

Enrolled House Bill 2276

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CHAPTER

AN ACT

Relating to Oregon Supplemental Income Program; creating new provisions; amending ORS 18.348, 113.085, 116.093, 125.060, 410.075, 411.010, 411.060, 411.105, 411.111, 411.120, 411.300, 411.620, 411.700, 411.760, 411.803, 412.600, 414.025, 414.065, 414.340, 414.708, 414.710, 414.712, 416.310, 708A.430, 722.262 and 723.466; and repealing ORS 411.113, 411.114, 412.005, 412.015, 412.025, 412.035, 412.045, 412.055, 412.065, 412.075, 412.085, 412.095, 412.105, 412.108, 412.113, 412.115, 412.125, 412.510, 412.520, 412.530, 412.540, 412.560, 412.570, 412.580, 412.590, 412.610, 412.620, 412.625, 412.630, 413.005, 413.009, 413.019, 413.029, 413.068, 413.070, 413.090, 413.100, 413.110, 413.120, 413.130, 413.140, 413.160, 413.165, 413.200, 413.220, 413.230 and 413.240.

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

SECTION 1. Sections 2 and 3 of this 2005 Act and ORS 412.600 are added to and made a part of ORS chapter 411.

SECTION 2. As used in this section and section 3 of this 2005 Act and ORS 411.120 and 412.600:

- (1) "Assistance" means:
 - (a) Cash payments made under section 3 of this 2005 Act to or on behalf of a needy person who is a resident of this state and who is blind, disabled or 65 years of age or older; or
 - (b) Special need allowances for one-time or ongoing needs.
- (2) "Blind" means having:
 - (a) Visual acuity with corrective lenses that does not exceed 20/200 in the better eye, or vision in the better eye that is restricted to a field that subtends an angle of not greater than 20 degrees; or
 - (b) An equivalent visual impairment, as determined by the Department of Human Services after examination by:
 - (A) An ophthalmologist licensed to practice medicine and surgery in Oregon or in another state or territory of the United States having qualifications substantially similar to those of the State of Oregon; or
 - (B) An optometrist licensed and practicing in Oregon or in another state or territory of the United States having qualifications substantially similar to those of the State of Oregon.
- (3) "Disabled" means having a physical or mental impairment that:
 - (a) Is likely to continue without substantial improvement for no less than 12 months or to result in death; and
 - (b) Prevents performance of substantially all the ordinary duties of occupations in which a person not having the physical or mental impairment is capable of engaging, having due

regard to the training, experience and circumstances of the individual with the physical or mental impairment.

(4)(a) **“Income” means net income in cash or in kind available to the applicant or recipient, the receipt of which is regular and predictable enough to afford security in the sense that the applicant or recipient may rely upon it to contribute toward meeting the needs of the applicant or recipient.**

(b) **“Income” does not include:**

(A) **Earnings or other income that may be exempted in compliance with federal laws and regulations; or**

(B) **Premiums on life insurance policies, whether paid by the applicant, recipient or other person.**

(5) **“Recipient” means a person who is receiving assistance provided by the Oregon Supplemental Income Program.**

(6) **“Resources” means an asset that may be applied toward meeting the needs of the applicant or recipient, including real and personal property holdings contributing to the maintenance of the applicant or recipient or representing investments or savings that may be drawn upon for maintenance purposes.**

SECTION 3. (1) The Oregon Supplemental Income Program shall:

(a) **Provide supplemental cash payments to recipients of Supplemental Security Income; and**

(b) **Grant special need allowances for one-time or ongoing needs.**

(2) **The program shall grant assistance to eligible persons who are blind, disabled or 65 years of age or older. Persons granted assistance under this section shall receive medical assistance as defined in ORS 414.025.**

(3) **The program shall grant assistance according to the rules of the Department of Human Services and on the basis of need, taking into account the income and resources available to the applicant or recipient.**

SECTION 4. ORS 411.010 is amended to read:

411.010. As used in this chapter and in other statutes providing for assistance and services to needy persons, unless the context or a specially applicable statutory definition requires otherwise:

(1) **“Department” means the Department of Human Services.**

(2) **“General assistance” means assistance or service of any character provided to needy persons not otherwise provided for to the extent of such need and the availability of funds, including medical, surgical and hospital or other remedial care [and costs of burials of needy persons].**

(3) **“Public assistance” means [all] the following types of assistance [including old-age assistance,]:**

(a) **Temporary assistance for needy families[, aid to the blind,] granted under ORS 418.035 to 418.125;**

(b) **General assistance[, aid to the permanently and totally disabled,] granted under ORS 411.710 to 411.730;**

(c) **Medical assistance;**

(d) **Assistance provided by the Oregon Supplemental Income Program; [and]**

(e) **General assistance other than general assistance granted under ORS 411.710 to 411.730; and**

(f) **[such] Any other functions [as] that may be delegated to the [administrator] Director of Human Services by or in accordance with [the provisions of] federal and state laws.**

SECTION 5. ORS 411.060 is amended to read:

411.060. Subject to ORS 417.300 and 417.305, the Department of Human Services shall:

(1) **Administer and supervise all public assistance programs; [and]**

(2) **Determine eligibility for all public assistance programs; and**

(3) **Adopt and enforce [such] rules [as are] necessary to ensure full compliance with [the terms of] federal and state laws relating to public assistance programs.**

SECTION 6. ORS 411.105 is amended to read:

411.105. (1) **A person seeking public assistance shall file an application for public assistance with the Department of Human Services.** At the time of *[making application every person applying for public assistance]* **application, the applicant** shall declare to the department *[of Human Services]* any circumstance *[which]* **that** directly affects the **applicant's** eligibility to receive assistance or the amount of assistance available to the *[person]* **applicant.** Upon the receipt of property or income or upon any other change in circumstances *[which]* **that** directly affects the eligibility of the recipient to receive assistance or the amount of assistance available to the recipient, the applicant, recipient or other person in the assistance household shall immediately notify the department of the receipt or possession of such property or income, or other change in circumstances. The department shall recover from the recipient the amount of assistance improperly disbursed by reason of failure to comply with the provision of this section.

