Chapter 416

1989 EDITION

Recovery of Assistance Payments

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RELATIVES' RESPONSIBILITY LAW

416.010 Definitions for ORS 416.010 to 416.260. For purposes of ORS 416.010 to 416.260:

(1) "Dependent" means any of those persons in addition to a spouse:

(a) Whom the relative has a legal obligation to support;

(b) Who received chief support from the relative during the preceding calendar year;

(c) Who is under 18 years of age, or is 18 years or over and is regularly attending an institution of learning as a full-time student, or is 18 years or over but is not self-supporting due to a physical or mental handicap; and

(d) Who is under 18 years of age and whose gross income for the preceding calendar year was $600 or less, or is 18 years of age or over and whose gross income for the preceding calendar year was $1,200 or less and who is regularly attending an institution of learning as a full-time student.

(2) "Gross annual income" means the adjusted gross income as defined by the federal Internal Revenue Code of 1954, as amended, as determined by the appropriate state or federal income tax return filed for the subject year (or, if such return has not been filed or is not available in the files of the Department of Revenue, the return filed for the preceding year) plus any nontaxable interest, excluded income, or exempt income not included in the adjusted gross income of the relative, less the amount paid by the responsible relative during the period covered by such state income tax return for medical and hospital expenses of the responsible relative, the spouse and those persons who are listed as dependents of the responsible relative on such income tax return, but amounts paid for such medical and hospital expenses may be subtracted only to the extent that they were not included as part of the monthly contributions required by ORS 416.061. A separate income tax return shall constitute prima facie evidence of the gross income and number of dependents of the individual making it; a joint income tax return of husband and wife shall constitute prima facie evidence of the gross income and number of dependents of the husband or wife, or both.

(3) A "needy person" is one who is eligible for public assistance under the laws of the state.

(4) "Relative" or "relatives" mean the living husband, wife, father, mother, son or daughter 21 years of age or over of an applicant for or a recipient of public assistance.

(5) "Total cost" means the total amount of public assistance of any type furnished by the Adult and Family Services Division to a recipient for a given period. [1961 c.605 §2; 1969 c.597 §250, 1971 c.407 §1]

416.020 Investigation of financial condition of relatives of applicant for public assistance. (1) Upon making application for public assistance, each applicant shall provide the Adult and Family Services Division with the names and current addresses, to the extent known to the applicant, of the applicant's living relatives as defined in ORS 416.010 (4). The applicant shall agree to provide information under oath and shall consent to investigation on the applicant's behalf of any person whose income and financial condition is at issue.

(2) Upon receipt of an application for public assistance, the division, in addition to duties otherwise imposed and acting without unnecessary delay and with diligence, shall investigate the facts relating to the income and financial condition of the applicant's living relatives. In making such investigation the division shall give each of the applicant's relatives 18 years of age or over written notice of such application and the possibility of the relative's present or future liability under ORS 416.061. Such notice shall include the information that it is given pursuant to ORS 416.010 to 416.260 and a copy of such notice shall be sent to the applicant. No liability for support of a needy person will be imposed prior to the mailing of written notice to the relative's last-known address. Receipt of the notice by the relative is not a condition precedent to the imposition of liability under ORS 416.061 or the use of any remedy provided by law to enforce such liability. The division may require statements under oath from the applicants and from any such person whose income and financial condition is at issue. The results of such investigation shall be filed at the headquarters office of the Adult and Family Services Division. [Formerly 411.410, 1971 c.480 §3, 1971 c.779 §49]

416.030 Certain relatives exempt from liability for support. (1) Upon receipt of the report of the investigation referred to in ORS 416.020, the Adult and Family Services Division may make such further investigation of the matter as it may deem necessary to ascertain the facts in relation thereto.

(2) No liability for the support of a needy person shall be imposed under the provisions of ORS 416.010 to 416.260 upon:

(a) A living relative of such needy person during any period when a court order or decree, entered in a proceeding other than a proceeding under ORS 416.010 to 416.260, is in effect, which requires the relative to pay

a sum of money for the support of that person.

(b) A living relative of such needy person during any period when the relative is subject to or exempt from support under ORS 179.610 to 179.770.

(c) The child of a needy person if, during the minority of the child, such person wilfully deserted or abandoned the child, or, by expulsion or cruelty, drove the child from the parental home, or, without good cause, was responsible for the child's being "dependent" as defined by ORS 418.205 (2).

(d) The child of a needy person, if, during the minority of the child, such person is committed by order of the court to a state institution for the mentally ill or mentally deficient. [Formerly 411.420, 1967 c.549 §7, 1971 c.125 §1; 1971 c.750 §5]

416.035 Exemption of relatives whose liability under other law terminated. Notwithstanding any other provisions of ORS 416.010 to 416.260, no liability shall be imposed upon any relative for the support of a needy person after such relative's responsibility therefor has been or would have been terminated under the provisions of ORS 179.635 (1971 Replacement Part) had such needy person continued to be a resident of a state institution for the mentally deficient. [1971 c.750 §2]

416.040 Annual financial statement; statement of recipient's relatives; effect of failure to file. (1) By April 15 of each year each relative of a recipient who received public assistance in the preceding calendar year shall file with the Adult and Family Services Division for the preceding year a sworn statement on a form provided by the division of the relative's gross annual income as defined in ORS 416.010 (2), along with such other information as the division considers necessary to assist in making a determination of the relative's future ability to contribute to the support of the applicant or recipient.

(2) The division may extend by 90 days the time for filing of the statement required in subsection (1) of this section.

(3) If the responsible relative fails to file a statement by the date specified under subsection (1) or (2) of this section or files a return which is so contradictory to the report and investigation under ORS 416.020 and 416.030 as to appear not to have been made in good faith, the division may estimate the gross annual income of the relative upon the basis of the information available from the report, from investigation and from the Department of Revenue as provided in ORS 416.230 (1977 Replacement Part).

(4) The statement referred to in subsection (1) of this section shall relate to such matters and information of the type referred to in ORS 411.650 (1)(a) and (b) as may be prescribed by the division or required by the division in any case. [1961 c.605 §6; subsection (4) enacted as 1963 c.499 §8]

416.050 Determination of relative's liability for support contributions. (1) Upon receipt of the statement required under ORS 416.040 or the reports under ORS 416.020 and 416.030, the division shall make a determination of the liability of the relative for contributions required by the relatives' contribution scale in ORS 416.061.

(2) In determining the ability to contribute, the division may consider the financial circumstances of the relative and, in unusual cases, may permit a contribution of less than the amount fixed in the relatives' contribution scale.

