



Behavioral Health Provisions

in the forthcoming amendments to House Bill 4002

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Utilization Review



Prohibits prior authorization or other utilization review for insurance coverage of prescription drugs for the treatment of substance use disorder.

Applies to:

Any group or individual “health benefit plan” offered in this state.



DEFINITION: HEALTH BENEFIT PLAN



“Health benefit plan” includes:

- A hospital expense, medical expense or hospital and medical expense policy or certificate for groups or individuals;
- Health care service contracts; and
- Plans provided by multiple employer welfare arrangements.



HEALTH BENEFIT PLAN EXCLUSIONS



“Health benefit plan” does not include:

- Accident only, specific disease or condition only, credit or disability incomes policies
- Medicare contracts
- Medicare supplement contracts
- Tricare
- Flexible spending accounts



HEALTH BENEFIT PLAN EXCLUSIONS



- Long term care insurance
- Hospital-only indemnity or other fixed indemnity insurance
- Short term health insurance policies
- Dental only coverage
- Vision only coverage
- Stop-loss coverage



HEALTH BENEFIT PLAN EXCLUSIONS



- Supplemental liability coverage
- Workers' compensation insurance
- No fault automobile insurance
- Employee benefit plans that ERISA exempts from state regulation



Discrimination



Prohibits residential settings from refusing to admit an individual based on the individual's involvement in medication-assisted treatment.

Applies to:

- Licensed long term care facilities (nursing or intermediate care facilities)
- Licensed residential facilities such as assisted living facilities or memory care facilities
- Group recovery homes



OPIOID USE DISORDER MEDICATIONS



Requires health benefit plans to cover the cost of emergency refills of medications prescribed for the treatment of opioid use disorder if:

- Prescribed or dispensed by a licensed health care professional; and
- The health care professional is legally authorized to prescribe or dispense the medication.



OPIOID USE DISORDER MEDICATIONS



Allows licensed pharmacist to prescribe and dispense emergency refills of medications for the treatment of opioid use disorder if the pharmacist:

- Completes a patient assessment to determine whether the prescription is appropriate;
- Documents the patient's visit including the evidence of a previous prescription from the patient's health care provider; and
- Makes a reasonable attempt to inform the patient's primary care provider and the health care provider who last prescribed the medication.



Access to treatment



Network adequacy:

Requires coordinated care organizations (CCOs) to contract with enough addiction treatment providers who are geographically distributed to ensure that addiction treatment services are reasonably accessible to all the members of the CCO.



ADPC study



Requires the Alcohol and Drug Policy Commission to:

- Conduct a study of barriers to:
 - Youth accessing substance use disorder treatment; and
 - Substance use disorder treatment providers obtaining credentialing or other authorization to provide substance use disorder treatment.



ADPC study



- Provide a report to the Behavioral Health Committees of the Legislative Assembly that includes:
 - A strategic plan to improve access of youth to substance use disorder treatment;
 - Recommendations for reducing the barriers to the provision of MAT interventions in emergency departments; and
 - Recommendations for the credentialing and expansion of the substance use disorder treatment workforce.



Certified Community Behavioral Health Clinic Program



Establishes the certified community behavioral health clinic program in OHA. CCBHCs receive a fixed cost-based rate for each patient encounter. To be certified, a CCBHC must provide:

- 24-hour crisis mental health services including mobile crisis teams, emergency crisis intervention services and crisis stabilization services;
- At least 20 hours per week of primary care services;
- Screening, diagnosis and assessment, including risk assessment;
- Patient-centered treatment planning or similar services;



Certified Community Behavioral Health Clinic Program



- Outpatient primary care screening and monitoring of key health indicators and health risks;
- Targeted case management;
- Psychiatric rehabilitation services;
- Peer support and counseling services;
- Family support services;
- Community-based mental health services; and
- Outpatient mental health and substance use disorder services.



Certified Community Behavioral Health Clinic Program



OHA must submit a plan to CMS to expand the CCBHC program by January 15, 2025.

OHA must seek approval for federal matching funds (FFP) for the program by September 15, 2025.



Questions?