(2) The department may recover any **cash assistance granted for general** *[or public]* assistance **under ORS 411.710 to 411.730** *[which]* **that** has been paid to any recipient when that recipient is presently receiving or subsequently receives Supplemental Security Income. The amount of recovery shall be limited to the total amount of Supplemental Security Income that was received for the same time period that the general *[or public]* assistance was being paid.

(3) Nothing in subsection (1) or (2) of this section shall be construed as to prevent the department from entering into a compromise agreement for recovery of assistance improperly disbursed, if the department determines that the administration and collection costs involved would exceed the amount that can reasonably be expected to be recovered.

SECTION 7. ORS 411.120 is amended to read:

411.120. The Department of Human Services may, subject to the allotment system provided for in ORS 291.234 to 291.260, expend such sums as are required to be expended in this state to provide public assistance excluding medical assistance. Expenditures for public assistance include, but are not limited to, expenditures for the following purposes:

(1) **General** assistance to needy persons and their dependents.

[(2) Old-age assistance, including services to applicants for and recipients of old-age assistance to help them attain self-care.]

[(3) Assistance to needy blind persons, including services to applicants for and recipients of aid to the blind to help them attain self-support and self-care.]

[(4)] (2) Temporary assistance for needy families **granted under ORS 418.035 to 418.125**, including services to relatives with whom dependent children applying for or receiving temporary assistance for needy families are living in order to help such relatives attain the maximum self-support or self-care consistent with the maintenance of continuing parental care and protection or in order to maintain and strengthen family life for such children.

(3) **Assistance provided by the Oregon Supplemental Income Program.**

(4) **General assistance granted under ORS 411.710 to 411.730.**

[(5) Assistance to the permanently and totally disabled as defined in ORS 412.510, including services to the permanently and totally disabled as defined in ORS 412.510 to help them attain self-support and self-care.]

[(6)] (5) Carrying out the provisions of law for child welfare purposes.

[(7)] (6) Scholarships or grants for qualified *[welfare]* recipients to provide them education and professional, technical or other helpful training, payable to a publicly supported career school or educational institution on behalf of the recipient.

[(8)] (7) *[Such]* **Other purposes for which** *[as]* the department is *[otherwise]* authorized to expend funds, including the administration expenses of the department.

[(9)] (8) Carrying out the provisions of ORS 411.116.

SECTION 8. ORS 411.300 is amended to read:

411.300. (1) The Department of Human Services shall make and enforce reasonable rules and regulations governing the custody, use and preservation of the records, papers, files and communications of the department. The use of such records, papers, files and communications by any other

agency or department of government or person to which they may be furnished shall be limited to the purposes for which they are furnished and by the provisions of the law under which they may be furnished.

(2) No rules or regulations shall be made or administrative practice followed by the Department of Human Services pursuant to subsection (1) of this section [*which*] **that** would interfere with the purposes of ORS [*411.113*] **411.060**, 411.155, 411.320 and 411.335.

SECTION 9. ORS 411.700 is amended to read:

411.700. (1) In the determination of eligibility and the amount of need with respect to a recipient or applicant of public assistance under ORS [*chapters 412, 413 and*] **chapter 414 and section 3 of this 2005 Act**, the Department of Human Services may disregard such amounts of income and resources as are required by federal law or rules adopted pursuant thereto or as are authorized by the Legislative Assembly including the following:

(a) Any elderly rental assistance payments provided by ORS 310.635 or refunds in lieu of such relief shall be disregarded in determining eligibility and need.

(b) Any increase in the amount of assistance that is authorized by section 4, Public Law 93-233 (87 Stat. 953) and which is also being paid on March 5, 1974, shall be disregarded in determining eligibility and need.

(2) Any increase in the amount of assistance provided under Title XVI of the Social Security Act to meet changes in the cost of living that is an increase over that amount being paid on January 1, 1977, pursuant to an Act of Congress and which will first be paid after January 1, 1977, shall be disregarded in determining eligibility and need.

(3) When considering an application for public assistance, the department shall exempt from consideration as a resource up to \$10,000 equity value of any licensed and unlicensed vehicles owned by the applicant or recipient.

(4) The department shall implement subsection (3) of this section statewide to the extent possible that is consistent with federal regulation to maintain state eligibility for federal participation in public assistance programs. In the event the department determines that this policy has a net fiscal cost to the state, the department shall present the fiscal analysis to the Emergency Board for additional funding or direction to modify or suspend the policy.

SECTION 10. ORS 411.760 is amended to read:

411.760. All moneys granted under the provisions of ORS 411.060, 411.070 and 411.710 to 411.730 **and section 3 of this 2005 Act** [*shall be*] **are** inalienable by any assignment or transfer and [*shall be*] **are** exempt from garnishment, levy or execution under the laws of this state.

SECTION 11. ORS 411.803 is amended to read:

411.803. When a married recipient of public assistance provided under [*ORS chapter 412 or 413*] **section 3 of this 2005 Act** requires in-home care, the Department of Human Services shall provide that such care be compensated even though provided by the spouse, in the manner and to the extent specified by rule of the department based on the extent of need and the availability of funds therefor.

