

## HOUSE AMENDMENTS TO HOUSE BILL 3108

By COMMITTEE ON HEALTH AND HUMAN SERVICES

May 17

1 On page 1 of the printed bill, line 2, after “services” insert “; creating new provisions; amending  
2 ORS 115.125, 411.795, 414.065, 414.105, 414.725 and 430.210; and declaring an emergency”.

3 Delete lines 4 through 28 and delete pages 2 and 3 and insert:

4 “**SECTION 1.** ORS 411.795 is amended to read:

5 “411.795. (1) The amount of any general assistance paid under this chapter is a claim against  
6 the property or any interest therein belonging to and a part of the estate of any deceased recipient  
7 or if there be no estate or the estate does not have sufficient assets to satisfy the claim, the estate  
8 of the surviving spouse shall be charged for such aid paid to either or both; provided, however, that  
9 there shall be no adjustment or recovery of any general assistance correctly paid to or on behalf  
10 of any individual under this chapter except after the death of such individual and the surviving  
11 spouse of the individual, if any, and only at a time when the individual has no surviving child who  
12 is under 21 years of age or is blind or permanently and totally disabled.

13 “(2) Except where there is a surviving spouse, or a surviving child who is under 21 years of age  
14 or is blind or permanently and totally disabled, the amount of any general assistance paid under this  
15 chapter is a claim against the estate in any conservatorship proceedings and may be paid pursuant  
16 to ORS 125.495.

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

20 “(4) **As used in this section, ‘general assistance’ includes the state’s monthly contribution**  
21 **to the federal government to defray the costs of outpatient prescription drug coverage pro-**  
22 **vided to a person who is eligible for Medicare Part D prescription drug coverage and who**  
23 **receives benefits under the state medical assistance program or Title XIX of the Social Se-**  
24 **curity Act.**

25 “**SECTION 2.** ORS 414.105 is amended to read:

26 “414.105. (1) The Department of Human Services may recover from any person the amounts of  
27 medical assistance incorrectly paid on behalf of such person.

28 “(2) Medical assistance pursuant to this chapter paid on behalf of an individual who was 55  
29 years of age or older when the individual received such assistance, or paid on behalf of a person  
30 of any age who was a permanently institutionalized inpatient in a nursing facility, intermediate care  
31 facility for the mentally retarded or other medical institution, may be recovered from the estate of  
32 the individual or from any recipient of property or other assets held by the individual at the time  
33 of death including the estate of the surviving spouse. Claim for such medical assistance correctly  
34 paid to the individual may be established against the estate, but there shall be no adjustment or  
35 recovery thereof until after the death of the surviving spouse, if any, and only at a time when the

1 individual has no surviving child who is under 21 years of age or who is blind or permanently and  
2 totally disabled. Transfers of real or personal property by recipients of such aid without adequate  
3 consideration are voidable and may be set aside under ORS 411.620 (2).

4 “(3) Nothing in this section authorizes the recovery of the amount of any aid from the estate  
5 or surviving spouse of a recipient to the extent that the need for aid resulted from a crime com-  
6 mitted against the recipient.

7 “(4) In any action or proceeding under this section to recover medical assistance paid, it shall  
8 be the legal burden of the person who receives the property or other assets from a Medicaid recip-  
9 ient to establish the extent and value of the Medicaid recipient’s legal title or interest in the prop-  
10 erty or assets in accordance with rules established by the department.

11 “(5) As used in this section[,]:

12 “(a) ‘Estate’ includes all real and personal property and other assets in which the deceased in-  
13 dividual had any legal title or interest at the time of death including assets conveyed to a survivor,  
14 heir or assign of the deceased individual through joint tenancy, tenancy in common, survivorship,  
15 life estate, living trust or other similar arrangement.

