

House Bill 2728

Sponsored by Representative KOTEK

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**.

Creates new category of medical assistance for individuals under 21 years of age who, at age 18, were in foster care. Requires Department of Human Services to make application for implementing state plan amendment by March 31, 2010.

A BILL FOR AN ACT

1
2 Relating to medical assistance for independent foster care adolescents; creating new provisions; and
3 amending ORS 411.708, 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, as amended by section 18a, chapter 861, Oregon Laws 2007, is
6 amended to read:

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

9 (1) "Category of aid" means assistance provided by the Oregon Supplemental Income Program,
10 aid granted under ORS 412.001 to 412.069 and 418.647 or federal Supplemental Security Income
11 payments.

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

14 (a) Is receiving a category of aid.

15 (b) Would be eligible for[,] **a category of aid** but is not receiving a category of aid.

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

18 (d) Is under the age of 21 years and would be a dependent child as defined in ORS 412.001 except
19 for age and regular attendance in school or in a course of professional or technical training.

20 (e)(A) Is a caretaker relative, as defined in ORS 412.001, who cares for a child who would be a
21 dependent child except for age and regular attendance in school or in a course of professional or
22 technical training; or

23 (B) Is the spouse of the caretaker relative.

24 (f) Is under the age of 21 years[,] **and:**

25 (A) Is in a foster family home or licensed child-caring agency or institution under a purchase
26 of care agreement and is one for whom a public agency of this state is assuming financial respon-
27 sibility, in whole or in part; **or**

28 (B) **On the person's 18th birthday was in a foster family home or licensed child-caring**
29 **agency or institution under a purchase of care agreement and, at that time, was a person**
30 **for whom a public agency of this state assumed financial responsibility, in whole or in part.**

31 (g) Is a spouse of an individual receiving a category of aid and who is living with the recipient

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 of a category of aid, whose needs and income are taken into account in determining the cash needs
 2 of the recipient of a category of aid, and who is determined by the Department of Human Services
 3 to be essential to the well-being of the recipient of a category of aid.

4 (h) Is a caretaker relative as defined in ORS 412.001 who cares for a dependent child receiving
 5 aid granted under ORS 412.001 to 412.069 and 418.647 or is the spouse of the caretaker relative.

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

8 (j) Is under the age of 21 years and is in an intermediate care facility which includes institutions
 9 for persons with mental retardation[; *or*].

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

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

13 [(L)] (m) Is a member of a family that received aid in the preceding month under ORS 412.006
 14 or 412.014 and became ineligible for aid due to increased hours of or increased income from em-
 15 ployment. As long as the member of the family is employed, such families will continue to be eligible
 16 for medical assistance for a period of at least six calendar months beginning with the month in
 17 which such family became ineligible for assistance due to increased hours of employment or in-
 18 creased earnings.

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

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

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

27 [(p)] (q) Is a pregnant woman who would be eligible for aid granted under ORS 412.001 to
 28 412.069 and 418.647, whether or not the woman is eligible for cash assistance.

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

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

37 [(s)] (t) Would be eligible for a category of aid but for the receipt of qualified long term care
 38 insurance benefits under a policy or certificate issued on or after January 1, 2008. As used in this
 39 paragraph, "qualified long term care insurance" means a policy or certificate of insurance as defined
 40 in ORS 743.652 (6).

41 (3) "Income" has the meaning given that term in ORS 411.704.

42 (4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable in-
 43 struments as defined in ORS 73.0104 and such similar investments or savings as the Department of
 44 Human Services may establish by rule that are available to the applicant or recipient to contribute
 45 toward meeting the needs of the applicant or recipient.

1 (5) "Medical assistance" means so much of the following medical and remedial care and services
 2 as may be prescribed by the Department of Human Services according to the standards established
 3 pursuant to ORS 414.065, including payments made for services provided under an insurance or
 4 other contractual arrangement and money paid directly to the recipient for the purchase of medical
 5 care:

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

7 (b) Outpatient hospital services;

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

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

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

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

14 (g) Home health care services;

15 (h) Private duty nursing services;

16 (i) Clinic services;

17 (j) Dental services;

18 (k) Physical therapy and related services;

19 (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter
 20 689;

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

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

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

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

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

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

32 (s) Hospice services.

33 (6) "Medical assistance" includes any care or services for any individual who is a patient in a
 34 medical institution or any care or services for any individual who has attained 65 years of age or
 35 is under 22 years of age, and who is a patient in a private or public institution for mental diseases.
 36 "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance"
 37 does not include care or services for an inmate in a nonmedical public institution.

38 (7) "Medically needy" means a person who is a resident of this state and who is considered el-
 39 igible under federal law for medically needy assistance.

40 (8) "Resources" has the meaning given that term in ORS 411.704. For eligibility purposes, "re-
 41 sources" does not include charitable contributions raised by a community to assist with medical
 42 expenses.

