

House Bill 2751

Sponsored by Representative CLEM (at the request of Neal Feldman) (Pre-session 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**.

Requires Oregon Health Authority to prescribe eligibility requirement for Oregon Supplemental Income Program medical assistance that excludes from income considered available for costs of care of recipient of Social Security disability benefits an amount that is no less than federal poverty guidelines.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to medical assistance; creating new provisions; amending ORS 87.533, 409.161, 411.404,
3 411.431, 411.432, 414.025, 414.231, 414.538 and 414.720; and declaring an emergency.

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

5 **SECTION 1.** ORS 411.404, as amended by section 2 of this 2011 Act, is amended to read:

6 411.404. (1) The Department of Human Services shall determine eligibility for medical assistance
7 according to criteria prescribed by rule by the Oregon Health Authority that take into account:

8 (a) The requirements and needs of the applicant and of the spouse and dependents of the appli-
9 cant;

10 (b) The income, resources and maintenance available to the applicant; and

11 (c) The responsibility of the spouse of the applicant and, with respect to an applicant who is
12 blind or is permanently and totally disabled or is under 21 years of age, the responsibility of the
13 parents.

14 (2) Rules adopted by the authority under subsection (1) of this section:

15 (a) Shall disregard resources for those who are eligible for medical assistance only by reason
16 of ORS 414.025 (2)(s), except for the resources described in ORS 414.025 (2)(s).

17 **(b) Shall exclude, from the income considered available for the costs of care of a recipient
18 of federal Social Security disability benefits who is applying for medical assistance under ORS
19 411.706 (2), an amount that is no less than the federal poverty guidelines.**

20 *[(b)] (c) Except as provided in this section,* may disregard income and resources within the
21 limits required or permitted by federal law, regulations or orders.

22 *[(c)] (d)* May not require any needy person over 65 years of age, as a condition of entering or
23 remaining in a hospital, nursing home or other congregate care facility, to sell any real property
24 normally used as such person's home.

25 **SECTION 2.** ORS 411.404 is amended to read:

26 411.404. (1) The Department of Human Services shall determine eligibility for medical assistance
27 according to criteria prescribed by rule[, *taking into account*] **by the Oregon Health Authority**
28 **that take into account:**

29 (a) The requirements and needs of the applicant and of the spouse and dependents of the appli-
30 cant;

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 (b) The income, resources and maintenance available to the applicant; and

2 (c) The responsibility of the spouse of the applicant and, with respect to an applicant who is
3 blind or is permanently and totally disabled or is under 21 years of age, the responsibility of the
4 parents.

5 (2) Rules adopted by the [department] **authority** under subsection (1) of this section:

6 (a) Shall disregard resources for those who are eligible for medical assistance only by reason
7 of ORS 414.025 (2)(s), except for the resources described in ORS 414.025 (2)(s).

8 (b) May disregard income and resources within the limits required or permitted by federal law,
9 regulations or orders.

10 [(3)] (c) [The department] May not require any needy person over 65 years of age, as a condition
11 of entering or remaining in a hospital, nursing home or other congregate care facility, to sell any
12 real property normally used as such person's home. [Any rule of the department inconsistent with this
13 section is to that extent invalid.]

14 **SECTION 3.** ORS 87.533 is amended to read:

15 87.533. A lien created by ORS 87.503 shall not be enforced so as to interfere with:

16 (1) Any assets or income allowed to the community spouse or dependent family member under
17 42 U.S.C. 1396r-5(d) or any rule of the Department of Human Services **or the Oregon Health Au-**
18 **thority.**

19 (2) The priority given to the recovery of medical assistance payments under ORS 115.125 (1)(i)
20 or (j) or other medical assistance claims under ORS 416.350 (2) and (3).

21 (3) The eligibility of a person for medical assistance or entitlement to Medicaid assistance pay-
22 ments.

23 **SECTION 4.** ORS 409.161 is amended to read:

24 409.161. (1) The Department of Human Services shall report to all relevant committees of the
25 Legislative Assembly at each regular session with respect to department employees in the classified
26 service who directly provide:

27 (a) Child welfare services under ORS 418.005;

28 (b) Temporary assistance for needy families under ORS 412.006;

29 (c) Nutritional assistance under ORS 411.816;

30 (d) Medical assistance **eligibility determinations** under ORS 411.404;

31 (e) Services to elderly persons and to persons with disabilities under ORS 410.070 and 412.014;
32 and

33 (f) Vocational rehabilitation services under ORS 344.530.

34 (2) The report of the department under this section shall address each of the following:

35 (a) Workload increases or decreases over the current biennium.

36 (b) Workload efficiencies achieved during the current biennium.

37 (c) Notwithstanding ORS 291.371 (5), additional staffing needs or decreases in staffing needs that
38 exist for the current biennium or that are projected for the next biennium, including a statement
39 of the number of full-time equivalent positions that are vacant on the date the report is prepared
40 or that can be double filled in order to meet any needs for additional staffing.