16 “(b) **‘Medical assistance’ includes the state’s monthly contribution to the federal gov-  
17 ernment to defray the costs of outpatient prescription drug coverage provided to a person  
18 who is eligible for Medicare Part D prescription drug coverage and who receives benefits  
19 under the state medical assistance program or Title XIX of the Social Security Act.**

20 “**SECTION 3.** ORS 414.065 is amended to read:

21 “414.065. (1)(a) With respect to medical and remedial care and services to be provided in med-  
22 ical assistance during any period, and within the limits of funds available therefor, the Department  
23 of Human Services shall determine, subject to such revisions as it may make from time to time and  
24 with respect to the ‘health services’ defined in ORS 414.705, subject to legislative funding in re-  
25 sponse to the report of the Health Services Commission **and paragraph (b) of this subsection:**

26 “[a] (A) The types and extent of medical and remedial care and services to be provided to each  
27 eligible group of recipients of medical assistance.

28 “[b] (B) Standards to be observed in the provision of medical and remedial care and services.

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

31 “[d] (D) Reasonable fees, charges and daily rates to which public assistance funds will be ap-  
32 plied toward meeting the costs of providing medical and remedial care and services to an applicant  
33 or recipient.

34 “[e] (E) Reasonable fees for professional medical and dental services which may be based on  
35 usual and customary fees in the locality for similar services.

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

39 “(b) **Notwithstanding ORS 414.720 (8), the department shall adopt rules establishing  
40 timelines for payment of health services under paragraph (a) of this subsection.**

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

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

4 “(4) Medical benefits, standards and limits established pursuant to subsection (1)(a), (b) and (c)  
5 of this section for the eligible medically needy, except for the aged served under ORS chapter 413  
6 and for the blind and disabled served under ORS chapter 412, may be less but shall not exceed  
7 medical benefits, standards and limits established for the eligible categorically needy, except that,  
8 in the case of a research and demonstration project entered into under ORS 411.135, medical bene-  
9 fits, standards and limits for the eligible medically needy may exceed those established for specific  
10 eligible groups of the categorically needy.

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

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

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

23 “(c) Hospitals that have been reimbursed by health care providers contracting with the De-  
24 partment of Human Services under ORS 414.725 (1) in accordance with ORS 414.727 (1), are entitled  
25 to full reimbursement from the department for the cost of covered services provided to persons  
26 whose medical assistance benefits are administered by the contracting health care provider accord-  
27 ing to paragraph (a) of this subsection.

28 “**SECTION 4.** ORS 414.725, as amended by section 277, chapter 794, Oregon Laws 2003, is  
29 amended to read:

30 “414.725. (1)(a) Pursuant to rules adopted by the Department of Human Services, the department  
31 shall execute prepaid managed care health services contracts for health services funded by the  
32 Legislative Assembly. The contract must require that all services are provided to the extent and  
33 scope of the Health Services Commission’s report for each service provided under the contract.  
34 [Such] **The** contracts are not subject to ORS chapters 279A and 279B, except ORS 279A.250 to  
35 279A.290 and 279B.235. **Notwithstanding ORS 414.720 (8), the rules adopted by the department**  
36 **shall establish timelines for executing the contracts described in this paragraph.**

37 “(b) It is the intent of ORS 414.705 to 414.750 that the state use, to the greatest extent possible,  
38 prepaid managed care health services organizations to provide physical health, dental, mental health  
39 and chemical dependency services under ORS 414.705 to 414.750.

40 “(c) The department shall solicit qualified providers or plans to be reimbursed for providing the  
41 covered services. The contracts may be with hospitals and medical organizations, health mainte-  
42 nance organizations, managed health care plans and any other qualified public or private prepaid  
43 managed care health services organization. The department may not discriminate against any con-  
44 tractors that offer services within their providers’ lawful scopes of practice.