SECTION 12. ORS 412.600 is amended to read:

412.600. (1) The amount of any [*aid to the disabled*] assistance paid under [*the provisions of this chapter*] **section 3 of this 2005 Act** is a claim against the property or interest [*therein*] **in the property** belonging to and a part of the estate of any deceased recipient[, *or if there be*]. **If the deceased recipient has** no estate, the estate of the surviving spouse **of the deceased recipient**, if any, shall be charged for [*such aid paid to either or both. However,*] **assistance granted under section 3 of this 2005 Act to the deceased recipient or the surviving spouse**. There shall be no adjustment or recovery of [*public*] assistance correctly paid on behalf of any [*individual*] **deceased recipient** under [*this chapter*] **section 3 of this 2005 Act** except after the death of the surviving spouse of the [*individual*] **deceased recipient**, if any, and only at a time when the [*individual*] **deceased recipient** has no surviving child who is under 21 years of age or who is blind or [*permanently and totally*] disabled. Transfers of real or personal property by recipients of [*such*] assistance without adequate consideration are voidable and may be set aside under ORS 411.620 (2).

(2) Except [where] **when** there is a surviving spouse, or a surviving child who is under 21 years of age or who is blind or [permanently and totally] disabled, the amount of any [aid] **assistance** paid under [this chapter] **section 3 of this 2005 Act** is a claim against the estate in any conservatorship proceedings and may be paid pursuant to ORS 125.495.

(3) Nothing in this section authorizes the recovery of the amount of any [aid] **assistance** from the estate or surviving spouse of a recipient to the extent that the need for [aid] **assistance** resulted from a crime committed against the recipient.

SECTION 13. ORS 414.025 is amended to read:

414.025. As used in this chapter, unless the context or a specially applicable statutory definition requires otherwise:

(1) "Category of aid" means [old-age assistance, aid to the blind, aid to the disabled] **assistance provided by the Oregon Supplemental Income Program**, temporary assistance for needy families **granted under ORS 418.035 to 418.125** or **federal Supplemental Security Income** [payment of the federal government] **payments**.

(2) "Categorically needy" means, insofar as funds are available for the category, a person who is a resident of this state and who:

(a) Is receiving a category of aid.

(b) Would be eligible for, but is not receiving a category of aid.

(c) Is in a medical facility and, if the person left such facility, would be eligible for a category of aid.

(d) Is under the age of 21 years and would be a dependent child under the program for temporary assistance for needy families except for age and regular attendance in school or in a course of professional or technical training.

(e)(A) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child who would be a dependent child under the program for temporary assistance for needy families except for age and regular attendance in school or in a course of professional or technical training; or

(B) Is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

(f) Is under the age of 21 years, is in a foster family home or licensed child-caring agency or institution under a purchase of care agreement and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(g) Is a spouse of an individual receiving a category of aid and who is living with the recipient of a category of aid, whose needs and income are taken into account in determining the cash needs of the recipient of a category of aid, and who is determined by the Department of Human Services to be essential to the well-being of the recipient of a category of aid.

(h) Is a caretaker relative named in ORS 418.035 (2)(a)(C) who cares for a dependent child receiving temporary assistance for needy families or is the spouse of such caretaker relative and fulfills the requirements of ORS 418.035 (1).

(i) Is under the age of 21 years, is in a youth care center and is one for whom a public agency of this state is assuming financial responsibility, in whole or in part.

(j) Is under the age of 21 years and is in an intermediate care facility which includes institutions for the mentally retarded; or is under the age of 22 years and is in a psychiatric hospital.

(k) Is under the age of 21 years and is in an independent living situation with all or part of the maintenance cost paid by the Department of Human Services.

(L) Is a member of a family that received temporary assistance for needy families in at least three of the six months immediately preceding the month in which such family became ineligible for such assistance because of increased hours of or increased income from employment. As long as the member of the family is employed, such families will continue to be eligible for medical assistance for a period of at least six calendar months beginning with the month in which such family became ineligible for assistance because of increased hours of employment or increased earnings.

(m) Is an adopted person under 21 years of age for whom a public agency is assuming financial responsibility in whole or in part.

(n) Is an individual or is a member of a group who is required by federal law to be included in the state's medical assistance program in order for that program to qualify for federal funds.

(o) Is an individual or member of a group who, subject to the rules of the department and within available funds, may optionally be included in the state's medical assistance program under federal law and regulations concerning the availability of federal funds for the expenses of that individual or group.

(p) Is a pregnant woman who would be eligible for temporary assistance for needy families including such aid based on the unemployment of a parent, whether or not the woman is eligible for cash assistance.

(q) Would be eligible for temporary assistance for needy families pursuant to 42 U.S.C. 607 based upon the unemployment of a parent, whether or not the state provides cash assistance.

(r) Except as otherwise provided in this section and to the extent of available funds, is a pregnant woman or child for whom federal financial participation is available under Title XIX of the federal Social Security Act.

(s) Is not otherwise categorically needy and is not eligible for care under Title XVIII of the federal Social Security Act or is not a full-time student in a post-secondary education program as defined by the Department of Human Services by rule, but whose family income is less than the federal poverty level and whose family investments and savings equal less than the investments and savings limit established by the department by rule.

(3) "Income" [*means income as defined in ORS 413.005 (2)*] **has the meaning given that term in section 2 of this 2005 Act.**

(4) "Investments and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the Department of Human Services may establish by rule that are available to the applicant or recipient to contribute toward meeting the needs of the applicant or recipient.