(3) If the relative fails to file a statement or files a contradictory statement as described in ORS 416.040 (3), the division shall, on the basis of its estimate of the relative's income, make a determination of the liability of the relative for contributions required by the relatives' contribution scale. [1961 c.605 §7]

416.055 Proration of liability among liable relatives. Whenever there is more than one relative who is determined liable for contribution under the scale in ORS 416.061, or determined liable as a result of any proceeding under ORS 416.120 and 416.130 and the total individual liability of such relatives exceeds total cost, the payments required of such relatives shall be prorated among such relatives. Each such relative shall be liable to the extent that the ratio of the liability of the relative bears to the total liability of all such relatives. [1971 c.480 §2]

416.060 [Formerly 411.425, repealed by 1971 c.651 §1 (416.061 enacted in lieu of 416.060)]

416.061 Monthly liability schedule; contribution from other relatives. (1) The living relatives of any needy person are hereby made liable to such person for monthly contributions of money not to exceed total cost in accordance with the following relatives' contribution scale:

RELATIVES' CONTRIBUTION SCALE

Gross annual income of responsible relatives in one family in dollars		Number of persons dependent upon income									
		1	2	3	4	5	6	7	8	9	10
Over	But not over	MONTHLY PAYMENTS REQUIRED (in dollars)									
6,500	7,000	26	0	0	0	0	0	0	0	0	0
7,000	7,500	32	13	0	0	0	0	0	0	0	0
7,500	8,000	39	20	0	0	0	0	0	0	0	0
8,000	8,500	46	26	13	0	0	0	0	0	0	0
8,500	9,000	52	32	20	0	0	0	0	0	0	0
9,000	9,500	59	39	26	13	0	0	0	0	0	0
9,500	10,000	65	45	32	20	0	0	0	0	0	0
10,000	10,500	71	52	39	26	13	0	0	0	0	0
10,500	11,000	78	59	45	32	20	0	0	0	0	0
11,000	11,500	85	65	52	39	26	13	0	0	0	0
11,500	12,000	91	71	59	45	32	20	13	0	0	0
12,000	12,500	97	78	65	52	39	26	20	13	0	0
12,500	13,000	104	85	71	59	45	32	26	20	13	0
13,000	13,500	110	91	78	65	52	39	32	26	20	13
13,500	14,000	117	97	85	71	59	45	39	32	26	20
14,000	14,500	131	111	99	85	73	59	53	46	40	34
14,500	15,000	145	125	113	99	87	73	67	60	54	48
15,000	15,500	159	139	127	113	101	87	81	74	68	62
15,500	16,000	173	153	141	127	115	101	95	88	82	76
16,000	16,500	187	167	155	141	129	115	109	102	96	90
16,500	17,000	208	188	176	162	150	136	130	123	117	111
17,000	17,500	229	209	197	183	171	157	151	144	138	132
17,500	18,000	250	230	218	204	192	178	172	165	159	153
18,000	18,500	271	251	239	225	213	199	193	186	180	174
18,500	19,000	292	272	260	246	234	220	214	207	201	195
19,000	19,500	Total Cost	293	281	267	255	241	235	228	222	216
19,500	20,000	Total Cost	Total Cost	302	288	276	262	256	249	243	237
20,000	20,500	Total Cost	Total Cost	Total Cost	309	297	283	277	270	264	258
20,500	21,000	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	304	299	291	285	279
21,000	21,500	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	306	300
21,500	22,000	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost	Total Cost

(2) When any living relative is required to contribute according to the scale in subsection (1) of this section, the relative may compel contribution from any other living relative or relatives liable under ORS 416.010 to 416.260.

(3) If the relative and the spouse of the relative each has income with respect to the calendar year during which public assistance is furnished and they jointly or severally owe a duty of support to one or more persons for whom the relative may not provide the chief support because of the combined income, the relative is still entitled to claim that number of dependents nearest the whole number obtained by dividing the relative's gross annual income by the combined gross annual income of the relative and the spouse of the relative and multiplying the quotient by the number of dependents for whose support they are jointly or severally liable. [1971 c 651 §2 (enacted in lieu of 416 060)]

416.070 Grant of assistance as prima facie evidence of need; findings prima facie correct. (1) In all administrative and judicial proceedings under ORS 416.010 to 416.260, the grant of public assistance by the Adult and Family Services Division to a recipient shall be prima facie evidence that such person does not have income or resources sufficient to provide the person with food, clothing, shelter and such other essentials as are necessary to sustain life and as are compatible with decency and good health.

(2) The findings of the examiner or referee, as reviewed by the division, and in the absence of any showing of bad faith by the division or the examiner or referee, shall be prima facie correct in any subsequent judicial proceedings. [1961 c.605 §16]

416.080 Liability of relative does not cut off assistance; consent of recipient to recover from relative. The liability of a relative to contribute to the support of a recipient of public assistance established by ORS 416.061 is not grounds for denying or discontinuing public assistance to any person. However, by accepting such public assistance, the recipient thereof shall be deemed to consent to the recovery of an amount equal thereto from any responsible living relative by the division, as provided in ORS 416.260. [Formerly 411.440 and then 411.428]

416.090 Needy person has cause of action against relatives for support. Each needy person in Oregon has a cause of action at law against any living relative or relatives referred to in ORS 416.020 for the monthly contribution to the support of the needy person established by ORS 416.030 and 416.061. In any such action at law, judgment may be entered for all accumulated contributions for which defendant is liable under ORS 416.061. [Formerly 411 450 and then 411 434]

416.100 Division is subrogated to right to prosecute needy person's cause of action. The Adult and Family Services Division shall be subrogated to the right of each needy person who is a recipient of public assistance in this state to prosecute an action at law arising under ORS 416.090 against any living relative of such recipient. [Formerly 411 460 and then 411.438]

416.110 Time within which proceedings under ORS 416.100 to 416.130 must be commenced. (1) Any action or proceeding by the Adult and Family Services Division as provided in ORS 416.100 to 416.130 for the enforcement of any claims arising after January 1, 1959, shall be commenced within three years from the first day of the month during which the public assistance sought to be recovered by the division was paid to the needy person, and any warrant issued by the division for the enforcement of a final decision of the division shall be filed within one year from the date upon which such decision is rendered, or within one year from the date the circuit court or Court of Appeals decides an appeal from such decision.

(2) A proceeding commenced under ORS 416.120 and 416.130 shall be deemed to commence when the notice required by ORS 416.120 is delivered to the relative. [Formerly 411 441, 1979 c 562 §14, 1983 c.740 §141]

416.120 Notice to relative of contribution due; hearing of relative's objections. (1) After having made a determination of liability of a relative pursuant to ORS 416.010 to 416.030, 416.040, 416.050 and 416.061 to 416.100, the Adult and Family Services Division may, in lieu of bringing an action at law on a theory of subrogation under ORS 416.100, give notice to the responsible relative by certified mail at the last-known address of the responsible relative that a contribution pursuant to the scale provided in ORS 416.061 is due and payable to the division for aid given to the needy person and that the relative may request in writing within 30 days of mailing of the notice a hearing on objections to financial responsibility at a time and place, in the county where the relative resides, as specified by the division.

(2) The hearing shall be held before an examiner or referee, appointed by the division, whose decision is subject to review by the division. The hearing shall be subject to ORS 183.310 to 183.550. The relative sought to be held responsible shall be given notice of the hearing by certified mail or personal service at least 20 days prior to the hearing.

[Formerly 411.442; subsection (4) enacted as 1961 c.605 §15, 1971 c.734 §46]

416.130 Decision after hearing; notice to relative. If the evidence at the hearing under ORS 416.120 or, in case the relative fails to appear at the hearing, the evidence pursuant to any investigation under ORS 416.020 and 416.030, does not disclose sufficient reason why, in the opinion of the division, the relative should not be held responsible in accordance with the contribution scale in ORS 416.061, the division shall notify the relative by certified mail at the last-known address of the relative of its final decision within 10 days after making such decision. [Formerly 411.444]

416.140 [Formerly 411.446, repealed by 1971 c.734 §21]

416.145 Judicial review. (1) Judicial review of the decision of the Adult and Family Services Division shall be as provided in ORS 183.310 to 183.550. Within 30 days after receipt of a petition for judicial review, the division shall make available without cost to the petitioner the record at any hearing under ORS 416.010 to 416.260.

