

CHAPTER 628

AN ACT

HB 3045

Relating to mental health drugs; creating new provisions; amending ORS 414.025, 414.325 and 414.361 and section 4, chapter 544, Oregon Laws 2019; and prescribing an effective date.

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

SECTION 1. Section 4, chapter 544, Oregon Laws 2019, is amended to read:

Sec. 4. Section 3 [of this 2019 Act], **chapter 544, Oregon Laws 2019**, is repealed on January 2, [2022] **2026**.

SECTION 2. ORS 414.025 is amended to read:

414.025. As used in this chapter and ORS chapters 411 and 413, unless the context or a specially applicable statutory definition requires otherwise:

(1)(a) "Alternative payment methodology" means a payment other than a fee-for-services payment, used by coordinated care organizations as compensation for the provision of integrated and coordinated health care and services.

(b) "Alternative payment methodology" includes, but is not limited to:

- (A) Shared savings arrangements;
- (B) Bundled payments; and
- (C) Payments based on episodes.

(2) "Behavioral health assessment" means an evaluation by a behavioral health clinician, in person or using telemedicine, to determine a patient's need for immediate crisis stabilization.

(3) "Behavioral health clinician" means:

- (a) A licensed psychiatrist;
- (b) A licensed psychologist;
- (c) A licensed nurse practitioner with a specialty in psychiatric mental health;
- (d) A licensed clinical social worker;
- (e) A licensed professional counselor or licensed marriage and family therapist;
- (f) A certified clinical social work associate;
- (g) An intern or resident who is working under a board-approved supervisory contract in a clinical mental health field; or
- (h) Any other clinician whose authorized scope of practice includes mental health diagnosis and treatment.

(4) "Behavioral health crisis" means a disruption in an individual's mental or emotional stability or functioning resulting in an urgent need for immediate outpatient treatment in an emergency department or admission to a hospital to prevent a serious deterioration in the individual's mental or physical health.

(5) "Behavioral health home" means a mental health disorder or substance use disorder treatment organization, as defined by the Oregon Health Authority by rule, that provides integrated health care to individuals whose primary diagnoses are mental health disorders or substance use disorders.

(6) "Category of aid" means assistance provided by the Oregon Supplemental Income Program, aid granted under ORS 411.877 to 411.896 and 412.001 to 412.069 or federal Supplemental Security Income payments.

(7) "Community health worker" means an individual who meets qualification criteria adopted by the authority under ORS 414.665 and who:

(a) Has expertise or experience in public health;

(b) Works in an urban or rural community, either for pay or as a volunteer in association with a local health care system;

(c) To the extent practicable, shares ethnicity, language, socioeconomic status and life experiences with the residents of the community where the worker serves;

(d) Assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness;

(e) Provides health education and information that is culturally appropriate to the individuals being served;

(f) Assists community residents in receiving the care they need;

(g) May give peer counseling and guidance on health behaviors; and

(h) May provide direct services such as first aid or blood pressure screening.

(8) "Coordinated care organization" means an organization meeting criteria adopted by the Oregon Health Authority under ORS 414.572.

(9) "Dually eligible for Medicare and Medicaid" means, with respect to eligibility for enrollment in a coordinated care organization, that an individual is eligible for health services funded by Title XIX of the Social Security Act and is:

(a) Eligible for or enrolled in Part A of Title XVIII of the Social Security Act; or

(b) Enrolled in Part B of Title XVIII of the Social Security Act.

(10)(a) "Family support specialist" means an individual who meets qualification criteria adopted by the authority under ORS 414.665 and who provides supportive services to and has experience parenting a child who:

(A) Is a current or former consumer of mental health or addiction treatment; or

(B) Is facing or has faced difficulties in accessing education, health and wellness services due to a mental health or behavioral health barrier.

(b) A "family support specialist" may be a peer wellness specialist or a peer support specialist.

(11) "Global budget" means a total amount established prospectively by the Oregon Health Authority to be paid to a coordinated care organization for the delivery of, management of, access to and quality of the health care delivered to members of the coordinated care organization.

(12) "Health insurance exchange" or "exchange" means an American Health Benefit Exchange described in 42 U.S.C. 18031, 18032, 18033 and 18041.

