

OREGON LAW CENTER

921 SW Washington Street, Suite 516, Portland Oregon 97205
Testimony of John Mullin, Legislative Advocate (503) 867-6236
HB 2859

House Health Committee March 8, 2013

Mister Chair, members of the Committee, my name is John Mullin, and I am a Legislative Advocate for the Oregon Law Center (OLC.) I am pleased to have this opportunity to comment on HB 2859.

In my work for OLC, and also in my role with the Human Services Coalition of Oregon, I have testified on a number of occasions about the connection between the Oregon Health Authority (OHA) and the Department of Human Services (DHS).

In committee this session, you heard from Mike Bonetto of the Governor's Office, and Bruce Goldberg of OHA present on the changes in health transformation going back to the 2007 session. In 2009, HB 2009 made a number of important changes and helped to set the blueprint for Oregon's transformation. One major change was the creation of OHA within DHS, with the directive to ultimately split into the two agencies we have today. While the separation has been accomplished, the division of duties, the responsibilities of each, and the collaboration between the organizations remains a "work in progress."

HB 2100 in the 2011 session provided for some necessary statutory cleanup in order to properly assign functions. And then on the first day of session you heard, and then passed out, HB 2089, which contained additional clarification.

And now that brings us to the bill before you today, HB 2859. We have been working with OHA on amendments.

First of all, we are interested to ensure proper language specifying OHA and DHS for notice and hearing requirements. The Oregon Law Center's proposed solution is to add language amending ORS 411.095 (see attached). And in addition, there are the other sections we would like to amend, and the specific language is in the second attachment in this testimony. Following are the sections and overview of the concepts:

- **Section 25** –authorized representative language to ensure that clients have choice regarding their representation by adding inclusive language. We believe this will satisfy federal regulations re: Medicaid hearings under 42 CFR 431 206 (b)(3);
- **Section 32** – our concerns are taken care of by amending ORS 411.095. And I very much appreciate the agreement with OHA about keeping General Assistance in statute, amendments, which I haven't seen). *To be clear, I want to be sure that HB 2859 does not eliminate General Assistance;*
- **Section 39** – OSIP Medical – we want to ensure that long term care is included. While OHA does not believe this is necessary, we want to be sure to be inclusive;
- **Section 54** – pertaining to recipient disqualifications - we don't believe this is allowable under federal law – see 42 CFR 455.15 and 16;
- **Section 94** – changing to 138% of FPL to be consistent with the ACA. I testified on SB 203 the first day of the session, relating to the Oregon Telephone Assistance Program (OTAP). The Oregon Public Utility Commission (PUC) must come into compliance with Federal Communication Commission regulations regarding eligibility for OTAP. With Medicaid expansion moving to 138% of FPL, we request that simple change in Section 94. I believe when the PUC does rulemaking for SB 203, that Medicaid eligibility will be used as one of the income eligibility factors.

Finally, I would only note that this “work in progress” will continue. We have identified some improvements we feel are important to further the work of the departments, including a more focused approach to grievances, the extension of consumer protection in fee-for-service, language access, simplified and coordinated application processes and more. However, we are not requesting amendments to this bill for those purposes. We will, however, continue to work with OHA, DHS, and Cover Oregon toward those ends.

Thank you for your consideration.

77th OREGON LEGISLATIVE ASSEMBLY--2013 Regular Session

NOTE: Matter within { + braces and plus signs + } in an amended section is new. Matter within { - braces and minus signs - } is existing law to be omitted. New sections are within { + braces and plus signs + } .

LC 174

House Bill 2859

Sponsored by COMMITTEE ON HEALTH CARE

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.

Removes medical assistance from definition of 'public assistance' and conforms applicable statutes to reflect definitional change. Requires grievance procedure for medical assistance applicants and recipients that parallels procedure for public assistance applicants and recipients. Establishes requirement for Oregon Health Authority to allocate funds for each category of medical assistance that parallels Department of Human Services requirement to allocate public assistance funds. Allows both authority and department to determine eligibility for medical assistance. Aligns state law with changes to federal Medicaid and Children's Health Insurance Program laws. Specifies medical assistance application procedures for authority, department and Oregon Health Insurance Exchange Corporation. Repeals obsolete provisions.

Becomes operative January 1, 2014.

Declares emergency, effective on passage.