41 (3) As used in this section, "double filled" means that the department is using one budgeted
42 full-time equivalent position to employ more than one employee.

43 **SECTION 5.** ORS 411.431 is amended to read:

44 411.431. (1) The [Department of Human Services shall] **Oregon Health Authority may** adopt
45 rules:

1 (a) Requiring recipients of medical assistance who are not otherwise exempt to pay monthly
 2 premium payments while receiving medical assistance; and

3 (b) Granting recipients of medical assistance under ORS 414.706 (5) who are required to pay
 4 monthly premium payments a grace period of up to six months for payment of overdue premiums.

5 (2) The Department of **Human Services** may not disenroll a recipient during the grace period
 6 described in subsection (1)(b) of this section.

7 (3) A recipient or former recipient of medical assistance under ORS 414.706 (5) who did not pay
 8 one or more monthly premium payments while receiving medical assistance is not eligible to reapply
 9 for medical assistance under ORS 414.706 (5) until the recipient or former recipient has paid the
 10 amount of overdue premiums in full.

11 **SECTION 6.** ORS 411.432 is amended to read:

12 411.432. (1) As used in this section, “federal poverty guidelines” means the most recent poverty
 13 guidelines as published annually in the Federal Register by the United States Department of Health
 14 and Human Services.

15 (2) Notwithstanding ORS 414.065, the [*Department of Human Services*] **Oregon Health Author-**
 16 **ity** shall adopt rules exempting recipients of medical assistance under ORS 414.706 (5) whose family
 17 income is no more than 10 percent of the federal poverty guidelines from the requirement to pay
 18 monthly premium payments.

19 **SECTION 7.** ORS 414.025, as amended by section 1, chapter 73, Oregon Laws 2010, is amended
 20 to read:

21 414.025. As used in this chapter, unless the context or a specially applicable statutory definition
 22 requires otherwise:

23 (1) “Category of aid” means assistance provided by the Oregon Supplemental Income Program,
 24 aid granted under ORS 412.001 to 412.069 and 418.647 or federal Supplemental Security Income
 25 payments.

26 (2) “Categorically needy” means, insofar as funds are available for the category, a person who
 27 is a resident of this state and who:

28 (a) Is receiving a category of aid.

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

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

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

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

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

38 (f) Is under the age of 21 years and:

39 (A) Is in a foster family home or licensed child-caring agency or institution and is one for whom
 40 a public agency of this state is assuming financial responsibility, in whole or in part; or

41 (B) Is 18 years of age or older, is one for whom federal financial participation is available under
 42 Title XIX or XXI of the federal Social Security Act and who met the criteria in subparagraph (A)
 43 of this paragraph immediately prior to the person’s 18th birthday.

44 (g) Is a spouse of an individual receiving a category of aid and who is living with the recipient
 45 of a category of aid, whose needs and income are taken into account in determining the cash needs

1 of the recipient of a category of aid, and who is determined by the Department of Human Services
 2 to be essential to the well-being of the recipient of a category of aid.

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

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

7 (j) Is under the age of 21 years and is in an intermediate care facility which includes institutions
 8 for persons with mental retardation.

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

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

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

18 (n) Is an adopted person under 21 years of age for whom a public agency is assuming financial
 19 responsibility in whole or in part.

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

22 (p) Is an individual or member of a group who, subject to the rules of the Department **of Human**
 23 **Services or the Oregon Health Authority**, may optionally be included in the state's medical as-
 24 sistance program under federal law and regulations concerning the availability of federal funds for
 25 the expenses of that individual or group.

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

28 (r) Except as otherwise provided in this section, is a pregnant woman or child for whom federal
 29 financial participation is available under Title XIX or XXI of the federal Social Security Act.

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

35 (t) Would be eligible for a category of aid but for the receipt of qualified long term care insur-
 36 ance benefits under a policy or certificate issued on or after January 1, 2008. As used in this para-
 37 graph, "qualified long term care insurance" means a policy or certificate of insurance as defined in
 38 ORS 743.652 (6).

39 (u) Is eligible for the Health Care for All Oregon Children program established in ORS 414.231.

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

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

45 (5) "Medical assistance" means so much of the following medical and remedial care and services

1 as may be prescribed by the Oregon Health Authority according to the standards established pur-
 2 suant to ORS 413.032, including payments made for services provided under an insurance or other
 3 contractual arrangement and money paid directly to the recipient for the purchase of medical care:

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

5 (b) Outpatient hospital services;

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

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

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

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

12 (g) Home health care services;

13 (h) Private duty nursing services;

14 (i) Clinic services;

15 (j) Dental services;

16 (k) Physical therapy and related services;

17 (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter
 18 689;

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

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

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

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

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

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

30 (s) Hospice services.

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

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

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

41 **SECTION 8.** ORS 414.231 is amended to read:

42 414.231. (1) As used in this section:

43 (a) "Child" means a person under 19 years of age.

