Chapter 428

1977 REPLACEMENT PART

Nonresident Mentally Ill or Deficient

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428.010 [Amended by 1955 c 597 §2; repealed by 1959 c.652 §24]

428.020 [Repealed by 1959 c.652 §24]

428.030 [Repealed by 1959 c.652 §24]

428.040 [Amended by 1957 c.388 §13; repealed by 1959 c.652 §24]

428.050 [Repealed by 1959 c 652 §24]

428.060 [Repealed by 1959 c 652 §24]

428.070 [Amended by 1957 c.92 §1; repealed by 1959 c.652 §24]

428.080 [Repealed by 1959 c.652 §24]

428.090 [Repealed by 1959 c.652 §24]

428.100 [Repealed by 1959 c.652 §24]

428.110 [Repealed by 1959 c.652 §24]

428.120 [Repealed by 1959 c.652 §24]

428.130 [Repealed by 1959 c 652 §24]

428.140 [Repealed by 1959 c.652 §24]

428.144 [1955 c 597 §4, repealed by 1959 c 652 §24]

428.146 [1955 c.597 §5; repealed by 1959 c.652 §24]

428.148 [1955 c.597 §6; repealed by 1959 c.652 §24]

428.150 [Repealed by 1959 c.652 §24]

OBLIGATIONS CONCERNING NONRESIDENT MENTALLY ILL AND MENTALLY DEFICIENT

428.205 Declaration of policy. 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 deficiency, he shall be eligible for care and treatment in an institution of the State of Oregon irrespective of his residence, settlement or citizenship qualifications.
[1975 c.155 §2]

428.210 Definitions for ORS 428.210 to 428.270. As used in ORS 428.210 to 428.270, unless the context requires otherwise:

(1) "Foreign hospital" means an institution in any other state which corresponds to the institutions defined in subsection (7) of this section.

(2) "Division" means the Mental Health Division.

(3) "Nonresident" means any person who is not a resident of this state as defined in subsection (6) of this section.

(4) "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.

(5) "Patient" means any person who has been committed by a court of competent jurisdiction to a state hospital, except a person committed to a state hospital pursuant to ORS 136.150, 136.160, 161.341 or 161.370.

(6) "Resident of this state" means a person who has lived in this state continuously for a period of one year and who has not acquired legal residence in any other state by living continuously therein for at least one year subsequent to his residence 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 considered a resident of this state so long as no other domicile is acquired by the service man or woman.

(7) "State hospital" means any institution listed in ORS 426.010 or 427.010.
[1957 c.388 §5; 1959 c.588 §19; 1967 c.299 §2; 1971 c.743 §368; 1977 c. 380 §20]

428.220 Determining residence; Mental Health Division may admit to state hospital a person whose residence is not established. (1) In determining whether or not any person committed by a court of competent jurisdiction to a state hospital or foreign hospital is a resident of this state:

(a) The time spent in a state hospital or foreign hospital or on parole therefrom 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 his residence for the duration of his commitment.

(2) The Mental Health Division may give written authorization for the admission to a 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 division, provide a sufficient reason for the suspension of the residence requirement provided by subsection (6) of ORS 428.210.
[1957 c.388 §6]

428.230 Return of nonresident patients; superintendents must admit eligible persons. (1) Except as provided in ORS 428.205, 428.220 and 428.330, the Mental Health Division shall return nonresident patients to any other state in which they may have legal residence.

(2) The division may give written authorization for the return to a state hospital of a resident of Oregon who has been committed by a court of competent jurisdiction to a foreign hospital.

(3) The superintendent of any state hospital shall admit and care for any person eligible for admission pursuant to subsection (2) of this section or subsection (2) of ORS 428.220 upon receipt of a certified copy of the commitment papers and the written authorization of the division.
[1957 c.388 §7; 1975 c.155 §5]

428.240 Reciprocal agreements for interstate exchange of nonresident patients. (1) For the purpose of facilitating the return of nonresident patients, the Mental Health Division may enter into a reciprocal agreement with any other state for the mutual exchange of persons committed by a court of competent jurisdiction to any state hospital or foreign hospital, whose legal residence is in the other's jurisdiction.

