

Enrolled House Bill 3618

Sponsored by Representative DEMBROW, Senator MORRISETTE; Representatives BARKER, BARNHART, BOONE, BUCKLEY, CLEM, DOHERTY, FREDERICK, GELSER, GREENLICK, HOLVEY, KAHL, MATTHEWS, NATHANSON, ROBLAN, STIEGLER, VANORMAN, WITT, Senators DEVLIN, MONROE, ROSENBAUM, SHIELDS (Pre-session filed.)

CHAPTER

AN ACT

Relating to home care workers; creating new provisions; amending ORS 410.600, 410.604, 410.606 and 656.039; and declaring an emergency.

Whereas home care workers and personal support workers provide essential services to seniors, persons with physical disabilities and persons experiencing a developmental disability or mental illness; and

Whereas the state has a duty to provide workers' compensation coverage to home care workers and personal support workers who receive funding from the state; and

Whereas the Legislative Assembly does not intend to compromise the resources and choices available to seniors, persons with physical disabilities, persons experiencing a developmental disability or mental illness or the family members of seniors, persons with physical disabilities or persons experiencing a developmental disability or mental illness; and

Whereas seniors, persons with physical disabilities, persons experiencing a developmental disability or mental illness and the family members of seniors, persons with physical disabilities and persons experiencing a developmental disability or mental illness have a right to choose among available services, activities and purchases, including adult support services; and

Whereas the Legislative Assembly does not intend to reduce the amount or scope of those services, activities and purchases or to compromise the services, activities and purchases currently available to persons who receive care from a home care worker or personal support worker who is currently registered in the registry maintained by the Home Care Commission; now, therefore,

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

SECTION 1. Sections 2 and 3 of this 2010 Act are added to and made a part of ORS 410.600 to 410.625.

SECTION 2. The Legislative Assembly finds and declares that the interest and welfare of the public are served by the Home Care Commission that operates in accordance with section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625 and also are served by operations that:

(1) Do not compromise the resources of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses;

(2) Do not compromise the ability of elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses to choose from among services, activities and purchases, including adult support services; and

(3) Do not reduce the amount and scope of the services, activities and purchases, including adult support services, available to elderly persons, persons with physical disabilities, persons with developmental disabilities or mental illnesses or the family members of elderly persons, persons with physical disabilities or persons with developmental disabilities or mental illnesses.

SECTION 3. (1) The Home Care Commission shall create a Developmental Disabilities and Mental Health Committee.

(2) The committee shall provide information and make recommendations to the commission on:

(a) Methods of improving the quality of services available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses;

(b) Means of ensuring that an adequate amount of services are available to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses; and

(c) All the duties and functions under ORS 410.600 to 410.625 as those duties and functions pertain to persons with developmental disabilities or mental illnesses and the family members of persons with developmental disabilities or mental illnesses, including but not limited to:

(A) Qualifications for personal support workers;

(B) Registration of personal support workers;

(C) Referrals for routine, emergency and respite care;

(D) Training opportunities for personal support workers; and

(E) Collective bargaining.

(3) The commission shall consider the recommendations of the committee. When the commission does not follow the recommendations of the committee, the commission shall inform the committee of the reasons for not following the recommendations.

(4) The commission shall appoint members to the committee. In appointing members to the committee, the commission shall include at least one:

(a) Consumer of services, activities or purchases available to persons with developmental disabilities;

(b) Consumer of services, activities or purchases available to persons with mental illnesses;

(c) Family member of a person with a developmental disability;

(d) Family member of a person with a mental illness;

(e) Advocate for persons with developmental disabilities or mental illnesses;

(f) Personal support worker;

(g) Representative from an agency that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services; and

(h) Representative from a support services brokerage that assists persons with developmental disabilities or mental illnesses in finding and arranging resources for home care services.

SECTION 4. ORS 410.606 is amended to read:

410.606. (1) Notwithstanding ORS 410.600, for purposes of this section:

(a) "Activities of community inclusion" includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.

