

ANALYSIS

Item 13: Oregon Health Authority OSH Federal Ruling on Admissions

Analyst: Steve Robbins

Request: Allocate \$4,857,521 General Fund from a special purpose appropriation made to the Emergency Board and establish 59 positions (14.75 FTE) in response to a federal court ruling imposing reduced timelines for restoration of Aid and Assist patients admitted to the Oregon State Hospital.

Analysis: As a part of the Oregon Health Authority (OHA), the Oregon State Hospital (OSH) provides inpatient psychiatric services for adults committed to the hospital through court actions. The hospital has a 2021-23 budget of \$763 million and 2,658 positions, which supports 758 patient beds across two campuses - a main campus in Salem (592 beds) and a second one in Junction City (150 beds). While most of the hospital's ongoing budget is supported with General Fund, approximately \$40 million is from Medicare and Medicaid reimbursement.

OSH's role is to provide services and treatment to individuals that will prepare them for discharge when they no longer require a hospital level of care. The hospital's two campuses serve individuals under three different commitment types: guilty except for insanity (GEI), civilly committed, and Aid and Assist patients. GEI patients are those who have successfully pleaded to crimes related to their mental illness and under the jurisdiction of the Psychiatric Security Review Board (PSRB). People who come to OSH through a civil commitment require 24-hour care that is not available through community programs. These patients have been found by the court to be a danger to themselves or others, or unable to provide for their own basic needs - such as health and safety - because of a mental disorder. The "Aid and Assist" population comes to OSH through a court order under ORS 161.370 for treatment that will help them understand the criminal charges against them and assist in their own defense. The Aid and Assist population is the foundation for this request.

On August 15, 2022, Disability Rights Oregon and Metropolitan Public Defenders asked the court to change restoration timeframes to help the hospital come into compliance with the 2002 Mink Order, which is a federal court ruling that requires OSH to admit patients under Aid and Assist orders for competence restoration within seven days of the date the circuit court judge signed the order. On August 29, 2022, U.S. District Judge Michael Mosman ruled OSH must make changes to the patient discharge process, impacting the amount of time allowed for people under Aid and Assist could be held for restoration.

Historically, some Aid and Assist patients have been held for as long as three years (ORS 161.371), or the maximum amount of time that a person could have been sentenced to prison for their alleged crime, whichever is shorter. The new limits are differentiated into three categories: those with a misdemeanor offense, those with a felony charge, and those with a "violent felony" under ORS 135.240. Misdemeanor Aid and Assist patients now have an adjusted maximum commitment time at OSH of 90 days, felony patients are limited to a maximum commitment of six months, and violent felony patients have a maximum commitment of one year.

OSH must now accomplish the restoration of persons committed to the hospital under Aid and Assist in less time and is requesting ongoing resources to address having fewer treatment days to achieve the same outcome. Current modeling estimates an additional 27 patients per month, added to the 67 they treated before the ruling, each of which require necessary resources to meet their individual treatment goals. The overall acuity of the patient population will also increase, as persons committed to OSH exhibit enhanced symptomology during the initial 60 days of placement. In addition to the resources needed to address acuity and safety requirements in shorter timelines, greater communication will need to take place with community partners - from jails (on the admission side) to patient placement (at discharge). The new federal ruling has a sunset in September 2023 unless OSH meets the seven-day admission requirement for three consecutive months sooner, or the ruling is extended. Irrespective of the current sunset, OHA is submitting a legislative concept (LC) to change state law to mirror the parameters of the federal ruling.

With the shifting restoration time limits under the new federal court order, OHA hopes to comply with the 2002 Mink Order by March 2023, but recent projections now put this goal at risk. To comply represents an increase in the number of admissions per month of 34.5% (from an average of 71 to 96 per month) between now and March 2023. OHA says the need for positions is permanent despite the temporary nature of the court ruling and the timelines to reach compliance - in part because of the pending LC. The shorter timelines for restoration require clinical and operational work to take place in a much more compact timeframe, and the hospital will be unable to sustain the requirements without this on-going investment. OHA is requesting the following positions in both OSH and the Health Systems Division:

Oregon State Hospital	Positions
Admissions and Forensic Evaluation Services	9
Psychiatry and Psychology	6
Social Work	8
Security and Transport	14
Treatment Services and Therapy Positions	13
Medical and Pharmacological Services	5
Health Systems Division	
Intensive Services Complex Case Coordinator	1
Intensive Services Forensic Diversion Coordinator	1
Intensive Services System Engagement Coordinator	1
Compliance Specialist 3	1
Total Positions	59

Prior to this request, the Legislature recently made the following significant investments in the 2021-23 biennium to address the challenges with the Aid and Assist population and OSH staffing:

- \$21.5 million General Fund in the Health Services Division for Aid and Assist community restoration and clinical services, rental assistance and wraparound support, a new Intensive Services Unit, and contracting to conduct root-cause analysis of the increase in Aid and Assist admissions and develop possible policy or investment changes.