(5) "Medical assistance" means so much of the following medical and remedial care and services as may be prescribed by the Department of Human Services according to the standards established pursuant to ORS 414.065, including payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of medical care:

- (a) Inpatient hospital services, other than services in an institution for mental diseases;
- (b) Outpatient hospital services;
- (c) Other laboratory and X-ray services;
- (d) Skilled nursing facility services, other than services in an institution for mental diseases;
- (e) Physicians' services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility or elsewhere;
- (f) Medical care, or any other type of remedial care recognized under state law, furnished by licensed practitioners within the scope of their practice as defined by state law;
- (g) Home health care services;
- (h) Private duty nursing services;
- (i) Clinic services;
- (j) Dental services;
- (k) Physical therapy and related services;
- (L) Prescribed drugs, including those dispensed and administered as provided under ORS chapter 689;
- (m) Dentures and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select;
- (n) Other diagnostic, screening, preventive and rehabilitative services;
- (o) Inpatient hospital services, skilled nursing facility services and intermediate care facility services for individuals 65 years of age or over in an institution for mental diseases;
- (p) Any other medical care, and any other type of remedial care recognized under state law;

(q) Periodic screening and diagnosis of individuals under the age of 21 years to ascertain their physical or mental [defects] **impairments**, and such health care, treatment and other measures to correct or ameliorate [defects] **impairments** and chronic conditions discovered thereby;

(r) Inpatient hospital services for individuals under 22 years of age in an institution for mental diseases; and

(s) Hospice services.

(6) "Medical assistance" includes any care or services for any individual who is a patient in a medical institution or any care or services for any individual who has attained 65 years of age or is under 22 years of age, and who is a patient in a private or public institution for mental diseases. "Medical assistance" includes "health services" as defined in ORS 414.705. "Medical assistance" does not include care or services for an inmate in a nonmedical public institution.

(7) "Medically needy" means a person who is a resident of this state and who is considered eligible under federal law for medically needy assistance.

(8) "Resources" [means resources as defined in ORS 413.005 (5)] **has the meaning given that term in section 2 of this 2005 Act.** For eligibility purposes, "resources" [shall] **does** not include charitable contributions raised by a community to assist with medical expenses.

SECTION 14. ORS 414.065 is amended to read:

414.065. (1) With respect to medical and remedial care and services to be provided in medical assistance during any period, and within the limits of funds available therefor, the Department of Human Services shall determine, subject to such revisions as it may make from time to time and with respect to the "health services" defined in ORS 414.705, subject to legislative funding in response to the report of the Health Services Commission:

(a) The types and extent of medical and remedial care and services to be provided to each eligible group of recipients of medical assistance.

(b) Standards to be observed in the provision of medical and remedial care and services.

(c) The number of days of medical and remedial care and services toward the cost of which public assistance funds will be expended in the care of any person.

(d) Reasonable fees, charges and daily rates to which public assistance funds will be applied toward meeting the costs of providing medical and remedial care and services to an applicant or recipient.

(e) Reasonable fees for professional medical and dental services which may be based on usual and customary fees in the locality for similar services.

(f) The amount and application of any copayment or other similar cost-sharing payment that the department may require a recipient to pay toward the cost of medical and remedial care or services.

(2) The types and extent of medical and remedial care and services and the amounts to be paid in meeting the costs thereof, as determined and fixed by the department and within the limits of funds available therefor, shall be the total available for medical assistance and payments for such medical assistance shall be the total amounts from public assistance funds available to providers of medical and remedial care and services in meeting the costs thereof.

(3) Except for payments under a cost-sharing plan, payments made by the department for medical assistance shall constitute payment in full for all medical and remedial care and services for which such payments of medical assistance were made.

(4) Medical benefits, standards and limits established pursuant to subsection (1)(a), (b) and (c) of this section for the eligible medically needy, except for [the aged served under ORS chapter 413 and for the blind and disabled served under ORS chapter 412] **persons receiving assistance under section 3 of this 2005 Act**, may be less than but [shall] **may** not exceed medical benefits, standards and limits established for the eligible categorically needy, except that, in the case of a research and demonstration project entered into under ORS 411.135, medical benefits, standards and limits for the eligible medically needy may exceed those established for specific eligible groups of the categorically needy.

(5) Notwithstanding the provisions of this section, the department shall cause Type A hospitals, Type B hospitals and rural critical access hospitals, as described in ORS 442.470, identified by the Office of Rural Health as rural hospitals to be reimbursed for the cost of covered services as follows:

(a) For services provided to persons entitled to receive medical assistance, based on the Medicare determination of reasonable cost as derived from the Hospital and Hospital Health Care Complex Cost Report, referred to as the Medicare Report.

(b) In accordance with the terms of the agreement for services provided to persons whose medical assistance benefits are administered by the contracting health care provider under an agreement between the hospital and a health care provider contracting with the Department of Human Services under ORS 414.725 (1) for reimbursement other than that specified by ORS 414.727 (1). Hospitals reimbursed under the terms of this paragraph are entitled to no additional reimbursement for services provided.

(c) Hospitals that have been reimbursed by health care providers contracting with the Department of Human Services under ORS 414.725 (1) in accordance with ORS 414.727 (1), are entitled to full reimbursement from the department for the cost of covered services provided to persons whose medical assistance benefits are administered by the contracting health care provider according to paragraph (a) of this subsection.

SECTION 15. ORS 414.340 is amended to read:

414.340. As used in this section and ORS 414.342 and 414.348:

(1) "Eligible person" means a resident of this state who:

(a) Is 65 years of age or older;

(b) Has a gross annual income that does not exceed the lesser of the maximum amount established by the Department of Human Services by rule or 185 percent of the federal poverty guidelines;

(c) Has not been covered under any public or private prescription drug benefit program for the previous six months; and

(d) Has less than \$2,000 in resources.

