member.

(5) The rights described in this section may be asserted and exercised by the person, the person's guardian and any representative designated by the person.

(6) Nothing in this section may be construed to alter any legal rights and responsibilities between parent and child.

(7) The department shall adopt rules concerning the rights described in this section that are consistent with the directives set forth in ORS 427.007.

SECTION 2. The Department of Human Services shall promote dispute resolution procedures for persons receiving developmental disability services from the department, including but not limited to grievance procedures, contested case hearings and mediation. An individual who files a grievance may also use other dispute resolution procedures.

SECTION 3. ORS 427.005 is amended to read: 427.005. 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:

(a) Supportive services, including, but not limited to, provision of room and board;

(b) Supervision;

(c) Protection; and

(d) Assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

(3) "Community developmental disabilities program director" means the director of an entity that provides services described in ORS 430.664 to persons with intellectual disabilities or other developmental disabilities.

(4) "Developmental disability" means an intellectual disability, autism, cerebral palsy, epilepsy or other neurological condition diagnosed by a qualified professional that:

(a) Originates before an individual is 22 years of age, or 18 years of age for an intellectual disability;

(b) Originates in and directly affects the brain and is expected to continue indefinitely;

(c) Results in a significant impairment in adaptive behavior as measured by a qualified professional;

(d) Is not attributed primarily to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, substance abuse, personality disorder, learning disability or attention deficit hyperactivity disorder; and

(e) Requires training and support similar to that required by an individual with an intellectual disability.

(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*] a facility.

(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*] that the Department of Human Services approves to provide necessary services to persons with intellectual disabilities or other developmental disabilities.

(7) "Incapacitated" means a person is unable, without assistance, to properly manage or take care of personal affairs, including but not limited to financial and medical decision-making, or is incapable, without assistance, of self-care.

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

(9) "Integration" means:

(a) Use by persons with intellectual disabilities or other developmental disabilities of the same community resources that are used by and available to other persons;

(b) Participation by persons with intellectual disabilities or other developmental disabilities in the same community activities in which persons without disabilities participate, together with regular contact with persons without disabilities; and

(c) Residence by persons with intellectual disabilities or other developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with persons without disabilities in their community.

(10)(a) "Intellectual disability" means significantly subaverage general intellectual functioning, defined as intelligence quotients under 70 as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior, that is manifested before the individual is 18 years of age.

(b) An individual with intelligence quotients of 70 through 75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior, as diagnosed and measured by a qualified professional.

(c) The impairment in adaptive behavior must be directly related to the intellectual disability.

(d) Intellectual disability is synonymous with mental retardation.

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

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

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

(14) "Productivity" means **regular engagement in income-producing work, preferable competitive employment with supports and accommodations to the extent necessary**, by a person with an intellectual disability or another developmental disability which is measured through improvements in income level, employment status or job advancement or engagement by a person with an intellectual disability or another developmental disability 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.]

(15) "**Service coordination**" means **person-centered planning, case management, procuring, coordinating and monitoring of services under an individualized support plan to establish desired outcomes, determine needs and identify resources for a person with developmental disabilities and advocating for the person.**

(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 any facility that is an intermediate care facility for the mentally retarded as defined in 42 U.S.C. 1396d(d).]

[(18)] (17) "Training" means:

(a) The systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or

(b) The planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each [resident's] **person's** specified needs in the areas of physical, emotional, intellectual and social growth.

[(19)] (18) "Treatment" means the provision of specific physical, mental, social interventions and therapies [which] **that** halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions.

SECTION 4. ORS 427.007 is amended to read:

427.007. [(1) *The Legislative Assembly finds and declares that a significant number of persons with intellectual disabilities 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 intellectual disabilities 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 a disability, 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 an intellectual disability or another developmental disability. 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 intellectual disabilities or other developmental disabilities.]

(1)(a) **Individuals with intellectual and other developmental disabilities and society as a whole benefit when the individuals exercise choice and self-determination, living and working in the most integrated community settings appropriate to their needs, with supportive services that are designed and implemented consistent with the choice of the individuals regarding services, providers, goals and activities. Individuals with developmental disabilities, together with their families and advocates, must play a major role in the planning, designing, funding, operation and monitoring of community services. These services should be ultimately focused on the outcomes of independence, integration and productivity.**

(b) **The employment of individuals with developmental disabilities in fully integrated work settings is the highest priority over unemployment, segregated employment, facility-based employment or day habilitation.**

(c) **Support for families with children who have developmental disabilities must be based upon principles of choice and self-determination, with families receiving the support they need to support their children at home. If a child with a developmental disability cannot remain safely at home even with supportive services, the child should live in a family-like setting with the ability to remain closely connected to the child's family.**

(d) **Therefore, the Department of Human Services is directed to facilitate, provide or contract for 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.**

(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,]* **personal support workers and adult foster home providers**, community provider organizations, state and local education officials and community *[mental health departments or]* **developmental disabilities** programs. Such plans shall include, where appropriate:

[(a) Proposals for the decrease in the number of persons with intellectual disabilities 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)] (a) 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]* **eligible for and needing developmental disability services** 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 intellectual disabilities 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 intellectual disabilities or other developmental disabilities.

[(c)] (b) Proposals for the location of community-based services for persons with intellectual disabilities 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]* **that** ensure 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]* **service coordination that ensures** an orderly movement of persons with intellectual disabilities or other developmental disabilities *[from state-operated hospitals and training centers to community-based services, and]* between community-based service alternatives, and *[assures]* **ensures** an effective system of service delivery to persons with intellectual disabilities 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 an intellectual disability or another developmental disability 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 an intellectual disability or another developmental disability demonstrates enhanced care-giving and nurturing capacities, and the degree to which the independence, productivity and integration into the community of each person with an intellectual disability or another developmental disability 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)] (b) *[The development of]* Specific standards for each component within the array of services, *[for persons with intellectual disabilities or other developmental disabilities, either operated or supported by the department [and assure], that ensure the competent management, program quality and cost-effectiveness of such services.]*

(4) Subject to available funds, the department shall ensure that each family with a member with an intellectual disability or another developmental disability has access to family support services, and that each person with an intellectual disability or another developmental disability 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]* **support** plan or in a family support service plan.

(5) Subject to available funds, the department shall determine the content of individual *[habilitation]* **support** 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.]

SECTION 5. ORS 427.104 is amended to read:

427.104. 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 intellectual disabilities or other 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 developmental disabilities programs, and the Developmental Disability Diagnosis and Evaluation Service] shall:

(1) Contract with each community developmental disabilities program to determine the eligibility of individuals to receive developmental disability services;

[(1)] **(2) Provide consultation and training to community developmental disabilities programs in [the development of local diagnosis and evaluation services] determining eligibility for developmental disability services;**

[(2)] **(3) Develop and periodically revise [department standards and procedures for diagnosis and evaluation] rules for determining eligibility for developmental disability services;**

[(3)] **(4) Coordinate diagnostic evaluations statewide to minimize duplication of tests and examinations; and**

[(4) Approve applications for admission to a state 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 a state training center is appealed by the person, the parents or legal guardian of the person;]

[(6)] **(5) Provide consultation to appropriate agencies and individuals regarding persons evaluated to receive developmental disability services.]; and]**

[(7) Process and coordinate all placements of residents from state training centers.]

SECTION 6. ORS 427.105 is amended to read:

427.105. (1) Pursuant to rules of the Department of Human Services, a diagnostic evaluation *[shall]* **conducted to determine eligibility for developmental disability services may include, but is 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; **and**

(c) A medical evaluation including, **if practicable**, 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]* **a developmental disability, such as an intellectual disability**, epilepsy, cerebral palsy, *[,]* **or** autism, and specific learning disorders and to out-

line 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.

SECTION 7. ORS 427.215 is amended to read:

427.215. For the purposes of ORS *[427.061 and]* 427.235 to 427.290, a person with an intellectual disability is in need of commitment for residential care, treatment and training if the person is either:

(1) Dangerous to self or others; or

(2) Unable to provide for the person's basic personal needs and not receiving care as is necessary for the health, safety or habilitation of the person.

SECTION 8. ORS 427.235 is amended to read:

427.235. (1) Any two persons may notify 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 a person with an intellectual disability under ORS 3.275, that a person within the county has an intellectual disability and is 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 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 has an intellectual disability and is in need of commitment for residential care, treatment and training. *[However, if the petition for commitment is from a state training center, the duties of the community developmental disabilities program director under ORS 427.235 to 427.290 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 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 person alleged to have an intellectual disability, where possible, in the home of the person or other place familiar to the person. Further investigation if warranted shall include a diagnostic evaluation as *[defined]* **described** in ORS 427.105 and may also include interviews with the 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] **Department of Human Services** and to the person alleged to have an intellectual disability and, if the person is a minor or incapacitated, to the parents or guardian of the person 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 person alleged to have an intellectual disability may, with patient authorization or in response to a court order, provide any relevant information the physician has regarding the person alleged to have an intellectual disability.