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SECTION 25. ORS 183.458 is amended to read:

183.458. (1) Notwithstanding any other provision of law, in any contested case hearing before a state agency involving child support, public assistance as defined in ORS 411.010

~~(+ + +~~
~~medical assistance as defined in ORS 414.025 +)~~ or the right to be free from potentially unusual or hazardous treatment procedures under ORS 426.385 (3), a party may be represented by any of the following persons:

(a) An authorized representative who is an employee of a

nonprofit legal services program that receives funding pursuant to ORS 9.572. The authorized representative must be supervised by an attorney also employed by a legal services program.

(b) An authorized representative who is an employee of the system described in ORS 192.517 (1). The authorized representative must be supervised by an attorney also employed by the system.

(c) As used in this paragraph, "authorized representative" may be an individual who is licensed to practice law in another state but is not licensed in Oregon.

(2) In any contested case hearing before a state agency involving child support, a party may be represented by a law student who is:

(a) Handling the child support matter as part of a law school clinical program in which the student is enrolled; and

(b) Supervised by an attorney employed by the program.

(3) { + Notwithstanding any other provision of law, in any contested case hearing before a state agency involving medical assistance as defined in ORS 414.025, a party who is an applicant or recipient of medical assistance may be represented by legal counsel, a relative, a friend, or other spokesman. + }

(3) A person authorized to represent a party under this section may present evidence in the proceeding, examine and cross-examine witnesses and present factual and legal arguments in the proceeding.

SECTION 32. ORS 411.010 is amended to read:

411.010. As used in this chapter and in other statutes providing for assistance and services to needy persons, unless the context or a specially applicable statutory definition requires otherwise { - : - } { + , + }

{ - (1) 'General assistance' means assistance or service of any character provided to needy persons not otherwise provided for to the extent of such need and the availability of funds, including medical, surgical and hospital or other remedial care. - }

{ - (2) - } 'public assistance' means the following types of assistance:

{ - (a) - } { + (1) + } Temporary assistance for needy families granted under ORS 412.001 to 412.069 and 418.647;

{ - (b) - } { + (2) + } General assistance granted under ORS 411.710 to 411.730;

{ - (c) Medical assistance; - }

{ - (d) - } { + (3) + } Assistance provided by the Oregon Supplemental Income Program;

{ - (e) - } { + (4) + } General assistance other than general assistance granted under ORS 411.710 to 411.730; and

{ - (f) - } { + (5) + } Any other functions, except the administration of medical assistance by the Oregon Health Authority, that may be delegated to the Director of Human Services by or in accordance with federal and state laws.

assistance programs { + , medical assistance programs + } and functions administered by the department.

Comment [jm1]: With the -2 relating to ORS 411.095, this takes care of our concern about notice and hearings

Comment [jm2]: I appreciate your help with ensuring that GA is not eliminated and remains in statute

SECTION 39. ORS 411.141 is amended to read:

411.141. The Department of Human Services may, subject to the allotment system provided for in ORS 291.234 to 291.260, expend such sums as are required to be expended in this state to provide public assistance { - excluding medical assistance - } . Expenditures for public assistance include, but are not limited to, expenditures for the following purposes:

{ - (1) General assistance to needy persons and their dependents. - }

{ - (2) - } { + (1) + } Temporary assistance for needy families granted under ORS 412.001 to 412.069 and 418.647, including services to relatives with whom dependent children applying for or receiving temporary assistance for needy families are living in order to help such relatives attain the maximum self-support or self-care consistent with the maintenance of continuing parental care and protection or in order to maintain and strengthen family life for such children.

{ - (3) - } { + (2) + } Assistance provided by the Oregon

Supplemental Income and Oregon Supplemental Income Medical Program.

{ - (4) - } { + (3) + } General assistance granted under ORS 411.710 to 411.730.

{ - (5) - } { + (4) + } Carrying out the provisions of law for child welfare purposes.

{ - (6) - } { + (5) + } Scholarships or grants for qualified recipients to provide them education and professional, technical or other helpful training, payable to a publicly supported career school or educational institution on behalf of the recipient.

{ - (7) - } { + (6) + } Other purposes for which the department is authorized to expend funds, including the administration expenses of the department.

{ - (8) - } { + (7) + } Carrying out the provisions of ORS 411.116.

(b) Except as to a conveyance by the person to create a tenancy

SECTION 54. ORS 411.660 is amended to read:

411.660. (1) If any person is convicted of a violation of any provision of ORS 411.630, any grant of { - general assistance or - } public assistance ~~{ + or medical assistance benefits + }~~ made wholly or partially to meet the needs of such person shall be modified, canceled or suspended for such time and under such terms and conditions as may be prescribed by or pursuant to rules or regulations of the Department of Human Services or the Oregon Health Authority.

