

Enrolled
House Bill 2406

Sponsored by Representatives GELSER, CAMERON, Senators BATES, MORRISSETTE; Representatives BARNHART, BERGER, BUCKLEY, CANNON, ESQUIVEL, GREENLICK, HUNT, KOTEK, OLSON, ROBLAN, ROSENBAUM, SCHAUFLE, SHIELDS, TOMEI, Senators BROWN, KRUSE, MONNES ANDERSON, MORSE, WINTERS (Pre-session filed.)

CHAPTER

AN ACT

Relating to home care for medically involved children; creating new provisions; amending ORS 414.737, 417.340 and 417.342; and declaring an emergency.

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

SECTION 1. ORS 417.340 is amended to read:

417.340. As used in ORS 417.340 to 417.348 and 417.349:

(1) "Child's home" means the home in which a child resides with the child's biological or adoptive parents or legal guardian. It does not include foster care, proctor care, group home placement or other institutional placement.

[(1)] **(2)** "Family" means the unit that consists of:

- (a) A member with a disability or chronic illness; and
- (b) One or more related persons who reside in the same household.

[(2)] **(3)** "Family member with a disability or chronic illness" means a person who has a disability or chronic illness that:

- (a) Is likely to continue indefinitely;
- (b) Results in substantial functional limitations in one or more of the following areas of major life activity:

- (A) Self-care;
- (B) Receptive and expressive language;
- (C) Learning;
- (D) Mobility;
- (E) Self-direction;
- (F) Capacity for independent living; or
- (G) Economic self-sufficiency; and

(c) Reflects the person's need for special, interdisciplinary or generic care, treatment or other services that are of lifelong duration and must be individually planned and coordinated.

(4) "Medically involved" means having a physical or developmental disability that requires assistance with most activities of daily living and requires health and personal care throughout the day and night.

SECTION 2. ORS 417.342 is amended to read:

417.342. (1) Family support services are based on the belief that all people, regardless of disability, chronic illness or special need, have the right to a permanent and stable familial relationship

in the community. **Children have a developmental need to grow up in a family home environment.** However, nothing in ORS 417.340 to 417.348 or 417.349 is intended [*to keep a family member with a disability or chronic illness in the family home or*] to require any person with a disability or chronic illness to live in the family home.

(2) Family support services can provide the support necessary to enable the family to meet the needs of caring for a family member with a disability or chronic illness at home and, subject to available funds, shall be based on the following principles:

(a) Family support services may use private and volunteer resources, publicly funded services and other flexible dollars to provide a family with the services needed to care for the family member with a disability or chronic illness.

(b) Family support services must be sensitive to the unique needs, strengths and multicultural values of an individual and the family rather than fitting the individual and family into existing services.

(c) Family support services must be built on a relationship of respect and trust that recognizes that families are better able to determine their own needs than have their needs determined by the state or a public agency.

(d) Family support services shall be provided in a manner that develops comprehensive, responsive and flexible support to families in their role as primary caregivers for family members with disabilities or chronic illnesses.

(e) Family support services shall focus on the entire family and be responsive to the needs of the individual and the family.

(f) Family support services may be needed throughout the lifespan of the individual family member living at home who has a disability or chronic illness.

(g) Family support services shall be available to families before they are in crisis.

(h) Family support services may be a service option offered to families, but not imposed on them.

(i) Family support services shall encourage maximum use of existing social networks and natural sources of support and should encourage community integration.

(j) Family support services shall not be confined to a single program or set of services but shall be a philosophy that permeates all programs and services.

SECTION 3. Sections 4 to 6 of this 2007 Act are added to and made a part of ORS 417.340 to 417.348.

SECTION 4. The Medically Involved Home-Care Program is created in the Department of Human Services. The department shall provide all State Plan Medicaid and waived services available under state and federal law that are necessary to enable a medically involved child to be cared for in the child's home. The waived services that must be available include but are not limited to home nursing care, durable medical equipment and respite care.