SECTION 9. ORS 427.290 is amended to read:

427.290. After hearing all of the evidence, and reviewing the findings of the investigation and other examiners, the court shall determine whether the person has an intellectual disability and because of the intellectual disability 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 in need of commitment for residential care, treatment and training, the person shall be discharged. If in the opinion of the court the person has, by clear and convincing evidence, an intellectual disability and is in need of commitment for residential care, treatment and training, the court may order as follows:

(1) If the 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 person requests that the relative, friend or legal guardian be allowed to care for the person for a period of one year in a place satisfactory to the court and shows that the relative, friend or legal guardian is able to care for the person and that there are adequate financial resources available for the care of the person, the court may commit the person and order that the 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 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 person.

(3) If in the opinion of the court voluntary treatment and training or conditional release is not in the best interest of the person, the court may or-

der 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] **427.235 to 427.290.**

(4) If in the opinion of the court the 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.

SECTION 10. ORS 427.293 is amended to read:

427.293. (1) In any proceeding conducted under ORS 427.235 to 427.290, the court may not disclose any part of the record, including any report submitted to the court under ORS 427.270, to any person except:

(a) The court shall, pursuant to rules adopted by the Department of State Police, transmit the minimum information necessary, as defined in ORS 181.740, to the Department of State Police for persons described in ORS 181.740 (1)(c) to enable the department to maintain the information and transmit the information to the federal government as required under federal law;

(b) On request of the person subject to the proceeding;

(c) On request of the person's legal representative or the attorney for the person or the state; or

(d) Pursuant to court order.

(2) In any proceeding described in subsection (1) of this section that is before the Supreme Court or the Court of Appeals, the limitations on disclosure imposed by this section apply to the appellate court record and to the trial court record while it is in the appellate court's custody. The appellate court may disclose information from the trial or appellate court record in a decision, as defined in ORS 19.450, provided that the court uses initials, an alias or some other convention for protecting against public disclosure the identity of the person who is alleged to have [mental retardation] **an intellectual disability.**

SECTION 11. ORS 427.300 is amended to read:

427.300. (1) The Department of Human Services may, at its discretion, direct any person with an intellectual disability who has been committed under ORS 427.290 to the facility best able to treat and train the person. The authority of the department on such matters shall be final.

(2)(a) At any time, for good cause and in the best interest of the person, the department may decide to transfer [a resident] **the person** from one facility to another or discharge [a resident] **the person** 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.]

(b) At least 30 days prior to the transfer or discharge, the department shall notify, by regular mail, the person and the parent, guardian or other individual entitled to custody of the person of the decision to transfer or discharge. The notice must inform the person of the right to appeal the department's decision to transfer or discharge. In the case of a medical emergency, the department is not required to give 30 days' notice but shall give the notice as soon as possible under the circumstances. The department shall define "medical emergency" by rule, including but not limited to an increase in the level of needed care or the person engaging in a behavior that poses an imminent danger to self or others.

(c) Except in a medical emergency, the person has the right to an administrative hearing prior to an involuntary transfer or discharge. ORS 441.605 (4) and the department's rules governing transfer notices and hearings for residents of long term care facilities apply to a transfer or discharge under this section. If the person is being transferred or discharged for a medical emergency, the hearing must be held no later than seven days after the transfer or discharge. The department shall maintain a space in the facility for the person pending the administrative order.

(3) The department, pursuant to its rules, may delegate to a community developmental disabilities program director the responsibility for assignment of persons with intellectual disabilities to suitable facilities or transfer between such facilities under conditions *[which]* **that** 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.]*

SECTION 12. ORS 427.306 is amended to read:

427.306. (1) A person, not incarcerated upon a criminal charge, who has been alleged or adjudged to have an intellectual disability and to be in need of commitment for residential care, treatment and training, may not 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) A person alleged or adjudged to have an intellectual disability and to be in need of commitment for residential care, treatment and training, who is

not incarcerated on a criminal charge, may not be confined without an attendant in charge of the person. If the person is not confined in a *[community]* hospital **or a facility**, the community developmental disabilities program director or sheriff having the person in custody shall select some suitable *[person]* **individual** 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.

SECTION 13. ORS 427.330 is amended to read:
427.330. 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)] (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 intellectual disabilities or other developmental disabilities; and

[(B)] (b) A single-family home or multiple-unit residential housing that an individual with an intellectual disability 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) "Equipment" means furnishings, fixtures, appliances, special adaptive equipment or supplies that are used or could be used to provide care in community housing.

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

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

(7) "Housing provider" means an individual or entity that provides community housing.

SECTION 14. ORS 427.345 is amended to read:
427.345. (1) As used in this section, "state training center" means any facility that is an intermediate care facility for the mentally retarded as defined in 42 U.S.C. 1396d(d).

[(1)] (2) 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)] (3) 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).

SECTION 15. ORS 427.400 is amended to read: 427.400. As used in this section and ORS 427.402 and 427.410:

(1) “Adult” means an individual who is 18 years of age or older.

(2) “Community living and inclusion supports” means services that may or may not be work-related and includes services designed to develop or maintain the individual’s skills in the following areas:

(a) Eating, bathing, dressing, personal hygiene, mobility and other personal needs;

(b) Self-awareness and self-control, social responsiveness, social amenities, interpersonal skills, interpersonal relationships and social connections;

(c) Community participation, recreation and the ability to use available community services, facilities or businesses;

(d) Expressive and receptive skills in verbal and nonverbal language, the functional application of acquired reading and writing skills and other communication needs; and

(e) Planning and preparing meals, budgeting, laundering, housecleaning and other personal environmental needs.

(3) “Comprehensive services” means a package of services, other than support services for adults, that is provided by or under the direction of a community developmental disabilities program and that includes at least one of the following living arrangements licensed or regulated by the Department of Human Services:

(a) Twenty-four-hour residential care, including but not limited to a group home, a foster home or a supported living program.

(b) Assistance provided to maintain an individual in the individual’s own home or the home of the individual’s family and that costs more than an amount specified by the department by rule.

(4) “Employment services” means services provided to develop or maintain the skills necessary for an individual to obtain and retain employment, including job assessment, job exploration, job development, job training, job coaching, work skills, and ongoing supports.

(5) “Environmental accessibility adaptations” means physical modifications to an individual’s home that are necessary to ensure the health, welfare and safety of the individual in the home, or that enable the individual to function with greater independence in the home.

(6) “Individualized written service plan” means a plan described in [ORS 430.210 (1)(a), (b) and (c)] **section 1 (2)(i), (j) and (k) of this 2013 Act** that identifies the resources, services and purchases necessary for an individual with a developmental disability to achieve identified personal goals and maximize self-determination.

(7) “Person-centered planning” means an informal or formal process for gathering and organizing information that helps an individual to:

(a) Enhance self-determination by choosing personal goals and lifestyle preferences;

(b) Design strategies and networks of support to achieve personal goals and a preferred lifestyle using individual strengths, relationships and resources; and

(c) Identify, use and strengthen naturally occurring opportunities for support in the home and in the community.

(8) “Self-determination” means empowering individuals to:

(a) Select and plan, together with freely-chosen family members and friends, the support services for adults that are necessary instead of purchasing a predefined program or package of services;

(b) Control the expenditure of available financial assistance in order to purchase support services for adults, with the help of a social support network if needed;

(c) Live an autonomous life in the community, rich in community affiliations, through formal or informal arrangements of resources and personnel; and

(d) Have a valued role in the community through competitive employment, organizational affiliations, personal development and general caring for others in the community, and to be accountable for spending public dollars in ways that are life-enhancing for the individual.

(9)(a) “Specialized medical equipment and supplies” means:

(A) Devices, aids, controls, supplies or appliances that enable individuals:

(i) To increase their ability to perform activities of daily living; or

(ii) To perceive, control or communicate with the environment in which they live;

(B) Items necessary for life support, including ancillary supplies and equipment necessary to the proper functioning of these items; and

(C) Medical equipment not available in the medical assistance program.

(b) “Specialized medical equipment and supplies” does not include items that have no direct medical or remedial benefit to the individual.

(10) “Specialized supports” means treatment, training, consultation or other unique services that are not available through the medical assistance program but are necessary to achieve the goals identified in the individualized written service plan, or other support services for adults prescribed by the department by rule.

(11) “Support service brokerage” means an entity that contracts with the department to provide or to arrange for support services for adults.

(12) “Support services for adults” means the services for adults with developmental disabilities provided by a support service brokerage under ORS 427.402 and 427.410.

SECTION 16. ORS 428.205 is amended to read: 428.205. It is declared to be the policy and intent of the Legislative Assembly that whenever a person physically present in the State of Oregon is in need of institutionalization by reason of mental illness or [mental retardation] **in need of residential care,**

treatment or training by reason of an intellectual disability, the person shall be eligible for care and treatment in an institution **or facility** of the State of Oregon irrespective of the residence of the person, settlement or citizenship qualifications.

SECTION 17. ORS 428.210 is amended to read: 428.210. As used in ORS 428.210 to 428.270:

(1) "Authority" means the Oregon Health Authority.

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

(3) "**Facility**" has the meaning given that term in **ORS 427.005**.

[(3)] (4) "Foreign hospital" means an institution in any other state [which] **that** corresponds to [the institutions defined in subsection (8) of this section] **a state hospital**.

[(4)] (5) "Nonresident" means any person who is not a resident of this state [as defined in subsection (7) of this section].

[(5)] (6) "Other state" includes all the states, territories, possessions, commonwealths and agencies of the United States and the District of Columbia, with the exception of the State of Oregon.

