

Chapter 428

1955 REPLACEMENT PART

Liability for Support of the Mentally Ill and Mentally Deficient

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CROSS REFERENCES

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| 428.010 | 428.060 |
| Liability for cost of hospitalization of mentally ill person, 426.240 | Appointment of guardian, 126.105 |
| Priority of claim for care and maintenance against estate, 117.110 | 428.100 |
| Reimbursement of state or political subdivision for support furnished dependent, procedure for where person liable is not in Oregon, 110.081 | Expenditures without allotment prohibited in certain cases, 291.238 |
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428.010 Duty of guardian or relative of inmate to reimburse state for maintenance; liability of inmate's estate for maintenance cost. (1) If any person committed to a state institution for the mentally ill or mentally deficient, or a close relative of such person, is possessed of an estate or income sufficient to meet the expenses of his or her care and maintenance, without depriving of necessary support those dependent upon such person or relative, then the guardian or responsible relative of such person shall be required to reimburse the State of Oregon for the cost and expense of the care, board, lodging and clothing of such person during his or her stay in such state institution.

(2) All inmates of state institutions for the care of the mentally ill or the mentally deficient, and their estate or relatives, or both, as their respective responsibility may appear, shall be liable for the payment of the monthly charge fixed as provided by law for care and maintenance of inmates of such institutions, according to their ability to pay as provided in this chapter.

(3) Upon the death of any person who is or has been an inmate of a state institution for the care of the mentally ill or the mentally deficient, his estate shall be liable for the monthly cost of care and maintenance of such inmate as computed under ORS 428.070 less any monthly payments made pursuant to a judicial determination of ability to pay under this chapter during the lifetime of such inmate. [Amended by 1955 c.597 §2]

428.020 Order of liability of relatives; "ability to pay" defined. (1) The relatives of mentally ill or mentally deficient persons shall be liable for the care and maintenance of such persons as follows: The husband for the wife, the wife for the husband, the parent or parents for his or her children, and the children for their parents, according to their respective abilities to pay.

(2) "Ability to pay," as referred to in subsection (1) of this section, means that the responsible person or persons have an estate or income, or both, sufficient to pay the amount determined by the court after allowing adequately for the current living expenses and other reasonable necessary present or future obligations of the responsible persons and all their other dependents.

428.030 Subrogation of spouses, parents or children. If any husband or wife, parent

or parents, child or children are required to pay for care and maintenance as specified in this chapter, they shall have the right to subrogation to the extent of the amounts so paid with interest at six percent per annum and contribution against the estate of such mentally ill or mentally deficient person and other persons mentioned in ORS 428.010 and 428.020 who are liable therefor for their pro rata share.

428.040 Process to compel appearance of persons liable for maintenance; appointment of guardian ad litem; examination of witnesses; order. At the time of and as part of the proceedings for the commitment of a mentally ill or mentally deficient person to a state institution for the mentally ill or mentally deficient, as provided in ORS chapters 426 and 427, or when a resident of any county of this state has been received by an Oregon state institution for the mentally ill or for the mentally deficient, under ORS 426.220, 426.230 or 427.140, the county judge or committing magistrate of the county shall cause a citation to be issued by the county clerk and served by the sheriff of the county, citing the person against whom proceedings for commitment for mental illness or mental deficiency have been commenced, or the person who has been so received by any such state institution, and any guardian, husband, wife, parents and children of such person, to appear in court before the judge at a time and place designated in the citation and show cause why an order should not be entered adjudging that the person or his estate or relatives or any combination thereof are financially able to pay for the care and maintenance of such person in a state institution. The county court or committing magistrate may direct subpoenas to be issued to any witness to appear and adduce evidence upon the trial of the matter for the purpose of determining the financial ability of the estate or such relatives, or both, to pay. If such person alleged to be mentally ill or mentally deficient, or such person so received by any such state institution, does not have a guardian, the court shall, if necessary, appoint some competent, disinterested person, at the expense of the county, as guardian ad litem to appear for and who shall have full authority to represent such person. All such persons shall be examined as witnesses under oath for the purpose of determining the financial ability of the mentally ill or mentally deficient per-

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son, his estate or relatives, to pay for the care and maintenance of such person in the state institution to which he or she may be committed or has been admitted. Findings of facts shall be made as to the ability to pay for such care and maintenance as above set forth and an order therein against the proper person or persons or estate found responsible, and fixing such liability. An appeal may be taken to the circuit court within 30 days in the ordinary manner for taking appeals from orders of the county court, and within 30 days from the entry of an order of the circuit court having jurisdiction of such probate proceedings, to the Supreme Court. The order declaring the financial ability of the estate or persons found responsible, or both, to pay for such care and maintenance of such person shall remain in full force and effect unless modified or appealed. Any order or a modified order and appeal only shall be altered upon a new hearing upon citation to all persons interested. Where there has been a change in the ability of the person to pay as specified in the order, and, upon a change of ability to pay, the order shall be modified accordingly.

