

DRAFT

SUMMARY

Digest: The Act requires the OHA to provide certain services to certain people who are under 21 years of age.

If a youth is charged with violating the law, the Act does not allow social workers to assess whether the youth is mentally able to proceed with a hearing. If a court orders the OHA to provide services to a youth so that the youth is able to proceed in the hearing, the Act says that the court order does not commit the youth to the OHA or change the youth's guardian. (Flesch Readability Score: 60.7).

Requires the Oregon Health Authority to seek federal approval to obtain federal funding to provide services and supports to certain individuals who are under 21 years of age to enable the individuals to live at home. Specifies services and supports and requirements for eligibility determinations.

Requires the authority to improve the process for accessing the services and supports to make it easier for individuals to access the services and supports, including for individuals who are eligible for services from more than one agency or more than one division within an agency.

Prohibits the denial of services and supports to individuals who have intellectual or developmental disabilities.

Requires the authority to create and maintain a unit staffed with staff who are trained to coordinate the services and supports on behalf of the individuals receiving them.

Requires the authority to contract with community-based entities to provide assistance to individuals and their families in accessing and managing services and supports.

Requires the authority to adopt rules listing medical assistance services that may not be delayed due to prior authorization, medical necessity reviews or provider restrictions.

Requires the authority and the Department of Education to develop strategies and recommendations for leveraging federal funds to provide certain school-based services and submit a report to the Legislative Assembly by October 1, 2024.

Modifies provisions regarding the assessment of a youth's fitness to proceed in a juvenile delinquency proceeding. Clarifies that an order directing

1 that a youth receive restorative services does not commit the youth to the
2 custody of the Oregon Health Authority or alter the youth's guardianship.
3 Limits when a youth may be removed from a current placement to a new
4 placement to receive restorative services.

5 Declares an emergency, effective on passage.

6 **A BILL FOR AN ACT**

7 Relating to services to individuals who are under 21 years of age; creating
8 new provisions; amending ORS 419C.380, 419C.382, 419C.392, 419C.396 and
9 419C.398; and declaring an emergency.

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

11 **SECTION 1. (1) Using funding available through the Community**
12 **First Choice option under 42 U.S.C. 1396n(k), the Oregon Health Au-**
13 **thority shall offer services and supports, listed in subsection (3) of this**
14 **section, to individuals who are under 21 years of age, qualify for**
15 **medical assistance as defined in ORS 414.025, meet the criteria estab-**

- 16 **(a) Are at risk of hospitalization or an out-of-home placement;**
17 **(b) Are hospitalized or in an out-of-home placement and wish to**
18 **receive services in their own homes or family foster homes; or**
19 **(c) Have been hospitalized or have been in an out-of-home place-**
20 **ment in the prior 24-month period.**

21 **(2)(a) The authority shall establish by rule eligibility criteria for**
22 **determining whether an individual, in the absence of community-based**
23 **services and supports, would require the level of care furnished in an**
24 **institution providing psychiatric services for individuals and shall es-**
25 **tablish an assessment tool to determine needed services and supports.**

26 **(b) Individuals eligible for services and supports under this section**
27 **include, but are not limited to, an individual who:**

28 **(A) Has been diagnosed with a severe and persistent mental illness**
29 **or behavioral disorder, serious emotional disturbance or trauma-**
30 **related behavioral disorder;**

31 **(B) Came to an emergency room as a result of an attempted suicide,**

1 **incident of self-harm or drug overdose;**

2 **(C) Is leaving a residential care facility or a foster care home and**
3 **who needs community-based supports to ensure the individual's suc-**
4 **cess living in noninstitutional placements; or**

5 **(D) Is at risk of being placed in out-of-home care, including a ju-**
6 **venile detention facility, as a result of behaviors related to the**
7 **individual's mental illness.**

8 **(c) An individual may not be denied eligibility for or access to ser-**
9 **vices or supports under this subsection on the basis that the individual**
10 **also has an intellectual or developmental disability.**

11 **(3) Services and supports provided under subsection (1) of this sec-**
12 **tion must include, but are not limited to:**

13 **(a) Skills training;**

14 **(b) Home modifications;**

15 **(c) Assistive technology;**

16 **(d) Supervision;**

17 **(e) Attendant care services;**

18 **(f) Cueing;**

19 **(g) Nonmedical transportation; and**

20 **(h) Case management services.**

21 **(4) The authority shall seek a waiver or other federal authority**
22 **necessary to:**

23 **(a) Disregard the income of a parent of an individual who is under**
24 **18 years of age when determining the individual's eligibility for med-**
25 **ical assistance if the individual:**