SECTION 5. (1) The Department of Human Services shall adopt by rule criteria for determining the need for and extent of assistance to be provided to a medically involved child enrolled in the Medically Involved Home-Care Program created by section 4 of this 2007 Act. The criteria shall include, but are not limited to, consideration of:

(a) The medical needs of the child;

(b) The needs of any other family member with a disability or chronic illness in the child's home;

(c) Family and community support available to the child and family caregivers; and

(d) The assistance necessary for the family to care for the child in the child's home, disregarding parental or legal guardian income.

(2) Subject to limits on enrollment required by state or federal law, services offered through the Medically Involved Home-Care Program shall be made available to children meeting the criteria established by the department by rule. Priority for enrollment shall be given to:

(a) A child transferring to the child's home from nursing home placement, foster care placement or other out-of-home placement;

(b) A child living at home who is at risk of nursing home placement, foster care placement or other out-of-home placement;

(c) A child who does not otherwise qualify for medical assistance under ORS chapter 414 and for whom the department pays family support payments pursuant to ORS 430.215 that exceed \$10,000 per year; and

(d) A child who is at risk of losing eligibility for medical assistance under ORS chapter 414 due to a caregiver's employment or an increase in a caregiver's earnings.

(3) As used in sections 4 to 6 of this 2007 Act, "child" means a person under 18 years of age.

SECTION 6. (1) The Department of Human Services shall enroll no fewer than 125 medically involved children in the Medically Involved Home-Care Program beginning January 1, 2008. The department shall enroll an additional 25 medically involved children each calendar year thereafter, to the maximum number allowed by federal law or under the terms of the federal approval.

(2) Moneys appropriated to the department for the Medically Involved Home-Care Program may not be used to supplant moneys appropriated to the department for the Children's Intensive In-Home Services program.

SECTION 7. Within 30 days after the effective date of this 2007 Act, the Director of Human Services shall seek any form of federal approval from the Centers for Medicare and Medicaid Services that is necessary to implement the Medically Involved Home-Care Program. The director shall notify Legislative Counsel upon receipt or denial of necessary federal approval.

SECTION 8. ORS 414.737 is amended to read:

414.737. (1) Except as provided in subsections (2) and (3) of this section, a person who is eligible for or receiving physical health, dental, mental health or chemical dependency services under ORS 414.705 to 414.750 must be enrolled in the prepaid managed care health services organizations to receive the health services for which the person is eligible.

(2) Subsection (1) of this section does not apply to:

(a) A person who is a noncitizen and who is eligible only for labor and delivery services and emergency treatment services;

(b) A person who is an American Indian and Alaskan Native beneficiary; and

(c) A person whom the department may by rule exempt from the mandatory enrollment requirement of subsection (1) of this section, including but not limited to:

(A) A person who is also eligible for Medicare;

(B) A woman in her third trimester of pregnancy at the time of enrollment;

(C) A person under 19 years of age who has been placed in adoptive or foster care out of state;

(D) A person under 18 years of age who is medically fragile and who has special health care needs;

(E) A person receiving services under the Medically Involved Home-Care Program created by section 4 of this 2007 Act; and

[(E)] (F) A person with major medical coverage.

(3) Subsection (1) of this section does not apply to a person who resides in a designated area in which a prepaid managed care health services organization providing physical health, dental, mental health or chemical dependency services is not able to assign an enrollee to a person or entity that is primarily responsible for coordinating the physical health, dental, mental health or chemical dependency services provided to the enrollee.

(4) As used in this section, "American Indian and Alaskan Native beneficiary" means:

(a) A member of a federally recognized Indian tribe, band or group;

(b) An Eskimo or Aleut or other Alaskan Native enrolled by the United States Secretary of the Interior pursuant to the Alaska Native Claims Settlement Act, 43 U.S.C. 1601; or

(c) A person who is considered by the United States Secretary of the Interior to be an Indian for any purpose.

SECTION 9. Sections 3 to 6 of this 2007 Act and the amendments to ORS 414.737, 417.340 and 417.342 by sections 1, 2 and 8 of this 2007 Act become operative upon receipt of the necessary federal approval described in section 7 of this 2007 Act.

SECTION 10. This 2007 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect on its passage.

Passed by House June 22, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate June 25, 2007

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President of Senate

Received by Governor:

.....M.,....., 2007

Approved:

.....M.,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2007

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Secretary of State