428.050 District attorney's duty. The district attorney, at the request of the county judge or committing magistrate or State Board of Control, shall appear at the inquest described in ORS 428.040 and present evidence with respect to the ability of the estate of the person who may be committed or has been admitted for mental illness or mental deficiency, or of his relatives, to pay the cost of care and maintenance in the state institution. The district attorney, on request of the Board of Control, if the Board of Control feels aggrieved by the order of the county judge or committing magistrate, shall appeal the cause to the circuit court and the Supreme Court, or either, as directed.

428.060 Appointment of guardian for the estate of a mentally ill or mentally deficient person. If no guardian has been appointed for the estate of the person mentioned in ORS 428.040 who may be committed or who has been admitted to an institution as provided in such section, the State Board of Control shall request, and the district attorney of the county of which such person is a resident, or was a resident at the time of commitment or admittance, shall institute proper proceedings in the

court having probate jurisdiction, for the appointment of a guardian for the estate of such person if necessary.

428.070 Monthly cost of care and maintenance of inmate; how determined. (1) Each mentally ill or mentally deficient person, his estate or relatives found to have the financial ability to pay for care and maintenance as specified in ORS 428.010 to 428.060, shall pay therefor the cost per month as herein provided, or such portion thereof as the court may find them able to pay. The monthly payment as determined by the court shall, in all cases, apply from the day the person is received at the institution.

(2) The cost of care and maintenance of a mentally ill or mentally deficient person in a state institution shall be determined by the Board of Control in the following manner: The board shall, as of June 30 each year, add all the costs chargeable to the maintenance and operation of state institutions for the care of mentally ill and mentally deficient persons for the fiscal year ending on that day. In computing such total cost there shall be included all expenses of providing care for inmates of the institutions, and the expenses of upkeep, but not replacement cost, of the buildings and grounds used in connection with such institutions. The total cost shall be divided by the number 12, and the result, expressed in dollars and cents, shall be established as the cost per month of operating said institutions. This cost shall be divided by the ascertained average number of inmates per month cared for in said institutions, and the number of dollars of the quotient so determined, without regard to any odd cents, shall be the monthly cost per inmate chargeable for the care and maintenance of each mentally ill or mentally deficient person in any such state institution for the ensuing year. *9/1/57-94⁰⁰ Mod. Rate per Mo. Resident New Commitments as well as present inmates.*

428.080 Redetermination, after Board of Control action, of charge to be paid by estate or relatives of committed inmates. The State Board of Control shall forward, at such intervals as in its judgment are advisable, to the county judge or committing magistrate of each county from which inmates of the state institutions for the care of the mentally ill and mentally deficient were committed, a list of inmates committed from such county. Upon receipt of said list, it shall be the duty of the judge or committing magistrate forthwith to cause a citation to

issue for each person on such list, the guardian and relatives aforesaid to appear and show cause and to determine their ability to pay as provided in this chapter. Findings of fact shall be made relative to the financial ability to pay maintenance as set forth in this chapter and an order entered therein against the proper person or persons or estate so found responsible. A charge to be determined by the court but not exceeding the charge per month for care and maintenance fixed as provided by law shall be made to apply in all such cases from the date of origin of responsibility therefor fixed in such order, against the estate, if any, or such responsible relatives, or both. An appeal may be taken to the circuit court and to the Supreme Court as in cases specified in ORS 428.040, and the district attorney shall perform such duties therewith connected as the Board of Control may direct.

428.090 Redetermination, upon petition of Board of Control or relatives or guardian of inmate or upon court's own initiative, of liability for maintenance. The decision of the court as to whether or not the estate or relatives of mentally ill or mentally deficient persons are able to pay for their maintenance, and the amount thereof, shall not be permanent. The court shall, upon petition of the State Board of Control or by any person against whom such order has been entered under the provisions of this chapter or his guardian, or upon its own initiative at any time by citation, summon the guardian and any relatives or interested persons in order to redetermine the facts and the amount, if any, to be paid and by whom. Notice of each such proposed rehearing shall be given to the Secretary of the State Board of Control who shall also receive notice from the court of the decision based on each such hearing.