26 **(A) Meets the eligibility criteria for inpatient psychiatric services**
27 **for individuals under 21 years of age as defined in 42 C.F.R. 440.160; or**

28 **(B)(i) Has a severe and persistent mental illness, substance use**
29 **disorder, emotional disturbance or behavioral disorder that puts the**
30 **individual at risk of an out-of-home placement, self-harm, harm to**
31 **others or involvement in the juvenile justice system; or**

1 (ii) Has a physical disability or chronic medical needs that meet a
2 hospital or nursing home level of care and place the individual at risk
3 of institutional placement in the absence of community-based supports
4 and services; and

5 (b) Provide flexibility for providing innovative services and supports
6 needed to allow individuals receiving services and supports under
7 subsection (1) of this section to be successful living in family or
8 community-based settings, including but not limited to:

9 (A) Respite care;

10 (B) Job coaching and employment supports;

11 (C) Family counseling;

12 (D) Person-centered planning;

13 (E) Peer support for individuals under 21 years of age and their
14 parents, guardians, personal representatives or families; and

15 (F) Training and support for parents, guardians, personal repre-
16 sentatives and family members of individuals under 21 years of age.

17 (5) The Department of Human Services and the authority shall:

18 (a) Develop a process to ensure that individuals who are eligible for
19 services and supports under both the Community First Choice option
20 and any other type of federal waiver or authority under subsection (4)
21 of this section, have all of their needs fully met while avoiding dupli-
22 cation of services and supports;

23 (b) Ensure that an individual is not denied access to services and
24 supports from the authority or the department on the basis that the
25 individual is also receiving services and supports from the other
26 agency or another agency;

27 (c) Ensure that services and supports are accessible to individuals
28 by minimizing the number of steps an individual must take to estab-
29 lish eligibility for the services and supports, including by streamlining
30 the application process for individuals who qualify for services and
31 supports from both agencies or different divisions within an agency;

1 and

2 (d) Ensure that individuals who experience intellectual or develop-
3 mental disabilities along with mental illness or substance use disorder
4 are provided access to services and supports offered by each agency
5 without delay.

6 (6) The authority shall create and maintain a unit within the
7 authority's children's behavioral health program to support the coor-
8 dination of the services and supports provided under this section to
9 individuals, including those who are involved with multiple state
10 agencies such as the authority, the department or the Oregon Youth
11 Authority. The unit must coordinate with the Oregon Health Author-
12 ity, the department and the Oregon Youth Authority to assist indi-
13 viduals who are receiving services and supports under this section to
14 remain in the community and avoid health crises, hospitalization or
15 an out-of-home placement. The unit must focus on prevention, recov-
16 ery and support, supporting individuals and their families to access the
17 appropriate comprehensive, wrap-around community-based services
18 and supports that prevent crises from happening or from reoccurring
19 and that provide support and stabilization in the event of a crisis.

20 (7)(a) Subject to rules adopted by the Oregon Health Authority, an
21 individual may be enrolled in a coordinated care organization to re-
22 ceive services and supports under this section but must be given the
23 choice to change to services and supports paid for on a fee-for-service
24 basis if the individual needs services or supports that are not imme-
25 diately accessible through the local coordinated care organization. The
26 individual must be allowed to see providers outside of the coordinated
27 care organization's provider network for evaluation, assessment,
28 treatment, counseling, therapy or short-term residential care and
29 must be ensured continuity in care with the individual's providers if
30 the individual moves to a different geographical area.

31 (b) The authority, a community mental health program or a coor-

1 **dinated care organization may not deny an individual access to mental**
2 **health assessment, treatment or services on the basis that the indi-**
3 **vidual also has an intellectual or developmental disability.**

4 **(8) An individual or the individual’s parents, guardian or legal rep-**
5 **resentative must be given the opportunity to direct the services and**
6 **supports under this section, to choose how to employ providers and to**
7 **select the providers, including the option to recruit and supervise the**
8 **providers obtained through the Home Care Commission registry or**
9 **other entity that makes providers available.**

10 **(9) The Oregon Health Authority shall contract with one or more**
11 **community-based entities to develop person-centered services, assist**
12 **individuals and their families in identifying and recruiting preferred**
13 **providers of services and support staff, provide fiscal intermediary**
14 **services and support individuals and their families in directing the**
15 **provision of services and supports. The contracts must ensure access**
16 **to culturally and linguistically appropriate and person-centered care**
17 **for individuals and their families throughout this state.**

