

## HB 4002 -1 STAFF MEASURE SUMMARY

### Joint Committee On Addiction and Community Safety Response

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**Meeting Dates:** 2/5, 2/7

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#### **WHAT THE MEASURE DOES:**

Requires the Oregon Health Authority to study Oregon’s addiction crisis. Directs the authority to submit findings to the interim committees of the Legislative Assembly related to health not later than September 15, 2025. Sunsets January 2, 2026.

#### **ISSUES DISCUSSED:**

#### **EFFECT OF AMENDMENT:**

-1 Replaces the measure.

#### **Payment for Substance Use Disorder Treatment (Sections 1 – 6)**

- Prohibits health insurers and coordinated care organizations (CCOs) from imposing prior authorization or other utilization review for reimbursement of covered medications prescribed to treat substance use disorder (SUD)
- Requires health insurers and CCOs to reimburse the cost of SUD medication refills
- Specifies application to all form of buprenorphine
- Permits insurer to use prior authorization or other utilization management for opioids prescribed for purposes other than SUD treatment

#### **Pharmacist Dispensing of Opioid Use Disorder Medication Refills (Section 7 and Section 9)**

- Permits pharmacist to dispense refills of medications used to treat opioid use disorder to patient who has evidence of previous prescription
- Requires pharmacist to take specified steps when dispensing refill, including notifying patient’s primary care provider
- Requires Board of Pharmacy to adopt rules allowing pharmacist to obtain registration number from the Drug Enforcement Administration and store medications for the treatment of opioid use disorder on premises

#### **Prescription Drug Lockers (Section 8)**

- Clarifies that prescription drug lockers located at the same physical address as the retail drug outlet with which the locker is associated do not need registration with the Oregon Board of Pharmacy or Drug Enforcement Administration (DEA)
- Requires prescription drug lockers located at other physical address to obtain registration from the DEA

#### **Discrimination Against Individuals with Substance Use Disorders Prohibited in Group Recovery Homes (Section 10)**

- Clarifies circumstances permitting group recovery home to remove tenant to require both positive preliminary and confirmatory tests
- Prohibits discrimination by group recovery home against tenant based on tenant’s involvement with medication-assisted treatment

#### **Access to Addiction Treatment by Members of Coordinated Care Organizations (Section 11)**

- Adds addiction treatment providers to CCO network adequacy requirements

#### **Alcohol and Drug Policy Commission Study (Section 12)**

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- Requires Alcohol and Drug Policy Commission (ADPC) to conduct study of barriers and best practices for youth SUD, increasing medication-assisted treatment (MAT), and increasing SUD providers in the state
- Requires ADPC to study data regarding insurance claim denials for SUD medications
- Requires ADPC to provide status update and preliminary recommendation by September 31, 2024
- Requires ADPC to deliver final report by September 15, 2025

### **Certified Community Behavioral Health Clinic Program (Sections 13 – 15)**

- Establishes certified community behavioral health clinic (CCBHC) program in Oregon Health Authority (OHA)
- Requires OHA to either provide additional funding or have exception process if additional requirements on CCBHCs are made
- Specifies actions to be taken by OHA in the development and adjustment of CCBHC rates
- Requires CCBHC located in same geographic region as community mental health program (CMHP) to enter collaboration agreement with CMHP before OHA may approve CCBHC certification
- Requires OHA to submit plan to Center for Medicare and Medicaid Services (CMS) to add new CCBHCs by September 15, 2025.

### **Joint Task Force on Regional Behavioral Health Accountability (Section 16)**

- Establishes 19-member Joint Task Force on Regional Behavioral Health Accountability to make recommendations on improving governance of behavioral health systems and strengthening evidence-based funding decisions
- Specifies membership
- Requires Task Force to develop recommendations on improving collaboration and accountability, improving outcomes, and providing greater cost efficiencies
- Requires Task Force to provide draft recommendations to Legislative Assembly by November 15, 2024 and final recommendations by December 15, 2024

### **Delivery of Controlled Substances (Delivery Definition Based on State v. Boyd) (Section 20)**

- Expands the definition of “deliver” or “delivery” to include the possession of a controlled substance with intent to transfer to another person.
- Defines “within 500 feet.”

