

Senate Bill 20

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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**.

Consolidates eligibility for services to children and adults with developmental disabilities. Modifies types of developmental disability services that may be offered and eligibility for services. Establishes new terminology.

A BILL FOR AN ACT

1
2 Relating to services provided to individuals with developmental disabilities; amending ORS 427.101,
3 427.107, 427.115, 427.121, 427.154, 427.163, 430.662 and 430.664; and repealing ORS 427.160.

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

5 **SECTION 1.** ORS 427.101 is amended to read:

6 427.101. As used in this section and ORS 427.115, **427.121**, 427.154 [*and 427.160*], **430.662 and**
7 **430.664:**

8 [(1) "*Adult*" means an individual who is 18 years of age or older.]

9 [(2) "*Community living and inclusion supports*"]

10 (1) "**Developmental disability services**" means [*services that may or may not be work-related*
11 *and includes*]:

12 (a) Services designed to develop or maintain the individual's skills in the following areas:

13 [(a)] (A) Eating, bathing, dressing, personal hygiene, mobility and other personal needs;

14 [(b)] (B) Self-awareness and self-control, social responsiveness, social amenities, interpersonal
15 skills, interpersonal relationships and social connections;

16 [(c)] (C) Community participation, recreation and the ability to use available community ser-
17 vices, facilities or businesses;

18 [(d)] (D) Expressive and receptive skills in verbal and nonverbal language, the functional appli-
19 cation of acquired reading and writing skills and other communication needs; and

20 [(e)] (E) Planning and preparing meals, budgeting, laundering, housecleaning and other personal
21 environmental needs;

22 (b) **Case management;**

23 (c) **Services described in ORS 430.215;**

24 (d) **Employment services;**

25 (e) **Environmental accessibility adaptations;**

26 (f) **Specialized supports; and**

27 (g) **Specialized medical equipment and supplies.**

28 [(3) "*Comprehensive services*" means a package of services, other than support services for adults,
29 that is provided by or under the direction of a community developmental disabilities program and that
30 includes at least one of the following living arrangements licensed or regulated by the Department of

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 *Human Services:]*

2 [(a) *Twenty-four-hour residential care, including but not limited to a group home, a foster home or*
3 *a supported living program.]*

4 [(b) *Assistance provided to maintain an individual in the individual's own home or the home of the*
5 *individual's family and that costs more than an amount specified by the department by rule.]*

6 [(4)] (2) "Employment services" means services provided to develop or maintain the skills nec-
7 essary for an individual to obtain and retain employment, including job assessment, job exploration,
8 job development, job training, job coaching, work skills, and ongoing supports.

9 [(5)] (3) "Environmental accessibility adaptations" means physical modifications to an
10 individual's home that are necessary to ensure the health, welfare and safety of the individual in the
11 home, or that enable the individual to function with greater independence in the home.

12 [(6)] (4) "Individualized [*written*] service plan" means a plan described in ORS 427.107 (2)(i), (j)
13 and (k) that identifies the resources, services and purchases necessary for an individual with a de-
14 velopmental disability to achieve identified personal goals and maximize self-determination.

15 [(7)] (5) "Person-centered planning" means an informal or formal process for gathering and or-
16 ganizing information that helps an individual to:

17 (a) Enhance self-determination by choosing personal goals and lifestyle preferences;

18 (b) Design strategies and networks of support to achieve personal goals and a preferred lifestyle
19 using individual strengths, relationships and resources; and

20 (c) Identify, use and strengthen naturally occurring opportunities for support in the home and
21 in the community.

22 (6) "**Placement setting**" means:

23 (a) **A residential setting; or**

24 (b) **An individual's home or the home of the individual's family.**

25 (7) "**Residential setting**" means one of the following living arrangements licensed or reg-
26 ulated by the Department of Human Services:

27 (a) **Residential facilities licensed under ORS 443.400 to 443.455;**

28 (b) **Licensed adult foster homes, as defined in ORS 443.705;**

29 (c) **Developmental disability child foster homes certified under ORS 443.835;**

30 (d) **Group homes; and**

31 (e) **Supported living programs.**

32 (8) "Self-determination" means empowering individuals to:

