

B-Engrossed Senate Bill 1542

Ordered by the Senate March 4
Including Senate Amendments dated February 12 and March 4

Sponsored by Senators ROSENBAUM, BEYER, STEINER HAYWARD, Representative GALLEGOS; Senators DEMBROW, MONNES ANDERSON, Representatives BARKER, CLEM, GORSEK, KENY-GUYER, SMITH WARNER (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Establishes program administered by Home Care Commission to allow private payers to purchase home care services from commission through registry maintained by commission. Requires commission to establish payment rates based on costs to commission for program. Requires commission to [*appoint*] **convene** subcommittee to establish classification system for home care workers. Requires commission to establish qualifications, training standards and occupational health and safety standards for home care workers.

Specifies purposes for which commission is employer of home care workers. Provides that state is not employer of home care workers except for specified purposes. Excludes home care workers from Public Employees Retirement System and Oregon Public Service Retirement Plan and from benefits offered by Public Employees' Benefit Board. Requires that commission must implement Act by January 1, 2016.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to in-home care providers; creating new provisions; amending ORS 410.600, 410.604, 410.606,
3 410.612, 410.614, 410.619, 410.625 and 656.039; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 410.595 to**
6 **410.625.**

7 **SECTION 2. (1) This section establishes a program, administered by the Home Care**
8 **Commission, to enable private individuals to purchase home care services from the com-**
9 **mission through the home care registry. The commission shall administer the program in a**
10 **manner that:**

11 **(a) Builds and strengthens the home care workforce that provides home care services to**
12 **medical assistance recipients by offering home care workers the opportunity to obtain addi-**
13 **tional work from private payers and by attracting additional home care workers to the home**
14 **care registry;**

15 **(b) Provides an opportunity for the rapidly growing population of elderly individuals and**
16 **individuals with disabilities in this state, who are not eligible for medical assistance, to ob-**
17 **tain high quality and affordable home care services from qualified, committed, experienced**
18 **and well-trained home care workers;**

19 **(c) Protects medical assistance recipients' access to and receipt of home care services;**
20 **and**

21 **(d) Ensures that this state incurs no liability for the costs of home care services pur-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 chased by private payers through the program, or for any other associated program costs,
2 that exceed the amount of revenue generated by the payments described in subsection (5)
3 of this section.

4 (2) The commission shall establish by rule the types and scope of home care services or
5 other services that may be offered through the program. The commission shall make avail-
6 able to consumers and potential consumers of home care services, information about the
7 scope of the services offered through the program, about the long term care services and
8 support that are not available through the program and about other community resources
9 that are available to individuals seeking long term care services and support.

10 (3) The commission shall adopt standards for home care services offered through the
11 program. The standards, to the greatest extent practicable, shall be compatible with the
12 standards for home care services reimbursed as medical assistance and by in-home care
13 agencies licensed under ORS 443.315.

14 (4) Private payers purchasing home care services through the program must complete a
15 standard assessment instrument prescribed by the commission that evaluates the capacity
16 and willingness of the individual receiving services, or a person selected by the individual to
17 act on the individual's behalf, to effectively manage and direct the home care services. A
18 private payer and a private pay home care worker must enter into a written service plan
19 based on the assessment instrument that is consistent with the private pay home care
20 worker's capabilities, training and experience. The standard assessment instrument must be
21 completed prior to the commencement of services.

22 (5) The commission shall establish payment rates for home care services purchased by
23 private payers through the home care registry and shall publish the rates online, showing
24 the projected cost of each component included in calculating the payment rates. The com-
25 mission shall establish the rates at levels expected to generate total revenue sufficient to
26 reimburse up to 107 percent of the costs associated with the program including, but not
27 limited to, the costs for:

28 (a) Screening, registering and training private pay home care workers and maintaining
29 and expanding the home care registry;

30 (b) Hiring additional staff;

31 (c) Providing referrals of private pay home care workers to private payers;

32 (d) Paying the private pay home care workers' wages;

33 (e) Paying payroll taxes;

34 (f) Paying for health insurance and employee benefits, either directly or through a trust
35 account;

36 (g) Processing payments from private payers and payments to private pay home care
37 workers;

38 (h) Paying workers' compensation and unemployment insurance;

39 (i) Publicizing the availability of the home care registry; and

40 (j) Other activities undertaken to ensure the quality of private pay home care workers,
41 the adequate provision of home care services and other administrative expenses associated
42 with the program.