[(6)] (7) "Patient" means any person who has been committed by a court of competent jurisdiction **to a facility pursuant to ORS 427.235 to 427.290 or to a state hospital**, except a person committed to a state hospital pursuant to ORS [136.150 (1969 Replacement Part), 136.160 (1969 Replacement Part),] 161.341 or 161.370.

[(7)] (8) "Resident of this state" means a person who [has lived in this state continuously for a period of one year] **resides in this state** and who has not acquired legal residence in any other state [by living continuously therein for at least one year subsequent to the residence of the person in this state]. However, a service man or woman on active duty in the Armed Forces of the United States who was domiciled in Oregon upon entry into active duty and who has acquired no other domicile shall be entitled to have his or her [children] **child** considered a resident of this state so long as no other domicile is acquired by the service man or woman.

[(8)] (9) "State hospital" means any institution listed in ORS 426.010 [or 427.010].

SECTION 18. ORS 428.220 is amended to read:

428.220. (1) In determining whether or not any person committed by a court of competent jurisdiction to a state hospital, [or] foreign hospital **or facility** is a resident of this state:

(a) The time spent in a state hospital or foreign hospital or on parole [therefrom] **from a state hospital or foreign hospital, or in a facility** shall not be counted in determining the residence of such person in this or any other state.

(b) The residence of such person at the time of commitment shall remain the residence of the person for the duration of the commitment of the person.

(2) The Department of Human Services may give written authorization for the admission to [the Eastern Oregon Training Center] **a facility** whenever:

(a) The residence of any person cannot be established after reasonable and diligent investigation and effort.

(b) The peculiar circumstances of a case, in the judgment of the department, provide a sufficient reason for the suspension of the residence requirement provided by ORS 428.210 [(7)] (8).

(3) The Oregon Health Authority may give written authorization for the admission to the Blue Mountain Recovery Center or the Oregon State Hospital whenever:

(a) The residence of any person cannot be established after reasonable and diligent investigation and effort.

(b) The peculiar circumstances of a case, in the judgment of the authority, provide a sufficient reason for the suspension of the residence requirement provided by ORS 428.210 [(7)] (8).

SECTION 19. ORS 428.230 is amended to read:

428.230. (1) Except as provided in ORS 428.205, 428.220 and 428.330, the Department of Human Services and the Oregon Health Authority shall return nonresident patients to any other state in which they may have legal residence.

(2) The department may give written authorization for the return to [the Eastern Oregon Training Center] **a facility** of a resident of Oregon who has been committed by a court of competent jurisdiction to a foreign hospital.

(3) The [superintendent of the Eastern Oregon Training Center] **facility** shall admit and care for any person eligible for admission pursuant to subsection (2) of this section or ORS 428.220 (2) upon receipt of a certified copy of the commitment papers and the written authorization of the department.

(4) The authority may give written authorization for the return to the Blue Mountain Recovery Center or the Oregon State Hospital of a resident of Oregon who has been committed by a court of competent jurisdiction to a foreign hospital.

(5) The superintendent of the Blue Mountain Recovery Center or the Oregon State Hospital shall admit and care for any person eligible for admission pursuant to subsection (4) of this section or ORS 428.220 (3) upon receipt of a certified copy of the commitment papers and the written authorization of the authority.

SECTION 20. ORS 428.240 is amended to read:

428.240. (1) For the purpose of facilitating the return of nonresident patients, the Department of Human Services may enter into a reciprocal agreement with any other state for the mutual exchange of persons committed by a court of competent jurisdiction to [the Eastern Oregon Training Center] **a facility pursuant to ORS 427.235 to 427.290 or to a foreign hospital**, whose legal residence is in the other's jurisdiction.

(2) For the purpose of facilitating the return of nonresident patients, the Oregon Health Authority may enter into a reciprocal agreement with any other state for the mutual exchange of persons committed by a court of competent jurisdiction to the Blue Mountain Recovery Center, the Oregon State Hospital or a foreign hospital, whose legal residence is in the other's jurisdiction.

(3) In such agreements, the department or authority may:

(a) Only for purposes of mutual exchange with the other state, vary the period of residence required by ORS 428.210 [(7)] (8).

(b) Provide for the arbitration of disputes arising out of the mutual exchange of such persons between this state and any other state.

SECTION 21. ORS 428.260 is amended to read:

428.260. (1) For the purpose of carrying out the provisions of ORS 428.210 to 428.270, the Department of Human Services or the Oregon Health Authority may employ all help necessary in arranging for and transporting nonresident patients.

(2) The cost and expense of providing such assistance and all expenses incurred in effecting the transportation of such patients shall be paid from funds appropriated for that purpose upon vouchers approved by the department, the authority or the superintendent of [*the Eastern Oregon Training Center,*] the Blue Mountain Recovery Center or the Oregon State Hospital.

SECTION 22. ORS 428.270 is amended to read:

428.270. (1) Any person, except an officer, agent or employee of a common carrier acting in the line of duty, who brings or in any way aids in bringing into this state any patient without the written authorization of the Department of Human Services or the Oregon Health Authority, shall be liable to this state for all expenses incurred in the care of such patient and in the transportation of such patient to the other state where the patient legally resides.

(2) Hospitals [*and sanitariums*], other than state hospitals, that care for and treat persons with mental illness [*or mental retardation*] shall be responsible for the return of those persons to their places of residence or domicile outside the state if they are brought into this state for treatment and care and are discharged from such institutions without being fully recovered.

(3) Failure to comply with the provisions of subsection (2) of this section shall render the person operating the hospital [*or sanitarium*] liable to reimburse the state for all expenses incurred in the care, maintenance and return of the persons with mental illness [*or mental retardation*] to their places of residence or domicile outside the state.

SECTION 23. ORS 428.320 is amended to read:

428.320. (1) When the person who is the subject of the **Interstate Compact on Mental Health** is being transported to or from [*the Eastern Oregon*

Training Center] **a facility**, the Department of Human Services shall carry out the duties of compact administrator, may [*promulgate*] **adopt** rules [*and regulations*] to carry out more effectively the terms of the compact, and may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. The power of termination of the compact formerly vested in the Board of Control under ORS 428.310 is vested in the department.

(2) When the person who is the subject of the compact is being transported to or from the Blue Mountain Recovery Center or the Oregon State Hospital, the Oregon Health Authority shall carry out the duties of compact administrator, may [*promulgate*] **adopt** rules [*and regulations*] to carry out more effectively the terms of the compact, and may enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. The power of termination of the compact formerly vested in the Board of Control under ORS 428.310 is vested in the authority.

SECTION 24. ORS 430.010 is amended to read:

430.010. As used in [ORS 430.010 to 430.050, 430.140, 430.160, 430.165, 430.265 and 430.610 to 430.695] **this chapter:**

[(1) "*Authority*" means the Oregon Health Authority.]

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

[(3) "*Health facility*" means a facility licensed as required by ORS 441.015 or a facility accredited by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed to admit persons requiring 24-hour nursing care.]

[(4) "*Mental retardation*" is synonymous with "*intellectual disability*" as defined in ORS 427.005.]

[(5) "*Residential facility*" or "*day or partial hospitalization program*" means a program or facility providing an organized full-day or part-day program of treatment. Such a program or facility shall be licensed, approved, established, maintained, contracted with or operated by the authority under:]

[(a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;]

[(b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or]

[(c) ORS 430.610 to 430.880 for mental or emotional disturbances.]

[(6)] (1) "*Outpatient service*" means:

(a) A program or service providing treatment by appointment and by:

(A) Medical or osteopathic physicians licensed by the Oregon Medical Board under ORS 677.010 to 677.450;

(B) Psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010 to 675.150;

(C) Nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010 to 678.410;

(D) Regulated social workers authorized to practice regulated social work by the State Board of Licensed Social Workers under ORS 675.510 to 675.600; or

(E) Professional counselors or marriage and family therapists licensed by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715 to 675.835; or

(b) A program or service providing treatment by appointment that is licensed, approved, established, maintained, contracted with or operated by the authority under:

(A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(C) ORS 430.610 to 430.880 for mental or emotional disturbances.

(2) "Residential facility" means a program or facility providing an organized full-day or part-day program of treatment. Such a program or facility shall be licensed, approved, established, maintained, contracted with or operated by the authority under:

(a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

(b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

(c) ORS 430.610 to 430.880 for mental or emotional disturbances.

SECTION 25. ORS 430.021 is amended to read: 430.021. Subject to ORS 417.300 and 417.305:

(1) The Department of Human Services shall **directly or through contracts with private entities, counties under ORS 430.620 or other public entities:**

(a) Direct, promote, correlate and coordinate all the activities, duties and direct services for persons with developmental disabilities.

(b) Promote, correlate and coordinate the developmental disabilities activities of all governmental organizations throughout the state in which there is any direct contact with developmental disabilities programs.

(c) Establish, coordinate, assist and direct a community developmental disabilities program in cooperation with local government units and integrate such a program with the state developmental disabilities program.

(d) Promote public education in this state concerning developmental disabilities and act as the liaison center for work with all interested public and private groups and agencies in the field of developmental disabilities services.