428.100 Remittance of amounts due; refunds; appropriation. (1) Remittance of amounts due for care and maintenance of persons committed to state institutions as provided in ORS 428.010 to 428.090 shall be made to the Secretary of the State Board of Control in advance on the first day of each calendar month during the time the person remains committed.

(2) The Oregon State Board of Control shall authorize the refund of any unearned advance payments for maintenance of patients at any of the state institutions in

those cases where payments have been made in advance and the patient has died or is discharged or paroled before the end of the month for which such payment is made. The Secretary of State shall audit all claims for refunds when duly approved by the State Board of Control, and draw his warrant on the State Treasurer in payment thereof in favor of the person entitled thereto, payable from the General Fund of the State Treasury, and such amounts as are determined to be necessary for the payment of such refunds hereby are appropriated from the money collected under the provisions of this chapter.

428.110 Daily deposit of money received. All money received by the Secretary of the State Board of Control under the provisions of this chapter shall be deposited daily with the State Treasurer for credit to the General Fund.

428.120 Collection and disposal of delinquent payments. In all cases where an order is entered against the estate, guardian or relatives of a mentally ill or mentally deficient person under the provisions of this chapter, and delinquency in the payment of any amounts due the State of Oregon under such order continues for a period of more than 30 days, upon notification of any such delinquency, by the Oregon State Board of Control, the district attorney of the county wherein the judgment is entered shall proceed to collect the amounts due by appropriate proceedings. The funds so collected by the district attorney shall be forwarded by him at once to the Secretary of the State Board of Control, together with a statement showing by whom paid and for what patient.

428.130 Satisfaction of order for payment on discharge of inmate; re-entry of order and resumption of payments on readmission to institution. Whenever a person ceases to be an inmate of any state institution in connection with whom an order has been entered for care and maintenance against any person or estate under the provisions of this chapter the county judge or committing magistrate of the county in which such order is of record shall forthwith satisfy such order of record, upon receipt of notice from the Secretary of the State Board of Control that it has been fully paid. If the person is subsequently readmitted to the institution, the county judge or committing

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magistrate shall, upon due notice from the Secretary of the State Board of Control, re-enter such order of record and the responsible estate or relatives shall resume monthly payments as before from the date of such readmittance.

428.140 Providing clothing for inmate of Fairview Home. When relatives are paying for care and maintenance as required by this chapter for an inmate of the institution for mentally deficient, they shall not be required to furnish clothing, but the institution shall provide such clothing.

428.144 Proceedings to collect support money from estate of deceased inmate. (1) The Oregon State Board of Control may present and file a claim for any support money under subsection (3) of ORS 428.010 in a proceeding upon the administration of the estate of any deceased inmate in like manner as other claims of creditors are filed and with such priorities as are provided in ORS 117.110.

(2) The Oregon State Board of Control may petition any court of competent jurisdiction for the issuance of letters of administration or testamentary in the estate of any deceased inmate who did not pay or for whom was not paid the full amount of cost of his care and maintenance as determined by subsection (2) of ORS 428.070. However, the board shall not file a petition under this subsection until at least 90 days after the death of the inmate and then only in the

event that the inmate's estate is not otherwise being probated. [1955 c.597 §4]

428.146 Compromise or waiver of claim against estate. The Oregon State Board of Control may compromise any claim against the estate of a deceased inmate during the pendency of the probate proceeding by accepting other security therefor or in any other manner deemed equitable. The board may waive payment of any such claim in a case in which it finds that the enforcement thereof in whole or in part would be inequitable. [1955 c.597 §5]

428.148 Responsible relative remains liable; limit on recovery against estate. The recovery of any claim against the estate of any deceased inmate under ORS 428.144 and 428.146 shall not relieve any responsible relative from making payments in accordance with a judicial determination of ability to pay under this chapter nor shall it prevent the Oregon State Board of Control from recovering such payments by appropriate action. However, the board is not entitled under this chapter to recover amounts which exceed, in the aggregate, the total cost of care and maintenance of the deceased inmate as computed under ORS 428.070. [1955 c.597 §6]

428.150 Employment of persons and promulgation of rules. The State Board of Control may employ such persons and promulgate and enforce such rules and regulations as may be necessary to carry out the provisions of this chapter.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.
Done at Salem, Oregon,
on October 15, 1955.

Sam R. Haley
Legislative Counsel

CHAPTERS 429 AND 430

[Reserved for expansion]