

Enrolled House Bill 2522

Sponsored by Representative KRUSE

CHAPTER

AN ACT

Relating to state agencies; creating new provisions; amending ORS 409.185, 414.712, 417.805, 417.810, 417.815, 417.825, 419B.035 and 656.709; appropriating money; and declaring an emergency.

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

SECTION 1. ORS 414.712 is amended to read:

414.712. *[Within six months after obtaining the necessary federal waivers or January 1, 1995, whichever is later,]* 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 and to children described in ORS 414.025 (2)(f), (i), (j), (k) and (m), 418.001 to 418.034, 418.187 to 418.970 and 657A.020 to 657A.460 and those mental health and chemical dependency services recommended according to standards of medical assistance *[set pursuant to chapter 836, Oregon Laws 1989,]* 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. **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. 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. 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 procedures shall include an expedited process for cases in which a patient's medical needs require swift resolution of a dispute.

SECTION 2. ORS 414.712, as amended by section 53, chapter 1084, Oregon Laws 1999, is amended to read:

414.712. [*Within six months after obtaining the necessary federal waivers or January 1, 1995, whichever is later,*] 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 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 [*set pursuant to chapter 836, Oregon Laws 1989,*] 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. **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. 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. 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 procedures shall include an expedited process for cases in which a patient's medical needs require swift resolution of a dispute.

SECTION 3. ORS 417.805 is amended to read:

417.805. [(1) *Subject to the availability of funds under subsection (2) of this section, the State Commission on Children and Families*] **The Office of Children's Advocate** shall [*cause to have installed*] **maintain** a state toll-free telephone line **to allow the public to:** [*that may be used in child*]

abuse situations to provide to persons who request such information referrals to local counseling and legal assistance.]

[(2) The commission may accept contributions of funds from any source to meet the costs of the installation described in subsection (1) of this section.]

(1) Access information and be referred to the appropriate services in matters of child abuse.

(2) Voice concerns regarding the actions and conduct of the Department of Human Services relating to child abuse.

(3) Have a single place to file complaints concerning the actions and conduct of the Department of Human Services relating to child abuse.

SECTION 4. ORS 417.810 is amended to read:

417.810. (1) *[Subject to the availability of funds under ORS 417.805 (2),]* The Office of Children's *[Ombudsman]* **Advocate** is established in the *[State Commission on Children and Families.]* **Department of Human Services. The office is under the supervision and control of the Children's Advocate, who is responsible for the performance of the duties, functions and powers of the office. With the concurrence of the Governor, the Director of Human Services shall appoint the [Children's Ombudsman for a four-year term. Any vacancy shall be filled within 60 days. The appointment is subject to confirmation by the Senate under ORS 171.562 and 171.565.] Children's Advocate and may terminate the Children's Advocate.**

(2) Subject to available funds and the applicable provisions of ORS chapter 240, the Children's Advocate may hire staff to carry out the duties, functions and powers of the office and shall prescribe their duties and fix their compensation.

[(2)] **(3) The Children's [Ombudsman] Advocate shall be a person who has background and experience [either] in:**

(a) Law enforcement with particular emphasis on crimes involving child victims; or [in]

(b) Social work with particular emphasis on child [sexual] abuse.

SECTION 5. ORS 417.815 is amended to read:

417.815. (1) The **Office of Children's [Ombudsman] Advocate** shall be accessible **to the public** through the state toll-free telephone line *[established]* **maintained** pursuant to ORS 417.805 and **through other electronic and written forms of communication. The office shall:**

[(a) Initiate or participate in activities relating to disseminating information on child sexual abuse detection, prosecution, prevention and education.]

(a) Disseminate information and educate the public about the detection and prevention of child abuse and about the prosecution of persons accused of child abuse;

(b) Cooperate with other units within the Department of Human Services and law enforcement officials in performing duties under ORS 418.747 to 418.749 and 419B.005 to 419B.050 when the investigation involves alleged child [sexual] abuse[.];

[(c) Assist the court appointed special advocate under ORS 419A.170 when the juvenile court proceedings involve a child sexual abuse victim or a child as the alleged perpetrator of child sexual abuse.]

