

House Bill 2461

Sponsored by Representative NOSSE, Senator LIEBER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Imposes new requirements on Oregon Health Authority with respect to residential mental health services. Clarifies right to contested case hearing to challenge amount, scope or duration of services or reduction in amount, scope or duration of services.

Requires coordinated care organizations to provide residential behavioral health services beginning January 1, 2025.

A BILL FOR AN ACT

1
2 Relating to medical assistance; creating new provisions; amending ORS 414.712, 414.766, 430.010 and
3 430.210; and repealing ORS 411.408.

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

5 **SECTION 1. (1) As used in this section:**

6 (a) **"Agent" means an individual who is qualified to perform independent assessments of**
7 **the level of support needed by an individual.**

8 (b) **"Assessment tool" means a standardized instrument used to determine an individual's**
9 **level of support.**

10 (c) **"Level of support" means the services and supports identified in a person-centered**
11 **service plan that are needed by an individual to reside in a residential treatment facility or**
12 **a residential treatment home.**

13 (d) **"Residential mental health services" means services and supports provided to resi-**
14 **dents in a residential treatment facility or a residential treatment home.**

15 (e) **"Residential treatment facility" has the meaning given that term in ORS 443.400.**

16 (f) **"Residential treatment home" has the meaning given that term in ORS 443.400.**

17 (2) **An assessment tool used by the Oregon Health Authority or by an agent must:**

18 (a) **Take into account the needs of a resident;**

19 (b) **Allow for value-based payments to be paid for the resident's level of support;**

20 (c) **Take into account the degree to which the resident is a risk to self or to others given**
21 **the severity of the resident's behavioral health disorder; and**

22 (d) **Minimize assessment biases.**

23 (3) **The authority shall adopt by rule a process for an individual or someone acting on**
24 **behalf of the individual to submit an application for residential mental health services. The**
25 **process and application must be clear and easy to complete and include any documentation**
26 **requirements that are needed to prepare a person-centered service plan for the individual.**

27 (4) **The authority shall monitor and provide oversight of agents to ensure that residents**
28 **or individuals applying for residential mental health services receive a thorough and com-**
29 **prehensive assessment of their needs for residential mental health services.**

30 (5) **The authority shall ensure that any standardized rate tiers paid for residential mental**

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 **health services accurately correlate to the level of support needed by the individuals assigned**
 2 **to each tier and adequately reimburse the costs of the services provided in each tier.**

3 **SECTION 2.** ORS 414.712 is amended to read:

4 414.712. (1) The Oregon Health Authority shall [provide health services under ORS 414.591,
 5 414.631 and 414.688 to 414.745 to eligible persons who are determined eligible for medical assistance
 6 as defined in ORS 414.025. The Oregon Health Authority shall also provide the following] **ensure the**
 7 **provision of all of the following to individuals who are found eligible for medical assistance:**

8 [(1) Ombudsman services for individuals who receive medical assistance under ORS 411.706 and
 9 for recipients who are members of coordinated care organizations. With the concurrence of the Gover-
 10 nor and the Oregon Health Policy Board, the Director of the Oregon Health Authority shall appoint
 11 ombudsmen and may terminate an ombudsman. Ombudsmen are under the supervision and control of
 12 the director. An ombudsman shall serve as a recipient's advocate whenever the recipient or a physician
 13 or other medical personnel serving the recipient is reasonably concerned about access to, quality of or
 14 limitations on the care being provided by a health care provider or a coordinated care organization.
 15 Recipients shall be informed of the availability of an ombudsman. Ombudsmen shall report to the
 16 Governor and the Oregon Health Policy Board in writing at least once each quarter. A report shall
 17 include a summary of the services that the ombudsman provided during the quarter and the
 18 ombudsman's recommendations for improving ombudsman services and access to or quality of care
 19 provided to eligible persons by health care providers and coordinated care organizations.]

20 **(a) Ombudsman services as described in subsection (2) of this section;**

21 [(2)] **(b) Case management services, as described in subsection (3) of this section,** in each
 22 health care provider organization or coordinated care organization [for those individuals who receive
 23 assistance under ORS 411.706. Case managers shall be trained in and shall exhibit skills in commu-
 24 nication with and sensitivity to the unique health care needs of individuals who receive assistance un-
 25 der ORS 411.706. Case managers shall be reasonably available to assist recipients served by the
 26 organization with the coordination of the recipient's health services at the reasonable request of the
 27 recipient or a physician or other medical personnel serving the recipient. Recipients shall be informed
 28 of the availability of case managers.];

29 [(3)] **(c)** A mechanism, established by rule, for soliciting consumer opinions and concerns re-
 30 garding accessibility to and quality of the services of each health care provider[.];

31 [(4)] **(d)** A choice of available medical plans and, within those plans, choice of a primary care
 32 provider[.]; **and**

33 [(5)] **(e)(A)** Due process procedures **that include advance written notice and an opportunity**
 34 **for a contested case hearing, in accordance with ORS 183.413 to 183.470 and 42 C.F.R. part**
 35 **431, subpart E,** for any individual:

36 **(i)** Whose request for medical assistance coverage for any treatment or service is denied or is
 37 not acted upon with reasonable promptness.

