



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED
03/04/2026 12:41 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Ability to Pay Order

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/24/2026 12:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

This amendment is needed to pursue cost of care collections for all adults in custody.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The Department of Corrections anticipates that the proposed amendments to its Division 203 rules on cost of care will have a neutral impact on racial equity in the State of Oregon.

State statute, ORS 179.620, imposes an obligation on persons in state institutions to be liable for the "full cost of care" established under ORS 179.701. The Department's administrative rules in Division 203 establish the department's policy and procedures for determining ability to pay for the cost of care, notifying the adult in custody of their obligation, and outlining appeal rights. The proposed amendment to these rules clarifies the procedure for cost of care determinations involving adults in custody with indeterminate sentences. The collection process outlined in Division 203 otherwise remains the same.

For these reasons, the department anticipates that the proposed amendment will have a neutral impact on racial equity in the State of Oregon.

FISCAL AND ECONOMIC IMPACT:

The proposed change no longer excludes "indeterminate" sentences from the requirement of AIC, or the personal estate of AIC, or decedent's estate to cover their cost of the AIC's care.

The amendment expands the number of AICs who could be subject to advance collection and would have an indeterminate impact on both the department and the AIC. The number of AICs who would now potentially need to pay

for their cost of care would be difficult to estimate due to the variable nature of the number of AICs having sufficient funds as well as the uncertainty of when advance collection might take place. For these reasons therefore fiscal impact would be indeterminate for both DOC and to the AICs.

While the amendment theoretically expands the pool of adults in custody (AICs) who could be subject to advance collection (potentially including those with indeterminate sentences), the actual fiscal effect to the department remains likely minimal due to advance collection being discretionary (“may”), not mandatory and the fact that most AICs lack sufficient liquid assets to trigger meaningful collections anyway, so any added potential rarely translates to increased revenue.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules as they will not be impacted by these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The department has determined that use of an advisory committee would not have provided any substantive assistance in drafting these rule revisions because of the technical nature of the revisions.

AMEND: 291-203-0040

RULE SUMMARY: Amends rule to clarify the procedure for cost of care determinations for all adults in custody.

CHANGES TO RULE:

291-203-0040

Ability to Pay Order ¶¶

(1) An ~~inmate~~adult in custody and the personal estate of an ~~inmate~~adult in custody, or a decedent's estate, is liable for the full cost of care as established in ORS 179.701. The Department may collect charges in advance for ~~inmates with determinate sentences~~adults in custody.¶¶

(2) The Department ~~shall~~may make a determination of the ~~inmate~~adult in custody's ability to pay which is set forth in the Ability to Pay Order. The two types of Ability to Pay Orders are: determination of charges and a modification of charges. Each order shall be given one of these titles to identify the type of determination it sets forth, based on the factors and criteria described in the following sections.¶¶

(3) The ~~inmate~~adult in custody's ability to pay will be investigated and an Ability to Pay Order may be issued when the Department is aware of an ~~inmate or the inmate~~adult in custody or the adult in custody's representative with cash assets or liquid reserves in excess of the current biennial cost of care or \$55,000 whichever is greater. This Ability to Pay threshold is applicable only to the determination of who will be reviewed for an Ability to Pay Order. (ORS 179.640(1)(b).¶¶

(4) The determination of the ability to pay may be assessed at intake or any time during the ~~inmate~~adult in custody's sentence, based on notification by sources the Department considers reliable. These sources include, but are not limited to, the District Attorney's Office, the Social Security and Veterans Administration, Oregon Department of Revenue, State of Oregon agencies, or any other sources the Department deems credible.¶¶

(5) When determining an ~~inmate~~adult in custody's ability to pay, in addition to other relevant factors, the Department will consider the ~~inmate~~adult in custody's personal estate, the ~~inmate~~adult in custody's need for funds for personal support after release, and the availability of third-party benefits such as, but not limited to,

Medicare or private insurance.

Statutory/Other Authority: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075

Statutes/Other Implemented: ORS 179.040, 179.610 - 179.770, 423.020, 423.030, 423.075