18 **(10)(a) The authority shall adopt rules for entities that supply pro-**
19 **viders of services and supports under this section to ensure the safety**
20 **and quality of care. The rules must allow for both self-directed models**
21 **of service and agency-directed models of service, as selected by the**
22 **individual receiving services and supports or the individual’s parent,**
23 **guardian or legal representative.**

24 **(b) As used in this subsection:**

25 **(A) “Agency-directed model of services” means a public or private**
26 **community agency or organization authorized by the Oregon Health**
27 **Authority to take direct responsibility for managing services and sup-**
28 **ports, including the hiring, training and supervision of support staff,**
29 **in a manner that promotes the personal choices and values of an in-**
30 **dividual who is receiving the services and supports.**

31 **(B) “Self-directed model of services” means that an individual, or**

1 a legal or designated representative of the individual, has decision-
2 making authority over services and supports and takes direct respon-
3 sibility for managing the services and supports provided to the
4 individual with the assistance of a support system that promotes per-
5 sonal choice and control over the delivery of the services and supports.

6 (11) Rules adopted by the authority under subsection (10) of this
7 section:

8 (a) Must require that any services described as treatment are pro-
9 vided only by licensed medical providers.

10 (b) May not require that attendant care services, supervision, re-
11 spite or other nontreatment services be provided by licensed medical
12 professionals or qualified mental health professionals.

13 SECTION 2. Section 3 of this 2024 Act is added to and made a part
14 of ORS chapter 414.

15 SECTION 3. (1) The Oregon Health Authority shall adopt by rule a
16 list a services to be provided to individuals who are under 21 years of
17 age and eligible for medical assistance without any:

18 (a) Requirement for prior authorization;

19 (b) Review for medical necessity or appropriateness; or

20 (c) Requirement that the service be provided only by a provider who
21 is in a coordinated care organization's network of providers.

22 (2) The services on the list described in subsection (1) of this section
23 must include, but are not limited to:

24 (a) Assessments or evaluations necessary to establish eligibility for
25 services provided in the medical assistance program or by the De-
26 partment of Human Services, the Department of Education or a public
27 education program;

28 (b) Any other treatment or service covered by the medical assist-
29 ance program that is necessary to prevent individuals who are under
30 21 years of age from needing an out-of-home placement or a higher
31 level of care; and

1 (c) Services that are necessary for the continuity of care, treatment
2 and uninterrupted access to counseling, prescription medication and
3 medical equipment or supplies for individuals under 21 years of age
4 who are in out-of-home placements and move from one coordinated
5 care organization to another coordinated care organization.

6 **SECTION 4.** (1) The Oregon Health Authority and the Department
7 of Education shall develop strategies and recommendations to leverage
8 federal Medicaid or Children’s Health Insurance Program funds to
9 support the inclusion, academic success and well-being of all Oregon
10 students who are eligible for medical assistance, including students
11 with severe emotional disturbances and students who need school-
12 based nursing services.

13 (2) No later than October 1, 2024, the authority and the department
14 shall report to the Legislative Assembly, in the manner provided in
15 ORS 192.245, on the strategies and recommendations developed. The
16 report must include, at a minimum:

17 (a) Strategies to simplify medical assistance billing for school dis-
18 tricts;

19 (b) Recommendations for any needed investments in infrastructure,
20 including staff and technology, to ensure low-barrier access to services
21 in the medical assistance program for eligible students; and

22 (c) Specific recommendations related to leveraging federal funds to
23 increase access to school-based services including, but not limited to:

24 (A) Nursing services for medically fragile and medically involved
25 students;

26 (B) Access to school-based mental health care, including screening,
27 assessment, counseling, treatment and therapy from licensed provid-
28 ers;

29 (C) Access to school-based direct services in speech, physical and
30 occupational therapy, nutrition, respiratory therapy, functional be-
31 havioral assessment and behavior support services;

1 (D) Personal care and noneducational attendant care services at
2 school to improve access to inclusive settings for high school students
3 with high needs; and

4 (E) Enhanced specialized transportation services.

5 (3) As used in this section, “medical assistance” has the meaning
6 given that term in ORS 414.025.

7 **SECTION 5.** ORS 419C.380 is amended to read:

8 419C.380. (1) An evaluation ordered under ORS 419C.378 must be con-
9 ducted by a psychiatrist[,] **or** a licensed psychologist [*or a regulated social*
10 *worker*]. If an evaluation is requested, the party at whose request the evalu-
11 ation was ordered shall notify the court and other parties of the date, time
12 and location of the evaluation and the name of the evaluator chosen by the
13 party. A party or the court may submit written information to the evaluator
14 for consideration. When written information that has not been provided to
15 the court or an opposing party is submitted to the evaluator, the party sub-
16 mitting the written information to the evaluator shall provide the written
17 information to the court and the opposing party.