(2) If the decision of the Adult and Family Services Division is sustained on appeal, the Court of Appeals shall enter an order stating the amount found due. The Adult and Family Services Division may sue on such order without issuance of the warrant required by ORS 416.170. [1971 c.734 §48]

Note: 416.145 was enacted into law by the Legislative Assembly and added to and made a part of ORS chapter 416 but not to any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

416.150 [1961 c.605 §13; repealed by 1971 c.734 §21]

416.160 [1961 c.605 §14; repealed by 1971 c.734 §21]

416.170 Issuance of warrant to collect contribution; filing; entry in lien record. (1) If the relative fails to appeal a final decision of the Adult and Family Services Division within the time specified in ORS 416.145 or if the court, on appeal, decides in favor of the division, the division may cause to have issued in its name by such person as it designates a warrant directed to the sheriff of any county of the state commanding the sheriff to levy upon and sell the real and personal property of the relative found within that county, for the payment of the amount of the contribution and the cost of executing the warrant, and to return such warrant to the division and pay to it the money collected by virtue thereof by a time to be therein specified, not less than 60 days from the date of the warrant.

(2) The sheriff shall, not later than five days after the receipt of the warrant, record with the clerk of the county a copy thereof. Thereupon, the clerk shall enter in the County Clerk Lien Record the name of the relative mentioned in the warrant, and the amount of the contribution due or portion thereof for which the warrant is issued and the date when such copy is recorded. [Formerly 411.448, 1975 c.146 §5; 1983 c.696 §19]

416.180 Lien of warrant; execution of warrant; effect of return of warrant unsatisfied. (1) The amount of a warrant docketed under ORS 416.170 shall become a lien upon the title to and interest in real property or personal property of the relative against whom it is issued in the same manner as a judgment duly docketed in the office of the county clerk. The sheriff shall then proceed upon the warrant in all respects, with like effect and in the same manner provided by law in respect to executions issued against property upon judgment of a court of record, and shall be entitled to the same fees for services in executing the warrant, to be added to and collected as a part of the warrant liability.

(2) If a warrant is returned not satisfied in full, the Adult and Family Services Division shall have the same remedies to enforce the claim for contributions against the relative as if the people of the state had recovered judgment against the relative for the amount of the contribution. [Formerly 411.452]

416.190 Release of lien when sale of property would not satisfy lien in whole or in part. (1) Any person having a lien upon or any interest in real estate against which the amount of the warrant provided for in ORS 416.170 has become a lien, notice of which has been recorded in accordance with the laws of this state prior to the filing of the warrant, may request the Adult and Family Services Division in writing to release the real estate from the lien of the warrant.

(2) If, upon such request, the division finds that a sale of the property would not result in satisfaction of the contributions due in whole or in part, the division shall execute a release of the lien as to such property and such release shall be conclusive evidence of the extinguishment of the lien as to that property.

(3) If the division fails to act upon a request for release of lien under this section within 60 days from the date of such request, any person having a lien upon or interest in the property against which the warrant has become a lien may make the division a party to any proceeding brought to enforce any interest in or lien upon such real property, and the determination of the court in such proceeding shall be conclusive and binding upon the division and the State of Oregon. [Formerly 411.454]

416.200 Release of lien in other cases. In addition to the release of lien provided for in ORS 416.190, the Adult and Family Services Division may execute releases in the following cases which releases shall be conclusive evidence of the extinguishment of the lien:

(1) If the division finds that the liability for the amount of the contribution, together with all costs in respect thereof has been satisfied; or

(2) If the division finds that the fair market value of that part of such property remaining subject to the lien is at least double the amount of the liability remaining unsatisfied in respect of such contribution and the amount of all prior liens upon such property; or

(3) If there is furnished to the division a bond, in such form and with such security as the division may deem sufficient, conditioned upon the payment of the amount of the warrant, together with all interest in respect thereof, within 60 days after the issuance of such release; or

(4) If there is paid to the division in partial satisfaction of the amount of the warrant an amount not less than the value, as determined by the division, of the interest of the State of Oregon in the part of the property to be so discharged. In determining such value, the division shall give consideration to the fair market value of the part of the property to be so discharged and to such liens thereon as have priority to the lien of the State of Oregon. [Formerly 411.456]

416.210 Compromise agreements with relatives. ORS 416.061 and 416.120, 416.130 and 416.170 to 416.250 shall not be construed to prevent the Adult and Family Services Division from entering into a compromise agreement with the responsible relative at any state of a proceeding under ORS 416.120, 416.130 and 416.170 to 416.250. [Formerly 411.458]

416.220 Support order by court; enforcement and modification of order. (1) In addition to the remedy provided in ORS 416.090, the circuit court of the county in which an applicant for or recipient of public assistance resides may, upon petition of the applicant or recipient, order that a relative pay an amount each month for the support of the applicant or recipient. Pending the final order, the court may enter such temporary order as may be necessary for support of the applicant or recipient. In making any support order under this section the court cannot exceed the amounts specified in ORS 416.061.

(2) An order of support entered under subsection (1) of this section shall be enforceable by contempt proceedings.

(3) If an applicant for or recipient of public assistance requires legal aid in exercising rights under this section or under ORS 416.090, the Adult and Family Services Division or the Support Enforcement Division of the Department of Justice shall provide necessary legal aid.

(4) The court entering an order under subsection (1) of this section shall retain jurisdiction over the person and may modify its orders upon a showing that the conditions under which the original order was entered have changed so that the original order creates a hardship on the relative or on the person for whose benefit the order was made. The court may modify its orders upon the request of the relative, the person for whose benefit the order was made or the division. [1961 c.605 §19; 1971 c.779 §50]

416.230 [Formerly 411.462; 1971 c.407 §2, repealed by 1979 c.690 §19]

416.240 Proceeding against one relative not to preclude action against others. A proceeding under ORS 416.010 to 416.260 against any relative of a needy person is not an exclusive remedy of the Adult and Family Services Division and does not preclude the division from taking action against any other relatives believed to be financially able, if full recovery of contributions cannot be made from any one relative. [Formerly 411.464]

416.250 Additional remedy. ORS 416.120, 416.130 and 416.170 to 416.250 is intended to be a remedy for collection of contributions from responsible relatives of needy persons additional to or as an alternative for the action provided in ORS 416.090, 416.100 and 416.260. [Formerly 411.466]

416.260 Distribution of amount recovered from relative of recipient of public assistance. The Adult and Family Services Division may, either in its own name or in the name of the recipient of public assistance to whose right of action it has been subrogated, commence and prosecute to final conclusion such legal proceedings as may be deemed necessary for the amount of the relatives' required contribution established by ORS 416.061. From the amount collected as a result of such legal proceedings or as a result of a warrant proceeding under ORS 416.120, 416.130 and 416.170 to 416.210, the division shall deduct the full amount previously paid as public assistance under the laws of this state and the remainder thereof, after deducting the costs of any proceeding, shall be delivered to the recipient. The amount of any previously paid public assistance recovered in any proceeding shall be

distributed by the division to the United States Government and to the Public Welfare Account, as their interests may appear. [Formerly 411.470, 1969 c.45 §2, 1971 c.418 §13]

416.270 Payments by relative based on estimated income for current year. (1) A relative referred to in ORS 416.010 may make monthly payments on the liability of the relative for the current year to the Adult and Family Services Division. The relative may compute monthly payments by applying the table provided in ORS 416.061 to the estimated income of the relative for the current year. The moneys received by the division shall be paid into the Relative Liability Contribution Fund which hereby is created and shall be retained in that fund until a final determination in accordance with ORS 416.010 to 416.260 is made of the relative's liability for that year. The Relative Liability Contribution Fund hereby is continuously appropriated for the purposes of this section.

(2) In the event that the sum of these payments is greater than the liability of the relative for that year, as computed in accordance with ORS 416.010 to 416.260, the division shall apply the excess first upon any liability of the relative to the division remaining from prior years. If the excess exceeds any prior liability, the balance of the sum of the payments after the current and prior years' liability has been deducted, shall be retained in the Relative Liability Contribution Fund and credited against the relative's liability for the next year unless the relative elects, in writing, to receive the balance. If the relative so elects, the division shall pay the relative out of the Relative Liability Contribution Fund the balance of the sum of payments of the relative after the relative's current and prior years' liability has been deducted.

