

**A-Engrossed**  
**House Bill 3108**

Ordered by the House May 17  
Including House Amendments dated May 17

Sponsored by Representative TOMEI (at the request of Beckie Child)

**SUMMARY**

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

*[Requires Department of Human Services to develop policy supporting and promoting self-determination for persons receiving mental health and addiction services.]*

*[Requires Director of Human Services to establish Consumer Advisory Council to advise director on provision of mental health services.]*

*[Requires director to establish Office of Consumer Affairs in department to promote consumer-directed mental health services.]*

*[Establishes Office of Ombudsman for Mental Health Consumers in department to provide services to consumers.]*

**Defines "general assistance" and "medical assistance" for purposes of claims against estate of deceased recipient.**

**Directs Department of Human Services to adopt rules establishing timelines for payment of health services under medical assistance provisions.**

**Specifies that rules adopted by department establish timelines for executing prepaid managed care health services contracts for health services funded by Legislative Assembly.**

**Provides that person receiving mental health or developmental disability services has right to be informed that family member has contacted department to determine location of person and to be informed of name and contact information, if known, of family member. Directs department to establish process to implement reconnection of family members.**

**Declares emergency, effective July 1, 2005.**

**A BILL FOR AN ACT**

1  
2 Relating to human services; creating new provisions; amending ORS 115.125, 411.795, 414.065,  
3 414.105, 414.725 and 430.210; and declaring an emergency.

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

5 **SECTION 1.** ORS 411.795 is amended to read:

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

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

18 (3) Nothing in this section authorizes the recovery of the amount of any aid from the estate or

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 the surviving spouse of a recipient to the extent that the need for aid resulted from a crime com-  
2 mitted against the recipient.

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

8 **SECTION 2.** ORS 414.105 is amended to read:

9 414.105. (1) The Department of Human Services may recover from any person the amounts of  
10 medical assistance incorrectly paid on behalf of such person.

11 (2) Medical assistance pursuant to this chapter paid on behalf of an individual who was 55 years  
12 of age or older when the individual received such assistance, or paid on behalf of a person of any  
13 age who was a permanently institutionalized inpatient in a nursing facility, intermediate care facil-  
14 ity for the mentally retarded or other medical institution, may be recovered from the estate of the  
15 individual or from any recipient of property or other assets held by the individual at the time of  
16 death including the estate of the surviving spouse. Claim for such medical assistance correctly paid  
17 to the individual may be established against the estate, but there shall be no adjustment or recovery  
18 thereof until after the death of the surviving spouse, if any, and only at a time when the individual  
19 has no surviving child who is under 21 years of age or who is blind or permanently and totally  
20 disabled. Transfers of real or personal property by recipients of such aid without adequate consid-  
21 eration are voidable and may be set aside under ORS 411.620 (2).

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

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

29 (5) As used in this section[,]:

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

34 (b) **“Medical assistance” includes the state’s monthly contribution to the federal govern-**  
35 **ment to defray the costs of outpatient prescription drug coverage provided to a person who**  
36 **is eligible for Medicare Part D prescription drug coverage and who receives benefits under**  
37 **the state medical assistance program or Title XIX of the Social Security Act.**

38 **SECTION 3.** ORS 414.065 is amended to read:

39 414.065. (1)(a) With respect to medical and remedial care and services to be provided in medical  
40 assistance during any period, and within the limits of funds available therefor, the Department of  
41 Human Services shall determine, subject to such revisions as it may make from time to time and  
42 with respect to the “health services” defined in ORS 414.705, subject to legislative funding in re-  
43 sponse to the report of the Health Services Commission **and paragraph (b) of this subsection:**

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

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

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

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

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

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

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

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

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

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

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

32       (a) For services provided to persons entitled to receive medical assistance, based on the Medi-  
33 care determination of reasonable cost as derived from the Hospital and Hospital Health Care Com-  
34 plex Cost Report, referred to as the Medicare Report.