(2) The Oregon Health Authority shall directly or by contract with private or public entities:

(a) Direct, promote, correlate and coordinate all the activities, duties and direct services for persons

with mental or emotional disturbances, alcoholism or drug dependence.

(b) Promote, correlate and coordinate the mental health activities of all governmental organizations throughout the state in which there is any direct contact with mental health programs.

(c) Establish, coordinate, assist and direct a community mental health program in cooperation with local government units and integrate such a program with the state mental health program.

(d) Promote public education in this state concerning mental health and act as the liaison center for work with all interested public and private groups and agencies in the field of mental health services.

(3) The department and the authority shall develop cooperative programs with interested private groups throughout the state to effect better community awareness and action in the fields of mental health and developmental disabilities, and encourage and assist in all necessary ways community general hospitals to establish psychiatric services.

(4) To the greatest extent possible, the least costly settings for treatment, outpatient services and residential facilities shall be widely available and utilized except when contraindicated because of individual health care needs. State agencies that purchase treatment for mental or emotional disturbances shall develop criteria consistent with this policy. In reviewing applications for certificates of need, the Director of the Oregon Health Authority shall take this policy into account.

(5) The department and the authority shall accept the custody of persons committed to its care by the courts of this state.

(6) The authority shall adopt rules to require a facility and a nonhospital facility as those terms are defined in ORS 426.005, and a provider that employs a person described in ORS 426.415, if subject to authority rules regarding the use of restraint or seclusion during the course of mental health treatment of a child or adult, to report to the authority each calendar quarter the number of incidents involving the use of restraint or seclusion. The aggregate data shall be made available to the public.

SECTION 26. ORS 430.205 is amended to read: 430.205. As used in this section and ORS 430.210:

(1) "Facility" means any of the following that are licensed or certified by *[the Department of Human Services or]* the Oregon Health Authority or that contract with the *[department or]* authority for the provision of services:

(a) A health care facility as defined in ORS 442.015;

(b) A domiciliary care facility as defined in ORS 443.205;

(c) A residential facility as defined in ORS 443.400; or

(d) An adult foster home as defined in ORS 443.705.

(2) "Person" means an individual who has a mental illness [or *developmental disability*] and receives services from a program or facility.

(3) "Program" means a community mental health program [or *a community developmental disabilities program as described in ORS 430.610 to 430.695*] and agencies with which the program contracts to provide services.

(4) "Services" means mental health services [or *developmental disabilities services*] provided under ORS 430.630 [or *430.664*].

SECTION 27. ORS 430.210 is amended to read: 430.210. (1) While receiving services, every person shall have the right to:

(a) Choose from available services those which are appropriate, consistent with the plan developed in accordance with paragraphs (b) and (c) of this subsection and provided in a setting and under conditions that are least restrictive to the person's liberty, that are least intrusive to the person and that provide for the greatest degree of independence.

(b) An individualized written service plan, services based upon that plan and periodic review and reassessment of service needs.

(c) Ongoing participation in planning of services in a manner appropriate to the person's capabilities, including the right to participate in the development and periodic revision of the plan described in paragraph (b) of this subsection, and the right to be provided with a reasonable explanation of all service considerations.

(d) Not receive services without informed voluntary written consent except in a medical emergency or as otherwise permitted by law.

(e) Not participate in experimentation without informed voluntary written consent.

(f) Receive medication only for the person's individual clinical needs.

(g) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services and exercise of a grievance procedure.

(h) A humane service environment that affords reasonable protection from harm, reasonable privacy and daily access to fresh air and the outdoors, except that such access may be limited when it would create significant risk of harm to the person or others.

(i) Be free from abuse or neglect and to report any incident of abuse without being subject to retaliation.

(j) Religious freedom.

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation.

(L) Visit with family members, friends, advocates and legal and medical professionals.

[(m) Exercise all rights set forth in ORS 427.031 if the individual is committed to the Department of Human Services.]

[(n)] (m) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Oregon Health Authority.

[(o)] (n) Be informed at the start of services and periodically thereafter of the rights guaranteed by this section and the procedures for reporting abuse, and to have these rights and procedures, including the name, address and telephone number of the system described in ORS 192.517 (1), prominently posted in a location readily accessible to the person and made available to the person's guardian and any representative designated by the person.

[(p)] (o) Assert grievances with respect to infringement of the rights described in this section, including the right to have such grievances considered in a fair, timely and impartial grievance procedure.

[(q)] (p) Have access to and communicate privately with any public or private rights protection program or rights advocate.

[(r)] (q) Exercise all rights described in this section without any form of reprisal or punishment.

[(2) An individual who is receiving developmental disability services under ORS 430.664 has the right to be informed and have the individual's guardian and any representative designated by the individual be informed that a family member has contacted the Department of Human Services to determine the location of the individual, and to be informed of the name and contact information, if known, of the family member.]

[(3)] (2) The rights described in this section are in addition to, and do not limit, all other statutory and constitutional rights [which] that are afforded all citizens including, but not limited to, the right to vote, marry, have or not have children, own and dispose of property, enter into contracts and execute documents.

[(4)] (3) The rights described in this section may be asserted and exercised by the person, the person's guardian and any representative designated by the person.

[(5)] (4) Nothing in this section may be construed to alter any legal rights and responsibilities between parent and child.

SECTION 28. ORS 430.215 is amended to read:

430.215. (1) The Department of Human Services shall be responsible for planning, policy development, administration and delivery of services to children with developmental disabilities and their families. Services to children with developmental disabilities may include, but are not limited to, case management, family support, crisis and diversion services, intensive in-home services, and residential and foster care services. **The department may deliver the services directly or through contracts with private entities, counties under ORS 430.620 or other public entities.**

(2) The Oregon Health Authority shall be responsible for psychiatric residential and day treatment services for children with mental or emotional disturbances.

SECTION 29. ORS 430.216 is amended to read:

430.216. (1) The Department of Human Services shall report to each odd-numbered year regular session of the Legislative Assembly:

(a) On the safety of individuals receiving developmental disability services including, but not limited to:

(A) The average turnover of direct care workers in service settings.

(B) A summary of the training provided by the department or its contractors to direct care workers in service settings.

(C) A summary of the core competencies required of direct care workers in service settings by the state for licensing or certification.

(D) A summary of the average wages of direct care workers in service settings, presented by type of services provided.

(E) The number of complaints of abuse filed as required by ORS 430.765 and received by the department under ORS 430.743, reported by type of allegation.

(F) The number of direct care workers in service settings who were subject to criminal or civil action involving an individual with a developmental disability.

(G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have occurred in service settings.

(b) A schedule of all license fees and civil penalties established by the department by rule pursuant to ORS 441.995, 443.455 and 443.790.

(2) The department shall provide the report described in subsection (1)(a) of this section to the appropriate legislative committees, the Oregon Council on Developmental Disabilities and to the agency designated to administer the state protection and advocacy system under ORS 192.517.

(3) As used in this section, "service settings" means any of the following that provide developmental disability services:

(a) An adult foster home as defined in ORS 443.705;

(b) A residential facility as defined in ORS 443.400;

(c) A location where home health services, as defined in ORS 443.005, are received by a resident;

(d) A location where in-home care services, as defined in ORS 443.305, are received by a resident; **and**

[(e) An institution under the control of the department under ORS 179.321; and]

(f) A domiciliary care facility as defined in ORS 443.205.

SECTION 30. ORS 430.620 is amended to read:

430.620. (1) The county court or board of county commissioners, or its representatives designated by it for the purpose, of any county, on behalf of the county, may:

(a) *[In conformity with]* **By contract with and subject to** the rules of the Department of Human Services, establish and operate, or contract with a

public agency or private corporation for, a community developmental disabilities program.

(b) In conformity with the rules of the Oregon Health Authority, establish and operate, or contract with a public agency or private corporation for, a community mental health program.

(c) Cooperate, coordinate or act jointly with any other county or counties or any appropriate officer or agency of such counties in establishing and operating or contracting for a community mental health program or community developmental disabilities program to service all such counties in conformity with the regulations of the department or the authority.

(d) Expend county moneys for the purposes referred to in paragraph (a), (b) or (c) of this subsection.

(e) Accept and use or expend property or moneys from any public or private source made available for the purposes referred to in paragraph (a), (b) or (c) of this subsection.

(2) All officers and agencies of a county, upon request, shall cooperate insofar as possible with the county court or board of county commissioners, or its designated representatives, in conducting programs and carrying on and coordinating activities under subsection (1) of this section.

SECTION 31. ORS 430.662 is amended to read:

430.662. (1) The Department of Human Services, in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds, shall:

(a) **Regulate and** assist Oregon counties and groups of Oregon counties in the establishment and financing of community developmental disabilities programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community developmental disabilities program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) *[In an emergency situation]* When no community developmental disabilities program is operating within a county, operate the program or service *[on a temporary basis]*.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community developmental disabilities program in the same manner in which the department contracts with a county court or board of county commissioners.

(e) If *[a county agrees]* **necessary to carry out the legislative policy declared in ORS 430.610**, contract with a public agency or private corporation, **in cooperation with the county**, for **some or** all developmental disabilities services.

(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community developmental disabilities

program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.664 may not be placed in effect without prior approval of the department. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.664 within the portion of the program for persons with developmental disabilities may be made without department approval.