(b) "Adult support services" means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual's own home or the individual's family's home or to fully participate in community life or work, that:

(A) Complement existing services, activities or purchases available to the individual;

(B) Are designed, selected and managed by the individual or the individual's legal representative;

(C) Are provided in accordance with an individualized plan; and

(D) Allow individuals to choose and have control over services and life goals.

(c) "Home care services" means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker for an elderly person or a person with a disability.

(d) "Home care worker" means:

(A) A person:

(i) Who is hired directly by an elderly person or a person with a physical disability or by a parent or guardian of an elderly person or a person with a physical disability;

(ii) Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;

(iii) Whose compensation is funded in whole or in part by the department, an area agency or other public agency; and

(iv) Who provides either hourly or live-in home care services; or

(B) A personal support worker.

(e) "Person with a disability" means a person with a physical disability, developmental disability or mental illness.

(f) "Personal support worker" means a person:

(A) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;

(B) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;

(C) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and

(D) Who provides home care services in the home or community.

(g) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.

(2) The department [of Human Services], an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

(3) The department shall collect:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry maintained by the commission;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

(4) If necessary to collect the information required by subsection (3) of this section:

(a) The department shall request the required information from any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The agency or support services brokerage shall provide the department with the requested information.

(5) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.

(6) The department:

(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and

(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.

SECTION 5. (1) The amendments to ORS 410.606 by section 4 of this 2010 Act become operative on October 1, 2010.

(2) Notwithstanding subsection (1) of this section, the Department of Human Services and any agency and support services brokerage that provides or arranges payroll services for home care workers may take any action necessary before the operative date specified in subsection (1) of this section to enable the department, agency and support services brokerage to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department, agency and support services brokerage by the amendments to ORS 410.606 by section 4 of this 2010 Act.

SECTION 6. ORS 410.600 is amended to read:

410.600. As used in ORS 410.600 to 410.625:

(1) **“Activities of community inclusion” includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.**

[(1)] (2) **“Activities of daily living” includes but is not limited to the following:**

(a) Bathing and personal hygiene;

(b) Dressing and grooming;

(c) Eating;

(d) Mobility;

(e) Bowel and bladder management; and

(f) Cognition.

(3) **“Adult support services” means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual’s own home or the individual’s family’s home or to fully participate in community life or work, that:**

(a) **Complement existing services, activities or purchases available to the individual;**

(b) **Are designed, selected and managed by the individual or the individual’s legal representative;**

(c) **Are provided in accordance with an individualized plan; and**

(d) **Allow individuals to choose and have control over services and life goals.**

[(2)] (4) **“Area agency” has the meaning given that term in ORS 410.040.**

[(3)] (5) **“Commission” means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625.**

[(4)] (6) **“Elderly person” has the meaning given that term in ORS 410.040.**

[(5)] (7) **“Home care services” means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker [in the home of] for an elderly person or a person with a disability.**

[(6)] (8) **“Home care worker” means:**

(a) A person:

[(a)] (A) **Who is hired directly by an elderly person or a person with a physical disability [who] or by a parent or guardian of an elderly person or a person with a physical disability;**

(B) Who receives moneys from the Department of Human Services for [that purpose] the purpose of providing care to the elderly person or the person with a physical disability;

[(b)] (C) Whose compensation is [paid] funded in whole or in part by the department, an area agency or other public agency [that receives moneys from the department for that purpose]; and

[(c)] (D) Who provides either hourly or live-in home care services; or

(b) A personal support worker.

[(7)] (9) "Person with a disability" [has the meaning given that term in ORS 410.040] means a person with a physical disability, developmental disability or mental illness.

(10) "Personal support worker" means a person:

(a) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;

(b) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;

(c) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and

(d) Who provides home care services in the home or community.

[(8)] (11) "Self-management" includes but is not limited to the following activities, other than activities of daily living, required by an individual to continue living independently in the individual's own home:

(a) Medication and oxygen management;

(b) Transportation;

(c) Meal preparation;

(d) Shopping; and

(e) [Client focused] Client-focused general household work.

(12) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.

