

House Bill 3198

Sponsored by Representative NOBLE (at the request of Oregon Association of the Deaf)

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 professionals and programs to ensure culturally and linguistically affirmative mental health services for individuals who are deaf, deaf-blind or hard of hearing.

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

Requires Oregon Health Authority to appoint advisory committee to advise authority on development and implementation of statewide access by individuals who are deaf, deaf-blind or hard of hearing to culturally and linguistically affirmative mental health services and programs.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to mental health services provided to individuals with impaired abilities to hear sounds;
3 and declaring an emergency.

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

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

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

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

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

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

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

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

25 Whereas it is essential that individuals who are deaf, deaf-blind or hard of hearing have mental
26 health options in which board-certified psychiatrists, licensed psychologists, licensed therapists, li-
27 censed professional counselors, licensed clinical social workers and other mental health profes-

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 sionals understand the unique nature of being deaf, deaf-blind or hard of hearing and are specifically
 2 trained to work with individuals who are deaf, deaf-blind or hard of hearing; and

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

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

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

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

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

16 Whereas given their unique communication needs, individuals who are deaf, deaf-blind or hard
 17 of hearing would benefit from the development and implementation of state and regional outpatient
 18 and inpatient mental health treatment programs, including a state centralized inpatient residential
 19 treatment program, that address their 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 2019 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 2019 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 sign language interpreters;**

34 (b) **Signed Exact 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 a qualified interpreter or other auxil-
 2 iary aids or services, to a deaf, deaf-blind or hard of hearing individual by appropriately li-
 3 censed mental health professionals fluent in the primary communication mode, style or
 4 language 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 licensed mental health professional workforce sufficient
 25 to ensure appropriate culturally and linguistically affirmative mental health services for
 26 deaf, deaf-blind and hard of hearing individuals in their primary communication mode, style
 27 or language, including but not limited to:

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

30 (b) Prevention specialists certified by the Mental Health and Addiction Certification
 31 Board of Oregon and meeting standards for community substance abuse providers adopted
 32 by the Oregon Health Authority by rule;

33 (c) Chemical dependency counselors certified by the Mental Health and Addiction Certi-
 34 fication Board of Oregon;

35 (d) Licensed clinical social workers;

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

37 (f) Licensed psychologists;

38 (g) Board-certified psychiatrists; and

39 (h) Registered nurses.

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

43 (a) Qualified interpreters certified under section 9 of this 2019 Act to render effective
 44 communication in a mental health setting; and

45 (b) Certified deaf interpreters.

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

4 (5) Allocate, to the greatest extent practicable, adequate funding for all mental health
5 programs that provide accessible mental health services to deaf, deaf-blind and hard of
6 hearing individuals.

7 (6) Develop and implement strategies and plans, with the support of and in consultation
8 with the advisory committee appointed under section 6 of this 2019 Act, to address the unmet
9 need in geographical areas where there are an insufficient number of mental health profes-
10 sionals adequately trained in any communication mode, style or language to treat deaf,
11 deaf-blind or hard of hearing individuals, including but not limited to authorizing qualified
12 mental health professionals licensed by another state to treat and serve the needs of deaf,
13 deaf-blind or hard of hearing individuals in this state.

14 (7) Authorize the use of technology, in treatment, that allows deaf, deaf-blind or hard of
15 hearing individuals to receive culturally and linguistically affirmative mental health services
16 from licensed mental health professionals who are licensed in this state or another state and
17 credentialed according to rules adopted by the Oregon Health Authority under ORS 441.223.

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

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

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

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

28 **SECTION 5.** (1) A deaf, deaf-blind or hard of hearing individual admitted to a hospital or
29 residential treatment center must be assigned to a qualified staff member or clinical treat-
30 ment team with the primary responsibility for coordinating and implementing the individual's
31 treatment plan.

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

35 (a) Direct access to licensed mental health treatment professionals who meet qualifica-
36 tion criteria adopted by the Oregon Health Authority by rule for fluency in the language or
37 communication mode, style or language preferred by the individual.

38 (b) If access to licensed mental health treatment professionals described in paragraph (a)
39 of this subsection is unavailable, free language assistance in compliance with federal and
40 state laws. All interpreters must be qualified to work in the treatment setting according to
41 standards adopted by rule by the authority with the advice of and in consultation with the
42 advisory committee appointed under section 6 of this 2019 Act. Family members, employees,
43 colleagues or friends of a deaf, deaf-blind or hard of hearing individual may not be used as
44 interpreters under any circumstances.