(g) Make all necessary and proper rules to [govern] **regulate** the establishment and operation of community developmental disabilities programs.

(2) The enumeration of duties and functions in subsection (1) of this section may not be deemed exclusive or construed as a limitation on the powers and authority vested in the department by other provisions of law.

SECTION 32. ORS 430.672 is amended to read:

430.672. (1) [*Except for community mental health programs or community developmental disabilities programs operated by the county,*] A county may impose only standards, requirements and conditions for mental health or developmental disabilities programs that are substantially similar to the standards, requirements and conditions established for such programs by the Department of Human Services or the Oregon Health Authority.

(2) When a county contracts with a public agency or private corporation for a community mental health program or community developmental disabilities program, the county shall include in the contract only terms that are substantially similar to model contract terms developed by the authority under ORS 430.640 or the department under ORS 430.662. The county may not add contractual requirements, including qualifications for contractor selection, that are nonessential to the services provided under ORS 430.630 or 430.664. The county may add contract requirements that the county considers necessary to ensure the siting and maintenance of facilities of the community mental health program or community developmental disabilities program.

(3) [*The provisions of*] Subsections (1) and (2) of this section apply only insofar as funds are provided by the department to the county for community developmental disabilities programs or by the authority to the county for community mental health programs **and do not apply to programs operated by counties without funding from the department or the authority.**

SECTION 33. ORS 113.085 is amended to read:

113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

(a) The executor named in the will.

(b) The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

(c) The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

(d) The Director of Human Services or the Director of the Oregon Health Authority, or an attorney approved under ORS 113.086, if the decedent received public assistance as defined in ORS 411.010 or received care at an institution described in ORS 179.321 (1) [*or* (2)] and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.

(e) The Department of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (8), and the department has joined in the petition for such appointment.

(f) Any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

SECTION 34. ORS 116.253 is amended to read:

116.253. (1) Within 10 years after the death of a decedent whose estate escheated in whole or in part to the state, or within eight years after the entry of a judgment or order escheating property of an estate to the state, a claim may be made for the property escheated, or the proceeds thereof, by or on behalf of a person not having actual knowledge of the escheat or by or on behalf of a person who at the time of the escheat was unable to prove entitlement to the escheated property.

(2) The claim shall be made by a petition filed with the Director of the Department of State Lands. The claim is considered a contested case as provided in ORS 183.310 and there is the right of judicial review as provided in ORS 183.480. The petition must include a declaration under penalty of perjury in the form required by ORCP 1 E and shall state:

(a) The age and place of residence of the claimant by whom or on whose behalf the petition is filed;

(b) That the claimant lawfully is entitled to the property or proceeds, briefly describing the property or proceeds;

(c) That at the time the property escheated to the state the claimant had no knowledge or notice thereof or was unable to prove entitlement to the escheated property and has subsequently acquired new evidence of that entitlement;

(d) That the claimant claims the property or proceeds as an heir or devisee or as the personal representative of the estate of an heir or devisee, setting forth the relationship, if any, of the claimant to the decedent who at the time of death was the owner;

(e) That 10 years have not elapsed since the death of the decedent, or that eight years have not elapsed since the entry of the judgment or order escheating the property to the state; and

(f) If the petition is not filed by the claimant, the status of the petitioner.

(3) If it is determined that the claimant is entitled to the property or the proceeds thereof, the Director of the Department of State Lands shall deliver the property to the petitioner, subject to and charged with any tax on the property and the costs and expenses of the state in connection therewith.

(4) If the person whose property escheated or reverted to the state was at any time *[an inmate]* a **patient** of a state institution in Oregon for persons with mental illness *[or mental retardation]* or of the **Eastern Oregon Training Center**, the reasonable unpaid cost of the care and maintenance of the person while a ward of the institution, regardless of when the cost was incurred, may be deducted from, or, if necessary, be offset in full against, the amount of the escheated property. The reasonable unpaid cost of care and maintenance shall be determined *[by:]*

[(a) The Department of Human Services for patients of the Eastern Oregon Training Center; and]

[(b) the Oregon Health Authority for patients of the Blue Mountain Recovery Center and the Oregon State Hospital.] **in accordance with ORS 179.701.**

(5) For the purposes of this section, the death of the decedent is presumed to have occurred on the date shown in the decedent's death certificate or in any other similar document issued by the jurisdiction in which the death occurred or issued by an agency of the federal government.

SECTION 35. ORS 132.090 is amended to read:

132.090. (1) Except as provided in subsections (2) and (3) of this section, no person other than the district attorney or a witness actually under examination shall be present during the sittings of the grand jury.

(2) Upon a motion filed by the district attorney in the circuit court, the circuit judge may appoint a reporter who shall attend the sittings of the grand jury to take and report the testimony in any matters pending before the grand jury, and may appoint a parent, guardian or other appropriate person 18 years of age or older to accompany any child 12

years of age or younger, or any person with *[mental retardation]* **an intellectual disability**, during an appearance before the grand jury. The circuit judge, upon the district attorney's showing to the court that it is necessary for the proper examination of a witness appearing before the grand jury, may appoint a guard, medical or other special attendant or nurse, who shall be present in the grand jury room and shall attend such sittings.

(3) The district attorney may designate an interpreter who is certified under ORS 45.291 to interpret the testimony of witnesses appearing before the grand jury. The district attorney may designate a qualified interpreter, as defined in ORS 45.288, if the circuit court determines that a certified interpreter is not available and that the person designated by the district attorney is a qualified interpreter as defined in ORS 45.288. An interpreter designated under this subsection may be present in the grand jury room and attend the sittings of the grand jury.

(4) No person other than members of the grand jury shall be present when the grand jury is deliberating or voting upon a matter before it.

(5) As used in this section, *["mental retardation"]* **"intellectual disability"** has the meaning given that term in ORS *[430.010]* **427.005.** *[Mental retardation]* **Intellectual disability** may be shown by attaching to the motion of the district attorney:

(a) Documentary evidence of intellectual functioning; or

(b) The affidavit of a qualified person familiar with the person with *[mental retardation]* **an intellectual disability**. "Qualified person" includes, but is not limited to, a teacher, therapist or physician.

SECTION 36. ORS 162.135 is amended to read:

162.135. As used in ORS 162.135 to 162.205, unless the context requires otherwise:

(1)(a) "Contraband" means:

(A) Controlled substances as defined in ORS 475.005;

(B) Drug paraphernalia as defined in ORS 475.525;

(C) Except as otherwise provided in paragraph (b) of this subsection, currency possessed by or in the control of an inmate confined in a correctional facility; or

(D) Any article or thing which a person confined in a correctional facility, youth correction facility or state hospital is prohibited by statute, rule or order from obtaining or possessing, and whose use would endanger the safety or security of such institution or any person therein.

(b) "Contraband" does not include authorized currency possessed by an inmate in a work release facility.

(2) "Correctional facility" means any place used for the confinement of persons charged with or convicted of a crime or otherwise confined under a court order and includes but is not limited to a youth correction facility. "Correctional facility" applies to a state hospital or a secure intensive com-

munity inpatient facility only as to persons detained therein charged with or convicted of a crime, or detained therein after having been found guilty except for insanity of a crime under ORS 161.290 to 161.370.

(3) "Currency" means paper money and coins that are within the correctional institution.

(4) "Custody" means the imposition of actual or constructive restraint by a peace officer pursuant to an arrest or court order, but does not include detention in a correctional facility, youth correction facility or a state hospital.

(5) "Escape" means the unlawful departure of a person from custody or a correctional facility. "Escape" includes the unauthorized departure or absence from this state or failure to return to this state by a person who is under the jurisdiction of the Psychiatric Security Review Board or under the jurisdiction of the Oregon Health Authority under ORS 161.315 to 161.351. "Escape" does not include failure to comply with provisions of a conditional release in ORS 135.245.

(6) "Youth correction facility" means:

(a) A youth correction facility as defined in ORS 420.005; and

(b) A detention facility as defined in ORS 419A.004.

(7) "State hospital" means the Oregon State Hospital, Blue Mountain Recovery Center[, *Eastern Oregon Training Center*] and any other hospital established by law for similar purposes.

(8) "Unauthorized departure" means the unauthorized departure of a person confined by court order in a youth correction facility or a state hospital that, because of the nature of the court order, is not a correctional facility as defined in this section, or the failure to return to custody after any form of temporary release or transitional leave from a correctional facility.

SECTION 37. ORS 179.010 is amended to read: 179.010. As used in this chapter, unless the context requires otherwise:

(1) "Institution" means the institutions designated in ORS 179.321.

(2) "Agency" means:

(a) The Department of Corrections when the institution is a Department of Corrections institution, as defined in ORS 421.005; **or**

(b) The Department of Human Services when the institution is the **facility formerly used as the Eastern Oregon Training Center**; or

(c) The Oregon Health Authority when the institution is the Blue Mountain Recovery Center or an Oregon State Hospital campus.

SECTION 38. ORS 179.321 is amended to read: 179.321. [(1) *The Department of Human Services shall operate, control, manage and supervise the Eastern Oregon Training Center.*]

[(2)] (1) The Oregon Health Authority shall operate, control, manage and supervise the Blue Mountain Recovery Center and the Oregon State Hospital campuses.

