

Enrolled
Senate Bill 1542

Sponsored by Senators ROSENBAUM, BEYER, STEINER HAYWARD, Representative GALLEGOS, Senators BATES, MONROE; Senators COURTNEY, DEMBROW, DEVLIN, EDWARDS, HASS, MONNES ANDERSON, PROZANSKI, ROBLAN, SHIELDS, Representatives BAILEY, BARKER, BARNHART, BUCKLEY, CLEM, DOHERTY, FREDERICK, GOMBERG, GORSEK, GREENLICK, HARKER, HOLVEY, HOYLE, KENY-GUYER, KOMP, KOTEK, LIVELY, MCKEOWN, NATHANSON, REARDON, SMITH WARNER, TOMEI, UNGER, VEGA PEDERSON, WITT (Presession filed.)

CHAPTER

AN ACT

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

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

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

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

(a) Builds and strengthens the home care workforce that provides home care services to medical assistance recipients by offering home care workers the opportunity to obtain additional work from private payers and by attracting additional home care workers to the home care registry;

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

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

(d) Ensures that this state incurs no liability for the costs of home care services purchased by private payers through the program, or for any other associated program costs, that exceed the amount of revenue generated by the payments described in subsection (5) of this section.

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

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

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

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

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

(b) Hiring additional staff;

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

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

(e) Paying payroll taxes;

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

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

(h) Paying workers' compensation and unemployment insurance;

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

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

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

(7) The commission shall establish the wage rates, pay the wages and provide for employee benefits for private pay home care workers. A private pay home care worker may not accept any additional compensation for hours of work that were compensated by the program.

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

(a) Home care worker qualifications;

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

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

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

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

(11)(a) If revenue generated by the payments described in subsection (5) of this section is insufficient to pay the costs of home care services purchased by private payers through

the program, and other costs associated with administering the program, the commission may modify the payment rates described in subsection (5) of this section as necessary to generate sufficient revenue to pay the costs.

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

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

(A) The reasons for the suspension;

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

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

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

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

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

SECTION 5. ORS 410.600 is amended to read:

410.600. As used in ORS 410.595 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.

(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.

(4) "Area agency" has the meaning given that term in ORS 410.040.

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

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

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

[(7)] **(8)** “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.

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

(a) A person:

(A) Who is hired [*directly*] **or selected** 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;

(B) 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;

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

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

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

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

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

[(9)] **(11)** “Person with a disability” means a person with a physical disability, developmental disability or mental illness.

[(10)] **(12)** “Personal support worker” means a person:

(a) Who is hired **or selected** 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.

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

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

(b) “Private payer” does not include the Home Care Commission, the Department of Human Services, the Oregon Health Authority, an area agency or a support services brokerage.

[(11)] **(15)** “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 general household work.

[(12)] **(16)** “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 6. 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, **to ensure the effective delivery of home care services by a qualified, committed, experienced and well-trained home care workforce;**

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

(c) Establishing **the home care registry** and maintaining [*a registry of*] **the registry with 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) **Establishing occupational health and safety standards for home care workers, in accordance with ORS 654.003 (3), and informing home care workers of the standards; and**

[(f)] (g) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to [(e)] (f) 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;

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

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

(6) 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.

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

SECTION 7. ORS 410.606 is amended to read:

410.606. (1)(a) The Department of Human Services, an area agency, 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 **home care** registry *[maintained by the Home Care Commission]*.

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

(2) To facilitate the development and maintenance of the **home care** registry *[maintained by the commission]* and any training opportunity offered by the commission, and to meet the requirements of providing workers' compensation, the department, **the Oregon Health Authority**, 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;

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

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

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

SECTION 8. ORS 410.612 is amended to read:

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

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

(3) The Oregon Department of Administrative Services shall represent the commission in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of home care workers. The department is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the commission and the Department of Human Services.

SECTION 9. ORS 410.614 is amended to read:

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

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

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

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

SECTION 10. ORS 410.619 is amended to read:

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

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

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

SECTION 11. ORS 410.625 is amended to read:

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

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

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

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

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

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

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

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

SECTION 12. 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*] **persons** who employ home care workers to make home care workers subject workers [*if the home care worker is 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 13. (1) Section 2 of this 2014 Act and the amendments to ORS 410.600, 410.604, 410.606, 410.612, 410.614, 410.619, 410.625 and 656.039 by sections 5 to 12 of this 2014 Act become operative July 1, 2015.

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

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

Passed by Senate March 5, 2014

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House March 7, 2014

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2014

Approved:

.....M.,....., 2014

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2014

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Kate Brown, Secretary of State