44 (b) "Health benefit plan" has the meaning given that term in ORS 414.841.

45 (2) The Health Care for All Oregon Children program is established to make affordable, acces-

1 sible health care available to all of Oregon’s children. The program is composed of:

2 (a) Medical assistance funded in whole or in part by Title XIX of the Social Security Act, by the
 3 State Children’s Health Insurance Program under Title XXI of the Social Security Act and by mon-
 4 eys appropriated or allocated for that purpose by the Legislative Assembly; and

5 (b) A private health option administered by the Office of Private Health Partnerships under ORS
 6 414.826.

7 (3) A child is eligible for the program if the child is lawfully present in this state and the income
 8 of the child’s family is at or below 300 percent of the federal poverty guidelines. There is no asset
 9 limit to qualify for the program.

10 (4)(a) A child receiving medical assistance under the program is continuously eligible for a
 11 minimum period of 12 months.

12 (b) The Department of Human Services shall reenroll a child for successive 12-month periods of
 13 enrollment as long as the child is eligible for medical assistance on the date of reenrollment.

14 (c) The department may not require a new application as a condition of reenrollment under
 15 paragraph (b) of this subsection and must determine the person’s eligibility for medical assistance
 16 using information and sources available to the department or documentation readily available to the
 17 person.

18 (5) Except for medical assistance funded by Title XIX of the Social Security Act, the
 19 [department] **Oregon Health Authority** may prescribe by rule a period of uninsurance prior to en-
 20 rollment in the program.

21 **SECTION 9.** ORS 414.538 is amended to read:

22 414.538. (1) The [Department of Human Services] **Oregon Health Authority** may not impose in-
 23 come or resource limitations or a prior period of uninsurance on a woman who otherwise qualifies
 24 for medical assistance under ORS 414.534 or 414.536.

25 (2) [In determining eligibility for medical assistance under ORS 414.534 or 414.536, the
 26 department] **The authority** shall give priority to low-income women **in prescribing eligibility for**
 27 **medical assistance under ORS 414.534 or 414.536.**

28 **SECTION 10.** ORS 414.720 is amended to read:

29 414.720. (1) The Health Services Commission shall conduct public hearings prior to making the
 30 report described in subsection (3) of this section. The commission shall solicit testimony and infor-
 31 mation from advocates representing seniors, persons with disabilities, mental health services con-
 32 sumers and low-income Oregonians, representatives of commercial carriers, representatives of small
 33 and large Oregon employers and providers of health care, including but not limited to physicians
 34 licensed to practice medicine, dentists, oral surgeons, chiropractors, naturopaths, hospitals, clinics,
 35 pharmacists, nurses and allied health professionals.

36 (2) The commission shall actively solicit public involvement in a community meeting process to
 37 build a consensus on the values to be used to guide health resource allocation decisions.

38 (3) The commission shall report to the Governor a list of health services ranked by priority,
 39 from the most important to the least important, representing the comparative benefits of each ser-
 40 vice to the entire population to be served. The list submitted by the commission pursuant to this
 41 subsection is not subject to alteration by any other state agency. The recommendation may include
 42 practice guidelines reviewed and adopted by the commission pursuant to subsection (4) of this sec-
 43 tion.

44 (4) In order to encourage effective and efficient medical evaluation and treatment, the commis-
 45 sion:

1 (a) May include clinical practice guidelines in its prioritized list of services. The commission
2 shall actively solicit testimony and information from the medical community and the public to build
3 a consensus on clinical practice guidelines developed by the commission.

4 (b) Shall consider both the clinical effectiveness and cost-effectiveness of health services in de-
5 termining their relative importance using peer-reviewed medical literature as defined in ORS
6 743A.060.

7 (5) The commission shall make its report by July 1 of the year preceding each regular session
8 of the Legislative Assembly and shall submit a copy of its report to the Governor, the Speaker of
9 the House of Representatives and the President of the Senate.

10 (6) The commission may alter the list during interim only under the following conditions:

11 (a) Technical changes due to errors and omissions; and

12 (b) Changes due to advancements in medical technology or new data regarding health outcomes.

13 (7) If a service is deleted or added and no new funding is required, the commission shall report
14 to the Speaker of the House of Representatives and the President of the Senate. However, if a ser-
15 vice to be added requires increased funding to avoid discontinuing another service, the commission
16 must report to the Emergency Board to request the funding.

17 (8) The report listing services to be provided pursuant to ORS [411.404,] 414.065, 414.705 to
18 414.725 and 414.735 to 414.750 shall remain in effect from October 1 of the odd-numbered year
19 through September 30 of the next odd-numbered year.

20 **SECTION 11. The amendments to ORS 411.404 by section 1 of this 2011 Act become op-**
21 **erative January 1, 2012.**

22 **SECTION 12. This 2011 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
24 **on its passage.**

25