(3) If the liability of the relative for the current year, as finally determined, in accordance with ORS 416.010 to 416.260, is greater than the sum of the payments made by the relative for that year, the division shall proceed to collect the remaining liability in accordance with the provisions of ORS 416.010 to 416.260.

(4) Any amount collected by the Adult and Family Services Division under this section which is retained in the Relative Liability Contribution Fund after the deduction of refunds, if any, shall be distributed to the United States Government, the county and to the Public Welfare Account as their interests may appear, except for any amount retained as a credit against the relative's liability for the next year which shall not be distributed until a final determination, in accordance with ORS 416.010 to 416.260, of the relative's liability for that year is made. [Formerly 411.474]

416.280 Certain recovery under ORS 416.010 to 416.270 prohibited. The amounts of assistance provided after July 1, 1973, pursuant to ORS chapters 411, 412 and 413 shall not be recovered by the division under ORS 416.010 to 416.270. [Formerly part of 414.105]

RECOVERY FROM ESTATES

416.310 Estate of deceased person liable for aid received from counties; relatives not relieved from obligation of support. (1) Except as otherwise provided by ORS 413.200, the estate of every deceased person who received aid from or whose burial expenses have been paid by any county, other than aid received as old age assistance or pursuant to ORS 418.040, 444.120 or 444.220, is liable for the actual cost of such aid so rendered or the actual expenses of such burial. The county shall have a just and valid claim against such estate therefor.

(2) Nothing in this section relieves the parents, children, brothers or sisters of any poor person from their obligation to support such person, or prevents the county court from recovering for such support.

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient. [Formerly 411.480, 1985 c.522 §5]

416.320 Manner of approval and payment of county claims against estate. All claims of the type mentioned in ORS 416.310 shall be itemized and verified by the county clerk and presented by the county clerk to the administrator or executor of the estate; except that the claims shall be verified by the county accountant in counties having a county accountant authorized by ORS chapter 210. The claims shall be approved and paid by the administrator or executor in the manner and in the order of preference provided by law for approval and payment of claims and charges against estates of deceased persons. [Formerly 411.490, 1983 c.310 §19]

416.330 [Formerly 411.500; repealed by 1983 c.537 §7]

416.340 Collection of claim against estate of deceased; waiver of claim. (1) With respect to any claim which the Adult and Family Services Division may have against the estate of a deceased person, the division may, subject to such terms as it may prescribe in any such case:

(a) Secure payment of such claim in whole or in part by the acceptance of assignments, conveyances, notes, mortgages and other transfers of property or interests therein.

(b) Waive such claim to the extent that the Adult and Family Services Division finds that the enforcement thereof would tend to defeat the purpose of the public assistance laws.

(2) To the extent that the need for aid resulted from a crime committed against the recipient, a claim for recovery of the amount of such aid defeats the purpose of the public assistance laws. [1963 c.114 §2, 1985 c.522 §6]

PARENTAL RESPONSIBILITY FOR DEPENDENT CHILDREN

416.400 Definitions for ORS 416.400 to 416.470. As used in ORS 416.400 to 416.470, unless the context requires otherwise:

(1) "Administrator" means either the Administrator of the Support Enforcement Division, Department of Justice, or the district attorney or the administrator's or the district attorney's authorized representative.

(2) "Court" shall mean any circuit court of this state and any court in another state having jurisdiction to determine the liability of persons for the support of another person.

(3) "Court order" means any judgment, decree or order of any Oregon court which orders payment of a set or determinable amount of support money by a subject parent and does not include an order or decree in any proceeding in which the court did not order support.

(4) "Debt" means the amount of money owed as child support pursuant to an Oregon court order or an order entered by the administrator under ORS 416.400 to 416.470.

(5) "Department" means the Department of Human Resources of this state or its equivalent in any other state from which a written request for establishment or enforcement of a support obligation is received under ORS 416.415.

(6) "Dependent child" means any person under the age of 18 who is not otherwise emancipated, self-supporting, married or a member of the Armed Forces of the United States. It also means any unmarried person between the ages of 18 and 21 who is not otherwise emancipated and who is a student regularly attending a course of vocational or technical training designed to train that person for gainful employment.

(7) "Director" means the Director of the Department of Human Resources or the director's authorized representative.

(8) "Division" means the Support Enforcement Division of the Department of Justice.

(9) "Office" means the office of the Support Enforcement Division or the office of the district attorney.

(10) "Parent" means the natural or adoptive father or mother of a dependent child. "Parent" also means stepparent when such person has an obligation to support a dependent child pursuant to ORS 109.053.

(11) "Public assistance" means any money payments made by the department which are paid to or for the benefit of any dependent child, including but not limited to payments made so that food, shelter, medical care, clothing, transportation or other necessary goods, services or items may be provided, and payments made in compensation for the provision of such necessities. [1979 c.421 §1, 1985 c.567 §1, 1985 c 671 §30, 1987 c 161 §1, 1989 c 519 §3; 1989 c.812 §11]

416.405 Policy. It is the public policy of this state that dependent children shall be maintained, as much as possible, from the resources of both of the parents, thereby relieving or avoiding, at least in part, the burden often borne by single parents or by the general citizenry through public assistance programs. The existing remedies pertaining to family desertion and nonsupport of dependent children are to be augmented by the additional remedies provided in ORS 416.400 to 416.470 which are directed to the real and personal property resources of the responsible parents. These additional remedies are not in lieu of existing law. ORS 416.400 to 416.470 shall be liberally construed and administered to implement the policy stated in this section. [1979 c 421 §2, 1985 c 671 §31]

416.410 Payments to dependent child as debt owed to department; subrogation to right of support action; limitations on recovery right. (1) Except as provided in subsection (3) of this section, any payment of public assistance by the department made to or for the benefit of any dependent child, including any payment made for the benefit of the caretaker of the child, creates an obligation, to be called "state debt," which is due and owing to the department by the parents of the dependent child in an amount equal to the amount of public assistance so paid; provided, however, that:

(a) Where there has been an Oregon court order directed to a parent, the state debt of that parent shall be an amount equal to the amount of public assistance paid up to the full amount of arrearages under the order, and shall thereafter be limited to and accrue at a rate equal to the payments ordered by the court.

(b) Where there has been no court order, the administrator may at any time set or re-

set the amount of state debt accrued and accruing.

(2) If public assistance is or has been paid, the department shall be subrogated to the right of the dependent child or person having legal or physical custody of such child to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the State of Oregon to obtain reimbursement of moneys thus expended. If a court order enters judgment for or requires payment of an amount of support to be paid by a parent, the department shall be subrogated to the debt created by such order, to the extent that public assistance has been paid, and such court order shall be deemed to be in favor of the department.

(3) Subject to the qualification noted in this subsection, a state debt under this section shall not be incurred by nor at any time collected from a parent who is the recipient of general or public assistance as defined in ORS 411.010 for the period during which such parent is eligible for and receiving such assistance. The exclusion from liability provided by this subsection is limited to those parents who receive such assistance on their own behalf, and does not include parents who receive assistance payments solely on behalf of other people.