### **Delivery in Certain Locations (Section 21)**

- Requires any conviction for delivery of a controlled substance (DCS) made within a public park, within 500 ft of a temporary residence shelter or within 500 ft of a treatment facility, if the person knows or reasonably should have known they were within 500 ft of said location, be classified as a Crime Category 7 of the sentencing guidelines grid of the Oregon Criminal Justice Commission (CJC) if the delivery is for consideration and as a Crime Category 5 if there is no consideration.

### **Reevaluation of Release Guidelines (Sections 22 and 23)**

- Directs the Chief Justice’s Criminal Justice Advisory Council to reevaluate and update the pretrial release criteria for persons arrested for delivery or manufacture of controlled substances.

### **Possession of Controlled Substances (Defense and Charge) (Sections 24-27)**

- Establishes an affirmative defense to the Class C misdemeanor crime of possession of a controlled substance (PCS) that the accused person:
  - Is at least 18 years of age;
  - Completed a qualified deflection program to which the person was referred when contacted by a law enforcement officer concerning the conduct constituting the alleged possession; or
  - Was not referred to a qualified deflection program when the person was contacted by a law enforcement officer concerning the conduct constituting the alleged possession.

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- The affirmative defense described is inapplicable if, at the time the person was contacted by a law enforcement officer concerning the conduct constituting the alleged possession, the law enforcement officer had probable cause to arrest or cite the person for any other offense.
- Requires a defendant file written notice of intent to rely on the affirmative defense at least 21 days before the first trial date and that it be accompanied by any documents intended to be offered as evidence to establish the affirmative defense.
- Defines “qualified deflection program” as a program certified by the CJC under the requirements of the proposed act.
- Defines “completed” to mean that a person, after being referred to the qualified deflection program received a behavioral health screening (as described in ORS 430.389) or an equivalent screening and engaged in at least one additional contact with the program following the screening.
- Requires the CJC to establish a certification process for deflection programs that qualify for the affirmative defense to the Class C misdemeanor PCS created by this measure.
- Establishes minimum program requirements and specifies certain criteria for eligibility for certification under this act.
- Provides that a document purporting to be a record of an individual’s completion of an qualified deflection program as defined by this proposed act is self-authenticating for purposes of admissibility as evidence under ORS 40.510.

### **Class C Misdemeanor Penalties (Sections 28-35)**

- Increases penalties for PCS from a Class E violation to a Class C misdemeanor.
- Prohibits a court from imposing a fine, cost, assessment or attorney fee as part of a judgment for a Class C misdemeanor PCS.

### **Supervision Duty and Funding (Sections 36-39)**

- Directs the Department of Corrections (DOC) to assume responsibility for community-based supervision for offenders convicted of designated property misdemeanors. Expands definition of “designated drug-related misdemeanor” to include a Class C misdemeanor PCS.

### **Conditional Discharge (Sections 40 and 41)**

- Requires a court, at the request of a person charged with a Class C misdemeanor of PCS as created by this act, to defer further proceedings and place the person on probation. Establishes terms authorized to be included in a conditional discharge agreement and certain rights a defendant must waive.
- Some of the requirements for entry into and terms of the agreement include:
  - That the person enter into the agreement no later than 30 days after the person’s first appearance, unless good cause is shown for delay.
  - Imposition of general conditions of probation as described in ORS 137.540(1) and a requirement that the defendant complete a substance abuse evaluation and treatment.
  - The understanding that the criminal charges filed will be dismissed with prejudice upon fulfillment of the probation terms as agreed, including upon early termination of probation period.