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Public Safety Provisions

in the forthcoming amendments to House Bill 4002

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Presentation Overview



- Delivery of a controlled substance (DCS) changes
 - Definition of delivery
 - Sentencing crime category
 - Pre-trial release
- Possession of a controlled substance (PCS) changes
 - Offense level
 - New defense
- Data tracking of PCS and DCS stops, arrests and prosecutions
- IMPACTS Grant Program expansion
- Holds for people under the influence of drugs or alcohol



Delivery: Definition



ORS 475.005 (8) (in pertinent part) currently states:

“Deliver” or **“delivery”** means the actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance



Delivery: Definition



- In *State v. Boyd* (1988), the court held that since possessing a controlled substance with the intent to deliver constitutes a substantial step towards transferring the controlled substance, evidence of possession with intent to deliver is an attempted transfer, and therefore is sufficient to prove delivery
- *State v. Hubbell* (2021, aff'd 2023) overturned *Boyd*; an attempted transfer now means that “the person has made some effort to undertake the act...of causing controlled substances to pass from one person to another” and “is NOT established by evidence that a person possessed a large quantity of a controlled substance and had a general intent to transfer it at an undetermined future time.”



Delivery: Definition



Change to ORS 475.005 (8) in the proposed amendment:

“Deliver” or “delivery” means:

- (a) The actual, constructive or attempted transfer, other than by administering or dispensing, from one person to another of a controlled substance; or**
- (b) The possession of a controlled substance by one person with the intent to transfer the controlled substance, other than by administering or dispensing, to another person.**



Delivery: Sentencing



Delivery of a controlled substance currently is:

- **Crime category 9 or 10:** delivery to a minor or involving large amounts of cocaine, methamphetamine, heroin, fentanyl or ecstasy
- **Crime category 8:** delivery constituting commercial drug offense, delivery within 1,000 feet of a school, or delivery of a substantial quantity of heroin, cocaine, fentanyl, methamphetamine or MDMA
- **Crime category 6:** delivery of heroin, cocaine, fentanyl, methamphetamine or MDMA for consideration
- **Crime category 4** otherwise



Delivery: Sentencing



The Oregon Sentencing Guidelines Grid

(for comparison of presumptive sentences for different crime category levels)

Crime Seriousness	A	B	C	D	E	F	G	H	I	Prob Term	Max Depart	PPS
11	225-269	196-224	178-194	164-177	149-163	135-148	129-134	122-128	120-121	5 Years		3 Years
10	121-130	116-120	111-115	91-110	81-90	71-80	66-70	61-65	58-60			
9	66-72	61-65	56-60	51-55	46-50	41-45	39-40	37-38	34-36			
8	41-45	35-40	29-34	27-28	25-26	23-24	21-22	19-20	16-18	3 Years	18 Mos.	
7	31-36	25-30	21-24	19-20	16-18	180-90	180-90	180-90	180-90			
6	25-30	19-24	15-18	13-14	10-12	180-90	180-90	180-90	180-90	2 Years	12 Mos.	2 Years
5	15-16	13-14	11-12	9-10	6-8	180-90	120-60	120-60	120-60			
4	10-11	8-9	120-60	120-60	120-60	120-60	120-60	120-60	120-60	2 Years		
3	120-60	120-60	120-60	120-60	120-60	120-60	90-30	90-30	90-30			
2	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	1 ½ Years	6 Mos.	1 Year
1	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30	90-30			



Delivery: Sentencing



Amendment: **enhanced crime category** for delivery of heroin, cocaine, fentanyl, methamphetamine or MDMA:

- Within 500 feet of a treatment facility, and the recipient or intended recipient is receiving treatment at the facility
- Within 500 feet of a temporary residence shelter (defined as a building that provides shelter for people who lack permanent housing)
- Within a public park



Delivery: Pre-Trial Release



Reevaluation of release guidelines:

- Under ORS 135.233, the Chief Justice establishes pretrial release guidelines, and the presiding judge of each judicial district enters a standing pretrial release order based on those guidelines
- The amendment directs the Chief Justice to reevaluate and update the release guidelines for delivery and manufacture of a controlled substance charges



Possession: Offense Level



Currently the following are **Class E violations** and, under the amendment, would become **Class C misdemeanors**:

- Possession of less than 40 pills, tablets, capsules or user units of hydrocodone, methadone or oxycodone
- Possession of less than 1 gram of heroin
- Possession of less than 1 gram, or less than 5 user units, of fentanyl
- Possession of less than 1 gram, or less than 5 pills, tablets or capsules, of MDMA
- Possession of less than 2 grams of cocaine or methamphetamine
- Possession of any amount of another controlled substance in Schedule I, II, III or IV (other than a commercial drug offense)