(4) Creation of or exemption from a state debt under this section shall not modify any rights which the department has or may obtain under common or statutory law, including but not limited to those obtained when support rights have been assigned pursuant to ORS 418.032, 418.042 or 419.513. The department's right to recover and retain unreimbursed public assistance is not modified by creation or an exemption from a state debt under this section. [1979 c 421 §3, 1985 c 671 §32]

416.415 Notice and finding of financial responsibility; contents; hearing; order. (1) At any time after the department is assigned support rights, a public assistance payment is made, an application for enforcement services under ORS 25.080 is made by an individual who is not a recipient of public assistance or a written request for enforcement of a support obligation is received from the state agency of another state responsible for administering the federal child support enforcement program, the administrator may, if there is no court order, issue a notice and finding of financial responsibility. Such notice shall be served upon the parent in the manner prescribed for service of summons in a civil action, or by certified mail, return receipt requested. Notices which involve the establishment of paternity must be served by personal service. All notices may be personally served by the administrator on the premises of the offices of the administrator.

(2) The notice shall include:

(a) A statement of the name of the caretaker relative or agency and the name of the dependent child for whom support is to be paid;

(b) A statement of the monthly support for which the parent shall be responsible;

(c) A statement of the state debt accrued and accruing if public assistance is being paid;

(d) A statement that the parent may be required to provide health care coverage for the dependent child whenever such coverage is available to the parent at a reasonable cost;

(e) A statement that if the parent desires to discuss the amount of support or health care coverage that the parent should be required to pay or provide, the parent may contact the office which sent the notice and request a negotiation conference. If no agreement is reached on the monthly support to be paid, the administrator may issue a new notice and finding of financial responsibility, which may be sent to the parent by regular mail addressed to the parent's last-known address, or if applicable, the parent's attorney's last-known address;

(f) A statement that if the parent objects to all or any part of the notice and finding of financial responsibility, then the parent must send to the office issuing the notice, within 20 days of the date of service, a written response which sets forth any objections and requests a hearing. In those cases where the administrator is seeking to establish paternity, then the alleged parent will have 30 days to respond instead of 20 days;

(g) A statement that if such a timely response is received by the appropriate office, the parent shall have the right to a hearing; and that if no timely written response is received, the administrator may enter an order in accordance with the notice and finding of financial responsibility;

(h) A statement that as soon as the order is entered, the property of the parent is subject to collection action, including but not limited to, wage withholding, garnishment and liens and execution thereon;

(i) A reference to ORS 416.400 to 416.470;

(j) A statement that the parent is responsible for notifying the office of any change of address or employment;

(k) A statement that if the parent has any questions, the parent should telephone or visit the appropriate office or consult an attorney; and

(L) Such other information as the administrator finds appropriate.

(3) If the paternity of the dependent child has not been legally established, and the notice and finding of financial responsibility is to be served on the alleged parent, then it shall also include:

(a) An allegation that the person is the parent of the dependent child;

(b) The name of the child's other parent;

(c) The child's date of birth;

(d) The probable time or period of time during which conception took place; and

(e) A statement that if the alleged parent does not timely send to the office issuing the notice a written response which denies paternity and requests a hearing, then the administrator, without further notice to the alleged parent, may enter an order which declares and establishes the person as the legal parent of the child.

(4) The statement of monthly future support required under paragraph (b) of subsection (2) of this section is to be computed as follows:

(a) If there is sufficient information available concerning the parent's financial and living situation, the formula provided for in ORS 25.275 and 25.280 shall be used; or

(b) If there is insufficient information available to use the formula, an allegation of ability to pay shall be the basis of the statement.

(5) The statement of state debt accrued and accruing in favor of the department required under paragraph (c) of subsection (2) of this section shall be computed pursuant to ORS 416.410 (1) and the principles of equity.

(6) The parent or alleged parent shall have time to request a hearing as outlined in paragraph (f) of subsection (2) of this section. The time limits may be extended by the administrator and are nonjurisdictional.

(7) If a timely written response setting forth objections and requesting a hearing is received by the appropriate office, a hearing shall be held pursuant to ORS 416.427.

(8) If no timely written response and request for hearing is received by the appropriate office, the administrator may enter an order in accordance with the notice, and shall include in that order:

(a) If the paternity of the dependent child is established by the order, a declaration of that fact;

(b) The amount of monthly support to be paid, with directions on the manner of payment;

(c) The amount of state debt owed to the department;

(d) Whether health care coverage is to be provided for the dependent child;

(e) The name of the caretaker relative or agency and the name and birthdate of the dependent child for whom support is to be paid; and

(f) A statement that the property of the parent is subject to collection action, including but not limited to, wage withholding, garnishment and liens and execution thereon.

(9) The parent shall be sent a copy of the order by regular mail addressed to the parent's last-known address, or if applicable, the parent's attorney's last-known address. The order is final, and action by the administrator to enforce and collect upon the order, including arrearages, may be taken from the date of issuance of the order. [1979 c.421 §4; 1985 c.671 §33; 1989 c.566 §1; 1989 c.811 §7]

416.417 When order of support contingent on child residing in state financed or supported residence. An order for support entered pursuant to ORS 416.400 to 416.470 for a child in the care and custody of the Children's Services Division may be made contingent upon the child residing in a state financed or supported residence, shelter or other facility or institution. A certificate signed by the Assistant Director for Children's Services or the Administrator of the Support Enforcement Division shall be sufficient to establish such periods of residence and to satisfy the order for periods of nonresidence. A hearing to contest the period of nonresidency or failure to satisfy shall be held pursuant to ORS 416.435. [1985 c.610 §8; 1989 c.519 §4]

416.420 [1979 c.421 §8; repealed by 1989 c.811 §10]

416.425 Modification of financial responsibility order. (1) At any time after the entry of an order pursuant to ORS 416.400 to 416.470, the obligated parent, the party holding the support rights or the administrator may move for the existing order to be modified. The motion shall be in writing in a form prescribed by the administrator, shall set out the reasons for modification and shall state the telephone number and address of the moving party. The motion shall be served in the same manner as the notice and finding of financial responsibility pursuant to ORS 416.415 (1) upon the obligated parent, the party holding the support rights and the administrator, as appropriate. The parties against whom the motion is made shall have 30 days to resolve the matter by stipulated agreement or to serve the moving party by regular mail with a written response setting forth any objections to the motion and a re-

quest for hearing. The hearing shall be conducted pursuant to ORS 416.427.

(2) When the moving party is other than the administrator and no objections and request for hearing have been served within 30 days, the moving party may submit a true copy of the motion to the hearings officer as provided in ORS 416.427, except the default shall not be construed to be a contested case as defined in ORS chapter 183. Upon proof of service, the hearings officer shall issue an order granting the relief sought.

(3) When the moving party is the administrator and no objections and request for hearing have been served within 30 days, the administrator may enter an order granting the relief sought.

(4) A motion for modification made pursuant to this section shall not stay the administrator from enforcing and collecting upon the existing order unless so ordered by the court in which the order is docketed.

(5) Except as otherwise provided by ORS 416.400 to 416.470, the only support payments which may be modified are the monthly future support payments.

(6) The party requesting modification shall have the burden of showing a change of circumstances and good cause for modification. [1979 c.421 §5, 1985 c.671 §37; 1989 c.566 §2]

416.427 Hearings procedure; enforcement of order; appeal of order. (1) When a party requests a hearing pursuant to ORS 416.415 or 416.425 (1), the contested case provisions of ORS 183.310 to 183.550 apply except when the issue of paternity is to be resolved pursuant to ORS 416.430.

(2) Except as provided in ORS 416.430, hearings shall be conducted by a qualified hearings officer appointed by the Employment Division.

(3) The hearings officer has the power to issue subpoenas for witnesses necessary to develop a full record. The attorney of record for the office may issue subpoenas. Witnesses appearing pursuant to subpoena, other than parties or officers or employees of the administrator, shall receive fees and mileage as prescribed by law for witnesses in ORS 44.415 (2). Obedience to the subpoena may be compelled in the same manner as set out in ORS 183.440 (2).