(13) “Health services” means at least so much of each of the following as are funded by the Legislative Assembly based upon the prioritized list of health services compiled by the Health Evidence Review Commission under ORS 414.690:

(a) Services required by federal law to be included in the state’s medical assistance program in order for the program to qualify for federal funds;

(b) Services provided by a physician as defined in ORS 677.010, a nurse practitioner licensed under ORS 678.375, a behavioral health clinician or other licensed practitioner within the scope of the practitioner’s practice as defined by state law, and ambulance services;

(c) Prescription drugs;

(d) Laboratory and X-ray services;

(e) Medical equipment and supplies;

(f) Mental health services;

(g) Chemical dependency services;

(h) Emergency dental services;

(i) Nonemergency dental services;

(j) Provider services, other than services described in paragraphs (a) to (i), (k), (L) and (m) of this subsection, defined by federal law that may be included in the state’s medical assistance program;

(k) Emergency hospital services;

(L) Outpatient hospital services; and

(m) Inpatient hospital services.

(14) “Income” has the meaning given that term in ORS 411.704.

(15)(a) “Integrated health care” means care provided to individuals and their families in a patient centered primary care home or behavioral health home by licensed primary care clinicians, behavioral health clinicians and other care team members, working together to address one or more of the following:

(A) Mental illness.

(B) Substance use disorders.

(C) Health behaviors that contribute to chronic illness.

(D) Life stressors and crises.

(E) Developmental risks and conditions.

(F) Stress-related physical symptoms.

(G) Preventive care.

(H) Ineffective patterns of health care utilization.

(b) As used in this subsection, “other care team members” includes but is not limited to:

(A) Qualified mental health professionals or qualified mental health associates meeting requirements adopted by the Oregon Health Authority by rule;

(B) Peer wellness specialists;

(C) Peer support specialists;

(D) Community health workers who have completed a state-certified training program;

(E) Personal health navigators; or

(F) Other qualified individuals approved by the Oregon Health Authority.

(16) “Investments and savings” means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar

investments or savings as the department or the authority may establish by rule that are available to the applicant or recipient to contribute toward meeting the needs of the applicant or recipient.

(17) “Medical assistance” means so much of the medical, mental health, preventive, supportive, palliative and remedial care and services as may be prescribed by the authority according to the standards established pursuant to ORS 414.065, including premium assistance and payments made for services provided under an insurance or other contractual arrangement and money paid directly to the recipient for the purchase of health services and for services described in ORS 414.710.

(18) “Medical assistance” includes any care or services for any individual who is a patient in a medical institution or any care or services for any individual who has attained 65 years of age or is under 22 years of age, and who is a patient in a private or public institution for mental diseases. Except as provided in ORS 411.439 and 411.447, “medical assistance” does not include care or services for a resident of a nonmedical public institution.

(19) “Mental health drug” means a type of legend drug, as defined in ORS 414.325, specified by the Oregon Health Authority by rule, including but not limited to:

(a) Therapeutic class 7 ataractics-tranquilizers; and

(b) Therapeutic class 11 psychostimulants-antidepressants.

[(19)] (20) “Patient centered primary care home” means a health care team or clinic that is organized in accordance with the standards established by the Oregon Health Authority under ORS 414.655 and that incorporates the following core attributes:

(a) Access to care;

(b) Accountability to consumers and to the community;

(c) Comprehensive whole person care;

(d) Continuity of care;

(e) Coordination and integration of care; and

(f) Person and family centered care.

[(20)] (21) “Peer support specialist” means any of the following individuals who meet qualification criteria adopted by the authority under ORS 414.665 and who provide supportive services to a current or former consumer of mental health or addiction treatment:

(a) An individual who is a current or former consumer of mental health treatment; or

(b) An individual who is in recovery, as defined by the Oregon Health Authority by rule, from an addiction disorder.

