

# House Bill 3415

Sponsored by Representatives NOBLE, HACK; Representatives 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 **as introduced**.

Imposes requirements upon mental health treatment providers and programs to ensure culturally and linguistically appropriate care for individuals who are deaf 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 and Hard of Hearing Individuals and specifies duties.

## A BILL FOR AN ACT

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

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

4 Whereas individuals who are deaf or hard of hearing often require highly specialized mental  
5 health services; and

6 Whereas research shows that individuals who are deaf or hard of hearing are subject to signif-  
7 icantly more risks to their mental health than individuals who are able to hear due to many factors,  
8 including but not limited to a lack of communication access in general and to family members, ed-  
9 ucators and treating professionals, lack of access to appropriate educational services and lack of  
10 appropriate physical and mental health treatment services; and

11 Whereas some individuals who are deaf or hard of hearing may have secondary disabilities that  
12 impact the type and manner of mental health services that they need; and

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

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

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

22 Whereas it is essential that individuals who are deaf or hard of hearing have mental health  
23 options in which their unique communication mode is respected and utilized and that mental health  
24 professionals are proficient in the primary communication mode of individuals who are deaf or hard  
25 of hearing; and

26 Whereas it is essential that individuals who are deaf or hard of hearing have mental health  
27

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

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

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

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

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

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

17 Whereas given their unique communication needs, individuals who are deaf or hard of hearing  
 18 would benefit from the development and implementation of state and regional programs that address  
 19 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 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 deaf and hard of**  
 29 **hearing people in the United States and Canada, with semantic, syntactic, morphological and**  
 30 **phonological rules that are distinct from English.**

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

- 32 (a) **Qualified interpreters;**
- 33 (b) **Signed English;**
- 34 (c) **Cued speech;**
- 35 (d) **Written communications; and**
- 36 (e) **Assistive listening devices.**

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

- 39 (a) **American Sign Language;**
- 40 (b) **English-based manual or sign systems that use manual signs in English word order,**  
 41 **sometimes with added affixes that are not present in American Sign Language; and**
- 42 (c) **Minimal sign language systems to communicate with others who use home-based**  
 43 **signs, idiosyncratic signs or a sign system or language from another country.**

44 (5) **"Culturally and linguistically affirmative mental health services" means the full range**  
 45 **of mental health services provided, without the use of an interpreter or other auxiliary aids**

1 or services, to a deaf or hard of hearing individual by appropriately licensed mental health  
2 professionals fluent in the primary communication mode, style or language as well as the  
3 cultural needs of the individual requiring such services.

4 (6) "Deaf individual" means an individual who has a hearing loss which is so severe that  
5 the individual has difficulty in processing linguistic information through hearing, with or  
6 without amplification or other assistive technology.

7 (7) "Hard of hearing individual" means an individual who has a hearing loss, which may  
8 be permanent or fluctuating or corrected by amplification or other assistive technology or  
9 means, that presents challenges in processing linguistic information through hearing.

10 (8) "Primary communication mode, style or language" means the communication mode,  
11 style or language that is preferred by and most effective for a particular individual, as de-  
12 termined by appropriate language assessment undertaken by individuals proficient in the  
13 communication mode, style or language being assessed.

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

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

18 (2) Develop, train and retain a mental health professional workforce sufficient to ensure  
19 appropriate culturally and linguistically affirmative mental health services for deaf and hard  
20 of hearing individuals in their primary communication mode, style or language, including but  
21 not limited to:

- 22 (a) Occupational therapists familiar with the unique needs of individuals who are deaf or  
23 hard of hearing;
- 24 (b) Prevention specialists;
- 25 (c) Chemical dependency counselors; and
- 26 (d) Social workers.

27 (3) Develop, train and make available resources sufficient to ensure appropriate, acces-  
28 sible mental health services for deaf and hard of hearing individuals in their primary com-  
29 munication mode, style or language, including but not limited to:

- 30 (a) Qualified interpreters certified or otherwise able to render effective communication  
31 in the mental health setting;
- 32 (b) Relay or certified deaf interpreters; and
- 33 (c) Foreign sign language interpreters.