43 **SECTION 2. No later than March 31, 2010, the Department of Human Services shall**
 44 **submit an application to the regional office of the Centers for Medicare and Medicaid Ser-**
 45 **vices to amend the state Medicaid plan in order to implement section 1 of this 2009 Act.**

SECTION 3. ORS 411.708 is amended to read:

411.708. (1) The amount of any assistance paid under ORS 411.706 is a claim against the property or interest in the property belonging to and a part of the estate of any deceased recipient. If the deceased recipient has no estate, the estate of the surviving spouse of the deceased recipient, if any, shall be charged for assistance granted under ORS 411.706 to the deceased recipient or the surviving spouse. There shall be no adjustment or recovery of assistance correctly paid on behalf of any deceased recipient under ORS 411.706 except after the death of the surviving spouse of the deceased recipient, if any, and only at a time when the deceased recipient has no surviving child who is under 21 years of age or who is blind or has a disability. Transfers of real or personal property by recipients of assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(2) Except when there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or has a disability, the amount of any assistance paid under ORS 411.706 is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) A claim under this section shall exclude benefits paid to or on behalf of a beneficiary under a policy of qualified long term care insurance, as defined in ORS 414.025 [(2)(s)] (2)(t).

(4) Nothing in this section authorizes the recovery of the amount of any assistance from the estate or surviving spouse of a recipient to the extent that the need for assistance resulted from a crime committed against the recipient.

SECTION 4. ORS 414.042 is amended to read:

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

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

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

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

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

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

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

SECTION 5. ORS 414.428 is amended to read:

414.428. (1) An individual described in ORS 414.025 [(2)(r)] **(2)(s)** who is eligible for or receiving medical assistance and who is an American Indian and Alaskan Native beneficiary shall receive the benefit package of health care services described in ORS [414.835] **414.707 (1)(a)** if:

(a) The Department of Human Services receives 100 percent federal medical assistance percentage for payments made by the department for the health care services provided as part of the benefit package described in ORS [414.835] **414.707 (1)(a)** that are not included in the benefit package described in ORS [414.834] **414.707 (3)**; or

(b) The department receives funding from the Indian tribes for which federal financial participation is available.

(2) 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 6. ORS 414.706 is amended to read:

414.706. The Legislative Assembly shall approve and fund health services to the following persons:

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

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

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

(4) Persons described in ORS 414.708; and

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

SECTION 7. ORS 414.707 is amended to read:

414.707. (1) Subject to funds available:

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

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

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

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

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

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

1 (5) The Department of Human Services shall:

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

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

5 (6) Notwithstanding ORS 414.735, the Legislative Assembly shall adjust health services funded
6 under ORS 414.705 (1) by increasing or reducing benefit packages or health services and, subject to
7 ORS 414.709, by increasing or reducing the population of eligible persons.

8 **SECTION 8.** ORS 414.710 is amended to read:

9 414.710. The following services are available to persons eligible for services under ORS 414.025,
10 414.036, 414.042, 414.065 and 414.705 to 414.750 but such services are not subject to ORS 414.720:

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

13 (2) Medical assistance to eligible persons who receive assistance under ORS 411.706 or to chil-
14 dren described in ORS 414.025 (2)(f), (i), (j), (k) and [(m)] n, 418.001 to 418.034, 418.189 to 418.970 and
15 657A.020 to 657A.460;

16 (3) Institutional, home- and community-based waived services or community mental health
17 program care for persons with mental retardation, developmental disabilities or severe mental illness
18 and for the treatment of alcohol and drug dependent persons; and

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

22 **SECTION 9.** ORS 414.712 is amended to read:

23 414.712. The Department of Human Services shall provide medical assistance under ORS 414.705
24 to 414.750 to eligible persons who receive assistance under ORS 411.706 and to children described
25 in ORS 414.025 (2)(f), (i), (j), (k) and [(m)] (n), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to
26 657A.460 and those mental health and chemical dependency services recommended according to
27 standards of medical assistance and according to the schedule of implementation established by the
28 Legislative Assembly. In providing medical assistance services described in ORS 414.018 to 414.024,
29 414.042, 414.107, 414.710, 414.720 and 735.712, the Department of Human Services shall also provide
30 the following:

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

41 (2) Case management services in each health care provider organization for those eligible per-
42 sons who receive assistance under ORS 411.706. Case managers shall be trained in and shall exhibit
43 skills in communication with and sensitivity to the unique health care needs of people who receive
44 assistance under ORS 411.706. Case managers shall be reasonably available to assist patients served
45 by the organization with the coordination of the patient's health care services at the reasonable

1 request of the patient or a physician or other medical personnel serving the patient. Patients shall
2 be informed of the availability of case managers.

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

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

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

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