(2) "Enrollee" means a person who has been found to be eligible for the Senior Prescription Drug Assistance Program, who has paid an enrollment fee of up to \$50 and who has a Senior Prescription Drug Assistance Program enrollment card issued by the Department of Human Services.

(3) "Federal poverty guidelines" means the most recent poverty guidelines as published annually in the Federal Register by the United States Department of Health and Human Services.

(4) "Income" has the meaning given that term in [ORS 413.005] **section 2 of this 2005 Act.**

(5) "Resources" includes but is not limited to cash, checking and savings accounts, certificates of deposit, money market funds, stocks and bonds. "Resources" does not include the primary residence or car of an eligible person.

(6) "Senior Prescription Drug Assistance Program price" means the price of a prescription drug paid by an enrollee that is equal to or less than the Medicaid price.

SECTION 16. ORS 414.708 is amended to read:

414.708. (1) A person is eligible to receive the health services described in ORS 414.707 (1)(b) when the person is a resident of this state who:

(a) Is 65 years of age or older, *is a* **or is blind** [*person as defined in ORS 412.005 or is a person who is disabled as defined in ORS 412.510*] **or disabled as those terms are defined in section 2 of this 2005 Act;**

(b) Has a gross annual income that does not exceed the standard established by the Department of Human Services; and

(c) Is not covered under any public or private prescription drug benefit program.

(2) A person receiving prescription drug services under ORS 414.707 (1)(b) shall pay up to a percentage of the Medicaid price of the prescription drug established by the department by rule and the dispensing fee.

SECTION 17. ORS 414.710 is amended to read:

414.710. The following services are available to persons eligible for services under ORS 414.025, 414.036, 414.042, 414.065 and 414.705 to 414.750 but such services are not subject to ORS 414.720:

(1) Nursing facilities and home- and community-based waived services funded through the Department of Human Services;

(2) Medical assistance to eligible persons who *[are aged and described in ORS chapter 413 or who are blind or disabled and described in ORS chapter 412]* **receive assistance under section 3 of this 2005 Act** or to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to 657A.460;

(3) Institutional, home- and community-based waived services or community mental health program care for *[the mentally retarded or developmentally disabled, for the chronically mentally ill or emotionally disturbed]* **persons with mental retardation, a developmental disability or a severe mental illness** and for the treatment of alcohol and drug dependent persons; and

(4) Services to children who are wards of the Department of Human Services by order of the juvenile court and services to children and families for health care or mental health care through the department.

SECTION 18. ORS 414.712 is amended to read:

414.712. The Department of Human Services shall provide medical assistance under ORS 414.705 to 414.750 to eligible persons *[who are aged and described in ORS chapter 413 or who are blind or disabled and described in ORS chapter 412]* **who receive assistance under section 3 of this 2005 Act** and to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.189 to 418.970 and 657A.020 to 657A.460 and those mental health and chemical dependency services recommended according to standards of medical assistance and according to the schedule of implementation established by the Legislative Assembly. In providing medical assistance services described in ORS 414.018 to 414.024, 414.042, 414.107, 414.710, 414.720 and 735.712, the Department of Human Services shall also provide the following:

(1) Ombudsman services for eligible persons who *[are aged and described in ORS chapter 413 or who are blind or disabled and described in ORS chapter 412]* **receive assistance under section 3 of this 2005 Act**. With the concurrence of the Governor, the Director of Human Services shall appoint ombudsmen and may terminate an ombudsman. Ombudsmen are under the supervision and control of the director. An ombudsman shall serve as a patient's advocate whenever the patient or a physician or other medical personnel serving the patient is reasonably concerned about access to, quality of or limitations on the care being provided by a health care provider. Patients shall be informed of the availability of an ombudsman. Ombudsmen shall report to the Governor in writing at least once each quarter. A report shall include a summary of the services that the ombudsman provided during the quarter and the ombudsman's recommendations for improving ombudsman services and access to or quality of care provided to eligible persons by health care providers.

(2) Case management services in each health care provider organization for those eligible persons who *[are aged and described in ORS chapter 413 or who are blind or disabled and described in ORS chapter 412]* **receive assistance under section 3 of this 2005 Act**. Case managers shall be trained in and shall exhibit skills in communication with and sensitivity to the unique health care needs of people who *[are elderly and those with disabilities]* **receive assistance under section 3 of this 2005 Act**. Case managers shall be reasonably available to assist patients served by the organization with the coordination of the patient's health care services at the reasonable request of the patient or a physician or other medical personnel serving the patient. Patients shall be informed of the availability of case managers.

(3) A mechanism, established by rule, for soliciting consumer opinions and concerns regarding accessibility to and quality of the services of each health care provider.

(4) A choice of available medical plans and, within those plans, choice of a primary care provider.

(5) Due process procedures for any individual whose request for medical assistance coverage for any treatment or service is denied or is not acted upon with reasonable promptness. These proce-

dures shall include an expedited process for cases in which a patient's medical needs require swift resolution of a dispute.

SECTION 19. ORS 18.348 is amended to read:

18.348. (1) All funds exempt from execution and other process under ORS 18.358, 18.385 (2) to (4), 238.445, 344.580, 348.863, 401.405, 407.595, 411.760, [412.115, 412.610, 413.130,] 414.095, 655.530, 656.234, 657.855 and 748.207 and [section 3101, title 38, United States Code and section 407, title 42, United States Code] **38 U.S.C. 3101 and 42 U.S.C. 407** shall remain exempt when deposited in an account of a judgment debtor as long as the exempt funds are identifiable.

(2) **Except as provided in subsection (3) of this section**, the provisions of subsection (1) of this section [shall] **do not** apply to any accumulation of funds greater than \$7,500.