### **Expungement (Sections 42 – 45)**

- Requires the sealing or expungement of records related to a person's conduct constituting a Class C misdemeanor PCS as follows:
- When a law enforcement agency receives written notice that a person has completed a qualified deflection program, the law enforcement agency shall provide verification to the district attorney with authority to prosecute the offense and within 60 days of receiving verification both the law enforcement agency and the district attorney shall seal all records related to the person’s participation in the program.
- If no further prosecutorial action has been taken after two years from the date of citation for or contact with law enforcement for conduct constituting a Class C misdemeanor PCS, any law enforcement agency or district

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attorney that possesses records related to the citation or conduct shall seal the records within 60 days of conclusion of two-year period. Any electronic court records related to the citation or conduct shall be sealed within 60 days of conclusion of two-year period.

- When a person successfully completes probation as part of a conditional discharge agreement as described by this proposed act and the court dismissed the proceedings the court shall order all records relating to the arrest or citation and criminal proceedings be sealed. Directs the clerk of the court to forward a certified copy of said order to applicable agencies.
- Three years from the date of conviction for a Class C misdemeanor PCS the court shall order all records relating to the arrest or citation, charges, and criminal proceedings be sealed. Directs the clerk of the court to forward a certified copy of said order to applicable agencies.
- Directs the Judicial Department to develop a standardized form for obtaining requisite information necessary for complying with an order to seal records as described, to be completed by the district attorney and defense attorney at the time a person enters probation.

### **Repealing Class E Violation Provisions (Sections 46-60)**

- Repeals provisions relating to PCS as a Class E violation.

### **Data Tracking (Section 61)**

- Requires the Oregon Criminal Justice Commission (CJC) to collect and analyze certain demographic data concerning deflections, arrests, charges and convictions for unlawful possession of a controlled substance and delivery of a controlled substance offenses.
- Directs the CJC, beginning August of 2025, to provide a report annually to the judiciary committees containing an analysis of the data.

### **Oregon Behavioral Health Deflection Program (Sections 62-66)**

- Defines “deflection program” as a collaborative program between law enforcement and behavioral health systems that assist individuals who may have substances use disorder, another behavioral health disorder or co-occurring disorders, to create community-based pathways to treatment, recover support services, housing, case management or other services.
- Establishes the Oregon Behavioral Health Deflection Program (BHDP) within the Improving People’s Access to Community-based Treatment, Supports and Services (IMPACTS) grants program and directs the CJC to develop a separate grant application and review processes for community mental health programs.
- Provides minimum requirements for grant applications and programs to be eligible for funding.
- Directs the CJC, in cooperation with the Oregon Health Authority, to monitor progress of and evaluate program outcomes for applicants that receive grant funds and to report annually, beginning September 2025, to the relevant interim committees of the Legislative Assembly.
- Establishes the Oregon Behavioral Health Deflection Program Account and appropriates funds for the purpose of carrying out the provisions relating to the BHDP.
- Increases membership of the IMPACTS grants review committee from 19 to 21.

### **Expansion of Welfare Holds (Section 67)**

- Extends authority provided in ORS 430.399 for a director of a treatment facility to hold an individual from up to 48 hours to up to 72 hours.

### **Emergency Clause (Section 74)**

- Declares an emergency, effective on passage.

## **BACKGROUND:**

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In November 2020, Oregon voters passed Ballot Measure 110, also known as the Drug Addiction and Treatment Recovery Act, approving two shifts in how the state deals with the use of illegal drugs. First, the measure reduces penalties for drug possession, making Oregon the first state to decriminalize the personal possession of illegal drugs. Secondly, any savings achieved from the cost of enforcing criminal drug possession penalties are combined with marijuana sales revenue to fund a new drug addiction treatment and recovery grant program. Senate Bill 755 (2021) modified some of the requirements of Ballot Measure 110, including establishing Behavioral Health Resource Networks (BHRNs), which are a group of organizations that partner to provide substance use services free of charge to individuals seeking care. The measure required a BHRN to be established in each county and tribal area in the state.