45 “(2) The department may institute a fee-for-service case management system or a fee-for-service

1 payment system for the same physical health, dental, mental health or chemical dependency services  
2 provided under the health services contracts for persons eligible for health services under ORS  
3 414.705 to 414.750 in designated areas of the state in which a prepaid managed care health services  
4 organization is not able to assign an enrollee to a person or entity that is primarily responsible for  
5 coordinating the physical health, dental, mental health or chemical dependency services provided to  
6 the enrollee. In addition, the department may make other special arrangements as necessary to in-  
7 crease the interest of providers in participation in the state's managed care system, including but  
8 not limited to the provision of stop-loss insurance for providers wishing to limit the amount of risk  
9 they wish to underwrite.

10 “(3) As provided in subsections (1) and (2) of this section, the aggregate expenditures by the  
11 department for health services provided pursuant to ORS 414.705 to 414.750 may not exceed the total  
12 dollars appropriated for health services under ORS 414.705 to 414.750.

13 “(4) Actions taken by providers, potential providers, contractors and bidders in specific accord-  
14 ance with ORS 414.705 to 414.750 in forming consortiums or in otherwise entering into contracts to  
15 provide health care services shall be performed pursuant to state supervision and shall be consid-  
16 ered to be conducted at the direction of this state, shall be considered to be lawful trade practices  
17 and may not be considered to be the transaction of insurance for purposes of the Insurance Code.

18 “(5) Health care providers contracting to provide services under ORS 414.705 to 414.750 shall  
19 advise a patient of any service, treatment or test that is medically necessary but not covered under  
20 the contract if an ordinarily careful practitioner in the same or similar community would do so un-  
21 der the same or similar circumstances.

22 “(6) A prepaid managed care health services organization shall provide information on contact-  
23 ing available providers to an enrollee in writing within 30 days of assignment to the health services  
24 organization.

25 “(7) Each prepaid managed care health services organization shall provide upon the request of  
26 an enrollee or prospective enrollee annual summaries of the organization's aggregate data regarding:

27 “(a) Grievances and appeals; and

28 “(b) Availability and accessibility of services provided to enrollees.

29 “(8) A prepaid managed care health services organization may not limit enrollment in a desig-  
30 nated area based on the zip code of an enrollee or prospective enrollee.

31 “**SECTION 5.** ORS 115.125 is amended to read:

32 “115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims  
33 in full, the personal representative shall make payment in the following order:

34 “(a) Support of spouse and children, subject to the limitations imposed by ORS 114.065.

35 “(b) Expenses of administration.

36 “(c) Expenses of a plain and decent funeral and disposition of the remains of the decedent.

37 “(d) Debts and taxes with preference under federal law.

38 “(e) Reasonable and necessary medical and hospital expenses of the last illness of the decedent,  
39 including compensation of persons attending the decedent.

40 “(f) Taxes with preference under the laws of this state that are due and payable while possession  
41 of the estate of the decedent is retained by the personal representative.

42 “(g) Debts owed employees of the decedent for labor performed within 90 days immediately  
43 preceding the date of death of the decedent.

44 “(h) Child support arrearages.

45 “(i) The claim of the Department of Human Services for the net amount of [public] assistance[

1 as defined in ORS 411.010,] paid to or for the decedent, [and] **in the following order:**

2 **“(A) The amount of the state’s monthly contribution to the federal government to defray**  
3 **the costs of outpatient prescription drug coverage provided to a person who is eligible for**  
4 **Medicare Part D prescription drug coverage and who receives benefits under the state med-**  
5 **ical assistance program or Title XIX of the Social Security Act;**

6 **“(B) Public assistance, as defined in ORS 411.010, funded entirely by moneys from the**  
7 **General Fund; and**

8 **“(C) Public assistance, as defined in ORS 411.010, funded by a combination of state and**  
9 **federal funds.**

10 **“(j) The claim of the Department of Corrections for care and maintenance of any decedent who**  
11 **was at a state institution to the extent provided in ORS 179.610 to 179.770.**

12 **“[(j)] (k) All other claims against the estate.**

13 **“(2) If the applicable assets of the estate are insufficient to pay in full all expenses or claims**  
14 **of any one class specified in subsection (1) of this section, each expense or claim of that class shall**  
15 **be paid only in proportion to the amount thereof.**

