

CHAPTER 785

AN ACT

SB 465

Relating to community mental health programs; creating new provisions; amending ORS 426.133, 426.228, 426.233, 426.241, 426.250, 426.297, 426.310 and 430.197; and declaring an emergency.

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

SECTION 1. ORS 426.133 is amended to read:

426.133. (1) As used in ORS 426.005 to 426.390, "assisted outpatient treatment" may not be construed to be a commitment under ORS 426.130 and does not include taking a person into custody or the forced medication of a person.

(2) A court may issue an order requiring a person to participate in assisted outpatient treatment if the court finds that the person:

(a)(A) Is 18 years of age or older;

(B) Has a mental disorder;

(C) Will not obtain treatment in the community voluntarily; and

(D) Is unable to make an informed decision to seek or to comply with voluntary treatment; and

(b) As a result of being a person described in paragraph (a) of this subsection:

(A) Is incapable of surviving safely in the community without treatment; and

(B) Requires treatment to prevent a deterioration in the person's condition that will predictably result in the person becoming a person with mental illness.

(3) In determining whether to issue the order under subsection (2) of this section, the court shall consider, but is not limited to considering, the following factors:

(a) The person's ability to access finances in order to get food or medicine.

(b) The person's ability to obtain treatment for the person's medical condition.

(c) The person's ability to access necessary resources in the community without assistance.

(d) The degree to which there are risks to the person's safety.

(e) The likelihood that the person will decompensate without immediate care or treatment.

(f) The person's previous attempts to inflict physical injury on self or others.

(g) The person's history of mental health treatment in the community.

(h) The person's patterns of decompensation in the past.

(i) The person's risk of being victimized or harmed by others.

(j) The person's access to the means to inflict harm on self or others.

(4) The community mental health program director may recommend to the court a treatment plan for a person participating in assisted outpatient treatment. The court may adopt the plan as recommended or with modifications.

(5) The court retains jurisdiction over the person until the earlier of the end of the period of the assisted outpatient treatment established under ORS 426.130 (2) or until the court finds that the person no longer meets the criteria in subsection (2) of this section.

(6) This section does not:

(a) Prevent a court from appointing a guardian ad litem to act for the person; or

(b) Require a [county] **community mental health program** to provide treatment or services to, or supervision of, the person:

(A) If the county lacks sufficient funds for such purposes; or

(B) **In the case of a county that has declined to operate or contract for a community mental health program, if the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, lacks sufficient funds for such purposes.**

SECTION 2. ORS 426.228 is amended to read:

426.228. (1) A peace officer may take into custody a person who the officer has probable cause to believe is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness. As directed by the community mental health program director, a peace officer shall remove a person taken into custody under this section to the nearest hospital or nonhospital facility approved by the Oregon Health Authority. The officer shall prepare a written report and deliver it to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(2) A peace officer shall take a person into custody when the community mental health program director, pursuant to ORS 426.233, notifies the peace officer that the director has probable cause to believe that the person is imminently dangerous to self or to any other person. As directed by the community mental health program director, the peace officer shall remove the person to a hospital or nonhospital facility approved by the authority. The community mental health program director shall prepare a written report that the peace officer shall deliver to the treating physician. The report shall state:

(a) The reason for custody;

(b) The date, time and place the person was taken into custody; and

(c) The name of the community mental health program director and a telephone number where the director may be reached at all times.

(3) If more than one hour will be required to transport the person to the hospital or nonhospital facility from the location where the person was taken into custody, the peace officer shall obtain, if

possible, a certificate from a physician licensed by the Oregon Medical Board stating that the travel will not be detrimental to the person's physical health and that the person is dangerous to self or to any other person and is in need of immediate care or treatment for mental illness. The physician shall have personally examined the person within 24 hours prior to signing the certificate.

(4) When a peace officer or other authorized individual, acting under this section, delivers a person to a hospital or nonhospital facility, a physician licensed by the Oregon Medical Board shall examine the person immediately. If the physician finds the person to be in need of emergency care or treatment for mental illness, the physician shall proceed under ORS 426.232, otherwise the person *[shall]* **may** not be retained in custody. If the person is to be released from custody, the peace officer or the community mental health program director shall return the person to the place where the person was taken into custody unless the person declines that service.

(5) A peace officer may transfer a person in custody under this section to the custody of an individual authorized by the *[county governing body]* **community mental health program director** under ORS 426.233 (3). The peace officer may meet the authorized individual at any location that is in accordance with ORS 426.140 to effect the transfer. When transferring a person in custody to an authorized individual, the peace officer shall deliver the report required under subsections (1) and (2) of this section to the authorized individual.