(3) Subsection (2) of this section does not apply to funds exempt from execution or other process under 42 U.S.C. 407.

SECTION 20. ORS 113.085 is amended to read:

113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

(a) To the executor named in the will.

(b) To the surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

(c) To the nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

(d) To the Director of Human Services or a designee, if it appears the decedent received public assistance pursuant to ORS chapter 411[, 412, 413] or 414 and that such assistance is a claim against the estate.

(e) To the Director of Veterans' Affairs, if the decedent was a protected person under ORS 406.050 (7), and the director has joined in the petition for such appointment.

(f) To any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

SECTION 21. ORS 116.093 is amended to read:

116.093. (1) Upon filing the final account and petition for a judgment of distribution, the personal representative shall fix a time for filing objections thereto in a notice thereof. Not less than 20 days before the time fixed in the notice, the personal representative shall cause a copy of the notice to be mailed to:

(a) Each heir at the last-known address of the heir, if the decedent died intestate.

(b) Each devisee at the last-known address of the devisee, if the decedent died testate.

(c) Each creditor who has not received payment in full and whose claim has not otherwise been barred.

(d) Any other person known to the personal representative to have or to claim an interest in the estate being distributed.

(2) The notice need not be mailed to the personal representative.

(3) Proof of the mailing to those persons entitled to notice shall be made by affidavit and filed in the estate proceeding at or before approval of the final account.

(4) If the Department of Human Services has presented a claim under ORS [*chapters 411 to 415 and*] **chapter 411 or 414** or ORS 416.310 to 416.340, [*and*] 416.510 to 416.990 or 417.010 to 417.080, or the Department of Corrections or the authorized agent of the Department of Corrections has presented a claim under ORS 179.620 (3), and the claim has not been settled or paid in full, the personal representative shall mail to the appropriate department a copy of the final account at the same time, and shall make proof of the mailing in the same manner, as the notice provided for in this section.

SECTION 22. ORS 125.060 is amended to read:

125.060. (1) The notices required by this section must be given to all persons whose identities and addresses can be ascertained in the exercise of reasonable diligence by the person required to give the notice.

(2) Notice of the filing of a petition for the appointment of a fiduciary or entry of other protective order must be given by the petitioner to the following persons:

(a) The respondent, if the respondent has attained 14 years of age.

(b) The spouse, parents and adult children of the respondent.

(c) If the respondent does not have a spouse, parent or adult child, the person or persons most closely related to the respondent.

(d) Any person who is cohabiting with the respondent and who is interested in the affairs or welfare of the respondent.

(e) Any person who has been nominated as fiduciary or appointed to act as fiduciary for the respondent by a court of any state, any trustee for a trust established by or for the respondent, any person appointed as a health care representative under the provisions of ORS 127.505 to 127.660 and any person acting as attorney-in-fact for the respondent under a power of attorney.

(f) If the respondent is a minor, the person who has exercised principal responsibility for the care and custody of the respondent during the 60-day period before the filing of the petition.

(g) If the respondent is a minor and has no living parents, any person nominated to act as fiduciary for the minor in a will or other written instrument prepared by a parent of the minor.

(h) If the respondent is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(i) If the respondent is receiving moneys paid or payable for public assistance provided under ORS chapter 411[, 412, 413] or 414 by the State of Oregon through the Department of Human Services, a representative of the department.

(j) If the respondent is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the respondent is confined.

(k) If the respondent is a foreign national, to the consulate for the respondent's country.

(L) Any other person that the court requires.

(3) Notice of a motion for the termination of the protective proceedings, for removal of a fiduciary, for modification of the powers or authority of a fiduciary, for approval of a fiduciary's actions or for protective orders in addition to those sought in the petition must be given by the person making the motion to the following persons:

(a) The protected person, if the protected person has attained 14 years of age.

(b) Any person who has filed a request for notice in the proceedings.

(c) Except for a fiduciary who is making a motion, to any fiduciary who has been appointed for the protected person.

(d) If the protected person is receiving moneys paid or payable by the United States through the Department of Veterans Affairs, a representative of the United States Department of Veterans Affairs regional office that has responsibility for the payments to the protected person.

(e) If the protected person is committed to the legal and physical custody of the Department of Corrections, the Attorney General and the superintendent or other officer in charge of the facility in which the protected person is confined.

(f) Any other person that the court requires.

(4) A request for notice under subsection (3)(b) of this section must be in writing and include the name, address and phone number of the person requesting notice. A copy of the request must be mailed by the person making the request to the petitioner or to the fiduciary if a fiduciary has been appointed. The original request must be filed with the court. The person filing the request must pay the fee specified by ORS 21.310 (5).

(5) A person who files a request for notice in the proceedings in the manner provided by subsection (4) of this section is entitled to receive notice from the fiduciary of any motion specified in subsection (3) of this section and of any other matter to which a person listed in subsection (2) of this section is entitled to receive notice under a specific provision of this chapter.

(6) If the Department of Human Services is nominated as guardian for the purpose of consenting to the adoption of a minor, the notice provided for in this section must also be given to the minor's brothers, sisters, aunts, uncles and grandparents.

(7) In addition to the requirements of subsection (2) of this section, notice of the filing of a petition for the appointment of a guardian for a person who is alleged to be incapacitated must be given by the petitioner to the following persons:

(a) Any attorney who is representing the respondent in any capacity.

(b) If the respondent is a resident of a nursing home or residential facility, or if the person nominated to act as fiduciary intends to place the respondent in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the respondent is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the person nominated to act as fiduciary intends to place the respondent in such a facility, the system designated to protect and advocate the rights of individuals with developmental disabilities as described in ORS 192.517 (1).