43 (6) A private payer who purchases home care services through the program shall pay the
44 commission in advance for the services.

45 (7) The commission shall establish the wage rates, pay the wages and provide for em-

1 **ployee benefits for private pay home care workers. A private pay home care worker may not**
2 **accept any additional compensation for hours of work that were compensated by the pro-**
3 **gram.**

4 **(8) Private pay home care workers are subject to the same requirements as home care**
5 **workers providing services reimbursed as medical assistance with respect to:**

6 **(a) Home care worker qualifications;**

7 **(b) Application and enrollment in the home care registry; and**

8 **(c) Suspension or termination of enrollment in the registry.**

9 **(9) The commission may specify requirements and procedures, in addition to those de-**
10 **scribed in subsection (8) of this section, for private pay home care workers.**

11 **(10) The commission, with the assistance of the Department of Human Services, may**
12 **conduct periodic evaluations of private pay home care workers, or take other measures to**
13 **determine whether the private pay home care workers continue to meet provider enrollment**
14 **requirements or for other appropriate purposes.**

15 **(11)(a) If revenue generated by the payments described in subsection (5) of this section**
16 **is insufficient to pay the costs of home care services purchased by private payers through**
17 **the program, and other costs associated with administering the program, the commission**
18 **may modify the payment rates described in subsection (5) of this section as necessary to**
19 **generate sufficient revenue to pay the costs.**

20 **(b) If the commission determines that modifying the payment rates will not generate**
21 **sufficient revenue to pay the costs of the program, the commission may suspend the pro-**
22 **gram following 30 days advance written notice to private payers and home care workers**
23 **participating in the program.**

24 **(c) If the commission suspends the program under paragraph (b) of this subsection, the**
25 **commission shall report to the Legislative Assembly in the manner provided in ORS 192.245,**
26 **no later than 30 days after the suspension begins:**

27 **(A) The reasons for the suspension;**

28 **(B) Any costs incurred by this state that exceed the revenue generated by the payments**
29 **described in subsection (5) of this section; and**

30 **(C) Any additional costs, during the remainder of the biennium in which the suspension**
31 **occurs, that are anticipated to exceed the revenue generated by the payments described in**
32 **subsection (5) of this section.**

33 **SECTION 3. The delegation of authority to the Home Care Commission or other pro-**
34 **visions of section 2 of this 2014 Act and the amendments to ORS 410.600, 410.604, 410.606,**
35 **410.612, 410.614, 410.619, 410.625 and 656.039 by sections 5 to 12 of this 2014 Act do not alter**
36 **the definition of employment relations in ORS 243.650 or other applicable laws.**

37 **SECTION 4. (1) The Home Care Commission shall convene a subcommittee of the com-**
38 **mission to define and establish classifications of home care workers. The classifications shall**
39 **be based on the home care worker's level of skill and the scope of the services provided by**
40 **the worker.**

41 **(2) The commission shall establish payment rates for each classification of home care**
42 **worker participating in the program described in section 2 of this 2014 Act.**

43 **SECTION 5. ORS 410.600 is amended to read:**

44 **410.600. As used in ORS 410.595 to 410.625:**

45 **(1) "Activities of community inclusion" includes but is not limited to volunteer activities, em-**

1 ployment, development of community life skills and participation in social and recreational commu-
2 nity events.

3 (2) "Activities of daily living" includes but is not limited to the following:

- 4 (a) Bathing and personal hygiene;
- 5 (b) Dressing and grooming;
- 6 (c) Eating;
- 7 (d) Mobility;
- 8 (e) Bowel and bladder management; and
- 9 (f) Cognition.

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

- 14 (a) Complement existing services, activities or purchases available to the individual;
 - 15 (b) Are designed, selected and managed by the individual or the individual's legal representative;
 - 16 (c) Are provided in accordance with an individualized plan; and
 - 17 (d) Allow individuals to choose and have control over services and life goals.
- 18 (4) "Area agency" has the meaning given that term in ORS 410.040.