45 (3) The authority shall specify how mental health services must be provided if in-person

1 interpreters are not available. If remote interpreters are used, the provider of mental health
 2 services shall be responsible for ensuring that the remote interpreters are qualified to pro-
 3 vide the interpretation of mental health services.

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

8 (5) Diagnostic testing of deaf, deaf-blind and hard of hearing individuals requires exper-
 9 tise in the administration and interpretation of standardized objective or projective tests and
 10 must be performed by licensed qualified mental health treatment professionals with the level
 11 of fluency in sign language or other mode of communication prescribed by the authority by
 12 rule.

13 **SECTION 6.** (1) The Oregon Health Authority shall appoint an advisory committee to
 14 advise the authority and make recommendations for the development and implementation
 15 of statewide access by individuals who are deaf, deaf-blind or hard of hearing to culturally
 16 and linguistically affirmative mental health services and appropriate programs. The author-
 17 ity shall appoint the following members to the committee:

18 (a) One licensed mental health practitioner who is deaf;

19 (b) One licensed mental health practitioner who is hard of hearing;

20 (c) One licensed psychologist or mental health counselor who has training and experience
 21 in working with individuals who are deaf, deaf-blind or hard of hearing;

22 (d) One licensed clinical social worker with training and experience in working with in-
 23 dividuals who are deaf, deaf-blind or hard of hearing;

24 (e) One certified sign language interpreter with experience in providing sign language
 25 interpretation in mental health counseling sessions with individuals who are deaf, deaf-blind
 26 or hard of hearing;

27 (f) One faculty member of Western Oregon University's Rehabilitation and Mental Health
 28 Counseling program, Rehabilitation Counseling for the Deaf option;

29 (g) One faculty member from Western Oregon University's Interpreting Studies program;

30 (h) One psychiatrist certified by the American Board of Psychiatry and Neurology;

31 (i) One assistive technology specialist; and

32 (j) One consumer of mental health services.

33 (2) Members of the advisory committee, other than the member who is a consumer of
 34 mental health services, are not entitled to compensation or reimbursement for expenses and
 35 serve as volunteers on the advisory committee.

36 (3) The member of the advisory committee who is a consumer of mental health services
 37 is not entitled to compensation but may be reimbursed for actual and necessary travel and
 38 other expenses incurred by the member in the performance of the member's duties in the
 39 manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing
 40 functions of the advisory committee shall be paid out of funds appropriated to the authority
 41 for purposes of the advisory committee.

42 (4) The authority shall provide accommodations and auxiliary aids or services for the
 43 advisory committee in accordance with state and federal laws.

44 (5) The authority shall provide an administrative assistant to the advisory committee,
 45 as needed, to aid in the advisory committee's meetings and other activities.

1 **(6) The advisory committee shall elect one of its members to serve as chairperson and**
2 **one person to serve as vice chairperson.**

3 **(7) The advisory committee shall meet at least four times each year at times and places**
4 **specified by the call of the chairperson or of a majority of the members of the advisory**
5 **committee.**

6 **(8) The advisory committee may adopt rules necessary for the operation of the advisory**
7 **committee.**

8 **SECTION 7. The Oregon Health Authority shall appoint the members of the advisory**
9 **committee under section 6 of this 2019 Act no later than January 1, 2020.**

10 **SECTION 8. Section 9 of this 2019 Act is added to and made a part of ORS 413.550 to**
11 **413.558.**

12 **SECTION 9. (1) The Oregon Health Authority shall adopt by rule, in accordance with ORS**
13 **413.558, minimum standards for the certification of health care interpreters qualified to**
14 **provide sign language interpretation in mental health treatment settings. The authority**
15 **shall consult with the advisory committee appointed under section 6 of this 2019 Act in**
16 **adopting the rules.**

17 **(2) The authority may work with Western Oregon University to offer specialized training**
18 **in sign language interpretation in mental health treatment settings.**

19 **(3) A health care interpreter must be certified according to standards adopted by the**
20 **authority under subsection (1) of this section before offering sign language interpretation in**
21 **a mental health treatment setting in this state.**

22 **SECTION 10. This 2019 Act being necessary for the immediate preservation of the public**
23 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
24 **on its passage.**

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