(8) In addition to the requirements of subsection (3) of this section, in a protective proceeding in which a guardian has been appointed, notice of the motions specified in subsection (3) of this section must be given by the person making the motion to the following persons:

(a) Any attorney who represented the protected person at any time during the protective proceeding.

(b) If the protected person is a resident of a nursing home or residential facility, or if the motion seeks authority to place the protected person in a nursing home or residential facility, the office of the Long Term Care Ombudsman.

(c) If the protected person is a resident of a mental health treatment facility or a residential facility for individuals with developmental disabilities, or if the motion seeks authority to place the protected person in such a facility, the system designated to protect and advocate the rights of individuals with developmental disabilities as described in ORS 192.517 (1).

(9) A respondent or protected person may not waive the notice required under this section.

(10) The requirement that notice be served on an attorney for a respondent or protected person under subsection (7)(a) or (8)(a) of this section does not impose any responsibility on the attorney receiving the notice to represent the respondent or protected person in the protective proceeding.

SECTION 23. ORS 410.075 is amended to read:

410.075. The Department of Human Services may take title to real and personal property in performing its duties under ORS 411.630, 411.795, 412.600, [413.200,] 414.105 and 416.310. Title shall be taken in the name of the department. The department may convey the property by deed or other appropriate conveyance under procedures adopted by rule of the department.

SECTION 24. ORS 411.620 is amended to read:

411.620. (1) The Department of Human Services may prosecute a civil suit or action against any person who has obtained, for personal benefit or for the benefit of any other person, any amount or type of general assistance or public assistance, as defined in ORS 411.010, or has aided any other

person to obtain such general assistance or public assistance, in violation of any provision of ORS 411.630, or in violation of ORS 411.640. In such suit or action the department may recover the amount or value of such general assistance or public assistance so obtained in violation of ORS 411.630, or in violation of ORS 411.640, with interest thereon, together with costs and disbursements incurred therein.

(2) Excepting as to bona fide purchasers for value, the department, the conservator for the recipient or the personal representative of the estate of a deceased recipient may prosecute a civil suit or action to set aside the transfer, gift or other disposition of any money or property made in violation of any provisions of ORS 411.630, 412.600[, 413.200] and 414.105 and the department may recover out of such money or property, or otherwise, the amount or value of any general assistance or public assistance obtained as a result of such violation, with interest thereon, together with costs and disbursements incurred therein.

SECTION 25. ORS 416.310 is amended to read:

416.310. (1) Except as otherwise provided by ORS [413.200] **412.600**, the estate of every deceased person who received aid from the state or any county or whose burial expenses have been paid by the state or any county, other than aid received [*as old-age assistance or*] pursuant to ORS 418.040, 444.120 or 444.220, is liable for the actual cost of such aid so rendered or the actual expenses of such burial. The state or the county shall have a just and valid claim against such estate therefor.

(2) Nothing in this section relieves the parents, children, brothers or sisters of any [*poor*] **needy** person from their obligation to support such person, or prevents the county court from recovering for such support.

(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or surviving spouse of a recipient to the extent that the need for aid resulted from a crime committed against the recipient.

SECTION 26. ORS 708A.430 is amended to read:

708A.430. (1) On the death of a depositor of a financial institution, if the deposit is \$25,000 or less, the financial institution may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit to the credit of the deceased depositor:

(a) To the surviving spouse;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the department within 60 days from the death of the depositor where there is a preferred claim arising under ORS 411.795, 412.600[, 413.200] or 414.105, or if there is no claim by the department, to the surviving children 18 years of age or older;

(c) If the depositor left no surviving spouse, Department of Human Services claim or surviving children, to the depositor's surviving parents; or

(d) If there is no surviving spouse, Department of Human Services claim, surviving child or surviving parent, to the depositor's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the depositor died;

(b) State that the total deposits of the deceased depositor in all financial institutions in Oregon do not exceed \$25,000;

(c) Show the relationship of the affiant or affiants to the deceased depositor; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the deposit to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the decedent died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The financial institution shall determine the relationship of the affiant to the deceased depositor, however payment of such moneys in good faith to the affiant or affiants shall discharge

and release the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, Department of Human Services claim, surviving child, surviving parent, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a financial institution transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties in the account under ORS 708A.455 to 708A.515.

SECTION 27. ORS 722.262 is amended to read:

722.262. (1) On the death of an account holder or a holder of a demand deposit account, if the savings liability of an association or federal association on all savings accounts of the deceased, and the amounts held in all demand deposit accounts of the deceased, is \$25,000 or less, the association or federal association may, upon receipt of an affidavit from the person claiming the account, pay the withdrawal value of the accounts of the deceased holder:

- (a) To the surviving spouse;
- (b) If there is no surviving spouse, to the surviving children 18 years of age or older;
- (c) If there is no surviving spouse or surviving children 18 years of age or older, to the surviving parents; or
- (d) If there is no surviving spouse, surviving child 18 years of age or older or surviving parent, to the surviving brothers and sisters 18 years of age or older.

(2) If the deceased account holder or holder of a demand deposit account received public assistance pursuant to ORS chapter 411[, 412, 413] or 414, the Department of Human Services may claim such withdrawal value by filing an affidavit in the form prescribed by subsection (3) of this section and the Department of Human Services shall be preferred to all other claimants except a surviving spouse.

(3) The affidavit of the person or the Department of Human Services claiming the account shall:

- (a) State where and when the account holder or holder of a demand deposit account died;
- (b) State that the total withdrawal value of all savings and demand deposit accounts of the deceased holder in all associations in Oregon, including federal associations, does not exceed \$25,000;
- (c) Show the relationship of the affiant or affiants to the deceased holder; and
- (d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the account to the full extent of the account if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(4) In the event the decedent died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the withdrawal value of the accounts as escheat property.