33 (a) Select and plan, together with freely chosen family members and friends, the [*support services*
34 *for adults*] **developmental disability services** that are necessary [*instead of purchasing a predefined*
35 *program or package of services*] **to maintain an individual in a placement setting;**

36 (b) Control the expenditure of available financial assistance [*in order to purchase support ser-*
37 *vices for adults,*] with the help of a social support network if needed;

38 (c) Live an autonomous life in the community, rich in community affiliations, through formal or
39 informal arrangements of resources and personnel; and

40 (d) Have a valued role in the community through competitive employment, organizational affil-
41 iations, personal development and general caring for others in the community, and to be accountable
42 for spending public dollars in ways that are life-enhancing for the individual.

43 (9) "Service provider" means any person who is paid a service rate by the department to provide
44 one or more of the services identified in the individualized [*written*] service plan of an [*adult*] **indi-**
45 **vidual** with a developmental disability regardless of where the service is provided.

1 (10) “Service rate” means the amount of reimbursement paid to a service provider to care for
 2 an *[adult]* **individual** with a developmental disability.

3 (11)(a) “Specialized medical equipment and supplies” means:

4 (A) Devices, aids, controls, supplies or appliances that enable individuals:

5 (i) To increase their ability to perform activities of daily living; or

6 (ii) To perceive, control or communicate with the environment in which they live;

7 (B) Items necessary for life support, including ancillary supplies and equipment necessary to the
 8 proper functioning of these items; and

9 (C) Medical equipment not available in the medical assistance program.

10 (b) “Specialized medical equipment and supplies” does not include items that have no direct
 11 medical or remedial benefit to the individual.

12 (12) “Specialized supports” means treatment, training, consultation or other unique services that
 13 are not available through the medical assistance program but are necessary to achieve the goals
 14 identified in the individualized *[written]* service plan, or other *[support services for adults]* **develop-**
 15 **mental disability services** prescribed by the department by rule.

16 (13) “Support service brokerage” means an entity that contracts with the department to provide
 17 or to arrange for *[support services for adults]* **developmental disability services**.

18 *[(14) “Support services for adults” means the services for adults with developmental disabilities*
 19 *provided by a support service brokerage under ORS 427.154 and 427.160.]*

20 **SECTION 2.** ORS 427.115 is amended to read:

21 427.115. (1) The Department of Human Services or its designee shall assess the support needs
 22 for each *[adult]* **individual** with a developmental disability who is receiving *[comprehensive services*
 23 *that include 24-hour residential care]* **developmental disability services in a residential setting**
 24 and shall determine a service rate that is sufficient to meet the support needs of the *[adult]* **indi-**
 25 **vidual**. If an assessment of support needs results in a change to the service rate being paid to the
 26 service provider, the department or the department’s designee shall provide to the *[adult receiving*
 27 *comprehensive services and the adult’s]* **individual and the individual’s** service provider and, if ap-
 28 propriate, to the *[adult’s service coordinator]* **individual’s case manager**, guardian, primary
 29 caregiver or family members, a detailed accounting of the service rate paid to the service provider
 30 and the factors and weighting of factors used to determine the service rate.

31 (2) The department or the department’s designee shall assess the support needs and determine
 32 the service rate, as described in subsection (1) of this section, no later than 90 days after the *[adult*
 33 *receiving comprehensive services or the adult’s]* **individual or the individual’s** service provider,
 34 *[service coordinator]* **case manager**, guardian, primary caregiver, family member or legal represen-
 35 tative makes a request, based on significant changes to the *[adult’s]* **individual’s** support needs, for
 36 a new assessment of support needs and a redetermination of the service rate.

37 (3) The department shall adopt by rule the procedures and criteria for requesting and conducting
 38 an assessment of support needs and a determination of a service rate under this section, using an
 39 advisory committee appointed in accordance with ORS 183.333. The rules shall include a procedure
 40 for contesting the denial of a request for assessment of support needs and redetermination of a
 41 service rate or the failure of the department or the department’s designee to respond to a request
 42 for assessment and redetermination within a reasonable period of time, as prescribed by the de-
 43 partment by rule.

