

# House Bill 2407

Sponsored by Representatives GELSER, CAMERON, Senators BATES, MORRISETTE; Representatives BARNHART, BERGER, BUCKLEY, CANNON, HUNT, KOTEK, OLSON, ROBLAN, ROSENBAUM, SCHAUFLEER, SHIELDS, TOMEI, Senators BROWN, KRUSE, MORSE, WINTERS (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Expands definition of categorically needy persons eligible for medical assistance to include children with disabilities whose family income is no more than 300 percent of federal poverty guidelines. Authorizes Department of Human Services to impose premiums or cost-sharing for medical assistance provided to specified individuals. Imposes limits on premiums and cost-sharing. Creates Medicaid buy-in program for children with disabilities whose family income exceeds 300 percent of federal poverty guidelines.

## A BILL FOR AN ACT

1  
2 Relating to medical assistance for persons with disabilities under 19 years of age; creating new  
3 provisions; and amending ORS 414.025, 414.042, 414.428, 414.706, 414.707, 414.710 and 414.712.

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

5 **SECTION 1.** ORS 414.025 is amended to read:

6 414.025. As used in this chapter, unless the context or a specially applicable statutory definition  
7 requires otherwise:

8 (1) "Category of aid" means assistance provided by the Oregon Supplemental Income Program,  
9 temporary assistance for needy families granted under ORS 418.035 to 418.125 or federal Supple-  
10 mental Security Income payments.

11 (2) "Categorically needy" means, insofar as funds are available for the category, a person who  
12 is a resident of this state and who:

13 (a) **Is an individual or a member of a group who is required by the Social Security Act**  
14 **and federal regulations adopted under the Act to be included in the state's medical assistance**  
15 **program in order for that program to qualify for federal funds; or**

16 (b) **Is an individual or a member of a group who, subject to the rules of the Department**  
17 **of Human Services, may optionally be included in the state's medical assistance program and**  
18 **who qualifies for federal funds under the Social Security Act and federal regulations adopted**  
19 **under the Act.**

20 (3) **"Categorically needy" may include, consistent with subsection (2) of this section, any**  
21 **person who:**

22 (a) Is receiving a category of aid.

23 (b) Would be eligible for, but is not receiving a category of aid.

24 (c) Is in a medical facility and, if the person left such facility, would be eligible for a category  
25 of aid.

26 (d) Is under the age of 21 years and would be a dependent child under the program for tempo-  
27 rary assistance for needy families except for age and regular attendance in school or in a course  
28 of professional or technical training.

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 (e)(A) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child  
2 who would be a dependent child under the program for temporary assistance for needy families ex-  
3 cept for age and regular attendance in school or in a course of professional or technical training;  
4 or

5 (B) Is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

6 (f) Is under the age of 21 years, is in a foster family home or licensed child-caring agency or  
7 institution under a purchase of care agreement and is one for whom a public agency of this state  
8 is assuming financial responsibility, in whole or in part.

9 (g) Is a spouse of an individual receiving a category of aid and who is living with the recipient  
10 of a category of aid, whose needs and income are taken into account in determining the cash needs  
11 of the recipient of a category of aid, and who is determined by the department [*of Human Services*]  
12 to be essential to the well-being of the recipient of a category of aid.

13 (h) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child re-  
14 ceiving temporary assistance for needy families or is the spouse of such caretaker relative and ful-  
15 fills the requirements of ORS 418.035 (1).

16 (i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency  
17 of this state is assuming financial responsibility, in whole or in part.

18 (j) Is under the age of 21 years and is in an intermediate care facility which includes institutions  
19 for the mentally retarded[; *or*].

20 (k) Is under the age of 22 years and is in a psychiatric hospital.

21 [(k)] (L) Is under the age of 21 years and is in an independent living situation with all or part  
22 of the maintenance cost paid by the department [*of Human Services*].

23 [(L)] (m) Is a member of a family that received temporary assistance for needy families in at  
24 least three of the six months immediately preceding the month in which such family became ineli-  
25 gible for such assistance because of increased hours of or increased income from employment. As  
26 long as the member of the family is employed, such families will continue to be eligible for medical  
27 assistance for a period of at least six calendar months beginning with the month in which such  
28 family became ineligible for assistance because of increased hours of employment or increased  
29 earnings.