19 (5) "Commission" means the Home Care Commission established and operated pursuant to sec-
20 tion 11, Article XV of the Oregon Constitution, and ORS 410.595 to 410.625.

21 (6) "Elderly person" has the meaning given that term in ORS 410.040.

22 (7) **"Home care registry" means the registry described in ORS 410.604 (1)(c).**

23 [(7)] (8) "Home care services" means assistance with activities of daily living, activities of
24 community inclusion and self-management provided by a home care worker for an elderly person or
25 a person with a disability.

26 [(8)] (9) "Home care worker" means:

27 (a) A person:

28 (A) Who is hired [*directly*] **or selected** by an elderly person or a person with a physical disa-
29 bility or by a parent or guardian of an elderly person or a person with a physical disability;

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

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

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

35 (b) A personal support worker; **or**

36 (c) **A person who provides home care services to private payers through the program**
37 **described in section 2 of this 2014 Act.**

38 (10) **"Payment rates" means the cost to a private payer to purchase home care services**
39 **through the program described in section 2 of this 2014 Act.**

40 [(9)] (11) "Person with a disability" means a person with a physical disability, developmental
41 disability or mental illness.

42 [(10)] (12) "Personal support worker" means a person:

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

45 (b) Who receives moneys from the department for the purpose of providing care to the person

1 with a developmental disability or mental illness;

2 (c) Whose compensation is provided in whole or in part through the department, a support ser-
3 vices brokerage or other public agency; and

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

5 **(13) “Private pay home care worker” means a home care worker who provides home care**
6 **services purchased from the commission by a private payer through the program described**
7 **in section 2 of this 2014 Act.**

8 **(14)(a) “Private payer” means an individual who purchases from the commission home**
9 **care services that are not otherwise covered by the medical assistance program.**

10 **(b) “Private payer” does not include the Home Care Commission, the Department of**
11 **Human Services, the Oregon Health Authority, an area agency or a support services bro-**
12 **kerage.**

13 [(11)] **(15) “Self-management” includes but is not limited to the following activities, other than**
14 **activities of daily living, required by an individual to continue living independently in the**
15 **individual’s own home:**

16 (a) Medication and oxygen management;

17 (b) Transportation;

18 (c) Meal preparation;

19 (d) Shopping; and

20 (e) Client-focused general household work.

21 [(12)] **(16) “Support services brokerage” means an entity that performs the functions associated**
22 **with the planning and implementation of adult support services, including the provision of services**
23 **and the arrangement of activities and purchases, for the purpose of maximizing individual choice**
24 **and self-determination for persons with developmental disabilities or mental illnesses.**

25 **SECTION 6.** ORS 410.604 is amended to read:

26 410.604. (1) The Home Care Commission shall ensure the quality of home care services by:

27 (a) Establishing qualifications for home care workers, with the advice and consent of the De-
28 partment of Human Services, **to ensure the effective delivery of home care services by a qual-**
29 **ified, committed, experienced and well-trained home care workforce;**

30 (b) **Establishing training requirements for home care workers, including personal support**
31 **workers, as the commission deems appropriate, and providing training opportunities for home**
32 **care workers and elderly persons and persons with disabilities who employ home care workers or**
33 **personal support workers;**

34 (c) Establishing **the home care registry** and maintaining [*a registry of*] **the registry with**
35 **qualified home care workers;**

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

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

40 (f) **Establishing occupational health and safety standards for home care workers, in ac-**
41 **cordance with ORS 654.003 (3), and informing home care workers of the standards; and**

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

44 (2)(a) The commission shall enter into an interagency agreement with the department to con-
45 tract for a department employee to serve as executive director of the commission. The executive

1 director shall be appointed by the Director of Human Services in consultation with the Governor
2 and subject to approval by the commission, and shall serve at the pleasure of the Director of Human
3 Services. The commission may delegate to the executive director the authority to act on behalf of
4 the commission to carry out its duties and responsibilities, including but not limited to:

5 (A) Entering into contracts or agreements; and

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

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

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

13 (a) Improving the quality of service delivered by home care workers;

14 (b) Ensuring adequate hours of service are provided to elderly persons and persons with disa-
15 bilities by home care workers; and

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

19 (4) The commission shall work with culturally diverse community-based organizations to train
20 and certify community health workers and personal health navigators. The workers and navigators
21 shall work as part of a multidisciplinary team under the direction of a licensed or certified health
22 care professional. The commission shall recruit qualified home care workers who desire to be
23 trained and certified as community health workers or personal health navigators.