44 **SECTION 3.** ORS 427.121 is amended to read:

45 427.121. (1) As used in this section[:]

1 [(a) “Adult” means an adult with developmental disabilities who is eligible to receive comprehen-
2 sive services as defined in ORS 427.101.]

3 [(b) “Residential setting” means a living arrangement described in ORS 427.101 (3).], “adult”
4 **means an individual:**

5 **(a) Who is at least 18 years of age;**

6 **(b) Who has a developmental disability; and**

7 **(c) Who is eligible to receive developmental disability services in a placement setting.**

8 (2) An adult has the right to choose the adult’s placement setting. The Department of Human
9 Services or the department’s designee shall present to an adult at least three appropriate placement
10 setting options, including at least two different types of residential settings, before:

11 (a) Making an initial placement.

12 (b) Transferring the adult from one placement setting to another placement setting.

13 (3) The department or the department’s designee may not transfer an adult from a placement
14 setting without first complying with subsection (2) of this section.

15 (4) The department or the department’s designee is not required to present the options under
16 subsection (2) of this section if:

17 (a) The department or the department’s designee demonstrates that three appropriate placement
18 settings or two different types of residential settings are not available within the geographic area
19 where the adult wishes to reside;

20 (b) The adult selects a placement setting option and waives the right to be presented with the
21 placement setting options described in subsection (2) of this section; or

22 (c) The adult is at imminent risk to health or safety in the adult’s current placement setting.

23 **SECTION 4.** ORS 427.154 is amended to read:

24 427.154. (1) [*Support services for adults*] **Developmental disability services** are intended to meet
25 the needs of [*adults*] **individuals** with developmental disabilities [*and to prevent or delay their need*
26 *for comprehensive services*]. The Department of Human Services shall establish by rule the applica-
27 tion and eligibility determination processes for [*support services for adults*] **developmental disability**
28 **services.**

29 (2) [*Support services for adults*] **Developmental disability services** shall be provided [*through*
30 *a support service brokerage and*] pursuant to an individualized [*written*] service plan that is developed
31 and reassessed at least annually using a person-centered planning process.

32 (3) The department shall ensure that each individual receiving [*support services for adults*] **de-**
33 **velopmental disability services and the individual’s guardian or legal representative** has an
34 active role in choosing the services, activities and purchases that will best meet the individual’s
35 needs and preferences and to express those choices verbally, using sign language or by other ap-
36 propriate methods of communication.

37 [(4) *The services, activities and purchases available as support services for adults include, but are*
38 *not limited to:*]

39 [(a) *Community living and inclusion supports that facilitate independence and promote community*
40 *integration by supporting the individual to live as independently as possible;*]

41 [(b) *Employment services;*]

42 [(c) *Environmental accessibility adaptations;*]

43 [(d) *Specialized supports; and*]

44 [(e) *Specialized medical equipment and supplies.*]

45 [(5)] (4) [*Support services for adults*] **Developmental disability services** must complement the

1 existing formal and informal supports, services, activities and purchases available to [*an adult living*
 2 *in the adult's own home or the home of the adult's family*] **an individual in the individual's own**
 3 **home or the home of the individual's family.**

4 [(6)] (5) The department shall ensure that each individual **and the individual's guardian or**
 5 **legal representative** has the opportunity to confirm satisfaction with the [*support services for*
 6 *adults*] **developmental disability services** that the individual receives and to make changes in the
 7 services as necessary.

8 [(7)] (6) The department shall ensure that all [*adults with developmental disabilities receiving*
 9 *comprehensive services*] **individuals receiving developmental disability services** have an equal
 10 opportunity for job placements. A provider of developmental disability services that offers job
 11 placements may not give preference to an [*adult with disabilities*] **individual** who is a resident of a
 12 facility owned or operated by the provider when determining eligibility for a job placement. The
 13 residence of an [*adult with developmental disabilities*] **individual** may not be the exclusive factor in
 14 determining eligibility for a job placement.

15 **SECTION 5.** ORS 427.107 is amended to read:

16 427.107. (1) As used in this section:

17 (a) "Facility" means any of the following that are licensed or certified by the Department of
 18 Human Services or that contract with the department for the provision of services:

19 (A) A health care facility as defined in ORS 442.015;

20 (B) A domiciliary care facility as defined in ORS 443.205;

21 (C) A residential facility as defined in ORS 443.400; or

22 (D) An adult foster home as defined in ORS 443.705.