- \$31 million General Fund and 110 positions to open two 24-bed patient units at the Junction City campus. These units were meant to enable the Salem campus to make available more bed space to admit additional Aid and Assist patients.
- \$10.8 million General Fund and 228 positions (188.52 FTE) to support the first stage of OSH's plan to maintain a sufficient level of direct care staff. The \$10.8 million was available from a \$20 million special purpose appropriation made to the Emergency Board for maintaining OSH staffing levels contingent on OHA working with staff and other stakeholders to establish a sustainable plan.

In addition, a snapshot of current vacant positions at OSH as of the end of September 2022 shows 202 vacant direct care staff positions, including 58 vacant licensed practical nurses, 38 registered nurses, and 106 vacant mental health technicians. Additional vacancies exist in other position classifications. Prior investments may not have had an opportunity to impact the Aid and Assist population and demonstrate results while additional funding is being considered. The addition of new positions in 2021-23 may simply increase the number of vacant positions unfilled before the end of the biennium. OSH points to the Department of Administrative Services pay equity tool (valuing state service over external experience when making compensation offers) and struggles with completing those assessments in a timely manner as additional challenges in hiring vacant positions.

The current situation with Aid and Assist patients at OSH continues to carry great risk. Court rulings and subsequent litigation reflect that time is of the essence in solving these complex problems. An investment could signal to the courts and litigants that Oregon is addressing the issue. While the immediate goal between now and March 2023 is to restore the existing caseload to improve capacity, any legislation to make the new restoration parameters permanent through a statutory change, as intended by OHA, would likely have a fiscal impact. If the request for new positions is approved in its current form, the ongoing costs for the 2023-25 biennium are estimated to increase to \$15.5 million to reflect the full biennial value of the positions requested.

Given the risk of OSH not being able to meet the parameters of the Mosman ruling, the Legislative Fiscal Office is recommending approval of OHA's request. This recommendation includes the establishment of the positions as permanent full-time given the difficulty hiring limited duration positions would be for the given purpose and at this late stage in the current biennium. If the positions take longer than expected to fill, OSH's 2021-23 budget can commensurately be adjusted through budget rebalance actions during the 2023 legislative session. Likewise, if any of the positions remain vacant throughout the remainder of the biennium, the Legislature will have the opportunity to determine the need to provide ongoing funding and position authority for them in OHA's 2023-25 legislatively adopted budget.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board allocate \$4,857,521 General Fund from the special purpose appropriation made to the Emergency Board for Oregon Health Authority or Department of Human Services caseload costs or other budget challenges, and authorize the establishment of 59 permanent positions (14.75 FTE), to respond to a federal court ruling that establishes limits on the time patients on Aid and Assist orders can stay at the Oregon State Hospital.

Request: Allocate \$4.9 million General Fund from a Special Purpose Appropriation established for caseload costs and other budget challenges and establish 59 positions (14.75 FTE) to enhance treatment services in the wake of a court ruling reducing the length of time patients can stay at the Oregon State Hospital.

Recommendation: Approve the request on a one-time basis with the following modification which utilizes General Fund savings from the Fall 2022 Rebalance plan: transfer \$4,563,439 General Fund from the appropriation made to the Health Systems, Health Policy and Analytics and Public Health Division to the Oregon State Hospital and establish 59 limited duration positions (14.75 FTE).