[(3)] (2) The Department of Corrections shall operate, control, manage and supervise those institutions defined as Department of Corrections institutions in ORS 421.005.

SECTION 39. ORS 179.325 is amended to read:

179.325. (1) 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 retardation*] **developmental disabilities** in order to care for persons committed to its custody whenever the department determines that a change in purpose and use will better enable this state to meet its responsibilities to persons with [*mental retardation*] **developmental disabilities**. In determining whether to order the change, the department shall consider changes in the number and source of the admissions of persons with mental retardation.

(2) The Oregon Health Authority 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 in order to care for persons committed to its custody whenever the authority determines that a change in purpose and use will better enable this state to meet its responsibilities to persons with mental illness. In determining whether to order the change, the authority shall consider changes in the number and source of the admissions of persons with mental illness.

SECTION 40. ORS 179.331 is amended to read:

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

[(a) *The superintendent of the Eastern Oregon Training Center, by the Director of Human Services.*]

[(b)] (a) The superintendents of the Blue Mountain Recovery Center and the Oregon State Hospital, by the Director of the Oregon Health Authority.

[(c)] (b) The 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.

SECTION 41. ORS 179.360 is amended to read:

179.360. (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 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[, *the Director of Human Services*] and the Director of the Oregon Health Authority 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 each agency director considers necessary for the good of the public service.

SECTION 42. ORS 179.370 is amended to read:

179.370. The Director of the Department of Corrections[, *the Director of Human Services*] or the Director of the Oregon Health Authority 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.

SECTION 43. ORS 179.375 is amended to read:

179.375. (1) The Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority shall ensure 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.

SECTION 44. ORS 179.380 is amended to read:

179.380. (1) The Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority 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 agencies 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.

SECTION 45. ORS 179.385 is amended to read:

179.385. The Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority, 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 agencies.

SECTION 46. ORS 179.390 is amended to read:

179.390. (1) The superintendent of an institution within the jurisdiction of the Department of Corrections shall, subject to the approval of 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 the Department of Corrections for approval or disapproval.

(2) The Director of the Department of Corrections[, *the Director of Human Services*] and the Director of the Oregon Health Authority shall:

(a) Fix the salaries of assistants, officers and employees where their salary is not fixed by law.

(b) Suspend or discharge any subordinate of a superintendent when public service requires such action, except when suspending or discharging the subordinate violates the State Personnel Relations Law.

[(3) *The Director of Human Services or a designee at a 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.*]

[(4)] (3) The Director of the Oregon Health Authority or a designee at a facility under jurisdiction of the Oregon Health Authority shall, as provided by law, appoint, suspend or discharge an employee of the authority. The director may designate up to three employees at each facility to act in the name of the director in accordance with ORS 240.400.

[(5)] (4) 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 Oregon Health Authority. 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.

SECTION 47. ORS 179.405 is amended to read:

179.405. [No] A Department of Corrections [*institutions,*] **institution or a youth correction** [*facilities*] **facility** as defined in ORS 420.005 [*and*]

institutions listed in ORS 427.010 shall] **may not** employ persons regularly as teachers who are not licensed.

SECTION 48. ORS 179.450 is amended to read:

179.450. The Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority may direct the employment of able-bodied persons at the agencies' respective institutions, 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.

SECTION 49. ORS 179.460 is amended to read:

179.460. (1) In order to encourage industry and thereby increase productiveness in the institutions, the Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority 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 agencies, respectively, for the benefit of the institutions in proportion to the amount earned by each.

(3) The provisions of this section apply to the school operated under ORS 346.010.

SECTION 50. ORS 179.473 is amended to read:

179.473. (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 **or facility**:

(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,*] **a residential facility for persons with intellectual disabilities** 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 Oregon Health Authority.

(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 Oregon Health Authority for evaluation and treatment pursuant to rules adopted jointly by the Oregon Youth Authority and the Oregon Health Authority.

(d) Except as provided in subsection (2) of this section, the Department of Corrections or the Ore-

gon Youth Authority may make a transfer of a person from any institution under the jurisdiction of the department or the Oregon Youth 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 Oregon Health Authority 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 Oregon Health Authority determines that administrative commitment for treatment for a mental illness is necessary or advisable or that the authority 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 Oregon Health Authority 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 subparagraph 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.

SECTION 51. ORS 179.478 is amended to read:

179.478. (1) If *[the person]* **an inmate or youth offender**, a relative, guardian or friend of **an inmate or youth offender**, or institution staff have probable cause to believe that an inmate or youth offender is a person with an intellectual disability 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 superintendent of the institution shall request that a diagnostic *[assessment]* **evaluation described in ORS 427.105** 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 an intellectual disability 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]* **is in need of commitment for residential care, treatment and training pursuant to ORS 427.235 to 427.290**, the *[person]* **inmate or youth offender** 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 an intellectual disability **and is in need of commitment for residential care, treatment and training**, the person shall be committed **to the Department of Human Services** and transferred to a *[training center]* **facility** designated by the department *[of Human Services]* as soon as space in an appropriate *[unit]* **facility** is available, and any sentence to a Department of Corrections institution

or commitment to the youth correction facility shall be terminated.

SECTION 52. ORS 179.479 is amended to read:

179.479. (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~~], *the Department of Human Services*]~~ or the Oregon Health Authority, 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~~], *the Department of Human Services*]~~ and the Oregon Health Authority shall prescribe rules and regulations governing conveyances authorized by this section.

SECTION 53. ORS 179.490 is amended to read:

179.490. 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~~], *the Department of Human Services*]~~ or the Oregon Health Authority, are unable to pay a part or the whole cost of the operation~~],~~ the agencies may have the operation performed, the cost of the operation to be payable from the funds of the institution concerned.

SECTION 54. ORS 179.492 is amended to read:

179.492. (1) The Department of Corrections, the Department of Human Services or the Oregon Health Authority 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 **or who has been committed pursuant to ORS 427.235 to 427.290**, 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 **or to the custody of the Department of Human Services under ORS 427.290**, a person has a prescription for a specified brand-name mental health drug and the prescription specifies “dispense as written” or contains the notation “D.A.W.” or other words of similar meaning, the Department of Corrections, the Department of Human Services or the Oregon Health Authority 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.

SECTION 55. ORS 179.505 is amended to read:

179.505. (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 Blue Mountain Recovery Center[, *the Eastern Oregon Training Center*] and the Oregon State Hospital campuses;

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

(C) A contractor of the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority that provides health care to individuals residing in a state institution operated by the agencies;

(D) A community mental health program or community 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 established or maintained under ORS 430.630 or 430.664;

(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 Oregon Health Authority for alcoholism, drug addiction or mental or emotional disturbance;

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

(I) The impaired health professional program established under ORS 676.190.

(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 access 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 Oregon Health Authority facility or community mental health program is the Director of the Oregon Health Authority, 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, the Oregon Health Authority 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, the Oregon Health Authority or an institution operated by the [department or] authority, 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 or the Oregon Health Authority 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 stu-

dents, 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.

SECTION 56. ORS 179.509 is amended to read:

179.509. (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 Corrections[, *the Department of Human Services*] or the Oregon Health Authority, as the case may be, having jurisdiction over the institution.

(2) The agencies 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.

SECTION 57. ORS 179.610 is amended to read:

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

(1) "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.

(2) "Care" means all services rendered to a patient by the state institutions as described in ORS 179.321 or by the [Department of Corrections, Department of Human Services or Oregon Health Authority on behalf of those institutions] **Eastern Oregon Training Center**. 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.

(3) "Decedent's estate" has the meaning given "estate" in ORS 111.005 (15).

(4) "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 or in the **Eastern Oregon Training Center**.

(5) "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.

SECTION 58. ORS 179.620 is amended to read:

179.620. (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 (5), 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, the Department of Corrections, the Department of Human Services and the Oregon Health Authority may not 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 **or in the Eastern Oregon Training Center** 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.

SECTION 59. ORS 179.640 is amended to read:

179.640. (1)(a) The Department of Corrections[, *the Department of Human Services*] and the Oregon Health Authority 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, none of the agencies 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.

SECTION 60. ORS 179.653 is amended to read:

179.653. (1) If any person or authorized representative refuses to pay for the cost of care as ordered by the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority 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.

SECTION 61. ORS 179.655 is amended to read:

179.655. (1) If any amount due the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority 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.

SECTION 62. ORS 179.660 is amended to read:

179.660. If the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority 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.

SECTION 63. ORS 179.701 is amended to read:

179.701. (1) The cost-of-care rates for a person **who is or was in a state institution described in ORS 179.321** shall be determined by the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority, 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 and any other costs not directly related to the care for a person at a state institution.

(2) **The cost-of-care rates for a person who was a resident of the Eastern Oregon Training Center shall be determined by the Department of Human Services. The rates established shall be reasonably related to the costs to operate, control, manage and supervise the state training center at the time of the person's residency. The department must exclude costs of outpatient services as defined in ORS 430.010 and any other costs not directly related to the care of the person at the state training center.**

SECTION 64. ORS 179.711 is amended to read:

179.711. (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 Corrections[, *the Department of Human Services*] or the Oregon Health Authority, 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 payment 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.

SECTION 65. ORS 179.731 is amended to read:

179.731. If the Department of Corrections[, *the Department of Human Services*] or the Oregon Health Authority 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.