Possession: Offense Level



The following would remain **Class A misdemeanors**:

- Possession of 1 gram or more, but less than 5 grams, or 5 or more but less than 25 user units, of fentanyl
- Possession of 40 or more, but less than 200, user units of LSD
- Possession of 12 or more, but less than 60, grams of psilocybin or psilocin
- Possession of 40 or more pills, tablets, capsules or user units of hydrocodone, methadone or oxycodone (or possession of hydrocodone constituting a commercial drug offense)
- Possession of 1 gram or more, but less than 5 grams, of heroin
- Possession of 1 gram or more, but less than 5 grams, or 5 or more but less than 25 pills, tablets or capsules, of MDMA
- Possession of 2 grams or more, but less than 10 grams, of cocaine
- Possession of 2 grams or more, but less than 10 grams, of methamphetamine



Possession: Offense Level



475.884 (1) It is unlawful for any person knowingly or intentionally to possess cocaine unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of professional practice, or except as otherwise authorized by ORS 475.005 to 475.285 and 475.752 to 475.980.

(2)(a) Unlawful possession of cocaine is a [*Class E violation*] **Class C misdemeanor**.

(b) Notwithstanding paragraph (a) of this subsection, unlawful possession of cocaine is a Class A misdemeanor if the person possesses two grams or more of a mixture or substance containing a detectable amount of cocaine.

(c) Notwithstanding paragraphs (a) and (b) of this subsection, unlawful possession of cocaine is a Class C felony if:

(A) The possession is a commercial drug offense under ORS 475.900 (1)(b); or

(B) The person possesses a substantial quantity under ORS 475.900 (2)(b).



Possession: Offense Level



Penalty for **Class E violations**: maximum/presumptive fine = \$100;
minimum fine = \$45; dismissal with completion of screening

Maximum penalties for **misdemeanors**:

Class A: 364 days (jail), \$6,250 fine

Class B: 6 months, \$2,500 fine

Class C: 30 days, \$1,250 fine



Possession: New Defense



New defense to possession of a controlled substance constituting a Class C misdemeanor:

- The person completed a deflection program on the charge; or
- The person was never offered participation in a deflection program on the charge

“Deflection program” means an “intervention deflection program” that involves at least a behavioral health screening and contact with a case manager



Possession: New Defense



“Intervention deflection program”:

- Law enforcement officer engages with a person who has been or could be arrested on a possession charge
- Charges are either filed and set over for the person to take certain actions, or the law enforcement officer directs the person to take certain actions without citing or arresting the person
- Fulfilling the requirements leads to dismissal of the charge (or charges are not filed)



Possession: New Defense



Defenses generally:

- Under ORS 161.055, if a defense is raised at trial, the state must disprove the defense beyond a reasonable doubt
- “Raised at trial” = defendant provides written notice before trial, or a defense witness offers evidence of the defense



Data Tracking



- The amendment directs the Oregon Criminal Justice Commission to annually report to the interim House and Senate Judiciary Committees concerning stops, arrests and prosecutions for possession and delivery of a controlled substance offenses
- Purpose: to track racial or other demographic disparities
- Reports begin no later than August 31, 2025



New Grant Program



Oregon Behavioral Health Intervention Program

- Counties, tribal governments and organizations can apply for grants
- Improving People's Access to Community-Based Treatment, Support and Services (IMPACTS) Grant Review Committee awards grants
- Grants may be awarded to fund deflection programs (prioritized) or organizations providing mobile behavioral health crisis interventions, medication-assisted treatment, or case management and peer support for people who lack permanent housing



Welfare Hold Expansion



ORS 430.399 allows a police officer to take a person to a treatment facility if the person is intoxicated or under the influence of controlled substances.

When the person is taken to the treatment facility, the director of the facility must determine whether the person should be admitted.



Welfare Hold Expansion



A person must be admitted if:

- The person is incapacitated;
- The health of the person appears to be in imminent danger; or
- The director of the facility has reasonable cause to believe the person is dangerous to self or to any other person.

Amends ORS 430.399 to provide that once admitted:

“The person shall be discharged within [48] **72** hours unless the person has applied for voluntary admission to the treatment facility.”



Questions?



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