[(d)] **(c) Provide technical assistance in the development and implementation of state and local programs that relate to child [sexual] abuse[.];**

[(e) Collect and analyze data on child sexual abuse detection, prosecution, prevention and education.]

(d) In cooperation with the department, objectively review the department's systems for handling child abuse cases; and

(e) Analyze data collected by the office to discern general patterns and trends, chronic problems and other systemic difficulties in the detection, reporting, investigation, prosecution and resolution of cases of child abuse.

(2) In addition to the duties required under subsection (1) of this section, the office shall:

(a) Review any complaint regarding the department's involvement in a specific child abuse case, unless the office determines there is an adequate remedy for the complaint;

(b) Make any appropriate referrals of the complaint or complainant at the time the office receives the complaint or during the office's review process;

(c) Inform the complainant of the referral of the complaint or any other action taken by the office on the complaint;

(d) Inform the department of the office's intention to review the department's action, unless the office determines that advance notice will unduly hinder the review; and

(e) Conduct a review of the department's action when appropriate, and inform the department of the results of the review, including any recommendation the Children's Advocate believes would resolve any case or any systemic issues identified in the review.

[2)] (3) If the [Children's Ombudsman] office has knowledge of confidential information relating to a child involved or allegedly involved in child [sexual] abuse, [such] the office shall keep the information [shall remain] confidential from public disclosure. However, the [ombudsman shall be] office is subject to legal mandates in ORS 418.747 to 418.749 and 419B.005 to 419B.050.

(4) A person who files a complaint under this section or ORS 417.805 or participates in any investigation under this section may not be, because of that action:

(a) Subject to any penalties, sanctions or restrictions imposed by the department;

(b) Subject to any penalties, sanctions or restrictions connected with the person's employment; or

(c) Denied any right, privilege or benefit.

(5) If deemed necessary by the Children's Advocate for the purposes of carrying out the duties of the office, the office may conduct criminal records checks on subject individuals pursuant to ORS 181.537 through the Law Enforcement Data System maintained by the Department of State Police or through a qualified vendor.

SECTION 6. ORS 417.825 is amended to read:

417.825. (1) In addition to any other fees provided by law, [a \$1 fee on the original filing and duplication of birth certificates, adoption filing and divorce filing shall be collected by the agency responsible for collecting the issuance or filing fee and the money dedicated to child sexual abuse prevention and intervention programs and to the Children's Ombudsman pursuant to ORS 417.400 to 417.490 (1991 Edition). The money shall be credited to the commission by the person collecting the fee.] the appropriate agency:

(a) When birth certificates are registered with the state, shall pay a \$1 fee on each birth certificate registered with the agency.

(b) That issues birth certificates for the state or a county, shall collect a \$1 fee on each birth certificate issued by the agency.

(c) When adoptions and divorces are filed with the court, shall collect a \$1 fee on each adoption and divorce filed with the agency.

(2) The agencies paying or collecting the fees described in subsection (1) of this section shall transfer moneys from the fees imposed by this section to the State Treasurer for deposit in the Department of Human Services Account established under ORS 409.060. The moneys deposited under this section are appropriated continuously to the Department of Human Services for use by the Office of Children's Advocate for the administration of ORS 417.805, 417.810 and 417.815.

SECTION 7. ORS 409.185 is amended to read:

409.185. (1) The Director of Human Services shall oversee the development of standards and procedures for assessment, investigation and enforcement of child protective services.

(2)(a) The Department of Human Services shall take action to implement the provision of child protective services as outlined in ORS 417.705 to 417.797 and 419A.170 and based on the recommendations in the 1992 "Oregon Child Protective Services Performance Study" published by the University of Southern Maine.

(b) In all substantiated cases of child abuse and neglect, the role of the department is to complete a comprehensive family assessment of risk of abuse or neglect, or both, assess service needs and provide immediate protective services as necessary.

(c) The department shall provide remedial services needed to ensure the safety of the child.