38 **(ii) Whose services are restricted, suspended or reduced.**

39 **(iii) Receiving or applying for home- or community-based services or residential services**
 40 **who disagrees with an assessment of the individual's need for services and supports or dis-**
 41 **agrees with the amount, scope or duration of services and supports designated in the**
 42 **individual's individualized service plan or person-centered service plan.**

43 **(B)** [These] **Due process** procedures [shall] **that** include an expedited process for cases in which
 44 a recipient's medical needs require swift resolution of a dispute.

45 **(2) With the concurrence of the Governor and the Oregon Health Policy Board, the Di-**

1 rector of the Oregon Health Authority shall appoint ombudsmen and may terminate an om-
 2 budsman. Ombudsmen are under the supervision and control of the director. An ombudsman
 3 shall serve as a recipient’s advocate whenever the recipient or a physician or other medical
 4 personnel serving the recipient is reasonably concerned about access to, quality of or limi-
 5 tations on the care being provided by a health care provider or a coordinated care organiza-
 6 tion. Recipients shall be informed of the availability of an ombudsman. Ombudsmen shall
 7 report to the Governor and the Oregon Health Policy Board in writing at least once each
 8 quarter. A report shall include a summary of the services that the ombudsman provided
 9 during the quarter and the ombudsman’s recommendations for improving ombudsman ser-
 10 vices and access to or quality of care provided to eligible persons by health care providers
 11 and coordinated care organizations. An ombudsman [described in subsection (1) of this section] may
 12 not act as the recipient’s representative during any grievance or hearing process.

13 (3) Case managers shall be trained in and shall exhibit skills in communication with and
 14 sensitivity to the unique health care needs of individuals who receive medical assistance. At
 15 the reasonable request of the recipient or a physician or other medical personnel serving the
 16 recipient, case managers shall be reasonably available to assist recipients with the coordi-
 17 nation of the recipient’s health services. Recipients shall be informed of the availability of
 18 case managers.

19 **SECTION 3.** ORS 414.766 is amended to read:

20 414.766. (1) Notwithstanding ORS 414.065 and 414.690, a coordinated care organization must
 21 provide behavioral health services, **including residential services**, to its members that include but
 22 are not limited to all of the following:

23 (a) For a member who is experiencing a behavioral health crisis:

24 (A) A behavioral health assessment; and

25 (B) Services that are medically necessary to transition the member to a lower level of care;

26 (b) At least the minimum level of services that are medically necessary to treat a member’s
 27 underlying behavioral health condition rather than a mere amelioration of current symptoms, such
 28 as suicidal ideation or psychosis, as determined in a behavioral health assessment of the member
 29 or specified in the member’s care plan;

30 (c) Treatment of co-occurring behavioral health disorders or medical conditions in a coordinated
 31 manner;

32 (d) Treatment at the least intensive and least restrictive level of care that is safe and effective
 33 and meets the needs of the individual’s condition;

34 (e) For all level of care placement decisions, placement at the level of care consistent with a
 35 member’s score or assessment using the relevant level of care placement criteria and guidelines;

36 (f) If the level of placement described in paragraph (e) of this subsection is not available,
 37 placement at the next higher level of care;

38 (g) Treatment to maintain functioning or prevent deterioration;

39 (h) Treatment for an appropriate duration based on the individual’s particular needs;

40 (i) Treatment appropriate to the unique needs of children and adolescents;

41 (j) Treatment appropriate to the unique needs of older adults;

42 (k) Treatment that is culturally and linguistically appropriate;

43 (L) Treatment that is appropriate to the unique needs of gay, lesbian, bisexual and transgender
 44 individuals and individuals of any other minority gender identity or sexual orientation;

45 (m) Coordinated care and case management as defined by the Department of Consumer and

1 Business Services by rule; and

2 (n) Mental health wellness appointments as prescribed by the Oregon Health Authority by rule.

3 (2) If there is a disagreement about the level of care required by subsection (1)(e) or (f) of this
 4 section, a coordinated care organization shall provide to the behavioral health treatment provider
 5 full details of the coordinated care organization's scoring or assessment, to the extent permitted by
 6 the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts
 7 160 and 164, ORS 192.553 to 192.581 or other state or federal laws limiting the disclosure of health
 8 information.

9 (3) The Oregon Health Authority shall adopt by rule a list of behavioral health services that
 10 may not be subject to prior authorization.