SECTION 7. ORS 410.606, as amended by section 4 of this 2010 Act, is amended to read:

410.606. [(1) Notwithstanding ORS 410.600, for purposes of this section:]

[(a) "Activities of community inclusion" includes but is not limited to volunteer activities, employment, development of community life skills and participation in social and recreational community events.]

[(b) "Adult support services" means individually determined services, activities and purchases, whether those services, activities and purchases are necessary for an individual to live in the individual's own home or the individual's family's home or to fully participate in community life or work, that:]

[(A) Complement existing services, activities or purchases available to the individual;]

[(B) Are designed, selected and managed by the individual or the individual's legal representative;]

[(C) Are provided in accordance with an individualized plan; and]

[(D) Allow individuals to choose and have control over services and life goals.]

[(c) "Home care services" means assistance with activities of daily living, activities of community inclusion and self-management provided by a home care worker for an elderly person or a person with a disability.]

[(d) "Home care worker" means:]

[(A) A person:]

[(i) Who is hired directly by an elderly person or a person with a physical disability or by a parent or guardian of an elderly person or a person with a physical disability;]

[(ii) Who receives moneys from the Department of Human Services for the purpose of providing care to the elderly person or the person with a physical disability;]

[(iii) Whose compensation is funded in whole or in part by the department, an area agency or other public agency; and]

[(iv) Who provides either hourly or live-in home care services; or]

[(B) A personal support worker.]

[(e) "Person with a disability" means a person with a physical disability, developmental disability or mental illness.]

[(f) "Personal support worker" means a person:]

[(A) Who is hired by a person with a developmental disability or mental illness or a parent or guardian of a person with a developmental disability or mental illness;]

[(B) Who receives moneys from the department for the purpose of providing care to the person with a developmental disability or mental illness;]

[(C) Whose compensation is provided in whole or in part through the department, a support services brokerage or other public agency; and]

[(D) Who provides home care services in the home or community.]

[(g) "Support services brokerage" means an entity that performs the functions associated with the planning and implementation of adult support services, including the provision of services and the arrangement of activities and purchases, for the purpose of maximizing individual choice and self-determination for persons with developmental disabilities or mental illnesses.]

[(2)] (1) The Department of Human Services, an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

[(3)] (2) The department shall collect:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry maintained by the commission;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers' compensation purposes.

[(4)] (3) If necessary to collect the information required by subsection [(3)] (2) of this section:

(a) The department shall request the required information from any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The agency or support services brokerage shall provide the department with the requested information.

[(5)] (4) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.

[(6)] (5) The department:

(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and

(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.

SECTION 8. ORS 410.604 is amended to read:

410.604. (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services [as the single state Medicaid agency];

(b) Providing training opportunities for home care workers and elderly persons and persons with disabilities who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2)(a) The commission shall enter into an interagency agreement with the department to contract for a department employee to serve as executive director of the commission. The executive director shall be appointed by the Director of Human Services in consultation with the Governor and subject to approval by the commission, and shall serve at the pleasure of the Director of Human Services. The commission may delegate to the executive director the authority to act on behalf of the commission to carry out its duties and responsibilities, including but not limited to:

(A) Entering into contracts or agreements; and

(B) Taking reasonable or necessary actions related to the commission's role as employer of record for home care workers under ORS 410.612.

(b) The commission shall enter into an interagency agreement with the department for carrying out any of the duties or functions of the commission, for department expenditures and for the provision of staff support by the department.

(3) When conducting its activities, and in making decisions relating to those activities, the commission shall first consider the effect of its activities and decisions on:

(a) Improving the quality of service delivered by home care workers; *[and]*

(b) Ensuring adequate hours of service are provided to elderly persons and persons with disabilities by home care workers[.]; **and**

(c) Ensuring that services, activities and purchases that are purchased by elderly persons and persons with disabilities other than home care services, including adult support services, are not compromised or diminished.

(4) The commission has the authority to contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own name.