SECTION 66. ORS 314.840, as amended by section 11, chapter 107, Oregon Laws 2012, is amended to read:

314.840. (1) The Department of Revenue may:

(a) Furnish any taxpayer, representative authorized to represent the taxpayer under ORS 305.230 or person designated by the taxpayer under ORS 305.193, upon request of the taxpayer, representative or designee, with a copy of the taxpayer's income tax return filed with the department for any year, or with a copy of any report filed by the taxpayer in connection with the return, or with any other information the department considers necessary.

(b) Publish lists of taxpayers who are entitled to unclaimed tax refunds.

(c) Publish statistics so classified as to prevent the identification of income or any particulars contained in any report or return.

(d) Disclose a taxpayer's name, address, telephone number, refund amount, amount due, Social Security number, employer identification number or

other taxpayer identification number to the extent necessary in connection with collection activities or the processing and mailing of correspondence or of forms for any report, return or claim required in the administration of ORS 310.630 to 310.706, any local tax under ORS 305.620, or any law imposing a tax upon or measured by net income.

(2) The department also may disclose and give access to information described in ORS 314.835 to:

(a) The Governor of the State of Oregon or the authorized representative of the Governor[:]

[(A)] with respect to an individual who is designated as being under consideration for appointment or reappointment to an office or for employment in the office of the Governor. The information disclosed shall be confined to whether the individual:

[(i)] (A) Has filed returns with respect to the taxes imposed by ORS chapter 316 for those of not more than the three immediately preceding years for which the individual was required to file an Oregon individual income tax return.

[(ii)] (B) Has failed to pay any tax within 30 days from the date of mailing of a deficiency notice or otherwise respond to a deficiency notice within 30 days of its mailing.

[(iii)] (C) Has been assessed any penalty under the Oregon personal income tax laws and the nature of the penalty.

[(iv)] (D) Has been or is under investigation for possible criminal offenses under the Oregon personal income tax laws. Information disclosed pursuant to this paragraph shall be used only for the purpose of making the appointment, reappointment or decision to employ or not to employ the individual in the office of the Governor.

[(B)] (b) [For use by] An officer or employee of the Oregon Department of Administrative Services duly authorized or employed to prepare revenue estimates, or a person contracting with the Oregon Department of Administrative Services to prepare revenue estimates, in the preparation of revenue estimates required for the Governor's budget under ORS 291.201 to 291.226, or required for submission to the Emergency Board or the Joint Interim Committee on Ways and Means, or if the Legislative Assembly is in session, to the Joint Committee on Ways and Means, and to the Legislative Revenue Officer or Legislative Fiscal Officer under ORS 291.342, 291.348 and 291.445. The Department of Revenue shall disclose and give access to the information described in ORS 314.835 for the purposes of this [subparagraph] **paragraph** only if:

[(i)] (A) The request for information is made in writing, specifies the purposes for which the request is made and is signed by an authorized representative of the Oregon Department of Administrative Services. The form for request for information shall be prescribed by the Oregon Department of Administrative Services and approved by the Director of the Department of Revenue.

[(ii)] (B) The officer, employee or person receiving the information does not remove from the premises of the Department of Revenue any materials

that would reveal the identity of a personal or corporate taxpayer.

[(b)] (c) The Commissioner of Internal Revenue or authorized representative, for tax administration and compliance purposes only.

[(c)] (d) For tax administration and compliance purposes, the proper officer or authorized representative of any of the following entities that has or is governed by a provision of law that meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality:

(A) A state;

(B) A city, county or other political subdivision of a state;

(C) The District of Columbia; or

(D) An association established exclusively to provide services to federal, state or local taxing authorities.

[(d)] (e) The Multistate Tax Commission or its authorized representatives, for tax administration and compliance purposes only. The Multistate Tax Commission may make the information available to the Commissioner of Internal Revenue or the proper officer or authorized representative of any governmental entity described in and meeting the qualifications of paragraph [(c)] (d) of this subsection.

[(e)] (f) The Attorney General, assistants and employees in the Department of Justice, or other legal representative of the State of Oregon, to the extent the department deems disclosure or access necessary for the performance of the duties of advising or representing the department pursuant to ORS 180.010 to 180.240 and the tax laws of this state.

[(f)] (g) Employees of the State of Oregon, other than of the Department of Revenue or Department of Justice, to the extent the department deems disclosure or access necessary for such employees to perform their duties under contracts or agreements between the department and any other department, agency or subdivision of the State of Oregon, in the department's administration of the tax laws.

[(g)] (h) Other persons, partnerships, corporations and other legal entities, and their employees, to the extent the department deems disclosure or access necessary for the performance of such others' duties under contracts or agreements between the department and such legal entities, in the department's administration of the tax laws.

[(h)] (i) The Legislative Revenue Officer or authorized representatives upon compliance with ORS 173.850. Such officer or representative shall not remove from the premises of the department any materials that would reveal the identity of any taxpayer or any other person.

[(i)] (j) The Department of Consumer and Business Services, to the extent the department requires such information to determine whether it is appropriate to adjust those workers' compensation benefits the amount of which is based pursuant to ORS chapter 656 on the amount of wages or earned income received by an individual.

[(j)] **(k)** Any agency of the State of Oregon, or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State as Auditor of Public Accounts under section 2, Article VI of the Oregon Constitution; the Department of Human Services pursuant to ORS 314.860 and 412.094; the Division of Child Support of the Department of Justice and district attorney regarding cases for which they are providing support enforcement services under ORS 25.080; the State Board of Tax Practitioners, pursuant to ORS 673.710; and the Oregon Board of Accountancy, pursuant to ORS 673.415.

[(k)] **(L)** The Director of the Department of Consumer and Business Services to determine that a person complies with ORS chapter 656 and the Director of the Employment Department to determine that a person complies with ORS chapter 657, the following employer information:

- (A) Identification numbers.
- (B) Names and addresses.
- (C) Inception date as employer.
- (D) Nature of business.
- (E) Entity changes.
- (F) Date of last payroll.

[(L)] *The Director of Human Services to determine that a person has the ability to pay for care that includes services provided by the Eastern Oregon Training Center or the Department of Human Services to collect any unpaid cost of care as provided by ORS chapter 179.*

(m) The Director of the Oregon Health Authority to determine that a person has the ability to pay for care that includes services provided by the Blue Mountain Recovery Center or the Oregon State Hospital or the Oregon Health Authority to collect any unpaid cost of care as provided by ORS chapter 179.

(n) Employees of the Employment Department to the extent the Department of Revenue deems disclosure or access to information on a combined tax report filed under ORS 316.168 is necessary to performance of their duties in administering the tax imposed by ORS chapter 657.

(o) The State Fire Marshal to assist the State Fire Marshal in carrying out duties, functions and powers under ORS 453.307 to 453.414, the employer or agent name, address, telephone number and standard industrial classification, if available.

(p) Employees of the Department of State Lands for the purposes of identifying, locating and publishing lists of taxpayers entitled to unclaimed refunds as required by the provisions of chapter 694, Oregon Laws 1993. The information shall be limited to the taxpayer's name, address and the refund amount.

(q) In addition to the disclosure allowed under ORS 305.225, state or local law enforcement agencies to assist in the investigation or prosecution of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to

the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(r) The United States Postal Inspection Service or a federal law enforcement agency, including but not limited to the United States Department of Justice, to assist in the investigation of the following criminal activities:

(A) Mail theft of a check, in which case the information that may be disclosed shall be limited to the stolen document, the name, address and taxpayer identification number of the payee, the amount of the check and the date printed on the check.

(B) The counterfeiting, forging or altering of a check submitted by a taxpayer to the Department of Revenue or issued by the Department of Revenue to a taxpayer, in which case the information that may be disclosed shall be limited to the counterfeit, forged or altered document, the name, address and taxpayer identification number of the payee, the amount of the check, the date printed on the check and the altered name and address.

(s) The United States Financial Management Service, for purposes of facilitating the offsets described in ORS 305.612.

(t) A municipal corporation of this state for purposes of assisting the municipal corporation in the administration of a tax of the municipal corporation that is imposed on or measured by income, wages or net earnings from self-employment. Any disclosure under this paragraph may be made only pursuant to a written agreement between the Department of Revenue and the municipal corporation that ensures the confidentiality of the information disclosed.

(u) A consumer reporting agency, to the extent necessary to carry out the purposes of ORS 314.843.

(v) The Public Employees Retirement Board, to the extent necessary to carry out the purposes of ORS 238.372 to 238.384, and to any public employer, to the extent necessary to carry out the purposes of ORS 237.637 (2).

(3)(a) Each officer or employee of the department and each person described or referred to in subsection (2)(a), [(e) to (k)] **(b), (f) to (L)** or (n) to (q) of this section to whom disclosure or access to the tax information is given under subsection (2) of this section or any other provision of state law, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of ORS 314.835 and 314.991, relating to penalties for the violation of ORS 314.835, and shall as a condition of employment or performance of duties execute a certificate for the department, in a form prescribed by the department,

stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of ORS 314.835.

