

A-Engrossed
House Bill 3415

Ordered by the House April 24
Including House Amendments dated April 24

Sponsored by Representatives NOBLE, HACK; Representatives GOMBERG, GREENLICK, KENNEMER, KENY-GUYER, NEARMAN, NOSSE, RAYFIELD, Senators GELSER, MONNES ANDERSON

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.

Imposes requirements upon mental health treatment providers and programs to ensure culturally and linguistically appropriate care for individuals who are deaf, **deaf-blind** or hard of hearing. Authorizes civil penalty for violation of requirements.

Prohibits and designates as unlawful practice denial of access to culturally and linguistically affirmative mental health services based on residual hearing ability or previous experience in alternative mode of communication.

Requires Oregon Health Authority to appoint Coordinator of Mental Health Services for Deaf, **Deaf-Blind** and Hard of Hearing Individuals and specifies duties.

A BILL FOR AN ACT

1
2 Relating to mental health services provided to individuals with impaired abilities to hear sounds.

3 Whereas individuals who are deaf, deaf-blind or hard of hearing, as a group, represent an
4 underserved population in many respects, particularly with respect to mental health services; and

5 Whereas individuals who are deaf, deaf-blind or hard of hearing require culturally and linguis-
6 tically specialized mental health services; and

7 Whereas research shows that individuals who are deaf, deaf-blind or hard of hearing are sub-
8 jected to additional burdens in access to mental health services; and

9 Whereas some individuals who are deaf, deaf-blind or hard of hearing may have secondary dis-
10 abilities that impact the type and manner of mental health services that they need; and

11 Whereas being deaf, deaf-blind or hard of hearing impacts the most basic of human needs, which
12 is the ability to communicate with other human beings; and

13 Whereas many individuals who are deaf, deaf-blind or hard of hearing use sign language, which
14 may be their primary language, while others express and receive language orally and aurally, with
15 or without visual signs or cues; and

16 Whereas it is essential for the mental health and well-being of individuals who are deaf, deaf-
17 blind or hard of hearing that mental health programs recognize the unique nature of being deaf,
18 deaf-blind or hard of hearing and ensure that all individuals who are deaf, deaf-blind or hard of
19 hearing have appropriate and fully accessible counseling and therapeutic options; and

20 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have mental
21 health options in which their effective communication mode is respected and utilized and that men-
22 tal health professionals are proficient in the primary communication mode of individuals who are
23 deaf, deaf-blind or hard of hearing; and

24 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have mental

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 health options in which psychiatrists, psychologists, therapists, counselors, social workers and other
2 mental health providers understand the unique nature of being deaf, deaf-blind or hard of hearing
3 and are specifically trained to work with individuals who are deaf, deaf-blind or hard of hearing; and

4 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have access
5 to mental health professionals who are familiar with their unique culture and needs; and

6 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing are involved
7 in determining the extent, content and purpose of mental health programs and services; and

8 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have pro-
9 grams in which they have direct and appropriate access to a full continuum of services, including
10 but not limited to all modes of therapy and evaluations; and

11 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have spe-
12 cialized programs that provide for their unique mental health needs, including appropriate research,
13 curricula, staff and outreach; and

14 Whereas mental health providers must make an individual determination for each individual who
15 is deaf, deaf-blind or hard of hearing of the most accessible mental health services that take into
16 consideration the findings in this preamble; and

17 Whereas given their unique communication needs, individuals who are deaf, deaf-blind or hard
18 of hearing would benefit from the development and implementation of state and regional programs
19 that address their the mental health needs; now, therefore,

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

21 **SECTION 1. Sections 1 to 6 of this 2017 Act shall be known and may be cited as the**
22 **Mental Health for Deaf, Deaf-Blind and Hard of Hearing Individuals' Bill of Rights.**

23 **SECTION 2. As used in sections 1 to 6 of this 2017 Act:**

24 (1) **"Accessible mental health services" means the full range of mental health services**
25 **provided, with the use of auxiliary aids or services, by appropriately licensed mental health**
26 **professionals who are not fluent in the primary communication mode, style or language of**
27 **the individual requiring such services.**

28 (2) **"American Sign Language" means the visual language used by people who are deaf**
29 **or deaf-blind and some hard of hearing people in the United States and parts of Canada and**
30 **Mexico, with semantic, syntactic, morphological and phonological rules that are distinct from**
31 **English.**

32 (3) **"Auxiliary aids or services" includes but is not limited to:**

33 (a) **Qualified interpreters;**

34 (b) **Signed English;**

35 (c) **Cued speech;**

36 (d) **Qualified captioners; and**

37 (e) **Assistive listening devices.**

38 (4) **"Communication mode, style or language" means the following systems or methods**
39 **of communication used by deaf, deaf-blind and hard of hearing individuals:**

40 (a) **American Sign Language;**

41 (b) **English-based manual or sign systems that use manual signs in English word order,**
42 **sometimes with added affixes that are not present in American Sign Language; and**

43 (c) **Minimal sign language systems to communicate with others who use home-based**
44 **signs, idiosyncratic signs or a sign system or language from another country.**

45 (5) **"Culturally and linguistically affirmative mental health services" means the full range**

1 of mental health services provided, without the use of an interpreter or other auxiliary aids
2 or services, to a deaf, deaf-blind or hard of hearing individual by appropriately licensed
3 mental health professionals fluent in the primary communication mode, style or language
4 as well as the cultural needs of the individual requiring such services.

