



Oregon

Tina Kotek, Governor

Department of Human Services

Office of Developmental Disabilities Services

Office of the Director
500 Summer St. NE, E-15
Salem, OR 97301



February 7, 2024

Chair Sara Gelsner Blouin
Senate Committee on Human Services
Oregon State Capitol
900 Court Street NE
Salem, OR 97301-4048

Dear Chair Gelsner Blouin,

Thank you for the opportunity to testify on SB 1522. The Oregon Department of Human Services, specifically ODHS's Office of Developmental Disabilities Services (ODDS), supports its passage.

The practice of civilly committing people with intellectual disabilities is a relic of the way Oregon used to provide services to people with I/DD. Oregon used to operate institutional settings in which people with I/DD received services. We have since shifted the system to providing home and community-based services (HCBS), which allows the individuals receiving those services to integrate into their communities, in some cases finding steady employment and strong relationships therein. As a result, we have successfully deinstitutionalized our state's I/DD services, closing Fairview Training Center in 2000, and most recently closing the last remaining institution, the Eastern Oregon Training Center, in 2009.

We have since implemented a new federal Medicaid authority (the "K Plan") that allows every individual who is eligible for I/DD services to access them in a home- or community-based setting. Our system is built on the core values of self-direction and self-determination, and is based on person-centered practices. Our mission is: ODDS, stakeholders and the developmental disabilities community come together to provide services, supports and advocacy to empower Oregonians with intellectual and developmental disabilities to live full lives in their communities.

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In 2014, the Centers for Medicare and Medicaid Services (CMS) strengthened requirements around HCBS for all individuals, including those with I/DD, through what is known as their “Settings Rule.” This further promoted the freedoms of people accessing HCBS services, including freedom from coercion and restraint, control of one’s own service schedule, choices about one’s service setting, and more.

The existence of state law provisions in Oregon Revised Statutes Chapter 427 (hereinafter, “ORS 427”) that allow for the civil commitment of individuals with intellectual disabilities in Oregon is at odds with these federal authorities that allow ODDS to deliver its services as a Medicaid program. ODDS receives significant federal funding to deliver these services on the contingency that they are in compliance with HCBS requirements. Specifically, the Medicaid authorities governing this funding require that:

- A person or their guardian must choose to access services in order to receive them;
- A person or their guardian must have a choice about what services to receive, and in what setting;
- A person’s rights and freedoms must be protected when receiving services (e.g., no physical confinement against one’s will; access to food, visitors, and community; and more).

In other words, that significant federal funding is contingent on our prioritization of goals such as community integration for individuals receiving services; ensuring that services are delivered in a person’s home or in a homelike setting; and optimizing an individual’s choice as to how, where, and whether they receive those services.

As currently written, the civil commitment provisions of ORS 427 delegate to the Department of Human Services the responsibility of a person’s assignment to a suitable facility after they have been civilly committed. However, under federal regulations the Department cannot assume custody of a person in order to involuntarily commit them to a facility. Typically, this results in a person’s placement in either a Stabilization and Crisis Unit (SACU) setting, or in a privately operated group home or adult foster home. Pursuant to the voluntariness required in Medicaid regulations, an individual’s access to the community can only be restricted due to a specific assessed need of the individual that is consented to by the individual or their guardian through an Individually Based Limitations (IBL) process. That consent can be revoked at any time. If an individual chooses to leave a facility,

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it is their right to do so because they cannot be confined in an HCBS setting that is Medicaid-funded.

Because ODHS does not take custody of civilly committed individuals, the Department cannot make service decisions for such an individual. It cannot force a person to receive services, prevent a person from leaving a service setting, or guarantee that a person who does leave will be returned to their service setting. In other words, ODHS cannot be an individual's guardian and make choices on their behalf.

As of our most recent assessment of data, there were sixteen individuals who had been civilly committed through the authority provided by ORS 427. I/DD services are an entitlement to these individuals and these individuals will remain eligible to receive ODDS provided supports. There are ongoing conversations on the steps that will be necessary for transition, and those conversations will continue if this bill passes, as we work toward the delayed implementation date that is intended to give us time to complete that work.

ODHS supports the passage of SB 1522 in order to align state law with federal authorities that provide funding and allow us to serve people with I/DD in their communities. We look forward to continuing to work with other state agencies and interested parties on improving home and community-based services to every eligible Oregonian with intellectual or developmental disabilities in a way that helps them be valued members of their communities in line with federal regulation.

Sincerely,

Anna Lansky, Interim Director
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Oregon Department of Human Services