(6) An individual authorized under ORS 426.233 (3) shall take a person into custody when directed to do so by a peace officer or by a community mental health program director under ORS 426.233.

(7) An individual authorized under ORS 426.233 (3) shall perform the duties of the peace officer or the community mental health program director required by this section and ORS 426.233 if the peace officer or the director has not already done so.

(8) An individual authorized under ORS 426.233 (3) may transfer a person in custody under this section to the custody of another individual authorized under ORS 426.233 (3) or a peace officer. The individual transferring custody may meet another authorized individual or a peace officer at any location that is in accordance with ORS 426.140 to effect the transfer.

(9)(a) When a peace officer takes a person into custody under this section, and the peace officer reasonably suspects that the person is a foreign national, the peace officer shall inform the person of the person's right to communicate with an official from the consulate of the person's country.

(b) A peace officer is not civilly or criminally liable for failure to provide the information required by this subsection. Failure to provide the information required by this subsection does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

SECTION 3. ORS 426.233 is amended to read:

426.233. (1)(a) A community mental health program director operating under ORS 430.610 to 430.695 or a designee of the director~~[, under authorization of a county governing body,]~~ may take one of the actions listed in paragraph (b) of this subsection when the community mental health program director or designee has probable cause to believe a person:

(A) Is dangerous to self or to any other person and is in need of immediate care, custody or treatment for mental illness; or

(B)(i) Is a person with mental illness placed on conditional release under ORS 426.125, outpatient commitment under ORS 426.127 or trial visit under ORS 426.273; and

(ii) Is dangerous to self or to any other person or is unable to provide for basic personal needs and is not receiving the care that is necessary for health and safety and is in need of immediate care, custody or treatment for mental illness.

(b) The community mental health program director or designee under the circumstances set out in paragraph (a) of this subsection may:

(A) Notify a peace officer to take the person into custody and direct the officer to remove the person to a hospital or nonhospital facility approved by the Oregon Health Authority;

(B) Authorize involuntary admission of, or, if already admitted, cause to be involuntarily retained in a nonhospital facility approved by the authority, a person approved for care or treatment at a nonhospital facility by a physician under ORS 426.232;

(C) Notify an individual authorized under subsection (3) of this section to take the person into custody and direct the authorized individual to remove the person in custody to a hospital or nonhospital facility approved by the authority;

(D) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a hospital or a nonhospital facility approved by the authority to another hospital or nonhospital facility approved by the authority as provided under ORS 426.235; or

(E) Direct an individual authorized under subsection (3) of this section to transport a person in custody from a facility approved by the authority to another facility approved by the authority as provided under ORS 426.060.

(2) A designee under subsection (1) of this section must *[be recommended by the community mental health program director,]* meet the standards established by rule of the authority and be approved by the *[county governing body]* **community mental health program director** before assuming the authority permitted under subsection (1) of this section.

(3) The *[county governing body may, upon recommendation by the]* community mental health program director~~[,]~~ **may** authorize any individual to provide custody and secure transportation services for a person in custody under ORS 426.228. In authorizing an individual under this subsection, the *[county governing body]* **community mental health program**

director shall grant the individual the authority to do the following:

(a) Accept custody from a peace officer of a person in custody under ORS 426.228;

(b) Take custody of a person upon notification by the community mental health program director under the provisions of this section;

(c) Remove a person in custody to an approved hospital or nonhospital facility as directed by the community mental health program director;

(d) Transfer a person in custody to another individual authorized under this subsection or a peace officer;

(e) Transfer a person in custody from a hospital or nonhospital facility to another hospital facility or nonhospital facility when directed to do so by the community mental health program director; and

(f) Retain a person in custody at the approved hospital or nonhospital facility until a physician makes a determination under ORS 426.232.

(4) An individual authorized under subsection (3) of this section must *[be recommended by the community mental health program director,]* meet the standards established by rule of the authority and be approved by the *[governing body]* **community mental health program director** before assuming the authority granted under this section.

(5) The costs of transporting a person under ORS 426.060, 426.228 or 426.235 by an individual authorized under subsection (3) of this section shall be the responsibility of the *[county whose peace officer or community mental health program director directs the authorized individual]* **community mental health program in the county in which the authorized individual is directed by a peace officer or a community mental health program director** to take custody of a person and to transport the person to a facility approved by the authority, but the *[county]* **community mental health program** shall not be responsible for costs that exceed the amount provided by the state for that transportation. An individual authorized to act under subsection (3) of this section shall charge the cost of emergency medical transportation to, and collect that cost from, the person, third party payers or other legally or financially responsible individuals or entities in the same manner that costs for the transportation of other persons are charged and collected.