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

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

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

3        414.725. (1)(a) Pursuant to rules adopted by the Department of Human Services, the department  
4 shall execute prepaid managed care health services contracts for health services funded by the  
5 Legislative Assembly. The contract must require that all services are provided to the extent and  
6 scope of the Health Services Commission's report for each service provided under the contract.  
7 [Such] **The** contracts are not subject to ORS chapters 279A and 279B, except ORS 279A.250 to  
8 279A.290 and 279B.235. **Notwithstanding ORS 414.720 (8), the rules adopted by the department**  
9 **shall establish timelines for executing the contracts described in this paragraph.**

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

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

18        (2) The department may institute a fee-for-service case management system or a fee-for-service  
19 payment system for the same physical health, dental, mental health or chemical dependency services  
20 provided under the health services contracts for persons eligible for health services under ORS  
21 414.705 to 414.750 in designated areas of the state in which a prepaid managed care health services  
22 organization is not able to assign an enrollee to a person or entity that is primarily responsible for  
23 coordinating the physical health, dental, mental health or chemical dependency services provided to  
24 the enrollee. In addition, the department may make other special arrangements as necessary to in-  
25 crease the interest of providers in participation in the state's managed care system, including but  
26 not limited to the provision of stop-loss insurance for providers wishing to limit the amount of risk  
27 they wish to underwrite.

28        (3) As provided in subsections (1) and (2) of this section, the aggregate expenditures by the de-  
29 partment for health services provided pursuant to ORS 414.705 to 414.750 may not exceed the total  
30 dollars appropriated for health services under ORS 414.705 to 414.750.

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

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

40        (6) A prepaid managed care health services organization shall provide information on contacting  
41 available providers to an enrollee in writing within 30 days of assignment to the health services  
42 organization.

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

45        (a) Grievances and appeals; and

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

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

4 **SECTION 5.** ORS 115.125 is amended to read:

5 115.125. (1) If the applicable assets of the estate are insufficient to pay all expenses and claims  
6 in full, the personal representative shall make payment in the following order:

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

8 (b) Expenses of administration.

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

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

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

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

15 (g) Debts owed employees of the decedent for labor performed within 90 days immediately pre-  
16 ceding the date of death of the decedent.

17 (h) Child support arrearages.

18 (i) The claim of the Department of Human Services for the net amount of *[public]* assistance,  
19 *as defined in ORS 411.010,* paid to or for the decedent, *[and]* **in the following order:**

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

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

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

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

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

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

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

36 **SECTION 7.** ORS 430.210 is amended to read:

37 430.210. (1) While receiving services, every person shall have the right to:

38 (a) Choose from available services those which are appropriate, consistent with the plan devel-  
39 oped in accordance with paragraphs (b) and (c) of this subsection and provided in a setting and  
40 under conditions that are least restrictive to the person's liberty, that are least intrusive to the  
41 person and that provide for the greatest degree of independence.

42 (b) An individualized written service plan, services based upon that plan and periodic review  
43 and reassessment of service needs.

44 (c) Ongoing participation in planning of services in a manner appropriate to the person's capa-  
45 bilities, including the right to participate in the development and periodic revision of the plan de-

1 scribed in paragraph (b) of this subsection, and the right to be provided with a reasonable  
2 explanation of all service considerations.

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

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

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

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

9 (h) A humane service environment that affords reasonable protection from harm and affords  
10 reasonable privacy.

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

13 (j) Religious freedom.

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

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

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

19 **(n) Be informed and have the person's guardian and any representative designated by the**  
20 **person be informed that a family member has contacted the department to determine the**  
21 **location of the person, and to be informed of the name and contact information, if known,**  
22 **of the family member.**

23 [(n)] (o) Be informed at the start of services and periodically thereafter of the rights guaranteed  
24 by this section and the procedures for reporting abuse, and to have these rights and procedures  
25 prominently posted in a location readily accessible to the person and made available to the person's  
26 guardian and any representative designated by the person.

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

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

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

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

37 (3) The rights described in this section may be asserted and exercised by the person, the per-  
38 son's guardian and any representative designated by the person.

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

41 **SECTION 8. (1) The Department of Human Services shall establish a process by rule that**  
42 **implements the reconnection of family members with a person with a developmental disa-**  
43 **bility as defined in ORS 427.330.**

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

- 1       **(a) The person is incapable of providing consent for the release of information;**  
2       **(b) The person does not have a guardian or any representative designated by the person**  
3 **who is authorized to release information; and**  
4       **(c) The release of information is in the best interests of the person as determined by the**  
5 **department.**

6       **SECTION 9. This 2005 Act being necessary for the immediate preservation of the public**  
7 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**  
8 **July 1, 2005.**

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