Discussion: OHA is requesting \$4.9 million General Fund and 59 positions (14.75 FTE) to respond to a federal court ruling reducing the length of time patients can stay at the Oregon State Hospital (OSH). The court ruling requires OSH to discharge patients on Aid and Assist orders within 90 days of admission if they were charged with a misdemeanor, 180 days if charged with a felony, and one year if charged with a Measure 11 felony. The ruling was made in response to litigation around the admissions crisis at OSH. Prior court rulings have required OSH to admit Aid and Assist and Guilty Except for Insanity patients within seven-days of a court order, but OSH has exceeded that standard off and on for years. Wait times averaged 40 days for Aid and Assist patients immediately prior to the court ruling. With the new length of stay standards, OHA projects it will be in compliance with the seven-day admission standard for the Aid and Assist and Guilty Except for Insanity populations by March 2023. The court order limiting the length of stay will be in place until the neutral expert appointed by a previous court ruling finds OSH has been compliant with the seven-day admission standards for three months. On this basis, the court order could be lifted in the early summer of 2023, at the earliest.

OHA's request is for two purposes: \$4.6 million and 55 positions for enhanced treatment, security and patient transportation services at Oregon State Hospital, and \$0.3 million and four positions are for the Health Systems Division to better support patients transitioning out of OSH to the community as well as to implement recommendations made by the neutral expert. The additional staff are needed at OSH due to the projected 34 percent increase in admissions. Patients, especially Aid and Assist patients, tend to be more acutely ill and require additional resources for the first 60 days after admission in order to acclimate to the treatment environment and receive medication.

The limits on length of stay are linked to the backlog of patients awaiting admissions and are temporary, but OHA is seeking to make them permanent through a statutory change. Current statute limits Aid and Assist patient length of stay to three years, while OHA would like to have the limits included in the federal ruling written into law. This request is recommended on a one-time basis given the short-term nature of the federal court ruling and to allow for Legislative consideration of enacting the limits into statute. The Oregon State Hospital portion of this request is recommended to be funded using a transfer of rebalance savings from the Health Systems, Health Policy and Analytics, and Public Health Divisions. The Health Systems Division portion of this request can be funded using one-time savings from within that appropriation. Only the authority to establish four limited duration positions is recommended.

Legal Reference:

Transfer of \$4,563,439 General Fund appropriation made by Chapter 668, Section 1, Oregon Laws 2021, for the 2021-23 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(1) Health Systems, Healthy Policy and Analytics, and Public Health	\$-4,563,439
(2) Oregon State Hospital	\$+4,563,439



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October 24, 2022

Senator Peter Courtney, Co-Chair
Representative Dan Rayfield, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Oregon Health Authority (OHA) requests the Legislature appropriate \$4,857,521 General Fund and establish 59 positions to implement the federal court ruling imposing reduced timelines for Aid and Assist restoration patients admitted to the Oregon State Hospital (OSH). OHA is requesting \$4,563,439 and 55 positions for OSH, and \$294,082 and 4 positions for Health Systems Division (HSD). The 2023-25 budget impact is estimated to be \$15,631,305 for OSH and \$1,005,705 for HSD.

OHA is requesting the total \$4,857,521 million from the special purpose appropriation the Legislature approved in House Bill 5006 (2021 regular session; \$55 million) and increased in House Bill 5202 (2022 regular session; \$45 million) for OHA and ODHS caseload costs and other budget challenges that the agencies are unable to mitigate.