SECTION 4. ORS 426.241 is amended to read:

426.241. (1) The cost of emergency psychiatric care, custody and treatment related to or resulting from such psychiatric condition, provided by a hospital or other facility approved by the Oregon Health Authority and the community mental health program director of the county in which the facility is located, except a state hospital, for a person alleged to have a mental illness who is admitted or detained under ORS 426.070, 426.140, 426.228, 426.232 or 426.233, or for a person with mental illness who is admitted or detained under ORS 426.150, 426.223, 426.273, 426.275 or 426.292, shall be paid by the **community mental health program in the county**

of which the person is a resident from state funds provided to the *[county]* **community mental health program** for this purpose. The *[county]* **community mental health program** is responsible for the cost when state funds provided to the *[county]* **community mental health program** are exhausted. The hospital or other facility shall charge to and collect from the person, third party payers or other legally or financially responsible individuals or entities the costs of the emergency care, custody and treatment, as it would for any other patient, and any funds received shall be applied as an offset to the cost of the services provided under this section.

(2) If any person is admitted to or detained in a state hospital under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233 for emergency care, custody or treatment, the authority shall charge to and collect from the person, third party payers or other legally or financially responsible individuals or entities the costs as it would for other patients of the state hospitals under the provisions of ORS 179.610 to 179.770.

(3) If any person is adjudged to have a mental illness under the provisions of ORS 426.130, or determined to be an extremely dangerous person with mental illness under ORS 426.701 or 426.702, and the person receives care and treatment in a state hospital, the person, third party payers or other legally or financially responsible individuals or entities shall be required to pay for the costs of the hospitalization at the state hospital, as provided by ORS 179.610 to 179.770, if financially able to do so.

(4) For purposes of this section and ORS 426.310, "resident" means resident of the county in which the person maintains a current mailing address or, if the person does not maintain a current mailing address within the state, the county in which the person is found, or the county in which a court-committed person has been conditionally released.

(5)(a) The authority may deny payment for part or all of the emergency psychiatric services provided by a hospital or nonhospital facility under ORS 426.232, 426.233 or 426.237 when the authority finds, upon review, that the condition of the person alleged to have a mental illness did not meet the admission criteria in ORS 426.232 (1), 426.233 (1) or 426.237 (1)(b)(A). The payer responsible under this section shall make a request for denial of payment for emergency psychiatric services provided under ORS 426.232, 426.233 or 426.237 in writing to the authority.

(b) The authority may require the following to provide the authority with any information that the authority determines is necessary to review a request for denial of payment made under this subsection or to conduct a review of emergency psychiatric services for the purpose of planning or defining authority rules:

(A) A hospital or nonhospital facility approved under ORS 426.228 to 426.235 or 426.237.

(B) A physician or a person providing emergency psychiatric services under ORS 426.228 to 426.235 or 426.237.

(c) The authority shall adopt rules necessary to carry out the purposes of this subsection.

SECTION 5. ORS 426.250 is amended to read:

426.250. The following is a nonexclusive list of responsibilities for payment of various costs related to commitment proceedings under this chapter as described:

(1) Any physician or qualified professional recommended by the Oregon Health Authority who is employed under ORS 426.110 to make an examination as to the mental condition of a person alleged to have a mental illness shall be allowed a fee as the court in its discretion determines reasonable for the examination.

(2) Witnesses subpoenaed to give testimony shall receive the same fees as are paid in criminal cases, and are subject to compulsory attendance in the same manner as provided in ORS 136.567 to 136.603. The attendance of out-of-state witnesses may be secured in the same manner as provided in ORS 136.623 to 136.637. The party who subpoenas the witness or requests the court to subpoena the witness is responsible for payment of the cost of the subpoena and payment for the attendance of the witness at a hearing. When the witness has been subpoenaed on behalf of a person alleged to have a mental illness who is represented by appointed counsel, the fees and costs allowed for that witness shall be paid pursuant to ORS 135.055. If the costs of witnesses subpoenaed by the person are paid as provided under this subsection, the procedure for subpoenaing witnesses shall comply with ORS 136.570.