18 (2)(a) A county court or justice court shall order the county to pay the
19 fees and costs described in subsection (3) of this section from funds available
20 for that purpose.

21 (b) A circuit court shall order the executive director of the Oregon Public
22 Defense Commission to pay the fees and costs described in subsection (3) of
23 this section from funds available for that purpose.

24 (3) Pursuant to subsection (2) of this section, the county or the executive
25 director of the Oregon Public Defense Commission shall pay:

26 (a) A reasonable fee to a psychiatrist, licensed psychologist or regulated
27 social worker in private practice who conducts the evaluation; and

28 (b) All costs, including transportation of the youth, if the evaluation is
29 conducted by a psychiatrist[,] **or** licensed psychologist. [*or regulated social*
30 *worker employed by the Department of Human Services or is conducted by a*
31 *community mental health program or community developmental disabilities*

1 *program established under ORS 430.610 to 430.695.]*

2 (4) If an evaluation is ordered under ORS 419C.378, the county shall pay
3 for the expense of the evaluation.

4 (5) After a motion is made by the court or the youth under ORS 419C.378
5 (3), the state shall have the right to seek an independent evaluation at its
6 own expense.

7 (6) A youth may not be removed from the youth's current placement for
8 the purpose of an evaluation performed under this section unless:

9 (a) The youth has been placed in a detention facility as defined in ORS
10 419A.004 or a youth correction facility as defined in ORS 420.005; **and**

11 **(b) The removal is for less than 14 days.**

12 **SECTION 6.** ORS 419C.382 is amended to read:

13 419C.382. (1) The Oregon Health Authority shall:

14 (a) Develop training standards for psychiatrists[,] **and** licensed psychol-
15 ogists [*and regulated social workers*] conducting evaluations under ORS
16 419C.380;

17 (b) Develop guidelines for the conduct of evaluations; and

18 (c) Provide courts with a current list of qualified evaluators from which
19 an evaluator may be selected. Neither the parties nor the court is required
20 to choose an evaluator from the list provided by the authority, provided that
21 the evaluator chosen is otherwise qualified.

22 (2) The authority shall adopt rules necessary to implement this section.

23 **SECTION 7.** ORS 419C.392 is amended to read:

24 419C.392. (1) If the court finds that the youth is fit to proceed, the court
25 shall vacate the stay under ORS 419C.378.

26 (2) If the court finds that the youth is unfit to proceed and that there is
27 not a substantial probability that the youth will gain or regain fitness to
28 proceed in the foreseeable future if provided restorative services under ORS
29 419C.396, the court shall:

30 (a) Immediately enter a judgment that dismisses the petition alleging ju-
31 risdiction under ORS 419C.005 without prejudice; or

1 (b) If necessary for planning or instituting an alternative proceeding, then
2 not more than five days after the findings are made enter a judgment that
3 dismisses the petition without prejudice.

4 (3)(a) If the court finds that the youth is unfit to proceed and that there
5 is a substantial probability that the youth will gain or regain fitness to
6 proceed in the foreseeable future if provided restorative services under ORS
7 419C.396, the court shall continue the order under ORS 419C.378 staying the
8 proceedings and order that the youth receive restorative services under ORS
9 419C.396.

10 (b) The court shall forward the order for restorative services to the
11 Oregon Health Authority.

12 (c) **Unless otherwise specifically ordered, the court's order for**
13 **restorative services does not commit the youth to the custody of the**
14 **authority or alter the guardianship of the youth.**

15 **SECTION 8.** ORS 419C.396 is amended to read:

16 419C.396. (1) The Oregon Health Authority shall arrange for the provision
17 of or begin providing restorative services within 30 days after receiving a
18 court order under ORS 419C.392 (3). The authority shall send a report to the
19 court, with copies to the parties to the proceeding initiated by a petition
20 alleging jurisdiction under ORS 419C.005, no later than 90 days after receipt
21 of the order. The report must describe the nature and duration of restorative
22 services provided, indicate whether the youth is fit to proceed or presents a
23 substantial probability of gaining or regaining fitness to proceed and re-
24 commend whether restorative services should be continued and, if so, the
25 type and duration of the services.

26 (2) Within 14 days after receiving a report under subsection (1) of this
27 section, the court shall [*determine*] **issue a finding regarding** the youth's
28 fitness to proceed.