(2) Subsection (1) of this section does not { - prohibit - } { + apply to + } a grant of { - general assistance or - } public assistance { + or to medical assistance provided + } to meet the needs of a child under the age of 18 years.

SECTION 94. Section 6, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 622, Oregon Laws 1991, section 1, chapter 29, Oregon Laws 2007, section 25, chapter 599, Oregon Laws 2009, and section 1, chapter 77, Oregon Laws 2011, is amended to read:

Comment [jm3]: As we discussed, we want to be sure long term care is included

Comment [jm4]: We are not sure if this is allowable under federal law. 42 CFR 455.15 and 16 address fraud, but we think there is nothing there about disqualifying the recipient.

{ + Sec. 6. + } (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public Utility Commission shall establish a plan to provide assistance to low income customers through differential rates or otherwise. The plan of assistance shall be designed to use, to the maximum extent possible, the available funding offered by the Federal Communications Commission, and may provide different levels of assistance to low income customers based upon differences in local exchange rates. The plan established by the commission shall prescribe the amount of assistance to be provided and the time and manner of payment.

(2) For the purpose of establishing a plan to provide assistance to low income customers under this section, the commission shall require all public utilities, cooperative corporations and unincorporated associations providing local exchange telecommunication service to participate in the plan, except as provided in subsection (3) of this section.

(3) In lieu of participation in the commission's plan to assist low income customers, a public utility, cooperative corporation or unincorporated association providing local exchange telecommunication service may apply to the commission to establish an alternative plan for the purpose of carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, for its own customers. The commission shall adopt standards for determining the adequacy of alternative plans.

(4) The commission may contract with any governmental agency to assist the commission in the administration of any assistance plan adopted pursuant to this section.

(5) (a) As used in sections 2 to 6, chapter 290, Oregon Laws 1987, 'low income customer' means an individual determined by the commission:

(A) To be receiving benefits from the Supplemental Nutrition Assistance Program or from another low income public assistance { + or medical assistance + } program for which eligibility requirements limit participation to individuals with income that does not exceed ~~135~~-138 percent of federal poverty guidelines; or

(B) To be a resident of a long term care facility, as defined in ORS 442.015, or a residential care facility, as defined in ORS 443.400, who receives medical assistance under ORS chapter 414.

(b) The commission must be able to verify the continuing participation of a low income customer in a program described in paragraph (a) of this subsection.

Amendment to HB 2859 to add amendments to ORS 411.095

411.095 Notice; hearings; rules. (1) Except as provided in subsection (2) of this section, when the Department of Human Services **or the Oregon Health Authority** changes a benefit standard that results in the reduction, suspension or closure of a grant of general assistance, [or] a grant of public assistance, **or a grant of medical assistance**, the department **or Authority** shall mail a notice of intended action to each recipient affected by the change at least 30 days before the effective date of the action.

(2) If the department **or Authority** has fewer than 60 days before the effective date to implement a proposed change described in subsection (1) of this section, the department **or Authority** shall mail a notice of intended action to each recipient affected by the change as soon as practicable but at least 10 working days before the effective date of the action.

(3) When the department **or Authority** conducts a hearing pursuant to ORS 416.310 to 416.340 and 416.510 to 416.830 and 416.990 or when the department **or Authority** proposes to deny, reduce, suspend or terminate a grant of **medical assistance**, **a grant of** general assistance, a grant of public assistance or a support service payment used to support participation in the job opportunity and basic skills program, the department **or Authority** shall provide an opportunity for a hearing under ORS chapter 183.

(4) When emergency assistance or the continuation of assistance pending a hearing on the reduction, suspension or termination of **medical assistance**, public assistance or a support service payment used to support participation in the job opportunity and basic skills program is denied, and the applicant for or recipient of **medical assistance**, public assistance or a support service payment requests a hearing on the denial, an expedited hearing on the denial shall be held within five working days after the request. A written decision shall be issued within three working days after the hearing is held.

(5) For purposes of this section, a reduction or termination of services resulting from an assessment for service eligibility as defined in ORS 411.099 is a grant of public assistance.

(6) Adoption of rules, conduct of hearings and issuance of orders and judicial review of rules and orders shall be in accordance with ORS chapter 183. [1971 c.734 §41; 1987 c.3 §9; 2001 c.900 §247; 2003 c.243 §1; 2003 c.567 §1; 2005 c.414 §1]