24 (5) The commission shall ensure that each coordinated care organization honors all of the terms
25 and conditions of employment established by the commission with respect to the community health
26 workers and personal health navigators referred by the commission. This subsection does not re-
27 quire a coordinated care organization to employ or contract with community health workers and
28 personal health navigators certified by the commission so long as the community health workers and
29 personal health navigators employed or otherwise retained by the organization meet competency
30 standards established by the authority under ORS 414.665.

31 (6) The commission has the authority to contract for services, lease, acquire, hold, own, en-
32 cumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own
33 name.

34 (7) As used in this section, "community health worker," "coordinated care organization" and
35 "personal health navigator" have the meanings given those terms in ORS 414.025.

36 **SECTION 7.** ORS 410.606 is amended to read:

37 410.606. (1)(a) The Department of Human Services, an area agency, other public agency or sup-
38 port services brokerage shall provide to an individual seeking a home care worker *[the]* names of
39 qualified individuals, in the appropriate geographic area, who have been placed on the **home care**
40 registry *[maintained by the Home Care Commission]*.

41 **(b) The Home Care Commission may adopt criteria for referrals in order to ensure the**
42 **effective delivery of home care services from qualified, committed, experienced and well-**
43 **trained home care workers and to ensure that, for private pay home care workers, the re-**
44 **quirements of section 2 of this 2014 are met.**

45 (2) To facilitate the development and maintenance of the **home care** registry *[maintained by the*

1 *commission*] and any training opportunity offered by the commission, and to meet the requirements
2 of providing workers' compensation, the department, **the Oregon Health Authority**, area agencies,
3 other public agencies and support services brokerages shall report to the commission:

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

5 (A) Who provides home care services;

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

7 (C) Who is not listed on the registry;

8 (b) The name of the program under which the home care worker provides the home care ser-
9 vices;

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

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

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

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

16 (b) The department, **authority**, agency or support services brokerage shall provide the commis-
17 sion with the requested information.

18 **(4) If the commission, with the assistance of the department, determines that the supply**
19 **of home care workers is inadequate to meet the needs of medical assistance recipients who**
20 **qualify for home care services, the commission may suspend or reduce the number of re-**
21 **errals of home care workers under the program described in section 2 of this 2014 Act.**

22 **SECTION 8.** ORS 410.612 is amended to read:

23 410.612. (1) For purposes of collective bargaining under ORS 243.650 to 243.782, the Home Care
24 Commission is the employer of record for home care workers.

25 (2) *[Notwithstanding subsection (1) of this section]* **Except as provided in ORS 410.614 and**
26 **410.619**, home care workers may not be considered *[for any purposes]* to be *[an employee]* **employees**
27 of the State of Oregon, an area agency or other public agency.

28 (3) The Oregon Department of Administrative Services shall represent the commission in col-
29 lective bargaining negotiations with the certified or recognized exclusive representatives of all ap-
30 propriate bargaining units of home care workers. The department is authorized to agree to terms
31 and conditions of collective bargaining agreements on behalf of the commission and the Department
32 of Human Services.

33 **SECTION 9.** ORS 410.614 is amended to read:

34 410.614. (1) Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be
35 considered a public employer and home care workers shall be considered public employees governed
36 by ORS 243.650 to 243.782.

37 (2) Home care workers have the right to form, join and participate in the activities of labor
38 organizations of their own choosing for the purpose of representation and collective bargaining with
39 the commission on matters concerning employment relations. These rights shall be exercised in ac-
40 cordance with the rights granted to public employees with mediation and interest arbitration under
41 ORS 243.742 as the method of concluding the collective bargaining process.

42 **(3) Home care workers are not public employees with respect to the Public Employees**
43 **Retirement System, the Oregon Public Service Retirement Plan or the Public Employees'**
44 **Benefit Board.**

45 (4) Home care workers do not have the right to strike.