5 (6) "Deaf-blind individual" means a person who has a combination of severe hearing loss
6 and vision loss that necessitates specialized adaptation of spoken, tactile and written infor-
7 mation.

8 (7) "Deaf individual" means an individual who has a severe or complete absence of
9 auditory sensitivity so that the primary effective communication mode is visual and the in-
10 dividual has difficulty in processing linguistic information through hearing, with or without
11 amplification or other assistive technology.

12 (8) "Hard of hearing individual" means an individual who has a hearing loss but retains
13 some residual hearing, wishes to be part of the hearing world, rarely understands American
14 Sign Language, can benefit from hearing aids or cochlear implants and for whom under-
15 standing speech is further enhanced by using hearing assistive technology and coping skills.

16 (9) "Primary communication mode, style or language" means the communication mode,
17 style or language that is preferred by and most effective for a particular individual, as de-
18 termined by appropriate language assessment undertaken by individuals proficient in the
19 communication mode, style or language being assessed.

20 **SECTION 3. The Oregon Health Authority shall:**

21 (1) Make available throughout this state mental health programs that provide culturally
22 and linguistically affirmative mental health services to deaf, deaf-blind and hard of hearing
23 individuals in their primary communication mode, style or language.

24 (2) Develop, train and retain a mental health professional workforce sufficient to ensure
25 appropriate culturally and linguistically affirmative mental health services for deaf, deaf-
26 blind and hard of hearing individuals in their primary communication mode, style or lan-
27 guage, including but not limited to:

28 (a) Occupational therapists familiar with the unique needs of individuals who are deaf,
29 deaf-blind or hard of hearing;

30 (b) Prevention specialists;

31 (c) Chemical dependency counselors;

32 (d) Social workers;

33 (e) Licensed professional counselors and marriage and family therapists;

34 (f) Licensed psychologists;

35 (g) Licensed psychiatrists; and

36 (h) Registered nurses.

37 (3) Develop, train and make available resources sufficient to ensure appropriate, acces-
38 sible mental health services for deaf, deaf-blind and hard of hearing individuals in their pri-
39 mary communication mode, style or language, including but not limited to:

40 (a) Qualified interpreters certified to render effective communication in the mental
41 health setting;

42 (b) Certified deaf interpreters; and

43 (c) Foreign sign language interpreters.

44 (4) Monitor state-funded mental health programs, schools, courts, medical facilities, long
45 term care facilities and providers of addiction and substance abuse treatment to ensure that

1 deaf, deaf-blind and hard of hearing individuals of all ages are served.

2 (5) Allocate adequate funding for all mental health programs that provide accessible
3 mental health services to deaf, deaf-blind and hard of hearing individuals.

4 (6) Develop and implement strategies and plans to address the unmet need in geograph-
5 ical areas where there are an insufficient number of mental health professionals adequately
6 trained in any communication mode, style or language to treat deaf, deaf-blind or hard of
7 hearing individuals, including but not limited to authorizing qualified mental health profes-
8 sionals licensed by another state to treat and serve the needs of deaf, deaf-blind or hard of
9 hearing individuals in this state.

10 (7) Authorize the use of technology, in treatment, that allows deaf, deaf-blind or hard of
11 hearing individuals to receive culturally and linguistically affirmative mental health services
12 from mental health professionals who are licensed in this state or another state.

13 **SECTION 4.** (1) An individual who is deaf, deaf-blind or hard of hearing may not be denied
14 access to culturally and linguistically affirmative mental health services in the individual's
15 preferred communication mode, style or language on the basis that:

16 (a) The individual has a residual hearing ability, whether assisted or not; or

17 (b) The individual has previous experience with another communication mode, style or
18 language.

19 (2) This section does not prohibit the provision of mental health treatment in more than
20 one communication mode, style or language for any particular individual. An individual shall
21 receive treatment in the communication mode, style or language that is determined to be
22 most effective.

23 (3) Violation of subsection (1) of this section is an unlawful practice that is subject to
24 enforcement under ORS chapter 659A.