SECTION 9. ORS 656.039 is amended to read:

656.039. (1) An employer of one or more persons defined as nonsubject workers or not defined as subject workers may elect to make them subject workers. If the employer is or becomes a carrier-insured employer, the election shall be made by filing written notice thereof with the insurer with a copy to the Director of the Department of Consumer and Business Services. The effective date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

(2) Any election under subsection (1) of this section may be canceled by written notice thereof to the insurer or, in the case of a self-insured employer, by notice thereof to the director. The cancellation is effective at 12 midnight ending the day the notice is received by the insurer or the director, unless a later date is specified in the notice. The insurer shall, within 10 days after receipt of a notice of cancellation under this section, send a copy of the notice to the director.

(3) When necessary the insurer or the director shall fix assumed minimum or maximum wages for persons made subject workers under this section.

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to an insurer for coverage. An insurer other than the State Accident Insurance Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool.

(5)(a) The Home Care Commission created by ORS 410.602 shall elect coverage on behalf of clients of the Department of Human Services **or the Oregon Health Authority** who employ home care workers to make home care workers subject workers if the home care worker is *[paid]* **funded** by the state on behalf of the client.

(b) As used in this subsection, “home care worker” has the meaning given that term in ORS 410.600.

SECTION 10. (1) **The amendments to ORS 410.600, 410.604, 410.606 and 656.039 by sections 6 to 9 of this 2010 Act become operative on January 1, 2011.**

(2) **Notwithstanding subsection (1) of this section, the Home Care Commission may take any action necessary before the operative date specified in subsection (1) of this section to enable the commission to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the commission by the amendments to ORS 410.604 and 656.039 by sections 8 and 9 of this 2010 Act.**

SECTION 11. ORS 410.606, as amended by sections 4 and 7 of this 2010 Act, is amended to read:
410.606. (1) The Department of Human Services, an area agency, *[or]* other public agency **or support services brokerage** shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission.

[(2) The department shall collect:]

(2) To facilitate the development and maintenance of the registry maintained by the commission and any training opportunity offered by the commission, and to meet the requirements of providing workers’ compensation, the department, area agencies, other public agencies and support services brokerages shall report to the commission:

(a) The name and address of any home care worker:

(A) Who provides home care services;

(B) Whose compensation is funded in whole or in part with state funds; and

(C) Who is not listed on the registry *[maintained by the commission]*;

(b) The name of the program under which the home care worker provides the home care services;

(c) Any other data required by the commission for training and registry purposes; and

(d) Any other data required for workers’ compensation purposes.

(3) If necessary to collect the information required by subsection (2) of this section:

(a) The *[department]* **commission** shall request the required information from **the department or** any agency or support services brokerage that provides or arranges payroll services for home care workers; and

(b) The **department**, agency or support services brokerage shall provide the *[department]* **commission** with the requested information.

[(4) The department shall keep and maintain until July 1, 2013, the information that the department collects and receives under this section for the purpose of updating the registry maintained by the commission.]

[(5) The department:]

[(a) Is not required to publish, electronically or otherwise, the names and addresses of home care workers that the department collects and receives under this section; and]

[(b) Shall provide the name and address of a home care worker to any person who requests the information in accordance with ORS 192.410 to 192.505.]

SECTION 12. (1) **The amendments to ORS 410.606 by section 11 of this 2010 Act become operative on July 1, 2013.**

(2) **Notwithstanding subsection (1) of this section, the Home Care Commission, the Department of Human Services, area agencies, other public agencies and support services brokerages may take any action necessary before the operative date specified in subsection (1) of this section to enable the commission, the department, area agencies, other public agencies and support services brokerages to exercise, on and after the operative date specified**

in subsection (1) of this section, all the duties, functions and powers conferred on the commission, the department, area agencies, other public agencies and support services brokerages by the amendments to ORS 410.606 by section 11 of this 2010 Act.

SECTION 13. This 2010 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect on its passage.

Passed by House February 23, 2010

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Chief Clerk of House

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Speaker of House

Passed by Senate February 23, 2010

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President of Senate

Received by Governor:

.....M.,....., 2010

Approved:

.....M.,....., 2010

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Governor

Filed in Office of Secretary of State:

.....M.,....., 2010

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Secretary of State