(b) The disclosure authorized in subsection (2)(r) of this section shall be made only after a written agreement has been entered into between the Department of Revenue and the person described in subsection (2)(r) of this section to whom disclosure or access to the tax information is given, providing that:

(A) Any information described in ORS 314.835 that is received by the person pursuant to subsection (2)(r) of this section is confidential information that may not be disclosed, except to the extent necessary to investigate or prosecute the criminal activities described in subsection (2)(r) of this section;

(B) The information shall be protected as confidential under applicable federal and state laws; and

(C) The United States Postal Inspection Service or the federal law enforcement agency shall give notice to the Department of Revenue of any request received under the federal Freedom of Information Act, 5 U.S.C. 552, or other federal law relating to the disclosure of information.

(4) The Department of Revenue may recover the costs of furnishing the information described in subsection [(2)(k) to (m)] **(2)(L), (m)** and (o) of this section from the respective agencies.

SECTION 67. ORS 410.060 is amended to read:

410.060. (1) It is the policy of the State of Oregon that persons with disabilities served by the Department of Human Services shall also receive necessary services, as appropriate for their needs, from other state agencies.

(2) In carrying out the provisions in subsection (1) of this section, the Department of Human Services shall negotiate interagency agreements and coordinate services with the Employment Department and the Department of Education for the provision of appropriate services to clients of the Department of Human Services who have disabilities.

(3)(a) Prior to approval of an appropriate living arrangement, as defined in ORS 410.040, administered by the Department of Human Services, all persons with disabilities shall be assessed by preadmission screening to ensure the appropriateness of the living arrangement.

(b) If a person with a disability is diagnosed as, or is reasonably believed to be, a person with a developmental disability, preadmission screening shall include *[an assessment by the Developmental Disability Diagnosis and Evaluation Service established under ORS 427.104]* **a diagnostic evaluation as described in ORS 427.105.**

(4) The Department of Human Services in coordination with the Department of Education shall work with nursing homes that have one or more residents under 18 years of age to develop a program appropriate to the needs of those residents.

SECTION 68. ORS 426.330 is amended to read:

426.330. (1) The special funds authorized for the use of the superintendents of the Oregon State Hospital[,] **and** the Blue Mountain Recovery Center *[and the Eastern Oregon Training Center]* to better enable them promptly to meet the advances and expenses necessary in the matter of transferring patients to the state hospitals are continued in existence. The superintendents shall present their claims monthly with vouchers that show the expenditures from the special funds during the preceding month to[.]

[(a)] the Oregon Health Authority for the transfer of patients to the Oregon State Hospital or the Blue Mountain Recovery Center.[]; *and]*

[(b)] *The Department of Human Services for the transfer of patients to the Eastern Oregon Training Center.]*

(2) Against the funds appropriated to cover the cost of transporting patients, the State Treasurer shall pay[.]

[(a)] the claims of the superintendents of the Oregon State Hospital and the Blue Mountain Recovery Center that have been approved by the Oregon Health Authority.[]; *and]*

[(b)] *The claims of the superintendent of the Eastern Oregon Training Center that have been approved by the Department of Human Services.]*

SECTION 69. ORS 547.045 is amended to read:

547.045. (1) Whenever any diking or drainage district is sought to be created and organized or is created and organized in the manner provided by law, within the boundaries of which are located any lands belonging to the state that have been acquired or used by or for any state institution described in ORS 179.321[,] **or used for the Eastern Oregon State Training Center,** the Director of Human Services, **the Department of Corrections** or the Director of the Oregon Health Authority may sign any petition or objections thereto for the organization of such district and exercise on behalf of the state with respect to the district and the land therein belonging to the state, all the rights and privileges of a landowner within the district.

(2) Whenever any such district or proposed district includes any lands belonging to any public body as defined in ORS 174.109, the presiding officer of such public body, or other member of the governing body of such public body, when thereto authorized by a resolution of the governing body thereof, may sign such petition or objection thereto on behalf of the public body, and exercise with respect to the district and the land therein belonging to the public body, all the rights and privileges of a landowner in the district, including the right to be a supervisor of the district.

(3) Lands belonging to a public body as defined in ORS 174.109 shall be subject to the same burdens and liabilities and entitled to the same benefits as lands in the district belonging to private individuals. The Department of Human Services, **the Department of Corrections** or the Oregon Health Au-

thority may pay from any appropriations made for the operation and maintenance of any institution, the lands of which have been included in any diking or drainage district, any charges billed to the [*department*] **departments or the authority on** any assessments levied against such lands by the diking or drainage district.

SECTION 70. ORS 118.525 is amended to read:

118.525. (1) It shall be unlawful for the Department of Revenue or any of its officers or employees to divulge or make known in any manner any particulars disclosed in any return or supporting data required under this chapter. Except for executors or beneficiaries and their authorized representatives, it shall be unlawful for any person or entity who has acquired information pursuant to subsections (3) and (4) of this section to divulge or make known such information for any purpose other than that specified in the provisions of law authorizing the use or disclosure. No subpoena or judicial order shall be issued compelling the department, or its officers or employees, or persons described in subsections (3) and (4) of this section, to divulge or make known any particulars disclosed in any such return or supporting data except where the liability for estate taxes is to be adjudicated by the Oregon Tax Court. Nothing in this section shall prohibit the publication of statistics so classified as to prevent the identification of particulars in any return or supporting data covered by this section.

(2) As used in this section:

(a) "Officer," "employee" or "person" includes an authorized representative of the officer, employee or person, or former officer, employee or person, or an authorized representative of such former officer, employee or person.

(b) "Particulars" includes, but is not limited to, a taxpayer's name, address, telephone number, Social Security number and the amount of refund claimed by or granted to a taxpayer.

(3) Notwithstanding subsection (1) of this section, the department may permit, for tax purposes only, the Commissioner of Internal Revenue or authorized representatives, or an officer or employee of any state or the District of Columbia which has a provision of law which meets the requirements of any applicable provision of the Internal Revenue Code as to confidentiality to inspect any return or supporting data referred to in subsection (1) of this section. The department may disclose to the executor or beneficiary of any estate, or an authorized representative thereof, any information or particulars otherwise made confidential by this section, if the department determines that the executor or beneficiary has a material interest which will be affected by such information or particulars.

(4) The department may disclose a taxpayer's name, address, telephone number, Social Security number, refund amount or tax due to the extent necessary in connection with collection activities or the processing or mailing of returns, correspondence

or forms with respect to the tax imposed under this chapter.

(5) The department also may disclose and give access to information described in subsection (1) of this section to those persons, agencies or entities, described in ORS 314.840 [(2)(e), (f), (g) and (h)] **(2)(f), (g), (h) and (i)** to the extent authorized by said paragraphs; and to any agency of the State of Oregon or any person, or any officer or employee of such agency or person to whom disclosure or access is given by state law and not otherwise referred to in this section, including but not limited to the Secretary of State and the officers and employees thereof, for the uses and purposes described in ORS 297.060.

(6) Each officer or employee of the department and each person described or referred to in subsection (5) of this section to whom disclosure or access to tax information is given, prior to beginning employment or the performance of duties involving such disclosure or access, shall be advised in writing of the provisions of subsection (1) of this section and ORS 118.990 (3), and shall as a condition of employment or performance of duties execute a certificate for the department, stating in substance that the person has read these provisions of law, that the person has had them explained and that the person is aware of the penalties for the violation of subsection (1) of this section.

SECTION 71. ORS 314.865 is amended to read:

314.865. A person granted access to information described in ORS 314.835 under ORS 314.840 [(2)(a)(B)] **(2)(b)** for the purpose of preparing revenue estimates shall not knowingly or intentionally use the information disclosed or the information to which access is given for any purpose if the effect of the use is private pecuniary benefit for the person or for a member of the person's household.

SECTION 72. ORS 412.094 is amended to read:

412.094. (1) All state, county and city agencies, officers and employees shall cooperate in the location of parents who have abandoned or deserted, or are failing to support, children receiving or applying to receive public assistance and shall on request supply the Department of Human Services, the Division of Child Support of the Department of Justice or the district attorney of any county in the state with all information on hand relative to the location, income and property of such parents, including information disclosed to the Division of Child Support under ORS 314.840 [(2)(j)] **(2)(k)**. The granting of aid to the applicant shall not be delayed or contingent upon receipt of the answer to such requests by the Department of Human Services, the Division of Child Support or the district attorney. The Department of Human Services shall use such information only for the purposes of administration of public assistance to such children, and the district attorney and the Division of Child Support shall use such information only for the purpose of enforcing the liability of such parents to support such chil-

dren, and neither shall use the information or disclose it for any other purpose. Any person who violates this prohibition against disclosure, upon conviction, is punishable as provided in ORS 314.991 (2).

(2) The Department of Human Services shall cooperate with the Division of Child Support or the district attorney prosecuting or considering the prosecution of such parent for nonsupport and shall report to the Division of Child Support or the district attorney all information contained in the case record which concerns the question of nonsupport and the suitability of prosecution as a method of obtaining support for the child in each case.

SECTION 73. ORS 427.010, 427.020, 427.031, 427.041, 427.051, 427.061, 427.108, 427.112, 427.175, 427.180, 427.185, 427.190, 427.195 and 427.205 are repealed.

SECTION 74. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Approved by the Governor April 11, 2013

Filed in the office of Secretary of State April 11, 2013

Effective date April 11, 2013