(4) Upon issuance of an order, action by the administrator to enforce and collect upon the order, including arrearages, may be taken. Such action shall not be stayed or partially stayed pending appeal or by any court unless there is substantial evidence showing that the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(5) An order issued by the hearings officer or the administrator is final. The order shall be in full force and effect while any appeal is pending unless the order is stayed by a court. No stay shall be granted unless there is substantial evidence showing the obligor would be irreparably harmed and that the obligee would not be irreparably harmed.

(6) Appeal of the order of the hearings officer or any default or consent order entered by the administrator pursuant to ORS 416.400 to 416.470 may be taken to the circuit court of the county in which the order has been docketed pursuant to ORS 416.440 for a hearing de novo. The appeal shall be by petition for review filed within 60 days after the order has been docketed pursuant to ORS 416.440. Unless otherwise specifically provided by law, the appeal shall be conducted pursuant to the Oregon Rules of Civil Procedure. [1985 c.671 §35; 1989 c.566 §3, 1989 c.980 §13a]

416.429 Notice of intent to enforce order; content; other remedies. (1) The administrator may issue, if there is a court order, a notice of intent to enforce the support order. Such notice shall be served upon the parent in the manner prescribed for service of summons in a civil action or mailed to the parent at the parent's last-known address by certified mail, return receipt requested.

(2) The notice shall include:

(a) A statement of the name of the caretaker relative or agency and the name of the dependent child for whom support is to be paid;

(b) A statement of the monthly support the parent is required to pay under the support order;

(c) A statement of the arrearages owed under the support order;

(d) A demand that the parent make full payment to the department or the clerk of the court, whichever is appropriate, within 14 days of the receipt or service of the notice;

(e) A statement that if full payment is not received within 14 days, the administrator will enforce the order and that the property of the responsible parent will be subject to administrative collection action, including but not limited to wage withholding, garnishment and liens and execution thereon;

(f) A reference to ORS 416.400 to 416.470;

(g) A statement that the parent is responsible for notifying the office of any change of address or employment;

(h) A statement that if the parent has any questions, the parent should telephone

or visit the appropriate office or consult an attorney; and

(i) Such other information as the administrator finds appropriate.

(3) Action to administratively enforce and collect upon the order may be taken 14 days after service of or receipt or refusal of the notice by the parent.

(4) Nothing in this section shall prevent the administrator from using other available enforcement remedies at any time. [1985 c 671 §36]

416.430 Establishing paternity of child; certification of paternity issue to circuit court. (1) The administrator may establish paternity of a child in the course of a support proceeding under ORS 416.400 to 416.470 when both parents sign sworn statements that paternity has not been legally established and that the male parent is the father of the child. The administrator may enter an order which establishes paternity.

(2) If the parent fails to file a response denying paternity and requesting a hearing within the time period allowed in ORS 416.415 (2), then the administrator, without further notice to the parent, may enter an order, in accordance with ORS 416.415 (8), which declares and establishes the parent as the legal father of the child.

(3) Any order entered pursuant to subsection (1) or (2) of this section establishes legal paternity for all purposes. The Vital Statistics Unit of the Health Division of the Department of Human Resources shall prepare a new birth certificate in the new name, if any, of the child. The original birth certificate shall be sealed and filed and may be opened only upon order of a court of competent jurisdiction.

(4) If paternity is alleged under ORS 416.415 (3) and a written response denying paternity and requesting a hearing is received within the time period allowed in ORS 416.415 (2), or if the administrator determines that there is a valid issue with respect to paternity of the child, the administrator shall certify the matter to the circuit court for a determination based upon the contents of the file and any evidence which may be produced at trial. The proceedings in court shall for all purposes be deemed suits in equity, but either party shall have the right to trial by jury on the issue of paternity. The administrator shall have 120 days from the date that a written response denying paternity is received, the date of birth of the child or the date that the administrator determines that there is a valid issue with respect to paternity of the child to attempt to resolve the issue of paternity by parentage tests conducted pursuant to ORS 109.250 to 109.262 and other discovery as appropriate conducted pursuant to the Oregon Rules of Civil Procedure. Unless otherwise specifically provided by statute, the proceedings shall be conducted pursuant to the Oregon Rules of Civil Procedure. The provisions of ORS 109.145 to 109.230 apply to proceedings certified to court by the administrator pursuant to this section. [1979 c.431 §7; 1983 c 709 §44; 1985 c 671 §38, 1989 c.566 §6]

416.435 Certification of order to circuit or juvenile court; trial. (1) Except as provided in subsection (2) of this section, when a response denying paternity and requesting a hearing is received pursuant to ORS 416.415, or paternity is a valid issue as determined by the administrator under ORS 416.430, the certification to the circuit court shall be to the court in the judicial district where the parent or dependent child resides.

(2) Notwithstanding subsection (1) of this section, if there is an Oregon juvenile court case regarding the dependent child, the matter may be certified to the county which has jurisdiction of the juvenile court case.

(3) The certification shall include true copies of the notice and finding of financial responsibility, the return of service, the denial of paternity and request for hearing and any other relevant papers.

(4) The court shall set the matter for trial and notify the parties of the time and place of trial.

(5) The circuit court shall use the scale and formula provided for in ORS 25.275 and 25.280 in establishing the monthly support and the amount of state debt accrued and accruing. [1979 c 421 §6; 1985 c.671 §39; 1989 c.811 §8]

416.440 Filing and docketing of financial responsibility order; order effective as circuit court decree. (1) The documents required to be filed for purposes of subsection (2) of this section include all the following:

(a) A true copy of any order entered by the administrator or hearings officer pursuant to ORS 416.400 to 416.470.

(b) A true copy of the return of service, if applicable.

(c) A separate statement containing the information required to be contained in a judgment under ORCP 70 A.(2)(a).

(2) The documents described under subsection (1) of this section shall be filed in the office of the clerk of the circuit court in the county in which either the parent or the dependent child resides. Upon receipt of the documents, the clerk shall docket the order in the circuit court judgment docket.

(3) Upon docketing under subsection (2) of this section, the order shall have all the

force, effect and attributes of a docketed order or decree of the circuit court, including but not limited to:

(a) Lien effect;

(b) Ability to be renewed pursuant to ORS 18.360; and

(c) Ability to be enforced by supplementary proceedings, contempt of court proceedings, writs of execution and writs of garnishment.

(4) Notwithstanding subsections (2) and (3) of this section, the docketing of an order entered by the administrator or hearings officer does not preclude any subsequent proceeding or remedy available under ORS 416.400 to 416.470. [1979 c 421 §9; 1983 c 696 §20; 1985 c.671 §39a, 1989 c.566 §4; 1989 c 768 §§10, 13]

416.445 Enforcement of financial responsibility order. (1) In addition to any other remedy provided by law for the enforcement of support, if an order has been entered by the administrator and an arrearage exists on the payments required, the administrator may upon the application of the party holding the support rights, issue an order directing any employer or trustee, including but not limited to a conservator, of the parent to withhold and pay over to the department or the clerk of the court, whichever is appropriate, from the obligor's disposable earnings, as defined in ORS 23.175, the amount stated in the order, subject to the following:

(a) For as long as arrearages are owed, the amount to be withheld shall not be less than 25 percent of the obligor's disposable earnings plus any employer fee which the department may establish or the amount of the monthly support obligation plus $1 plus an employer fee, whichever is greater.

(b) When arrearages are paid in full, the amount to be withheld shall equal the monthly support obligation plus an employer fee.

(c) Notwithstanding paragraph (a) or (b) of this subsection, the amount to be withheld shall not exceed the maximum amount permitted under section 303(b) of the Consumer Credit Protection Act (15 U.S.C. §1673(b)) as of January 3, 1985.