1 **SECTION 10.** ORS 410.619 is amended to read:

2 410.619. *[A person who is hired as a housekeeper or homemaker, or home care worker, and is not*
3 *otherwise employed by the Department of Human Services, an area agency or other public agency, shall*
4 *not for any purposes be deemed to be an employee of the State of Oregon or an area agency whether*
5 *or not the department or agency selects the person for employment or exercises any direction or control*
6 *over the person's employment. However, nothing in this section precludes the state or an area agency*
7 *from being considered the employer of the person for purposes of ORS chapter 657.]*

8 **(1) A home care worker who is not otherwise employed by the Home Care Commission,**
9 **the Department of Human Services, the Oregon Health Authority, an area agency or a sup-**
10 **port services brokerage shall not be deemed to be an employee of the state, whether or not**
11 **the state selects the home care worker for employment or exercises any direction or control**
12 **over the home care worker, for the purpose of the state's liability for the home care**
13 **worker's actions.**

14 **(2) The state shall be deemed an employer of home care workers for the purposes of ORS**
15 **410.606, 410.612 and 410.614, ORS chapter 657 and section 2 of this 2014 Act.**

16 **SECTION 11.** ORS 410.625 is amended to read:

17 410.625. (1) In carrying out its duties under ORS 410.595 to 410.625, the Home Care Commission
18 may:

19 (a) Enter into an interagency agreement or a contract with any state agency for the perform-
20 ance of the commission's duties or the leasing of office space;

21 (b) Provide nonemployee compensation to home care workers or prospective home care workers
22 who attend training sessions approved or sponsored by the commission;

23 (c) On behalf of an elderly person or a person with a disability who hires a home care worker
24 through the [*Home Care Commission*] **home care** registry, elect workers' compensation coverage or
25 arrange for health insurance coverage, including group coverage, for the person's home care work-
26 ers; and

27 (d) As prescribed by rule, charge fees to and collect fees from persons who attend training ses-
28 sions sponsored by the commission and who currently are not home care workers.

29 (2) The commission and the Department of Human Services shall confer as to the amount of
30 funds necessary to carry out the duties and activities of the commission, and the department shall
31 include the agreed upon amount in the Governor's budget request to the Legislative Assembly.

32 (3) The commission may apply for and receive gifts and grants from any public or private source.

33 (4) The commission may award grants from funds appropriated by the Legislative Assembly to
34 the department for allocation to the commission or from funds otherwise available from any other
35 source for the purpose of carrying out the duties of the commission under ORS 410.595 to 410.625.

36 **SECTION 12.** ORS 656.039 is amended to read:

37 656.039. (1) An employer of one or more persons defined as nonsubject workers or not defined
38 as subject workers may elect to make them subject workers. If the employer is or becomes a
39 carrier-insured employer, the election shall be made by filing written notice thereof with the insurer
40 with a copy to the Director of the Department of Consumer and Business Services. The effective
41 date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured em-
42 ployer, the election shall be made by filing written notice thereof with the director, the effective
43 date of coverage to be the date specified in the notice.

44 (2) Any election under subsection (1) of this section may be canceled by written notice thereof
45 to the insurer or, in the case of a self-insured employer, by notice thereof to the director. The can-

1 cellation is effective at 12 midnight ending the day the notice is received by the insurer or the di-
2 rector, unless a later date is specified in the notice. The insurer shall, within 10 days after receipt
3 of a notice of cancellation under this section, send a copy of the notice to the director.

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

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

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

18 (b) As used in this subsection, “home care worker” has the meaning given that term in ORS
19 410.600.

20 **SECTION 13. (1) Section 2 of this 2014 Act and the amendments to ORS 410.600, 410.604,**
21 **410.606, 410.612, 410.614, 410.619, 410.625 and 656.039 by sections 5 to 12 of this 2014 Act become**
22 **operative July 1, 2015.**

23 **(2) The Home Care Commission may take any action before July 1, 2015, that is necessary**
24 **to implement section 2 of this 2014 Act and the amendments to ORS 410.600, 410.604, 410.606,**
25 **410.612, 410.614, 410.619, 410.625 and 656.039 by sections 5 to 12 of this 2014 Act no later than**
26 **January 1, 2016.**

27 **SECTION 14. This 2014 Act being necessary for the immediate preservation of the public**
28 **peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect**
29 **on its passage.**