34 (4) Monitor state-funded mental health programs, schools, courts, medical facilities, long  
35 term care facilities and providers of addiction and substance abuse treatment to ensure that  
36 deaf and hard of hearing individuals of all ages are adequately served.

37 (5) Allocate adequate funding for all mental health programs that provide accessible  
38 mental health services to deaf and hard of hearing individuals.

39 (6) Develop and implement strategies and plans to address the unmet need in geograph-  
40 ical areas where there are an insufficient number of mental health professionals adequately  
41 trained in any communication mode, style or language to treat deaf or hard of hearing indi-  
42 viduals, including but not limited to authorizing qualified mental health professionals licensed  
43 by another state to treat or otherwise serve the needs of deaf or hard of hearing individuals  
44 in this state.

45 (7) Authorize the use of technology, in treatment, that allows deaf or hard of hearing

1 individuals to receive culturally and linguistically affirmative mental health services from  
2 mental health professionals who are licensed in this state or another state.

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

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

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

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

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

15 **SECTION 5.** (1) The Oregon Health Authority shall appoint a Coordinator of Mental  
16 Health Services for Deaf and Hard of Hearing Individuals to coordinate the statewide pro-  
17 vision of culturally and linguistically affirmative mental health services to deaf and hard of  
18 hearing individuals.

19 (2) The coordinator must have leadership abilities and extensive experience in treating  
20 deaf individuals and must:

21 (a) Be fluent in American Sign Language and possess a thorough understanding of the  
22 culture of the deaf community;

23 (b) Have completed clinical training and possess a minimum of five years of experience  
24 providing direct services to deaf individuals with mental health needs;

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

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

28 (e) Be capable of or have experience in creating or integrating programs in the mental  
29 health service delivery system in this state to ensure that deaf and hard of hearing individ-  
30 uals have access to the full continuum of mental health care; and

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

33 (3) The coordinator shall be responsible for ensuring that culturally and linguistically  
34 affirmative mental health services are available to deaf and hard of hearing individuals  
35 statewide and shall have the authority to:

36 (a) Take steps necessary to ensure access to training, consultation and technical assist-  
37 ance by mental health treatment providers in various settings, including but not limited to  
38 inpatient hospitalization, outpatient treatment and residential programs serving deaf and  
39 hard of hearing individuals with mental health needs or addiction or substance abuse disor-  
40 ders;

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

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

45 (d) Establish statewide mental health standards for the care of deaf and hard of hearing

1 individuals, including standards for American Sign Language skills in mental health settings;

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

4 (f) Collect and evaluate clinical and programmatic outcomes data from each mental  
5 health service provider serving deaf or hard of hearing individuals in this state.

6 **SECTION 6.** (1) A deaf or hard of hearing individual admitted to a hospital or residential  
7 treatment center must be assigned to a qualified staff member or clinical treatment team  
8 with the primary responsibility for coordinating and implementing the individual's treatment  
9 plan.

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

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

16 (b) If the services described in paragraph (a) of this subsection cannot be made available,  
17 free language assistance in compliance with federal and state laws. All interpreters must be  
18 qualified to work in the treatment setting according to standards adopted by rule by the  
19 authority. Family members may not be used as interpreters under any circumstances.

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

24 (4) If qualified interpreters are offered but refused by a deaf or hard of hearing individual  
25 in need of mental health services, the mental health service provider must obtain a signed  
26 waiver from the individual of the right to accessible mental health services and retain the  
27 waiver in the individual's case record.

28 (5) Diagnostic testing of deaf and hard of hearing individuals requires expertise in the  
29 administration and interpretation of standardized objective or projective tests and must be  
30 performed by qualified mental health treatment providers with the level of fluency in sign  
31 language or other mode of communication prescribed by the authority by rule.

32 **SECTION 7.** (1) The Oregon Health Authority may impose a civil penalty of up to \$5,000  
33 on a person for failure to comply with section 6 of this 2017 Act.

34 (2) Civil penalties under this section must be imposed in the manner provided by ORS  
35 183.745.

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

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

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