(3) If a person with a right to a counsel under ORS 426.100, 426.701 or 426.702 is determined to be financially eligible for appointed counsel at state expense, the public defense services executive director shall determine and pay, as provided in ORS 135.055, the reasonable expenses related to the representation of the person and compensation for legal counsel. The expenses and compensation so allowed shall be paid by the public defense services executive director from funds available for the purpose.

(4) The authority shall pay the costs of expenses incurred under ORS 426.100 by the Attorney General's office. Any costs for district attorneys or other counsel appointed to assume responsibility for presenting the state's case shall be paid by the county where the commitment hearing is held, subject to reimbursement under ORS 426.310.

(5) All costs incurred in connection with a proceeding under ORS 426.180, 426.701 or 426.702, including the costs of transportation, commitment and delivery of the person, shall be paid by the **community mental health program in the county of which the person is a resident**. If the person is not a resident of this state, then the costs incurred in connection with the proceeding shall be paid by the **community mental health program in the county from which the emergency admission was made**.

(6) All costs incurred in connection with a proceeding under ORS 426.180 for the commitment of a

person from a reservation, including the cost of transportation, commitment and delivery of the person, shall be paid by the governing body of the reservation of which the person is a resident.

SECTION 6. ORS 426.297 is amended to read:

426.297. (1) The expenses of a proceeding under ORS 426.295 (2) shall be paid by the person with mental illness, unless it appears from the affidavit of the person or other evidence that the person is unable to pay the expenses. If the person is unable to pay, the expenses of the proceedings shall be paid by the **community mental health program in the county of which the person was a resident at the time of admission**. If the county of residence cannot be established, the **community mental health program in the county from which the person was admitted** shall pay the expenses.

(2) The expenses of the proceeding under ORS 426.295 (3) shall be paid by the petitioner.

(3) Any physician employed by the court to make an examination as to the mental condition of a person subject to a competency proceeding under ORS 426.295 or 426.380 to 426.390 shall be allowed a reasonable professional fee by order of the court. Witnesses summoned and giving testimony shall receive the same fees as are paid in ORS 44.415 (2).

SECTION 7. ORS 426.310 is amended to read:

426.310. (1) If a person with mental illness is a resident of some other county in this state, the county making the commitment shall be reimbursed by the county of which the person is a resident. All reasonable and actual expenses incurred and paid by the county by reason of the care, custody, treatment, investigation, examination and commitment hearing shall, upon presentation of a copy of the order of the judge making the examination and commitment, together with a properly itemized and certified claim covering the expense, be promptly paid to the county by the county of which the person was a resident. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250.

(2) If a person alleged to have a mental illness is a resident of some other county in this state, a county attempting a commitment shall be reimbursed by the county of which the person is a resident, as defined in ORS 426.241, for all actual, reasonable expenses incurred and paid by the county attempting commitment by reason of the care, custody, treatment, investigation, examination and commitment hearing. The expenses reimbursed under this subsection shall include any expenses incurred to pay for representation of the state's interest under ORS 426.100 and 426.250.

(3) **In the case of a county that declines to operate or contract for a community mental health program, the public agency or private corporation that contracts with the Oregon Health Authority to provide the program, as described in ORS 430.640, is responsible for re-**

imbursing a county for the costs incurred by the county in the care, custody, treatment, investigation and examination of the person.

SECTION 8. ORS 430.197 is amended to read:

430.197. The Mental Health Services Fund is established in the State Treasury, separate and distinct from the General Fund. The Mental Health Services Fund comprises moneys collected or received by the Oregon Health Authority, the Department of Human Services and the Department of Corrections under ORS 179.640, 426.241 and 430.165. The moneys in the fund are continuously appropriated to the Oregon Health Authority, the Department of Human Services and the Department of Corrections for the purposes of paying the costs of:

- (1) Services provided to a person in a state institution, as defined in ORS 179.610;
- (2) Emergency psychiatric care, custody and treatment paid [*for by a county*] under ORS 426.241;
- (3) Emergency care, custody or treatment provided to a person admitted to or detained in a state

mental hospital or nonhospital facility under ORS 426.070, 426.140, 426.180 to 426.210, 426.228, 426.232 or 426.233; and

(4) Programs operating under ORS 430.265, 430.306 to 430.375, 430.405, 430.415, 430.850 to 430.880, 813.500 and 813.510.

SECTION 9. ~~The amendments to ORS 426.233, 426.241, 426.250, 426.297, 426.310 and 430.197 by sections 3 to 8 of this 2015 Act apply to costs incurred on or after the effective date of this 2015 Act.~~

SECTION 10. ~~This 2015 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect on its passage.~~

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