(2) In such agreements, the division may:

(a) Only for purposes of mutual exchange with the other state, vary the period of residence required by subsection (6) of ORS 428.210.

(b) Provide for the arbitration of disputes arising out of the mutual exchange of such persons between this state and any other state.
[1957 c.388 §8]

428.250 Liability for expenses of returning nonresident patients. (1) Except as provided in ORS 428.270, all expenses incurred under ORS 428.230 and 428.240 in returning nonresident patients from this state to any other state shall be paid by this state.

(2) All expenses of returning residents of this state shall be borne by the other state making the return.
[1957 c.388 §9]

428.260 Division may employ help for transporting nonresident patients; payment of expenses. (1) For the purpose of carrying out the provisions of ORS 415.110 and 428.210 to 428.270, the Mental Health Division 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 division and the superintendent of the state hospital from which such patients are transported.
[1957 c.388 §10]

428.270 Liability of persons for care and return of nonresident mentally ill or mentally deficient persons. (1) Any person, except an officer, agent or employe 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 Mental Health Division, 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 he legally resides.

(2) Hospitals and sanitariums, other than state hospitals, which care for and treat mentally ill and mentally deficient persons shall be responsible for the return of mentally ill or mentally deficient 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 mentally ill or mentally deficient persons to their places of residence or domicile outside the state.
[1957 c.388 §11]

INTERSTATE COMPACT ON MENTAL HEALTH

428.310 Mental Health Division may execute and terminate compact concerning mentally ill and mentally deficient. The Mental Health Division may execute and terminate a compact on behalf of the State of Oregon with any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico joining therein, in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any

time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calculated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment

and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances; provided, however, that in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator or other person or agency however denominated who is charged by law with responsibility for the property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when entered into according to law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom as provided by law and such renunciation shall be by the same authority which executed it. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII (b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the

United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

[1957 c.388 §14]

428.320 Mental Health Division as compact administrator; rules; supplementary agreements. The Mental Health Division shall carry out the duties of compact administrator, may promulgate 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 Mental Health Division.
[1957 c.388 §15; 1961 c.706 §28]

428.330 Mental Health Division entering agreement with state not a party to compact; terms. (1) The Mental Health Division may comply with the terms of the Interstate Compact on Mental Health in dealing with a state which is not a party of the interstate compact.

(2) When the Mental Health Division acts under subsection (1) of this section, the term "party state," as used in the Interstate Compact on Mental Health, includes states which are not parties of the interstate compact.
[1975 c.155 §3]

428.410 [1959 c.588 §1; 1965 c.339 §24; repealed by 1971 c.75 §2]

428.420 [1959 c.588 §2; 1965 c.339 §25; repealed by 1971 c.75 §2]

428.430 [1959 c.588 §3; repealed by 1971 c.75 §2]

428.440 [1959 c.588 §4; repealed by 1971 c.75 §2]

428.450 [1959 c.588 §5; repealed by 1971 c.75 §2]

428.460 [1959 c.588 §6; repealed by 1971 c.75 §2]

428.470 [1959 c.588 §7; repealed by 1971 c.75 §2]

428.480 [1959 c.588 §8; repealed by 1971 c.75 §2]

428.490 [1959 c.588 §12; 1963 c.395 §1; 1969 c.597 §95; repealed by 1971 c.75 §2]

428.500 [1959 c.588 §11; repealed by 1971 c.75 §2]

428.510 [1959 c.588 §16; repealed by 1971 c.75 §2]

428.520 [1959 c.588 §9; repealed by 1971 c.75 §2]

428.530 [1959 c.588 §10; repealed by 1971 c.75 §2]

428.540 [1959 c.588 §14; renumbered 427.012]

428.550 [1959 c.588 §26; repealed by 1971 c.75 §2]

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Thomas G. Clifford, 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,
October 1, 1977.

Thomas G. Clifford
Legislative Counsel

CHAPTER 429

[Reserved for expansion]