(2)(a) An order entered pursuant to this section shall recite the amount of arrearages as shown on the records of the Department of Human Resources and fees due, and the amount required to be paid as continuing support, if any. A copy of ORS 23.175 shall be appended to the order.

(b) An order entered pursuant to this section may be served on the employer or trustee or the employer or trustee's registered agent, bookkeeper, accountant, person responsible for payroll or local office manager in the manner prescribed for the service of summons in a civil action or may be served by any type of mail which requests a return receipt or other written acknowledgment of receipt and is addressed to one of the persons listed above.

(c) The department shall notify any employer or trustee upon whom such an order has been served whenever all arrearages and fees have been paid in full, and whenever for any other reason the amount required to be withheld and paid over to the department under the order as to future pay periods is to be reduced.

(d) If the parent's support obligation is required to be paid monthly and the parent's pay periods are at more frequent intervals, the employer or trustee may at the request of the parent and with the consent of the division withhold and pay over to the department, after all arrearages and fees have been paid in full, an equal amount at each pay period cumulatively sufficient to pay the monthly support obligation plus an employer fee; otherwise the full amount of the obligation plus any employer fee shall be withheld and paid from the parent's first pay periods each month, consistent with subsection (1) of this section.

(3) An order issued under subsection (1) of this section shall be a continuing order and shall remain in effect and be binding upon any employer or trustee upon whom it is served until further order of the administrator.

(4) An order to withhold issued and served pursuant to this section shall have priority over any execution or garnishment subsequently served upon any employer or trustee of the parent.

(5) No employer or trustee who complies with an order entered pursuant to this section or with the notice provided for in paragraph (c) of subsection (2) of this section shall be liable to the parent or to any other person claiming rights derived from the parent for wrongful withholding.

(6) An employer or trustee described in subsection (1) of this section who wilfully fails or refuses to withhold or pay the amounts as ordered under this section is subject to the penalties provided in ORS 25.050 (7).

(7) No employer shall discharge or refuse to hire an employee because of the entry or service of an order of withholding under this section. Any person who violates this subsection is subject to the penalties provided in ORS 25.050 (8). [1979 c.421 §10; 1985 c.610 §4; 1989 c.726 §8]

416.450 Preventing transfer of assets to evade compliance with order. If at any time subsequent to service, receipt or refusal of a notice pursuant to ORS 416.415, and prior to the entry of an order, the administrator reasonably believes that the parent is about to transfer, encumber, convey, sell, remove, secrete, waste or otherwise dispose of property which could be made subject to collection action to satisfy the state debt, the administrator may certify the matter to the circuit court, accompanied by a legal description of the property in question, in order to obtain a temporary restraining order directing that such property not be transferred, encumbered, conveyed, sold, removed, secreted, wasted or otherwise disposed of pending entry of a support order by the circuit court. The administrator shall, in such cases, file in the case record an affidavit stating the reasons upon which such belief is founded. If the parent furnishes a good and sufficient bond satisfactory to the court, the temporary restraining order shall be vacated. A certified copy of an order entered under this section may be recorded in the same manner as a notice of lis pendens under ORS 93.740. [1979 c.421 §11]

416.455 Establishment and collection of child support; rules. (1) In any individual case, commencing with the payment of public assistance by the department with the application for enforcement services under ORS 25.080 by an individual not receiving public assistance or upon receipt of a written request for enforcement of a support obligation from the state agency of another state responsible for administering the federal child support enforcement program, the administrator may take action under ORS 416.400 to 416.470. The administrator and, as appropriate, the hearings officer, may establish, modify and terminate support orders, require health care coverage for dependent children, establish paternity and collect child support.

(2) The administrator may make such rules and take such action as may be necessary or desirable for carrying out ORS 416.400 to 416.470. [1979 c 421 §12, 1985 c.671 §40]

416.460 Supreme Court to provide for expeditious proceedings. The Supreme Court by administrative order shall provide, where necessary, for expeditious hearings on all matters referred to the circuit court pursuant to ORS 416.435 or 416.450. [1979 c 421 §13]

416.465 Relief from compliance with order. The court may, upon such terms as may be just at any time within one year after notice thereof, relieve a parent from an administrative order taken against that parent because of mistake, inadvertence, surprise or excusable neglect. [1979 c.421 §15]

416.470 Redetermination of amount of future support payments. (1) If public assistance was being provided at the time an order was entered by the administrator pursuant to ORS 416.415, 416.425, 416.427, 416.430 or 416.455, then either the obligated parent or the party holding the right to receive the monthly support payments pursuant to ORS 416.400 to 416.470 may file, if public assistance is no longer being provided, a motion with the administrator requesting that the amount of the monthly future support payments be redetermined without reference to the present monthly support payments. Such motion must be filed within six months after the closing of the public assistance grant. The motion shall be served by the moving party upon the other party in the manner prescribed for the service of summons in a civil action. A true copy of the motion and a copy of the return of service shall be mailed to the administrator.

(2) The administrator shall have 30 days from receipt of the motion to resolve the matter by stipulated agreement between the parties. If the matter is not resolved by stipulated agreement within 30 days of receipt of the motion, the administrator shall set the matter for hearing pursuant to the provisions of ORS 416.427.

(3) The only support payments which may be modified are the monthly future support payments. [1979 c 421 §16; 1985 c.671 §41, 1989 c 566 §5]

LIEN ON RECIPIENT'S CLAIM FOR DAMAGES FOR PERSONAL INJURIES

416.510 Definitions for ORS 416.510 to 416.610. As used in ORS 416.510 to 416.610, unless the context requires otherwise:

(1) "Action" means an action, suit or proceeding.

(2) "Applicant" means an applicant for assistance.

(3) "Assistance" means moneys paid by the Adult and Family Services Division to persons directly and moneys paid by the division to others for the benefit of such persons.

(4) "Claim" means a claim of a recipient of assistance for damages for personal injuries against any person or public body, agency or commission other than the State Accident Insurance Fund Corporation or Workers' Compensation Board.

(5) "Compromise" means a compromise between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(6) "Judgment" means a judgment in any action or proceeding brought by a recipient to enforce the claim of the recipient.

(7) "Recipient" means a recipient of assistance.

(8) "Settlement" means a settlement between a recipient and any person or public body, agency or commission against whom the recipient has a claim.

(9) "Division" means the Adult and Family Services Division. [Formerly 411.552, 1969 c.203 §12]

416.520 Claim for damages for personal injuries not grounds for denying assistance. If any applicant or recipient has a claim for damages for personal injuries, the existence of such claim or any action to enforce such claim shall not be grounds for denying or discontinuing assistance to such applicant or recipient. [Formerly 411.554]

416.530 Notice to division of claim. When any applicant or recipient makes a claim or, without making a claim, begins an action to enforce such claim, the applicant or recipient shall immediately notify the Adult and Family Services Division. If an applicant or recipient has given notice that the applicant or recipient has made a claim, it shall not be necessary for the applicant or recipient to give notice that the applicant or recipient has begun an action to enforce such claim. The notification shall include the name and address of each person or public body, agency or commission against whom claim is made or action is brought. If claim is made or action is brought against a corporation, the address given in such notification shall be that of its principal place of business. If the applicant or recipient be a minor, the parents, legal guardian or foster parents of the minor shall give the notification required by this section. [Formerly 411.556]

416.540 Lien of division. (1) Except as provided in subsection (2) of this section and in ORS 416.590, the Adult and Family Services Division shall have a lien upon the amount of any judgment in favor of a recipient or amount payable to the recipient under a settlement or compromise for all assistance received by such recipient from the date of the injury of the recipient to the date of satisfaction of such judgment or payment under such settlement or compromise.