30 [(m)] (n) Is an adopted person under 21 years of age for whom a public agency is assuming fi-  
31 nancial responsibility in whole or in part.

32 [(n) *Is an individual or is a member of a group who is required by federal law to be included in*  
33 *the state's medical assistance program in order for that program to qualify for federal funds.*]

34 [(o) *Is an individual or member of a group who, subject to the rules of the department and within*  
35 *available funds, may optionally be included in the state's medical assistance program under federal law*  
36 *and regulations concerning the availability of federal funds for the expenses of that individual or*  
37 *group.*]

38 [(p)] (o) Is a pregnant woman who would be eligible for temporary assistance for needy families  
39 including such aid based on the unemployment of a parent, whether or not the woman is eligible for  
40 cash assistance.

41 [(q)] (p) Would be eligible for temporary assistance for needy families pursuant to 42 U.S.C. 607  
42 based upon the unemployment of a parent, whether or not the state provides cash assistance.

43 [(r)] (q) Except as otherwise provided in this section [*and to the extent of available funds*], is a  
44 pregnant woman or child for whom federal financial participation is available under Title XIX of the  
45 federal Social Security Act.

1 [(s)] (r) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the  
 2 federal Social Security Act or is not a full-time student in a post-secondary education program as  
 3 defined by the department [*of Human Services*] by rule, but whose family income is less than the  
 4 federal poverty [*level*] **guidelines** and whose family investments and savings equal less than the in-  
 5 vestments and savings limit established by the department by rule.

6 (s) **Is under the age of 19 years, would be considered disabled for federal Supplemental**  
 7 **Security Income purposes but whose family income or resources exceed the limits for Sup-**  
 8 **plemental Security Income payments, and whose family income does not exceed 300 percent**  
 9 **of the federal poverty guidelines.**

10 [(3)] (4) "Income" has the meaning given that term in ORS 411.704.

11 [(4)] (5) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable  
 12 instruments as defined in ORS 73.0104 and such similar investments or savings as the department  
 13 [*of Human Services*] may establish by rule that are available to the applicant or recipient to con-  
 14 tribute toward meeting the needs of the applicant or recipient.

15 [(5)] (6) "Medical assistance" means so much of the following medical and remedial care and  
 16 services as may be prescribed by the department [*of Human Services*] according to the standards  
 17 established pursuant to ORS 414.065, including payments made for services provided under an in-  
 18 surance or other contractual arrangement and money paid directly to the recipient for the purchase  
 19 of medical care:

20 (a) Inpatient hospital services, other than (a) services in an institution for mental diseases;

21 (b) Outpatient hospital services;

22 (c) Other laboratory and X-ray services;

23 (d) Skilled nursing facility services, other than services in an institution for mental diseases;

24 (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled  
 25 nursing facility or elsewhere;

26 (f) Medical care, or any other type of remedial care recognized under state law, furnished by  
 27 licensed practitioners within the scope of their practice as defined by state law;

28 (g) Home health care services;

29 (h) Private duty nursing services;

30 (i) Clinic services;

31 (j) Dental services;

32 (k) Physical therapy and related services;

33 (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter  
 34 689;

35 (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases  
 36 of the eye or by an optometrist, whichever the individual may select;

37 (n) Other diagnostic, screening, preventive and rehabilitative services;

38 (o) Inpatient hospital services, skilled nursing facility services and intermediate care facility  
 39 services for individuals 65 years of age or over in an institution for mental diseases;

40 (p) Any other medical care, and any other type of remedial care recognized under state law;

41 (q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their  
 42 physical or mental impairments, and such health care, treatment and other measures to correct or  
 43 ameliorate impairments and chronic conditions discovered thereby;

44 (r) Inpatient hospital services for individuals under 22 years of age in an institution for mental  
 45 diseases; and

1 (s) Hospice services.

2 [(6)] (7) "Medical assistance" includes any care or services for any individual who is a patient  
 3 in a medical institution or any care or services for any individual who has attained 65 years of age  
 4 or is under 22 years of age, and who is a patient in a private or public institution for mental dis-  
 5 eases. "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assist-  
 6 ance" does not include care or services for an inmate in a nonmedical public institution.