25 **SECTION 5.** (1) The Oregon Health Authority shall appoint a Coordinator of Mental
26 Health Services for Deaf, Deaf-Blind and Hard of Hearing Individuals to coordinate the
27 statewide provision of culturally and linguistically affirmative mental health services to deaf,
28 deaf-blind and hard of hearing individuals.

29 (2) The coordinator must have leadership abilities and extensive experience in treating
30 deaf, deaf-blind and hard of hearing individuals and must:

31 (a) Be fluent in American Sign Language and possess a thorough understanding of the
32 culture of the deaf, deaf-blind and hard of hearing community;

33 (b) Have completed clinical training and possess a minimum of five years of experience
34 providing direct services to deaf, deaf-blind and hard of hearing individuals with mental
35 health needs;

36 (c) Possess at least a master's degree in a behavioral health or other relevant clinical
37 field, with a preference given to individuals who are licensed to practice independently;

38 (d) Know and understand applicable federal and state laws;

39 (e) Be capable of or have experience in creating or integrating programs in the mental
40 health service delivery system in this state to ensure that deaf, deaf-blind and hard of
41 hearing individuals have access to the full continuum of mental health care; and

42 (f) Demonstrate the aptitude to develop policies and procedures based on the actual ser-
43 vice needs of deaf, deaf-blind and hard of hearing individuals.

44 (3) The coordinator shall be responsible for ensuring that culturally and linguistically
45 affirmative mental health services are available to deaf, deaf-blind and hard of hearing indi-

1 individuals statewide and shall have the authority to:

2 (a) Take steps necessary to ensure access to training, consultation and technical assist-
3 ance by mental health treatment providers in various settings, including but not limited to
4 inpatient hospitalization, outpatient treatment and residential programs serving deaf, deaf-
5 blind and hard of hearing individuals with mental health needs or addiction or substance
6 abuse disorders;

7 (b) Facilitate collaboration between state agencies and departments to maximize the use
8 of state resources and joint planning;

9 (c) Develop, oversee and directly supervise staff responsible for the statewide delivery
10 of accessible mental health services;

11 (d) Establish statewide mental health standards for the care of deaf, deaf-blind and hard
12 of hearing individuals, including standards for American Sign Language skills in mental
13 health settings;

14 (e) Allocate mental health funds or grants to public and private mental health providers
15 to achieve optimum service delivery within the system of care in this state; and

16 (f) Collect and evaluate clinical and programmatic outcomes data from each mental
17 health service provider serving deaf, deaf-blind or hard of hearing individuals in this state.

18 **SECTION 6.** (1) A deaf, deaf-blind or hard of hearing individual admitted to a hospital or
19 residential treatment center must be assigned to a qualified staff member or clinical treat-
20 ment team with the primary responsibility for coordinating and implementing the individual's
21 treatment plan.

22 (2) A hospital or residential treatment center must have written procedures to ensure
23 that deaf, deaf-blind or hard of hearing individuals are provided culturally and linguistically
24 affirmative mental health services, including but not limited to the following:

25 (a) Direct access to mental health services by a staff member who meets qualification
26 criteria adopted by the Oregon Health Authority by rule for fluency in the language or
27 communication mode, style or language preferred by the individual.

28 (b) If the services described in paragraph (a) of this subsection cannot be made available,
29 free language assistance in compliance with federal and state laws. All interpreters must be
30 qualified to work in the treatment setting according to standards adopted by rule by the
31 authority. Family members, employees, colleagues or friends of a deaf, deaf-blind or hard of
32 hearing individual may not be used as interpreters under any circumstances.

33 (3) The authority or the coordinator shall specify how mental health services must be
34 provided if in-person interpreters are not available. If remote interpreters are used, the
35 provider of mental health services shall be responsible for ensuring that the remote inter-
36 preters are qualified to provide the interpretation of mental health services.

37 (4) If qualified interpreters are offered but refused by a deaf, deaf-blind or hard of hear-
38 ing individual in need of mental health services, the mental health service provider must
39 obtain a signed waiver from the individual of the right to accessible mental health services
40 and retain the waiver in the individual's case record.

41 (5) Diagnostic testing of deaf, deaf-blind and hard of hearing individuals requires exper-
42 tise in the administration and interpretation of standardized objective or projective tests and
43 must be performed by qualified mental health treatment providers with the level of fluency
44 in sign language or other mode of communication prescribed by the authority by rule.

45 **SECTION 7.** (1) The Oregon Health Authority may impose a civil penalty of up to \$5,000

1 on a person for failure to comply with section 6 of this 2017 Act.

2 (2) Civil penalties under this section must be imposed in the manner provided by ORS
3 183.745.

4 (3) All penalties recovered under this section shall be paid into the State Treasury and
5 credited to the Oregon Health Authority Fund established under ORS 413.101.

6 SECTION 8. The requirements of section 4 of this 2017 Act apply to conduct occurring
7 on or after the effective date of this 2017 Act.

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