(d) In all cases of abuse and neglect when a criminal investigation occurs, the role of law enforcement agencies is to provide a legally sound, child sensitive investigation of whether abuse or neglect or both have occurred and to gather other evidence and perform other responsibilities in accordance with interagency agreements.

(e) The department and law enforcement agencies shall conduct the investigation and assessment concurrently, based upon the protocols and procedures of the multidisciplinary team in each jurisdiction.

(f) When the department and law enforcement agencies conduct a joint investigation and assessment, the activities of the department and agencies are to be clearly differentiated by the protocols of the multidisciplinary team.

(g) Nothing in this subsection is intended to be inconsistent with ORS 418.747, 418.748 and 418.749 and ORS chapter 419B.

(3) Upon receipt of a recommendation of the Children's Advocate under ORS 417.815 (2)(e), the department shall implement the recommendation or give the Children's Advocate written notice of an intent not to implement the recommendation.

SECTION 8. ORS 419B.035 is amended to read:

419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and are not accessible for public inspection. However, the Department of Human Services shall make records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, at the request of the physician, regarding any child brought to the physician or coming before the physician for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect; *[and]*

(f) The Child Care Division for certifying, registering or otherwise regulating child care facilities; **and**

(g) The Office of Children's Advocate.

(2) The Department of Human Services may make reports and records available to any person, administrative hearings officer, court, agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the *[assistant director]* **Director of Human Services** gives prior written approval. The department shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection and subsection (1) of this section. The names, addresses or other identifying information about the person who made the report shall not be disclosed pursuant to this subsection and subsection (1) of this section.

(3) Any record made available to a law enforcement agency in this state or to a physician in this state, as authorized by subsections (1) and (2) of this section, shall be kept confidential by the agency or physician. Any record or report disclosed by the department to other persons or entities pursuant to subsections (1) and (2) of this section shall be kept confidential.

(4) No officer or employee of the department or any person or entity to whom disclosure is made pursuant to subsections (1) and (2) of this section shall release any information not authorized by subsections (1) and (2) of this section.

(5) A person who violates subsection (3) or (4) of this section commits a Class A violation.

SECTION 9. On the effective date of this 2003 Act, the duties, functions and powers of the State Commission on Children and Families relating to the Office of Children's Advocate are imposed upon, transferred to and vested in the Department of Human Services.

SECTION 10. (1) The staff director of the State Commission on Children and Families shall:

(a) Deliver to the Department of Human Services all records and property within the jurisdiction of the director that relate to the duties, functions and powers transferred by section 9 of this 2003 Act; and

(b) Transfer to the Department of Human Services those employees engaged primarily in the exercise of the duties, functions and powers transferred by section 9 of this 2003 Act.

(2) The Director of Human Services shall take possession of the records and property, and shall take charge of the employees and employ them in the exercise of the duties, functions and powers transferred by section 9 of this 2003 Act, without reduction of compensation but subject to change or termination of employment or compensation as provided by law.

(3) The Governor shall resolve any dispute between the State Commission on Children and Families and the Department of Human Services relating to transfers of records, property and employees under this section, and the Governor's decision is final.

SECTION 11. (1) The unexpended balances of amounts authorized to be expended by the State Commission on Children and Families for the biennium beginning July 1, 2003, from revenues dedicated, continuously appropriated, appropriated or otherwise made available for the purpose of administering and enforcing the duties, functions and powers transferred by section 9 of this 2003 Act are appropriated and transferred to and are available for expenditure by the Department of Human Services for the biennium beginning July 1, 2003, for the purpose of administering and enforcing the duties, functions and powers transferred by section 9 of this 2003 Act.

(2) The expenditure classifications, if any, established by Acts authorizing or limiting expenditures by the State Commission on Children and Families relating to the duties, functions and powers transferred by section 9 of this 2003 Act remain applicable to expenditures by the Department of Human Services under this section.

SECTION 12. The transfer of duties, functions and powers to the Department of Human Services by section 9 of this 2003 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Department of Human Services is substituted for the State Commission on Children and Families in the action, proceeding or prosecution.