23 (b) "Person" means an individual who has a developmental disability as defined in ORS 427.005
 24 and receives services from a program or facility.

25 (c) "Program" means a community developmental disabilities program as described in ORS
 26 430.662 and agencies with which the department or the program contracts to provide services.

27 (d) "Service" means a community-based service described in ORS 427.007.

28 (2) While receiving developmental disability services, every person shall have the right to:

29 (a) Be free from abuse or neglect and to report any incident of abuse or neglect without being
 30 subject to retaliation.

31 (b) Be free from seclusion or personal, chemical or mechanical restraints unless an imminent
 32 risk of physical harm to the person or others exists and only for as long as the imminent risk con-
 33 tinues.

34 (c) Not receive services without informed voluntary written consent except in a medical emer-
 35 gency or as otherwise permitted by law.

36 (d) Not participate in experimentation without informed voluntary written consent.

37 (e) A humane environment that affords reasonable privacy and the ability to engage in private
 38 communications with people of the individual's choosing through personal visits, mail, telephone or
 39 electronic means.

40 (f) Visit with family members, friends, advocates and legal and medical professionals.

41 (g) Participate regularly in the community and use community resources.

42 (h) Not be required to perform labor, except personal housekeeping duties, without reasonable
 43 and lawful compensation.

44 (i) Seek a meaningful life by choosing from available services and enjoying the benefits of com-
 45 munity involvement and community integration in a manner that is least restrictive to the person's

1 liberty considering the person’s preferences and age.

2 (j) An individualized [*written*] service plan, services based upon that plan and periodic review
3 and reassessment of service needs.

4 (k) Ongoing participation in the planning of services, including the right to participate in the
5 development and periodic revision of the plan for services, the right to be provided with an expla-
6 nation of all service considerations in a manner that ensures meaningful individual participation and
7 the right to invite others of the person’s choosing to participate in the plan for services.

8 (L) Not be involuntarily terminated or transferred from services without prior notice, notifica-
9 tion of available sources of necessary continued services and exercise of a grievance procedure.

10 (m) Be informed at the start of services and annually thereafter of the rights guaranteed by this
11 section, the contact information for the protection and advocacy system described in ORS 192.517
12 (1), and the procedures for filing grievances, hearings or appeals if services have been or are pro-
13 posed to be reduced, eliminated or changed.

14 (n) Be encouraged and assisted in exercising all legal rights.

15 (o) Assert grievances with respect to infringement of the rights described in this section, in-
16 cluding the right to have such grievances considered in a fair, timely and impartial grievance pro-
17 cedure without any form of retaliation or punishment.

18 (p) Manage the person’s own money and financial affairs unless that right has been taken away
19 by court order or other legal procedure.

20 (q) Keep and use personal property and have a reasonable amount of personal storage space.

21 (3) The rights described in this section are in addition to, and do not limit, all other statutory
22 and constitutional rights that are afforded all citizens including, but not limited to, the right to ex-
23 ercise religious freedom, vote, marry, have or not have children, own and dispose of property, enter
24 into contracts and execute documents.

25 (4) A person who is receiving developmental disability services has the right under ORS 430.212
26 to be informed and to have the person’s guardian and any representative designated by the person
27 be informed that a family member has contacted the department to determine the location of the
28 person, and to be informed of the name and contact information, if known, of the family member.

29 (5) The rights described in this section may be asserted and exercised by the person, the
30 person’s guardian and any representative designated by the person.

31 (6) Nothing in this section may be construed to alter any legal rights and responsibilities be-
32 tween parent and child.

33 (7) The department shall adopt rules concerning the rights described in this section that are
34 consistent with the directives set forth in ORS 427.007.

35 **SECTION 6.** ORS 427.163 is amended to read:

36 427.163. The Department of Human Services shall apply any savings generated by support ser-
37 vice brokerages developed under the Staley Settlement Agreement to provide services to individuals
38 who are awaiting [*adult*] developmental disability [*support*] services and who are not receiving any
39 services.