(5) A savings association or federal association is under no obligation to determine the relationship of the affiant to the deceased. Payment made in good faith to the person or the Department of Human Services or an estate administrator of the Department of State Lands making the affidavit is a full acquittance and release of the association or federal association for the amount so paid.

(6) A probate proceeding is not necessary to establish the right of the surviving spouse, surviving children, surviving parent or surviving brothers and sisters to withdraw an account as provided by this section. However, if a personal representative is appointed in an estate of a deceased

person whose account has been withdrawn under this section, the person or the Department of Human Services withdrawing the account shall account for it to the personal representative.

SECTION 28. ORS 723.466 is amended to read:

723.466. (1) On the death of a member of a credit union, if the deposit to the credit of the deceased member is \$25,000 or less, the credit union may, upon receipt of an affidavit from the person claiming the deposit as provided in subsection (2) of this section, pay the moneys on deposit:

(a) To the surviving spouse;

(b) If there is no surviving spouse, to the Department of Human Services, on demand of the Department of Human Services within 60 days from the death of the member when there is a preferred claim arising under ORS 411.795, 412.600[, 413.200] or 414.105, or if there is no claim by the Department of Human Services, to the surviving children 18 years of age or older;

(c) If there is no surviving spouse, Department of Human Services claim or surviving children, to the member's surviving parents; or

(d) If there is no surviving spouse, Department of Human Services claim, surviving children or surviving parents, to the member's surviving brothers and sisters 18 years of age or older.

(2) The affidavit shall:

(a) State where and when the member died;

(b) State that the total deposits of the deceased member in all financial institutions in this state do not exceed \$25,000;

(c) Show the relationship of the affiant or affiants to the deceased member; and

(d) Embody a promise to pay the expenses of last sickness, funeral expenses and just debts of the deceased out of the deposit, to the full extent of the deposit if necessary, in the order of priority prescribed by ORS 115.125, and to distribute any remaining moneys to the persons who are entitled to those moneys by law.

(3) In the event the decedent died intestate without known heirs, an estate administrator of the Department of State Lands appointed under ORS 113.235 shall be the affiant and shall receive the moneys as escheat property.

(4) The credit union shall determine the relationship of the affiant to the deceased member. However, payment of such moneys in good faith to the affiant or affiants shall discharge and release the transferor from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(5) A probate proceeding is not necessary to establish the right of the surviving spouse, Department of Human Services claim, surviving children, surviving parents, surviving brothers and sisters or an estate administrator of the Department of State Lands to withdraw the deposits upon the filing of the affidavit. If a personal representative is appointed in an estate where a withdrawal of deposits was made under this section, the person withdrawing the deposits shall account for them to the personal representative.

(6) When a credit union transfers moneys under subsection (1) of this section, the transferor may require the transferee to furnish the transferor with a written indemnity agreement, indemnifying the transferor against loss for moneys paid to the extent of the amount of the deposit.

(7) This section is subject to the rights of other parties to the account under ORS 723.474 to 723.498.

SECTION 29. ORS 411.111 is amended to read:

411.111. (1) *[For the purpose of eliminating from the public assistance rolls all persons for any reason not entitled to the benefits being granted, any application for or grant of public assistance is subject to investigation, certification, review and reconsideration from time to time and as frequently as is required by the rules and regulations of the Department of Human Services, and is subject to change or cancellation when the circumstances are not verified or have changed sufficiently to warrant such action; and for this purpose the department may employ and fix the compensation of such persons as it finds necessary and advisable.]* **The Department of Human Services may reconsider a grant of general assistance or a grant of public assistance only for the following purposes:**

(a) To correct an inadvertent clerical or mathematical error made when determining a grant of general assistance or a grant of public assistance;

(b) To correct misinformation provided to an applicant or recipient by the department;

(c) To consider facts not previously known to the department;

(d) To correct errors caused by a misapplication of the law by the department;

(e) To consider substantive changes in the applicable law; or

(f) To consider a change in circumstances that directly affects the eligibility of a recipient of general assistance or public assistance.

(2) A recipient of general assistance or public assistance may request reconsideration of a grant of general assistance or a grant of public assistance for the purposes described in subsection (1) of this section.

(3) If the department reduces, suspends or terminates a grant of general assistance or a grant of public assistance after reconsideration under subsection (1) of this section, the department shall provide an opportunity for a hearing under ORS chapter 183.

(4) Notwithstanding subsection (1) of this section, the department may conduct periodic redeterminations of eligibility of recipients of grants of general assistance or grants of public assistance and participate in audits and other review activities as required by state or federal law.

SECTION 30. ORS 411.113, 411.114, 412.005, 412.015, 412.025, 412.035, 412.045, 412.055, 412.065, 412.075, 412.085, 412.095, 412.105, 412.108, 412.113, 412.115, 412.125, 412.510, 412.520, 412.530, 412.540, 412.560, 412.570, 412.580, 412.590, 412.610, 412.620, 412.625, 412.630, 413.005, 413.009, 413.019, 413.029, 413.068, 413.070, 413.090, 413.100, 413.110, 413.120, 413.130, 413.140, 413.160, 413.165, 413.200, 413.220, 413.230 and 413.240 are repealed.

Passed by House May 19, 2005

Received by Governor:

.....M.,....., 2005

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Chief Clerk of House

Approved:

.....M.,....., 2005

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Speaker of House

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Governor

Passed by Senate June 15, 2005

Filed in Office of Secretary of State:

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President of Senate

.....M.,....., 2005

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Secretary of State