11 **SECTION 4.** ORS 430.210 is amended to read:

12 430.210. (1) While receiving services, every person shall have the right to:

13 (a) Choose from available services those that are appropriate, consistent with the plan developed
 14 in accordance with paragraphs (b) and (c) of this subsection and provided in a setting and under
 15 conditions that are least restrictive to the person's liberty, that are least intrusive to the person and
 16 that provide for the greatest degree of independence.

17 (b) [*An individualized*] **A person-centered** service plan, services based upon that plan and pe-
 18 riodic review and reassessment of service needs.

19 (c) Ongoing participation in planning of services in a manner appropriate to the person's capa-
 20 bilities, including the right to participate in the development and periodic revision of the plan de-
 21 scribed in paragraph (b) of this subsection, and the right to be provided with a reasonable
 22 explanation of all service considerations.

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

25 (e) Not participate in experimentation without informed voluntary written consent.

26 (f) Receive medication only for the person's individual clinical needs.

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

29 (h) A humane service environment that affords reasonable protection from harm, reasonable
 30 privacy and daily access to fresh air and the outdoors, except that such access may be limited when
 31 it would create significant risk of harm to the person or others.

32 (i) Be free from abuse or neglect and to report any incident of abuse without being subject to
 33 retaliation.

34 (j) Religious freedom.

35 (k) Not be required to perform labor, except personal housekeeping duties, without reasonable
 36 and lawful compensation.

37 (L) Visit with family members, friends, advocates and legal and medical professionals.

38 (m) Exercise all rights set forth in ORS 426.385 if the individual is committed to the Oregon
 39 Health Authority.

40 (n) Be informed at the start of services and periodically thereafter of the rights guaranteed by
 41 this section and the procedures for reporting abuse, and to have these rights and procedures, in-
 42 cluding the name, address and telephone number of the system described in ORS 192.517 (1), promi-
 43 nently posted in a location readily accessible to the person and made available to the person's
 44 guardian and any representative designated by the person.

45 (o) Assert grievances with respect to infringement of the rights described in this section, in-

1 cluding the right to have such grievances considered in a fair, timely and impartial grievance pro-
2 cedure.

3 (p) Have access to and communicate privately with any public or private rights protection or-
4 ganization or rights advocate.

5 (q) Exercise all rights described in this section without any form of reprisal or punishment.

6 (2) The rights described in this section are in addition to, and do not limit, all other statutory
7 and constitutional rights that are afforded all citizens including, but not limited to, the right to vote,
8 marry, have or not have children, own and dispose of property, enter into contracts and execute
9 documents.

10 (3) The rights described in this section may be asserted and exercised by the person, the
11 person's guardian and any representative designated by the person.

12 (4) Nothing in this section may be construed to alter any legal rights and responsibilities be-
13 tween parent and child.

14 **SECTION 5.** ORS 430.010 is amended to read:

15 430.010. As used in this chapter:

16 (1) "Outpatient service" means:

17 (a) A program or service providing treatment by appointment and by:

18 (A) Physicians licensed under ORS 677.100 to 677.228;

19 (B) Psychologists licensed by the Oregon Board of Psychology under ORS 675.010 to 675.150;

20 (C) Nurse practitioners licensed by the Oregon State Board of Nursing under ORS 678.010 to
21 678.410;

22 (D) Regulated social workers authorized to practice regulated social work by the State Board
23 of Licensed Social Workers under ORS 675.510 to 675.600;

24 (E) Professional counselors or marriage and family therapists licensed by the Oregon Board of
25 Licensed Professional Counselors and Therapists under ORS 675.715 to 675.835; or

26 (F) Naturopathic physicians licensed by the Oregon Board of Naturopathic Medicine under ORS
27 chapter 685; or

28 (b) A program or service providing treatment (b) by appointment that is licensed, approved, estab-
29 lished, maintained, contracted with or operated by the authority under:

30 (A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

31 (B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

32 (C) ORS 430.610 to 430.880 for mental or emotional disturbances.

33 (2) "Residential facility" means a program or facility providing an organized full-day or part-day
34 program of treatment[. *Such a program or facility shall be*] **that is** licensed, approved, established,
35 maintained, contracted with or operated by the authority under:

36 (a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

37 (b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

38 (c) ORS 430.610 to 430.880 for mental or emotional disturbances.

39 **SECTION 6. The amendments to ORS 414.766 by section 3 of this 2023 Act apply to con-**
40 **tracts between the Oregon Health Authority and coordinated care organizations, as defined**
41 **in ORS 414.025, in effect on and after January 1, 2025.**

42 **SECTION 7. ORS 411.400, 411.402, 411.404, 411.406, 411.435, 411.439, 411.447 and 411.463 are**
43 **added to and made a part of ORS chapter 414.**

44 **SECTION 8. ORS 411.408 is repealed.**