[(21)] (22) “Peer wellness specialist” means an individual who meets qualification criteria adopted by the authority under ORS 414.665 and who is responsible for assessing mental health and substance use disorder service and support needs of a member of a coordinated care organization through community outreach, assisting members with access to available services and resources, addressing barriers to services and providing education and information

about available resources for individuals with mental health or substance use disorders in order to reduce stigma and discrimination toward consumers of mental health and substance use disorder services and to assist the member in creating and maintaining recovery, health and wellness.

[(22)] **(23)** “Person centered care” means care that:

(a) Reflects the individual patient’s strengths and preferences;

(b) Reflects the clinical needs of the patient as identified through an individualized assessment; and

(c) Is based upon the patient’s goals and will assist the patient in achieving the goals.

[(23)] **(24)** “Personal health navigator” means an individual who meets qualification criteria adopted by the authority under ORS 414.665 and who provides information, assistance, tools and support to enable a patient to make the best health care decisions in the patient’s particular circumstances and in light of the patient’s needs, lifestyle, combination of conditions and desired outcomes.

[(24)] **(25)** “Prepaid managed care health services organization” means a managed dental care, mental health or chemical dependency organization that contracts with the authority under ORS 414.654 or with a coordinated care organization on a prepaid capitated basis to provide health services to medical assistance recipients.

[(25)] **(26)** “Quality measure” means the health outcome and quality measures and benchmarks identified by the Health Plan Quality Metrics Committee and the metrics and scoring subcommittee in accordance with ORS 413.017 (4) and 414.638.

[(26)] **(27)** “Resources” has the meaning given that term in ORS 411.704. For eligibility purposes, “resources” does not include charitable contributions raised by a community to assist with medical expenses.

[(27)(a)] **(28)(a)** “Youth support specialist” means an individual who meets qualification criteria adopted by the authority under ORS 414.665 and who, based on a similar life experience, provides supportive services to an individual who:

(A) Is not older than 30 years of age; and

(B)(i) Is a current or former consumer of mental health or addiction treatment; or

(ii) Is facing or has faced difficulties in accessing education, health and wellness services due to a mental health or behavioral health barrier.

(b) A “youth support specialist” may be a peer wellness specialist or a peer support specialist.

SECTION 3. ORS 414.325 is amended to read: 414.325. (1) As used in this section:

(a) “Legend drug” means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(b) “Urgent medical condition” means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner’s care and within the scope of practice. Prescriptions shall be dispensed in the generic form pursuant to ORS 689.515 and pursuant to rules of the Oregon Health Authority unless the practitioner prescribes otherwise and an exception is granted by the authority.

(3) Except as provided in subsections (4) and (5) of this section, the authority shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the authority shall pay only for drugs in the generic form unless an exception has been granted by the authority.

(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the authority is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the authority.

(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection, the authority is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; and

(B) Require prior authorization of payment for drugs that the authority has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

(b) The authority may not require prior authorization for:

(A) Therapeutic classes of nonsedating antihistamines and nasal inhalers, as defined by rule by the authority, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Evidence Review Commission on the funded portion of its prioritized list of services:

[(A)] (i) Asthma;

[(B)] (ii) Sinusitis;

[(C)] (iii) Rhinitis; or

[(D)] (iv) Allergies.

(B) Any mental health drug prescribed for a medical assistance recipient if:

(i) The claims history available to the authority shows that the recipient has been in a course of treatment with the drug during the preceding 365-day period; or

(ii) The prescriber specifies on the prescription “dispense as written” or includes the notation “D.A.W.” or words of similar meaning.

(6) The authority shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:

(a) There is not a pharmacy within 15 miles of the clinic;

(b) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(c) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

(7) Notwithstanding ORS 414.334, the authority may conduct prospective drug utilization review in accordance with ORS 414.351 to 414.414.

(8) Notwithstanding subsection (3) of this section, the authority may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(9)(a) Within 180 days after the United States patent expires on an immunosuppressant drug used in connection with an organ transplant, the authority shall determine whether the drug is a narrow therapeutic index drug.

(b) As used in this subsection, "narrow therapeutic index drug" means a drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring.

SECTION 4. ORS 414.361 is amended to read:

414.361. (1) The Pharmacy and Therapeutics Committee shall advise the Oregon Health Authority on:

(a) Adoption of rules to implement ORS 414.351 to 414.414 in accordance with ORS chapter 183.