40 **SECTION 7.** ORS 430.662 is amended to read:

41 430.662. (1) The Department of Human Services, in carrying out the legislative policy declared
42 in ORS 430.610, subject to the availability of funds, shall:

43 (a) Regulate and assist Oregon counties and groups of Oregon counties in the establishment and
44 financing of community developmental disabilities programs operated or contracted for by one or
45 more counties.

1 (b) If a county declines to operate or contract for a community developmental disabilities pro-
 2 gram, contract with another public agency or private corporation to provide the program. The
 3 county must be provided with an opportunity to review and comment.

4 (c) When no community developmental disabilities program is operating within a county, operate
 5 the program or service.

6 (d) At the request of the tribal council of a federally recognized tribe of Native Americans,
 7 contract with the tribal council for the establishment and operation of a community developmental
 8 disabilities program in the same manner in which the department contracts with a county court or
 9 board of county commissioners.

10 (e) **Enter into contracts with support service brokerages to deliver developmental disa-**
 11 **abilities services in a manner that features regional consolidation, administrative efficiency,**
 12 **cost-effectiveness and strong consumer and family oversight.**

13 [(e)] (f) If necessary to carry out the legislative policy declared in ORS 430.610, contract with
 14 a public agency or private corporation, in cooperation with the county, for some or all develop-
 15 mental disabilities services.

16 [(f)] (g) Approve or disapprove the biennial plan and budget information for the establishment
 17 and operation of each community developmental disabilities program. Subsequent amendments to or
 18 modifications of an approved plan or budget information involving more than 10 percent of the state
 19 funds provided for services under ORS 430.664 may not be placed in effect without prior approval
 20 of the department. However, an amendment or modification affecting 10 percent or less of state
 21 funds for services under ORS 430.664 within the portion of the program for persons with develop-
 22 mental disabilities may be made without department approval.

23 [(g)] (h) Make all necessary and proper rules to regulate the establishment and operation of
 24 [community] developmental disabilities [programs] **services.**

25 (2) The enumeration of duties and functions in subsection (1) of this section may not be deemed
 26 exclusive or construed as a limitation on the powers and authority vested in the department by
 27 other provisions of law.

28 **SECTION 8.** ORS 430.664 is amended to read:

29 430.664. (1) In addition to any other requirements that may be established by rule by the De-
 30 partment of Human Services, each community developmental disabilities program may contract with
 31 the department to provide or arrange for the provision of the following basic services to persons
 32 with developmental disabilities:

33 (a) Eligibility determination for developmental disability services.

34 (b) Access to developmental disability services in homes, work sites or other locations that
 35 promote independence, productivity and integration into the community.

36 (c) Case management services.

37 (d) Abuse investigation and protective services.

38 (e) Planning and coordination of activities with other agencies or organizations to ensure the
 39 effective and efficient service delivery and use of resources.

40 (f) Establishing and implementing a process to respond to complaints and grievances.

41 (g) Other alternative services as prescribed by the department by rule.

42 (2) Each community developmental disabilities program shall have a written management plan
 43 that governs the program's operating structure, goals and activities.

44 (3) Each community developmental disabilities program shall have a developmental disability
 45 advisory committee.

1 (4) Subject to the review and approval of the department, a community developmental disabili-
2 ties program may initiate additional services after the services described in this section are pro-
3 vided.

4 (5) **The department may contract with a support service brokerage to provide or arrange**
5 **for the provision of the following basic services to persons with developmental disabilities:**

6 (a) **Access to developmental disability services by persons with developmental disabilities**
7 **in their homes, work sites or other locations that promote independence, productivity and**
8 **integration into the community.**

9 (b) **Case management.**

10 (c) **Protective services.**

11 (d) **Planning and coordination of activities with other agencies or organizations to ensure**
12 **the effective and efficient delivery of services and use of resources.**

13 (e) **Other services as prescribed by the department by rule.**

14 (6) **A person with a developmental disability who is served by a support service brokerage**
15 **and the person's family members shall have a formal, significant, continuing role in advising**
16 **the support service brokerage regarding the design, implementation and quality assurance**
17 **of the support service brokerage.**

18 **SECTION 9. ORS 427.160 is repealed.**

19