SECTION 13. (1) Nothing in sections 9 to 15 of this 2003 Act or ORS 409.185, 417.805, 417.810, 417.815, 417.825 or 419B.035 as amended by sections 3 to 8 of this 2003 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 9 of this 2003 Act. The Department of Human Services may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the State Commission on Children and Families legally incurred under contracts, leases and business transactions executed, entered into or begun before the effective date of section 9 of this 2003 Act are transferred to the Department of Human Services. For the purpose of succession to these rights and obligations, the Department of Human Services is a continuation of the State Commission on Children and Families and not a new authority.

SECTION 14. Notwithstanding the transfer of duties, functions and powers by section 9 of this 2003 Act, the rules of the State Commission on Children and Families relating to the duties, functions and powers transferred by section 9 of this 2003 Act, in effect on the ef-

fective date of section 9 of this 2003 Act, continue in effect until superseded or repealed by rules of the Department of Human Services. References in the specified rules of the State Commission on Children and Families to the commission or an officer or employee of the commission are considered to be references to the Department of Human Services or an officer or employee of the department.

SECTION 15. (1) Whenever, in any uncodified law or resolution of the Legislative Assembly relating to the duties, functions and powers transferred by section 9 of this 2003 Act or in any rule, document, record or proceeding authorized by the Legislative Assembly relating to the duties, functions and powers transferred by section 9 of this 2003 Act, reference is made to the State Commission on Children and Families or an officer or employee of the commission, the reference is considered to be a reference to the Department of Human Services or an officer or employee of the department.

(2) Whenever, in any uncodified law or resolution of the Legislative Assembly relating to the duties, functions and powers transferred by section 9 of this 2003 Act or in any rule, document, record or proceeding authorized by the Legislative Assembly relating to the duties, functions and powers transferred by section 9 of this 2003 Act, reference is made to the Office of Children's Ombudsman or an officer or employee of the Office of Children's Ombudsman, the reference is considered to be a reference to the Office of Children's Advocate or an officer or employee of the Office of Children's Advocate.

SECTION 16. ORS 656.709 is amended to read:

656.709. (1)(a) The *[office of]* **Director of the Department of Consumer and Business Services, with the concurrence of the Governor, shall appoint an ombudsman for injured workers.** *[is created in the Department of Consumer and Business Services. The ombudsman shall report directly to the Director of the Department of Consumer and Business Services]* **The ombudsman is under the supervision and control of the director and, with the concurrence of the Governor, the director may terminate the ombudsman.**

(b) The ombudsman **for injured workers** shall:

(A) Act as an advocate for injured workers by accepting, **investigating and attempting to resolve** complaints concerning matters related to workers' compensation, *[investigating them and attempting to resolve them. The ombudsman shall also];*

(B) Provide information to injured workers to enable them to protect their rights in the workers' compensation system; **and**

(C) **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 for protecting workers' rights in the workers' compensation system.**

(2)(a) The *[office of]* **Director of the Department of Consumer and Business Services, with the concurrence of the Governor, shall appoint an ombudsman for small business.** *[is created in the department. The ombudsman shall report directly to the director.]* **The ombudsman is under the supervision and control of the director and, with the concurrence of the Governor, the director may terminate the ombudsman.**

(b) The ombudsman **for small business** shall:

(A) Provide information and assistance to small businesses with regard to workers' compensation insurance and claims processing matters; **and**

(B) **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 for providing information and assistance to small businesses with regard to workers' compensation insurance and claims processing matters.**

SECTION 17. If an agency or officer of the executive department, as defined by ORS 174.112, designates a person to perform ombudsman services, the person shall report to the Governor in writing at least once each quarter. A report shall include a summary of the

services that the person provided during the quarter and the person's recommendations for improving ombudsman services and the services for which the person provides assistance.

SECTION 18. Section 17 of this 2003 Act applies to all designations, whether made before, on or after the effective date of this 2003 Act.

SECTION 19. This 2003 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2003 Act takes effect July 1, 2003.

Passed by House June 19, 2003

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Chief Clerk of House

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Speaker of House

Passed by Senate June 27, 2003

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President of Senate

Received by Governor:

.....M.,....., 2003

Approved:

.....M.,....., 2003

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2003

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Secretary of State