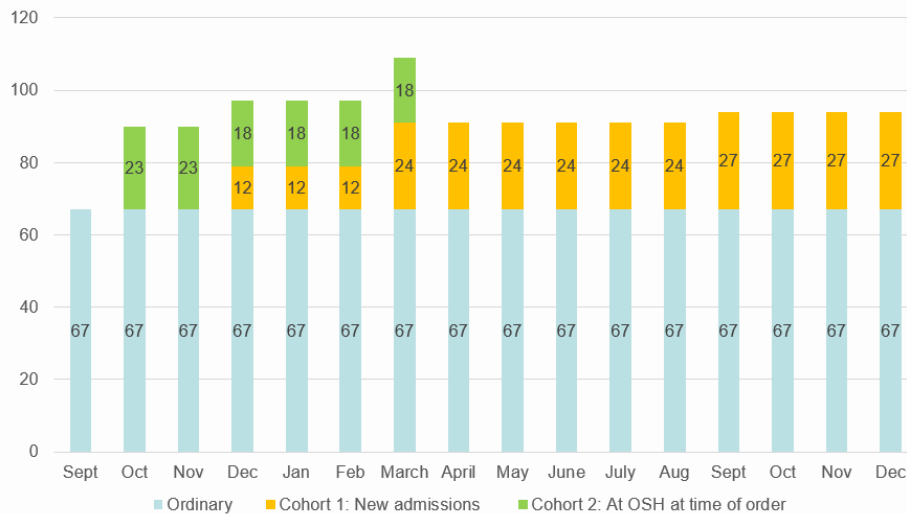
Agency Action

On August 29, 2022, a federal judge ordered new timelines for OSH Aid and Assist patients through a ruling on a case initiated by Disability Rights Oregon. The new limits relate to persons who are charged with a misdemeanor offense, adjusting the maximum commitment time at OSH to 90 days, which ORS 161.371 previously established as durations of up to three years. Additionally, the new federal ruling for persons whose most serious charge is a felony is now a maximum duration of commitment for restoration of six months, unless the felony meets the definition of a “violent felony” under ORS 135.240(6) in which case the maximum duration of commitment for restoration is one year.

The impact of this ruling is that OSH must accomplish the restoration of persons committed to the hospital in less time. The reduced timelines require additional

dedicated resourcing—as the patients within the facility will have fewer treatment days to achieve the same outcome—and the accelerated admissions and discharges will result in more patients being treated within the facility. Current modeling estimates an additional 27 patients per month, each of which requires necessary resourcing for their individual treatment goals. The graph below represents the average number of Aid and Assist admissions to OSH (67) with the modeled impact of the federal ruling, both in discharge of current patients that meet the timeline criteria, and then by expected new admissions.

Monthly Discharges by Group



This ruling will allow patients to be admitted sooner, as additional discharges occur and more bed space is made available; however, because persons committed to OSH exhibit enhanced symptomology during the initial 60 days of placement, this ruling will result in higher overall hospital acuity. Individual cases with higher acuity or complexity require additional resources to address care and safety requirements as staff deliver treatment in the reduced timelines, resulting in the request for additional personnel to provide the enhanced concentration of treatment the guidelines will require, and the additional number of patients served. This ruling will also require greater communication with the communities from which and to which the patient population will be admitted and discharged, respectively.

Oregon State Hospital

OSH is requesting additional positions to meet increased demands across several hospital disciplines and service areas. These can be grouped into general areas.

Admissions and Forensic Evaluation Services

This request adds nine positions responsible for the admissions processes, additional evaluations and progress reports and the associated support and documentation.

Psychiatry and Psychology

Both Psychiatry and Psychology provide the “backbone” of care at OSH. Six positions are required to meet the concentration of care and documentation required by the reduction in total treatment time available per patient. For both Psychiatry and Psychology, as the patient turnover increases, the caseload for practitioners must become more focused to allow for adequate care to all assigned patients.

Social Work

Eight positions are needed in the Social Work department related to community restoration referrals, hearings, and the increased discharge planning required by the ruling, for documentation to the courts, ensuring patient participation at court hearings, and that all related information is documented and updated in the patient record. Thoughtful planning and coordination with community partners is a cornerstone to quality discharge planning and seamless transitioning of the patient into the community.

Security and Transport

Security provides necessary support for the entirety of the OSH patient population but is vital to those with the highest acuity. Fourteen positions are requested to support the need of the ruling on timelines, to allow Security and Transport personnel to respond to acuity across the campus and escort patients when off secure units.

Treatment Services and Therapy Positions

Treatment Services requires the addition of thirteen positions to effectively engage patients and reduce risk of violence, and to promote patient engagement and stabilization with an emphasis on the cognitive skill set which contributes to the effectiveness of psychotherapeutic restoration services, positioning the patient for success and ongoing recovery.

Medical and Pharmacological Services

This request would add four positions to meet the needs of patients coming into the hospital and ensure timely resolution of untreated medical issues prior to discharge, and one position to meet the additional prescription requirements of increased patients at admission, during treatment, and in preparation for discharge.

In total, the request for OSH is 55 positions over a range of disciplines required to provide restoration services within the compressed time available. Meeting the overall staffing needs of OSH is contingent upon the 2023-25 policy package for Sustainable Staffing. If that package is not granted, the resourcing above will not be sufficient in all areas.

Health Systems Division – Behavioral Health

The OHA request will also require services from HSD and that corresponding level of communication with community restoration providers, coordinated care organizations, OSH and other governances or entities. In total, HSD needs four positions, consisting of three Operations and Policy Analyst 3 (OPA 3) and one Compliance Specialist 3 positions. These positions would focus on working with local communities to build community services for individuals discharging from OSH and creating policies and procedures to ensure continuity of care and community engagement. These positions would consist of the following roles:

Intensive Services Complex Case Coordinator (OPA 3)

The primary purpose of this position is to serve as liaison and facilitate collaboration between the Office of Behavioral Health Services, community mental health programs, coordinated care organizations, residential treatment providers, and the OSH social workers to coordinate admission and discharge planning for OSH patients. This person would focus specifically on the planning, policy, system performance, and program recommendations for people who have entered the behavioral health system through Oregon's courts as a result of civil commitment, guilty except for insanity, aid and assist, or magistrate hold. The person in this position would identify program policy development needs, including administrative, legislative, and funding changes, to improve the effectiveness of the services and service delivery system.