16 **“SECTION 6. The amendments to ORS 115.125 by section 5 of this 2005 Act apply to**  
17 **claims against an estate filed on or after the effective date of this 2005 Act.**

18 **“SECTION 7. ORS 430.210 is amended to read:**

19 **“430.210. (1) While receiving services, every person shall have the right to:**

20 **“(a) Choose from available services those which are appropriate, consistent with the plan de-**  
21 **veloped in accordance with paragraphs (b) and (c) of this subsection and provided in a setting and**  
22 **under conditions that are least restrictive to the person’s liberty, that are least intrusive to the**  
23 **person and that provide for the greatest degree of independence.**

24 **“(b) An individualized written service plan, services based upon that plan and periodic review**  
25 **and reassessment of service needs.**

26 **“(c) Ongoing participation in planning of services in a manner appropriate to the person’s ca-**  
27 **pabilities, including the right to participate in the development and periodic revision of the plan**  
28 **described in paragraph (b) of this subsection, and the right to be provided with a reasonable expla-**  
29 **nation of all service considerations.**

30 **“(d) Not receive services without informed voluntary written consent except in a medical**  
31 **emergency or as otherwise permitted by law.**

32 **“(e) Not participate in experimentation without informed voluntary written consent.**

33 **“(f) Receive medication only for the person’s individual clinical needs.**

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

36 **“(h) A humane service environment that affords reasonable protection from harm and affords**  
37 **reasonable privacy.**

38 **“(i) Be free from abuse or neglect and to report any incident of abuse without being subject to**  
39 **retaliation.**

40 **“(j) Religious freedom.**

41 **“(k) Not be required to perform labor, except personal housekeeping duties, without reasonable**  
42 **and lawful compensation.**

43 **“(L) Visit with family members, friends, advocates and legal and medical professionals.**

44 **“(m) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to**  
45 **the Department of Human Services.**

1       “(n) Be informed and have the person’s guardian and any representative designated by  
2 the person be informed that a family member has contacted the department to determine  
3 the location of the person, and to be informed of the name and contact information, if  
4 known, of the family member.

5       “[(n)] (o) Be informed at the start of services and periodically thereafter of the rights guaran-  
6 teed by this section and the procedures for reporting abuse, and to have these rights and procedures  
7 prominently posted in a location readily accessible to the person and made available to the person’s  
8 guardian and any representative designated by the person.

9       “[(o)] (p) Assert grievances with respect to infringement of the rights described in this section,  
10 including the right to have such grievances considered in a fair, timely and impartial grievance  
11 procedure.

12       “[(p)] (q) Have access to and communicate privately with any public or private rights protection  
13 program or rights advocate.

14       “[(q)] (r) Exercise all rights described in this section without any form of reprisal or punishment.

15       “(2) The rights described in this section are in addition to, and do not limit, all other statutory  
16 and constitutional rights which are afforded all citizens including, but not limited to, the right to  
17 vote, marry, have or not have children, own and dispose of property, enter into contracts and exe-  
18 cute documents.

19       “(3) The rights described in this section may be asserted and exercised by the person, the per-  
20 son’s guardian and any representative designated by the person.

21       “(4) Nothing in this section shall be construed to alter any legal rights and responsibilities be-  
22 tween parent and child.

23       “**SECTION 8. (1) The Department of Human Services shall establish a process by rule**  
24 **that implements the reconnection of family members with a person with a developmental**  
25 **disability as defined in ORS 427.330.**

26       “(2) The rules adopted under subsection (1) of this section shall include a process that  
27 provides guidance for the release of information to family members about the person when:

28       “(a) The person is incapable of providing consent for the release of information;

29       “(b) The person does not have a guardian or any representative designated by the person  
30 who is authorized to release information; and

31       “(c) The release of information is in the best interests of the person as determined by  
32 the department.

33       “**SECTION 9. This 2005 Act being necessary for the immediate preservation of the public**  
34 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
35 **July 1, 2005.”.**