(2) The lien does not attach to the amount of any judgment, settlement or compromise to the extent of attorney's fees, costs and expenses incurred by a recipient in securing such judgment, settlement or compromise and to the extent of medical, surgical and hospital expenses incurred by such recipient on account of the personal injuries for which the recipient had a claim. [Formerly 411.558]

416.550 Procedure to perfect lien. (1) Upon receiving notice under ORS 416.530, to perfect its lien the Adult and Family Services Division shall:

(a) File a notice of lien, substantially in the form prescribed in ORS 416.560, with the recording officer of the county in which the person against whom claim is made or action is brought resides. If the claim or action be against a corporation, the notice of lien shall be filed with the recording officer of the county within the state in which such corporation has its principal place of business. If the claim or action be against a public body, agency or commission, the notice of lien shall be filed with the recording officer of the county in which the public body, agency or commission has its main offices; and

(b) Prior to the date of satisfaction of the judgment or payment under the settlement or compromise, send a certified copy of the notice of lien by registered mail to each person or public body, agency or commission against whom claim is made or action is brought by the recipient.

(2) Upon the filing of a notice of lien by the division, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the division as lienor in the hospital lien docket provided for in ORS 87.575 and shall make an index thereto in the names of the injured persons and the division. [Formerly 411.560]

416.560 Form of notice of lien. The form of the notice required by subsection (1) of ORS 416.550 shall be substantially as follows:

Notice is hereby given that the Adult and Family Services Division has rendered assistance to _____, a person who was injured on or about the ____ day of _____ in the city of _____ and State of _____, and the Adult and Family Services Division hereby asserts a lien to the extent provided in ORS 416.510 to 416.610, for the amount of such assistance upon any amount due and owing _____ (name of injured person) under a judgment, settlement or compromise from _____ alleged to have caused such injuries and from any other person or public body, agency or commission liable for the injury or obligated to compensate the injured person on account of such injuries.

Adult and Family Services Division
by _____, Assistant Director.

State of Oregon,)
) ss.
County of _____)

I, _____, being first duly sworn on oath say: That I am the Assistant Director for Adult and Family Services; that I have read the foregoing notice of lien and know the contents thereof and believe the same to be true.

_____

Subscribed and sworn to before me this _____ day of _____ in the year of our Lord _____.

_____, Notary Public.

[Formerly 411.562, 1969 c.597 §251]

416.570 Notice to division when judgment rendered or claim settled; statement by division of amount of lien. Immediately after a judgment has been rendered in favor of a recipient or a settlement or compromise has been agreed upon, the person or public body, agency or commission bound by such judgment, settlement or compromise shall notify the Adult and Family Services Division. After such notification the division shall send a statement of the amount of its lien to such person or public body, agency or commission by registered mail. [Formerly 411.564]

416.580 Payment in satisfaction of lien. (1) After a notice of lien is filed in the manner provided in ORS 416.550 (2), any person or public body, agency or commission who makes any payment to the injured recipient, the heirs, personal representatives or assigns of the recipient, or their attorneys, under a judgment, settlement or compromise without previously having paid to the Adult and Family Services Division the amount of its lien, shall be liable to the State of Oregon, for the use and benefit of the division for a period of 180 days after the date of such payment for the amount of such payment to the extent that the lien attached thereto under ORS 416.540.

(2) Any amount paid to the division in satisfaction of its lien shall be distributed by the division to the United States Government and the Public Welfare Account, as their interests may appear.

(3) If the recipient be a minor, no payments to the division in satisfaction of its lien and, except to the extent of the fees, costs and expenses specified in ORS 416.540 (2), no payments to the recipient under a judgment, settlement or compromise shall be made until a hearing has taken place and the court has issued its order under ORS 416.590. [Formerly 411.566, 1969 c.45 §3]

416.590 Procedure where recipient is a minor. (1) If the recipient is a minor, after the date on which a judgment in favor of the recipient is rendered or settlement or compromise is agreed upon, the guardian of the minor or the conservator of the estate of the minor shall petition the court having probate jurisdiction in the county in which the guardian or conservator was appointed to determine the sum that will be needed for the minor's complete physical rehabilitation. If the guardian or the conservator of the minor's estate fail to petition the court, any other interested person or public body, agency or commission may file the petition. The lien of the Adult and Family Services Division provided for in ORS 416.510 to 416.610 shall not attach to the amount of the judgment, settlement or compromise to the extent of the sum needed for the rehabilitation. Among other data, the petition shall contain the name and address of each person or public body, agency or commission liable to the minor under the judgment, settlement or compromise.

(2) The court shall conduct a hearing to determine the sum that will be needed by the minor and at least 10 days prior to the date of the hearing, the clerk of the court shall notify the conservator of the minor's estate, the division and the person who filed the petition, if the person is someone other than the guardian or the conservator of the minor's estate, of the date on which the hearing will be held. At the hearing any interested person as well as witnesses for the minor and for the division may testify on the question before the court. Upon reaching a decision, the court shall issue an order setting forth the decision and the clerk of the court shall enter the order in an appropriate record book. The clerk shall also send a copy of the order to the guardian or the conservator of the minor's estate, the person who filed the petition if the person is someone other than the guardian or the conservator of the minor's estate, the division and to each person or public body, agency or commission liable to the minor under the judgment, settlement or compromise. [Formerly 411.568, 1973 c.823 §131]

416.600 Release of portion of lien in certain cases. When the Adult and Family Services Division determines that a recipient will incur additional medical, surgical or hospital expenses or that additional assistance will have to be given to the recipient after the date of satisfaction of judgment or payment under a settlement or compromise, the division may release any portion of its lien to the extent of such anticipated expenses and assistance. [Formerly 411.570]

416.610 Action against recipient who fails to notify division of claim. The Adult and Family Services Division shall have a cause of action against any recipient who fails to give the notification required by ORS 416.530 for amounts received by the recipient pursuant to a judgment, settlement or compromise to the extent that the division could have had a lien against such amounts had such notice been given. [Formerly 411.572]

MISCELLANEOUS PROVISIONS

416.810 Disposition of reimbursements for public assistance granted. All sums of money recovered by or paid to the division as reimbursement for funds granted for public assistance shall be paid into the State Treasury and credited to the Public Welfare Account and may be expended for public assistance purposes in accordance with ORS 411.060 to 411.111, 411.250 and 411.710 to 411.730; provided, that the United States Government is entitled to a share of any amount so received as its interest may appear, which shall be promptly paid to the United States Government. [Formerly 411 510; 1969 c.45 §4]

416.820 Acceptance and disbursement of gifts for support of certain persons. The Adult and Family Services Division may accept funds, money or other valuable things from relatives, corporations or interested persons or organizations for the care and support of needy persons and may expend the same for the care and support of the individual or individuals for whom the money was paid. Funds accruing thereunder shall be deposited with the State Treasurer in a special account and shall be disbursed in accordance with ORS 411.060 to 411.111, 411.250 and 411.710 to 411.730. [Formerly 411 520, 1971 c 779 §51]

416.830 Acceptance and disbursement of gifts for public assistance. The Adult and Family Services Division may accept from persons, corporations and organizations contributions or gifts in cash or otherwise which shall be disbursed in the same manner as the money appropriated for public assistance purposes; provided, however, that the donor of such gifts may stipulate the manner in which such gifts shall be expended. Moneys received under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account. [Formerly 411 530, 1971 c.779 §52, 1989 c 966 §47]

PENALTIES

416.990 Penalties. Any person who makes, renders, signs or verifies any false or fraudulent statement, or supplies any false or fraudulent information with intent to evade any requirement of ORS 416.020, 416.030 and 416.061 or any lawful requirement of the Adult and Family Services Division thereunder is guilty of a misdemeanor. [Formerly part of 411 990]