Intensive Services Forensic Diversion Coordinator (OPA 3)

The purpose of this position is to develop, manage, and monitor mental health treatment consultations and program services for individuals in community, hospital and jail settings who need to be restored to competency to be able to stand trial, or are under the jurisdiction of the Psychiatric Security Review Board. The Forensic Diversion Coordinator would work with the Community Mental Health Programs, coordinated care organizations, OSH, and local courts and jails, to ensure individuals are housed in the appropriate level of care for restoration services. The person in this position would also provide data regarding caseload growth and statewide use of Aid and Assist services; make contract amendment requests or requests for proposals to increase Aid and Assist services in the community; and develop, revise, and

implement administrative rules as necessary to coordinate the Aid and Assist program.

Intensive Services System Engagement Coordinator (OPA 3)

This position would serve as a compliance expert who would assist the Behavioral Health Intensive Services unit in interpreting and monitoring Oregon Health Plan contract compliance issues as they relate to Aid and Assist, jail diversion and other programs within the Behavioral Health intensive services unit. This position would ensure that Oregonians who are leaving OSH forensic units or who are being served by jail diversion and restoration services in their communities have access to available and appropriate behavioral health benefits. This position would primarily collaborate with internal partners working on complex treatment and care access issues as they relate to people in Aid and Assist or jail diversion programs and would coordinate with local Oregon Department of Human Services, Aging and People with Disabilities, and other state agencies to ensure compliance, engagement, and integrated care coordination and care experience. The purpose of this position is to develop, manage, and monitor mental health treatment and program services for individuals in community, hospital and jail settings who need to be restored to competency in order to be able to stand trial.

Compliance Specialist 3

This position would serve as a compliance expert who would assist the Behavioral Health Intensive Services unit with interpreting and monitoring compliance issues related to Civil Commitment to ensure that individuals are receiving and have access to appropriate levels of care and treatment in the community. This position would work with Community Mental Health Programs, coordinated care organizations, OSH, local courts, and outpatient systems of care. This position would also monitor contracts and provide contract administration for programs serving civilly committed individuals and individuals who are placed on notices of mental illness.

Summary

OHA requires a variety of positions to successfully implement the timelines imposed by the federal ruling. For the 2021-23 biennium, OHA needs 59 positions and \$4.86 million. For the 2023-25 biennium, OHA estimates expenses approximately a \$16.64 million budget impact for the 59 positions.

Division	Department	Positions	2021-23 Expense	2023-25 Expense
OSH	Admissions and Forensic	9	\$ 685,375	\$ 2,337,552
	Psychiatry and Psychology	6	\$ 963,770	\$ 3,512,672
	Social Work	8	\$ 555,020	\$ 1,868,641
	Security and Transport	14	\$ 778,946	\$ 2,458,792
	Treatment and Therapy Services	13	\$ 858,709	\$ 2,852,724
	Medical and Pharmacological	5	\$ 721,619	\$ 2,600,924
OSH Total		55	\$ 4,563,439	\$ 15,631,305
HSD	HSD	4	\$ 294,082	\$ 1,005,705
HSD Total		4	\$ 294,082	\$ 1,005,705
Grand Total		59	\$ 4,857,521	\$ 16,637,010

Action Requested

OHA requests the Legislature appropriate \$4,857,521 General Fund and establish 59 positions to implement the federal court ruling imposing reduced timelines for Aid and Assist restoration patients admitted to the Oregon State Hospital.

Legislation Affected

Oregon Laws 2021, Chapter 668 1(2), increase General Fund \$4,563,439.
Oregon Laws 2021, Chapter 668 1(1), increase General Fund \$294,082.

Sincerely,



Patrick M. Allen
Director

EC: Patrick Heath, Department of Administrative Services
George Naughton, Department of Administrative Services
Steve Robbins, Legislative Fiscal Office
Amanda Beitel, Legislative Fiscal Office