

## Oregon's Unique EPSDT Waiver Allows OHP to Deny Medically Necessary Care to Children to Save Money

Under Federal law, Medicaid includes a critical benefit for children and adolescents under the age of 21, called “Early and Periodic Screening, Diagnostic and Treatment” ([EPSDT](#)) to ensure that they receive “age-appropriate screening, preventive services, and treatment services that are medically necessary to correct or ameliorate any identified conditions – the right care to the right child at the right time in the right setting.” Critically, the EPSDT provision requires comprehensive coverage of health services for children – *regardless of whether or not such services are otherwise covered* under the state Medicaid plan for adults ages 21 and older – to make certain that rationing is not imposed for this vulnerable population.

### Except in Oregon.

Oregon's Section 1115 Medicaid waiver includes a provision authorizing it to withhold medically necessary care from children over the age of 1 if it is “below the line” on its “Prioritized List” of health services:

*3. Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Section 1902(a)(10)(A) and 1902(a)(43)(C) To allow the state to restrict coverage for treatment services identified during an EPSDT screening for individuals above age 1 to the extent that such services are not consistent with a prioritized list of conditions and treatments. (Applies to all Medicaid state plan populations, except population 23.) [Centers For Medicare & Medicaid Services Amended Waiver List and Expenditure Authority; Number: 21-W-00013/10 and 11-W-00160/10 Title: Oregon Health Plan \(OHP\)](#)*

Effective January 1, 2020, Oregon Health Plan covers [Prioritized List](#) lines 1 through 471. Any service that is “below the line” – numbered higher than 471 – is automatically excluded from coverage regardless of need, as is any service that isn't included anywhere on the list at all.

The Oregon Department of Justice has published an opinion asserting that this clause in the waiver permits Oregon to limit or exclude coverage of medically necessary care from children, even when those limits or exclusions specifically contradict CMS guidance, such as [CMS guidance](#) prohibiting “hard” limits on physical therapy visits for children. [Meeting Packet, April, 2016](#)

The purpose of the waiver – and of this EPSDT clause – is to save money by withholding medically necessary care from needy children. Some services for children that have been excluded because they fall below the line include: Selective Mutism – Medical / Psychotherapy (line 473), Conduct Disorder, Age 18 or Under (Line 479), Chronic Otitis Media (line 475).

Selective Mutism fell below the line and is excluded even though it scored high on effectiveness (4 out of 5), and even though Oregon's Health Evidence Review Commission (HERC) concluded that 80% of affected individuals would need care – because the category weight in [HERC's methodology](#) was low (Non Fatal condition = 20), and because HERC staff concluded that the “impact on healthy life” for a child unable to speak was very low (1 out of 10); that the impact on suffering was low (1 out of 5); and there was no impact to the general population for a child who is unable to communicate.

Conduct Disorder fell below the line and is excluded because the category weight is low (Non Fatal condition = 20) and because HERC staff rated effectiveness low (1 on a 0 to 5 scale). As a result, children and adolescents in Oregon with a conduct disorder who might have a chance of benefiting from professional counseling or psychotherapy are denied care and placed at much higher risk of incarceration in the juvenile justice system.

Chronic Otitis Media (recurrent ear infection) fell below the line and is excluded even though it scored medium on effectiveness (3 out of 5), and even though Oregon’s Health Evidence Review Commission (HERC) concluded that 80% of affected individuals would need care – because the category weight was low (Non Fatal condition = 20), and because HERC staff concluded that “impact on healthy life” for a child with chronic otitis media was low (2 out of 10), even though it can result in [severe complications](#) if left untreated, including permanent hearing loss and problems with speech and language development.

Prioritization of Selective Mutism, Conduct Disorder, and Chronic Otitis Media with [HERC Methodology](#):

| Factor:                 | Selective Mutism (line 473) | Conduct Disorder (line 479) | Chronic Otitis Media (line 475) | Range:     |
|-------------------------|-----------------------------|-----------------------------|---------------------------------|------------|
| Category Weight         | 20*                         | 20*                         | 20*                             | 1 to 100   |
| Impact on Healthy Life: | 1                           | 5                           | 2                               | 0 to 10    |
| Impact on Suffering:    | 1                           | 3                           | 1                               | 0 to 5     |
| Population Effects:     | 0                           | 2                           | 0                               | 0 to 5     |
| Vulnerable Population:  | 0                           | 2                           | 0                               | 0 to 5     |
| Tertiary Prevention:    | 1                           | 1                           | 1                               | 0 to 5     |
| Effectiveness:          | 4                           | 1                           | 3                               | 0 to 5     |
| % Need for Service:     | 80%                         | 70%                         | 80%                             | 0% to 100% |
| Total Score:            | 192                         | 182                         | 192                             |            |

\* Nonfatal Conditions, Where Treatment is Aimed at Disease Modification or Cure

For children whose families can afford commercial insurance plans, coverage of all three conditions is required under Oregon and Federal law as an “Essential Health Benefit” – insurers would face severe civil penalties for refusing to provide coverage.

**Oregon’s vulnerable youth deserve better. It is time to end this failed experiment relying on discrimination to ration care.**

Disability Rights Oregon (DRO)

For more than 40 years, DRO has served as Oregon’s federally authorized and funded Protection & Advocacy System. DRO is committed to ensuring the civil rights of all people are protected and enforced, including youth in correctional settings.