(b) Implementation of the medical assistance program retrospective and prospective programs as described in ORS 414.351 to 414.414, including the type of software programs to be used by the pharmacist for prospective drug use review and the provisions of the contractual agreement between the state and any entity involved in the retrospective program.

(c) Development of and application of the criteria and standards to be used in retrospective and prospective drug use review in a manner that ensures that such criteria and standards are based on compendia, relevant guidelines obtained from professional groups through consensus-driven processes, the experience of practitioners with expertise in drug therapy, data and experience obtained from drug utilization review program operations. The committee shall have an open professional consensus process for establishing and revising criteria and standards. Criteria and standards shall be available to the public. In developing recommendations for criteria and standards, the committee shall establish an explicit ongoing process for soliciting and considering input from interested parties. The committee shall make timely revisions to the criteria and standards based upon this input in addition to revisions based upon scheduled review of the criteria and standards. Further, the drug utilization review standards shall reflect the local practices of prescribers in order to monitor:

- (A) Therapeutic appropriateness.
- (B) Overutilization or underutilization.
- (C) Therapeutic duplication.
- (D) Drug-disease contraindications.
- (E) Drug-drug interactions.

(F) Incorrect drug dosage or drug treatment duration.

(G) Clinical abuse or misuse.

(H) Drug allergies.

(d) Development, selection and application of and assessment for interventions that are educational and not punitive in nature for medical assistance program prescribers, dispensers and patients.

(2) In reviewing retrospective and prospective drug use, the committee may consider only drugs that have received final approval from the federal Food and Drug Administration.

(3) The committee shall make recommendations to the authority, subject to approval by the Director of the Oregon Health Authority or the director's designee, for drugs to be included on any preferred drug list adopted by the authority and on the Practitioner-Managed Prescription Drug Plan. The committee shall also recommend all utilization controls, prior authorization requirements or other conditions for the coverage of a drug.

(4) In making recommendations under subsection (3) of this section, the committee may use any information the committee deems appropriate. The recommendations must be based upon the following factors in order of priority:

(a) Safety and efficacy of the drug.

(b) The ability of Oregonians to access effective prescription drugs that are appropriate for their clinical conditions.

(c) For mental health drugs, the recommendations of the Mental Health Clinical Advisory Group.

~~[(c)]~~ (d) Substantial differences in the costs of drugs within the same therapeutic class.

(5)(a) No later than seven days after the date on which the committee makes a recommendation under subsection (3) of this section, the committee shall publish the recommendation on the website of the authority.

(b) As soon as practicable after the committee makes a recommendation, the director shall decide whether to approve, disapprove or modify the recommendation, shall publish the decision on the website and shall notify persons who have requested notification of the decision.

(c) Except as provided in subsection (6) of this section, a recommendation approved by the director, in whole or in part, with respect to the inclusion of a drug on a preferred drug list or the Practitioner-Managed Prescription Drug Plan may not become effective less than seven days after the date that the director's decision is published on the website.

(6)(a) The director may allow the immediate implementation of a recommendation described in subsection (5)(c) of this section if the director determines that immediate implementation is necessary to protect patient safety or to comply with state or federal requirements.

(b) The director shall reconsider any decision to approve, disapprove or modify a recommendation described in subsection (5)(c) of this section upon the request of any interested person filed no later than

seven days after the director's decision is published on the website of the authority. The director's determination regarding the request for reconsideration shall be sent to the requester and posted to the website without undue delay. Upon receipt of a request for reconsideration, the director may:

(A) Delay the implementation of the recommendation pending the reconsideration process; or

(B) Implement the recommendation if the director determines that delay could reasonably result in harm to patient safety or would violate state or federal requirements.

SECTION 5. The amendments to ORS 414.025, 414.325 and 414.361 by sections 2 to 4 of this 2021 Act become operative on January 2, 2026.

SECTION 6. This 2021 Act takes effect on the 91st day after the date on which the 2021 regular session of the Eighty-first Legislative Assembly adjourns sine die.

Approved by the Governor July 27, 2021

Filed in the office of Secretary of State August 2, 2021

Effective date September 25, 2021