7 [(7)] (8) "Medically needy" means a person who is a resident of this state and who is considered  
 8 eligible under federal law for medically needy assistance.

9 [(8)] (9) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes,  
 10 "resources" does not include charitable contributions raised by a community to assist with medical  
 11 expenses.

12 **SECTION 2. Sections 3 and 4 of this 2007 Act are added to and made a part of ORS**  
 13 **chapter 414.**

14 **SECTION 3. (1) The Department of Human Services shall adopt by rule standards for**  
 15 **premiums, copayments or deductibles for persons who are categorically needy as described**  
 16 **in ORS 414.025 (3)(s), subject to the following:**

17 (a) **The department may not require copayments or deductibles if the family income is**  
 18 **at or below 250 percent of the federal poverty guidelines.**

19 (b) **Copayments and deductibles may not exceed five percent of the cost of the treatment**  
 20 **or service and may not be required for:**

21 (A) **Preventive services such as well baby and well child care and immunizations.**

22 (B) **Services furnished to a terminally ill individual who is receiving hospice care.**

23 (C) **Services to a child described in ORS 414.025 (2)(a).**

24 (D) **Services to a child described in ORS 414.025 (3)(f).**

25 (E) **Services to a child described in ORS 414.025 (3)(n).**

26 (F) **Pregnancy-related services.**

27 (G) **Services furnished to a child who is an inpatient in a medical institution and is re-**  
 28 **quired to pay for costs of medical care all of the child's income except for a minimal amount**  
 29 **required for personal needs.**

30 (H) **Emergency services.**

31 (I) **Family planning services and supplies.**

32 (J) **Services to a child receiving medical assistance under ORS 414.534.**

33 (c) **Premiums shall be based upon the average capitation rate paid to prepaid managed**  
 34 **care health services organizations under contracts described in ORS 414.725 for coverage of**  
 35 **categorically needy persons under the age of 19 years. A premium may not be imposed if the**  
 36 **family income is at or below 250 percent of the federal poverty guidelines.**

37 (d) **The combined premiums, copayments and deductibles may not exceed five percent of**  
 38 **the family income, as applied on a quarterly or monthly basis.**

39 (2) **The department shall adopt by rule methods for determining family income under this**  
 40 **section and section 4 of this 2007 Act, including the use of income disregards.**

41 (3) **If an employer of a parent of a child described in ORS 414.025 (3)(s) contributes at**  
 42 **least 50 percent of the total cost of annual premiums for family coverage under a health**  
 43 **benefit plan as defined in ORS 743.730, the parent must apply for, enroll in and pay premiums**  
 44 **for such coverage as a condition of the child being or remaining eligible for medical assist-**  
 45 **ance under this section.**

1 (4) The amount of the premiums paid under subsection (3) of this section shall be de-  
 2 ducted from premiums due the department under subsection (1)(c) of this section and section  
 3 4 of this 2007 Act.

4 (5) The department may not impose a prior period of uninsurance on a person who is  
 5 categorically needy under ORS 414.025 (3)(s) and otherwise meets the requirements of this  
 6 section.

7 (6) The Administrator of the Office for Oregon Health Policy and Research shall be re-  
 8 sponsible for analyzing and reporting on the implementation and operation of this section  
 9 and section 4 of this 2007 Act, including an analysis of the impact of premiums and cost-  
 10 sharing on utilization and access to health care by children.

11 **SECTION 4.** Persons who would be categorically needy as described in ORS 414.025 (3)(s)  
 12 but for family income exceeding 300 percent of the federal poverty guidelines may qualify for  
 13 medical assistance under this chapter upon payment of a premium according to standards  
 14 prescribed by the Department of Human Services by rule in accordance with section 3 of this  
 15 2007 Act.