29 (3) Upon the recommendation of the authority, the request of a party or
30 the court's own motion, the court may hold a review hearing concerning the
31 evaluation of the youth's fitness to proceed at any time during which

1 restorative services are provided pursuant to an order under ORS 419C.392
2 (3). After a review hearing, the court shall determine the youth's fitness to
3 proceed.

4 (4) If the court finds that a youth is fit to proceed, the court shall vacate
5 the stay under ORS 419C.378.

6 (5) If the court finds that the youth remains unfit to proceed and that
7 there is not a substantial probability that the youth will gain or regain fit-
8 ness to proceed in the foreseeable future, the court shall:

9 (a) Immediately enter a judgment that dismisses the petition alleging ju-
10 risdiction under ORS 419C.005 without prejudice; or

11 (b) If necessary for planning or instituting an alternative proceeding, then
12 not more than five days after the findings are made enter a judgment that
13 dismisses the petition without prejudice.

14 (6) If the court finds under subsection (2) or (3) of this section that the
15 youth remains unfit to proceed, but that the youth presents a substantial
16 probability of gaining or regaining fitness to proceed, the court shall order
17 that restorative services be continued. The court shall order the authority
18 to send a report to the court, with copies to the parties, within a specified
19 time, not to exceed 90 days from the time the order is filed.

20 (7) If the court finds under subsection (2) or (3) of this section that a
21 youth remains unfit to proceed, the youth shall be discharged within a period
22 of time that is reasonable for making a determination whether the youth
23 presents a substantial probability of gaining or regaining fitness to proceed.
24 Regardless of the number of acts the petition alleging jurisdiction under ORS
25 419C.005 alleges that the youth committed, the youth may not be continued
26 in restorative services for longer than whichever of the following, measured
27 from the date the petition is filed, is shorter:

28 (a) Three years; or

29 (b) The period of time that is equal to the maximum commitment the
30 court could have imposed if the petition had been adjudicated.

31 (8)(a) If the court orders placement for restorative services, the court may

1 specify the type of care, supervision, security or services to be provided by
2 the authority to any youth placed in the custody of the Department of Hu-
3 man Services and to the parents or guardians of the youth.

4 (b) The authority, in coordination with the Department of Human Ser-
5 vices, the local juvenile department and the youth's family, may place the
6 youth in any facility authorized to accept the youth and provide the neces-
7 sary services and care that are most appropriate for the youth.

8 (c) The authority shall continue to provide restorative services wherever
9 the youth is placed.

10 **SECTION 9.** ORS 419C.398 is amended to read:

11 419C.398. (1) A youth may not be removed from the youth's current
12 placement solely for the purpose of receiving restorative services pursuant
13 to a court order under ORS 419C.392 unless the court finds:

14 (a) That removal is necessary to provide restorative services under ORS
15 419C.396;

16 (b) That removal is in the best interest of the youth; *[and]*

17 **(c) That the youth meets the medical necessity criteria for the**
18 **restorative services placement; and**

19 *[(c)]* **(d)** If the Department of Human Services has custody of the youth,
20 that:

21 (A) The department made reasonable efforts to prevent or eliminate the
22 need for removal and make it possible for the youth to safely return to the
23 youth's current placement; or

24 (B) Reasonable efforts have not been made by the department but rea-
25 sonable efforts would not have eliminated the need for removal under para-
26 graphs (a) *[and (b)]* **to (c)** of this subsection.

27 (2) If a youth is removed for the purpose of receiving restorative services,
28 the youth shall be returned to the youth's current placement immediately
29 upon conclusion of the provision of the restorative services unless the youth
30 has been placed in a detention facility as defined in ORS 419A.004 or a youth
31 correction facility as defined in ORS 420.005.

1 **SECTION 10.** No later than December 1, 2024, the Oregon Health
2 Authority must submit to the Centers for Medicare and Medicaid
3 Services an application for a waiver to disregard parental income un-
4 der section 1 (4)(a) of this 2024 Act.

5 **SECTION 11.** (1) The Oregon Health Authority shall adopt eligibility
6 criteria under section 1 (2) of this 2024 Act no later than January 1,
7 2025.

8 (2) No later than July 1, 2025, The authority shall begin making el-
9 igibility determinations:

10 (a) For the community-based services described in section 1 (3) of
11 this 2024 Act; and

12 (b) Under the terms of the waiver described in section 1 (4) of this
13 2024 Act.

14 **SECTION 12.** Section 4 of this 2024 Act is repealed on January 2,
15 2025.

16 **SECTION 13.** This 2024 Act being necessary for the immediate
17 preservation of the public peace, health and safety, an emergency is
18 declared to exist, and this 2024 Act takes effect on its passage.

19