16 **SECTION 5.** ORS 414.042 is amended to read:

17 414.042. (1) The need for and the amount of medical assistance to be made available for each  
 18 eligible group of recipients of medical assistance shall be determined, in accordance with the rules  
 19 of the Department of Human Services, taking into account:

20 (a) The requirements and needs of the person, the spouse and other dependents;

21 (b) The income, resources and maintenance available to the person but, except as provided in  
 22 ORS 414.025 [(2)(s)] (3)(r), resources shall be disregarded for those eligible by reason of having in-  
 23 come below the federal poverty [level] **guidelines** and who are eligible for medical assistance only  
 24 because of the enactment of chapter 836, Oregon Laws 1989;

25 (c) The responsibility of the spouse and, with respect to a person who is blind or is permanently  
 26 and totally disabled or is under 21 years of age, the responsibility of the parents; and

27 (d) The report of the Health Services Commission as funded by the Legislative Assembly and  
 28 such other programs as the Legislative Assembly may authorize. However, medical assistance, in-  
 29 cluding health services, shall not be provided to persons described in ORS 414.025 [(2)(s)] (3)(r) un-  
 30 less the Legislative Assembly specifically appropriates funds to provide such assistance.

31 (2) Such amounts of income and resources may be disregarded as the department may prescribe  
 32 by rules, except that the department may not require any needy person over 65 years of age, as a  
 33 condition of entering or remaining in a hospital, nursing home or other congregate care facility, to  
 34 sell any real property normally used as such person's home. Any rule of the department inconsistent  
 35 with this section is to that extent invalid. The amounts to be disregarded shall be within the limits  
 36 required or permitted by federal law, rules or orders applicable thereto.

37 (3) In the determination of the amount of medical assistance available to a medically needy  
 38 person, all income and resources available to the person in excess of the amounts prescribed in ORS  
 39 414.038, within limits prescribed by the department, shall be applied first to costs of needed medical  
 40 and remedial care and services not available under the medical assistance program and then to the  
 41 costs of benefits under the medical assistance program.

42 **SECTION 6.** ORS 414.428 is amended to read:

43 414.428. (1) An individual described in ORS 414.025 [(2)(s)] (3)(r) who is eligible for or receiving  
 44 medical assistance and who is an American Indian and Alaskan Native beneficiary shall receive the  
 45 benefit package of health care services described in ORS 414.835 if:

1 (a) The Department of Human Services receives 100 percent federal medical assistance per-  
2 centage for payments made by the department for the health care services provided as part of the  
3 benefit package described in ORS 414.835 that are not included in the benefit package described in  
4 ORS 414.834; or

5 (b) The department receives funding from the Indian tribes for which federal financial partic-  
6 ipation is available.

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

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

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

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

13 **SECTION 7.** ORS 414.706 is amended to read:

14 414.706. The Legislative Assembly shall approve and fund health services to the following per-  
15 sons:

16 (1) Persons who are categorically needy as described in ORS 414.025 [(2)(n) and (o)];

17 (2) Pregnant women with incomes no more than 185 percent of the federal poverty guidelines;

18 (3) Persons under 19 years of age with incomes no more than 200 percent of the federal poverty  
19 guidelines;

20 (4) Persons described in ORS 414.708; and

21 (5) Persons 19 years of age or older with incomes no more than 100 percent of the federal pov-  
22 erty guidelines who do not have federal Medicare coverage.

23 **SECTION 8.** ORS 414.707 is amended to read:

24 414.707. (1) Subject to funds available:

25 (a) Persons who are categorically needy as described in ORS 414.025 [(2)(n) and (o),] and persons  
26 under 19 years of age and pregnant women who are eligible to receive health services under ORS  
27 414.706, are eligible to receive all the health services approved and funded by the Legislative As-  
28 sembly.

29 (b) Persons described in ORS 414.708 are eligible to receive the health services described in ORS  
30 414.705 (1)(c), (f) and (g).

31 (c) Persons 19 years of age and older who are eligible to receive health services under ORS  
32 414.706 are eligible to receive the health services described in ORS 414.705 (1)(b) to (m).

33 (2) Persons who are categorically needy as described in ORS 414.025 [(2)(n) and (o),] and persons  
34 under 19 years of age and pregnant women who are eligible to receive health services under ORS  
35 414.706, must be provided, at a minimum, the health services described in ORS 414.705 (1)(a) to (g).

36 (3) Persons 19 years of age and older who are eligible to receive health services under ORS  
37 414.706 must be provided, at a minimum, health services described in ORS 414.705 (1)(b) to (h).

38 (4) Persons described in ORS 414.708 must be provided, at a minimum, the health services de-  
39 scribed in ORS 414.705 (1)(c).

40 (5) The Department of Human Services shall:

41 (a) Develop at least three benefit packages of provider services to be offered under ORS 414.705  
42 (1)(j); and

43 (b) Define by rule the services to be offered under ORS 414.705 (1)(k).

44 (6) Notwithstanding ORS 414.735, the Legislative Assembly shall adjust health services funded  
45 under ORS 414.705 (1) by increasing or reducing benefit packages or health services and, subject to

1 ORS 414.709, by increasing or reducing the population of eligible persons.

2 **SECTION 9.** ORS 414.710 is amended to read:

3 414.710. The following services are available to persons eligible for services under ORS 414.025,  
4 414.036, 414.042, 414.065 and 414.705 to 414.750 but such services are not subject to ORS 414.720:

5 (1) Nursing facilities and home- and community-based waived services funded through the De-  
6 partment of Human Services;

7 (2) Medical assistance to eligible persons who receive assistance under ORS 411.706 or to chil-  
8 dren described in ORS 414.025 [(2)(f),] **(3)(f)**, (i), (j), (k), **(L)**, **(n)** and **(s)** [and (m)], 418.001 to 418.034,  
9 418.189 to 418.970 and 657A.020 to 657A.460;

10 (3) Institutional, home- and community-based waived services or community mental health  
11 program care for persons with mental retardation, a developmental disability or a severe mental  
12 illness and for the treatment of alcohol and drug dependent persons; and

13 (4) Services to children who are wards of the Department of Human Services by order of the  
14 juvenile court and services to children and families for health care or mental health care through  
15 the department.

16 **SECTION 10.** ORS 414.712 is amended to read:

17 414.712. The Department of Human Services shall provide medical assistance under ORS 414.705  
18 to 414.750 to eligible persons who receive assistance under ORS 411.706 and to children described  
19 in ORS 414.025 [(2)(f),] **(3)(f)**, (i), (j), (k), **(L)**, **(n)** and **(s)** [and (m)], 418.001 to 418.034, 418.189 to  
20 418.970 and 657A.020 to 657A.460 and those mental health and chemical dependency services re-  
21 commended according to standards of medical assistance and according to the schedule of imple-  
22 mentation established by the Legislative Assembly. In providing medical assistance services  
23 described in ORS 414.018 to 414.024, 414.042, 414.107, 414.710, 414.720 and 735.712, the Department  
24 of Human Services shall also provide the following:

25 (1) Ombudsman services for eligible persons who receive assistance under ORS 411.706. With the  
26 concurrence of the Governor, the Director of Human Services shall appoint ombudsmen and may  
27 terminate an ombudsman. Ombudsmen are under the supervision and control of the director. An  
28 ombudsman shall serve as a patient's advocate whenever the patient or a physician or other medical  
29 personnel serving the patient is reasonably concerned about access to, quality of or limitations on  
30 the care being provided by a health care provider. Patients shall be informed of the availability of  
31 an ombudsman. Ombudsmen shall report to the Governor in writing at least once each quarter. A  
32 report shall include a summary of the services that the ombudsman provided during the quarter and  
33 the ombudsman's recommendations for improving ombudsman services and access to or quality of  
34 care provided to eligible persons by health care providers.

35 (2) Case management services in each health care provider organization for those eligible per-  
36 sons who receive assistance under ORS 411.706. Case managers shall be trained in and shall exhibit  
37 skills in communication with and sensitivity to the unique health care needs of people who receive  
38 assistance under ORS 411.706. Case managers shall be reasonably available to assist patients served  
39 by the organization with the coordination of the patient's health care services at the reasonable  
40 request of the patient or a physician or other medical personnel serving the patient. Patients shall  
41 be informed of the availability of case managers.

42 (3) A mechanism, established by rule, for soliciting consumer opinions and concerns regarding  
43 accessibility to and quality of the services of each health care provider.

44 (4) A choice of available medical plans and, within those plans, choice of a primary care pro-  
45 vider.

1           (5) Due process procedures for any individual whose request for medical assistance coverage for  
2 any treatment or service is denied or is not acted upon with reasonable promptness. These proce-  
3 dures shall include an expedited process for cases in which a patient's medical needs require swift  
4 resolution of a dispute.

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