

Senate Bill 1542

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 **as introduced**.

Allows private payers to hire home care workers through registry maintained by Home Care Commission. Requires commission to establish payment rates for private payers based on costs to commission and to establish classification system for home care workers. Provides that state is not employer of home care workers except for specified purposes. Excludes housekeepers, homemakers and home care workers from Public Employees Retirement System and from benefits offered by Public Employees' Benefit Board.

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, 410.614 and
3 410.619; 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) The Home Care Commission shall establish payment rates for home care**
8 **workers performing home care services that are paid by private individuals or private enti-**
9 **ties on behalf of an individuals and not by the Department of Human Services or an area**
10 **agency. The commission shall establish payment rates at levels that the commission expects**
11 **will generate revenue sufficient to reimburse up to 107 percent of the commission's total**
12 **costs related to home care workers hired by private individuals for:**

13 (a) **Screening the home care workers;**

14 (b) **Training the home care workers;**

15 (c) **Paying the home care workers a base rate equal to the rate paid to home care**
16 **workers by the department or an area agency;**

17 (d) **Payroll taxes;**

18 (e) **Costs related to health insurance and employee benefits for the home care workers,**
19 **paid directly or through a trust account;**

20 (f) **Processing payroll for the home care workers;**

21 (g) **Other administrative expenses;**

22 (h) **Providing workers' compensation to the home care workers; and**

23 (i) **Publicizing the availability of the registry described in ORS 410.606.**

24 (2) **A person other than the department or area agency that hires a home care worker**
25 **through the registry maintained by the commission shall make a payment to the commission**
26 **in advance of the services and the commission shall process the payment to the home care**
27 **worker.**

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 **SECTION 3. (1) The Home Care Commission shall create a subcommittee of the com-**
 2 **mission to define and establish new classifications of home care workers. The classifications**
 3 **shall be based on the home care worker’s level of skill and the scope of the services provided**
 4 **by the worker.**

5 **(2) The commission shall establish payment rates for home care workers in classifica-**
 6 **tions requiring higher skills as a percentage above the rates established in any collective**
 7 **bargaining agreement entered into between the commission and a labor organization repre-**
 8 **senting home care workers.**

9 **SECTION 4.** ORS 410.600 is amended to read:

10 410.600. As used in ORS 410.595 to 410.625:

11 (1) “Activities of community inclusion” includes but is not limited to volunteer activities, em-
 12 ployment, development of community life skills and participation in social and recreational commu-
 13 nity events.

14 (2) “Activities of daily living” includes but is not limited to the following:

- 15 (a) Bathing and personal hygiene;
- 16 (b) Dressing and grooming;
- 17 (c) Eating;
- 18 (d) Mobility;
- 19 (e) Bowel and bladder management; and
- 20 (f) Cognition.

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

- 25 (a) Complement existing services, activities or purchases available to the individual;
- 26 (b) Are designed, selected and managed by the individual or the individual’s legal representative;
- 27 (c) Are provided in accordance with an individualized plan; and
- 28 (d) Allow individuals to choose and have control over services and life goals.

29 (4) “Area agency” has the meaning given that term in ORS 410.040.

30 (5) “Commission” means the Home Care Commission established and operated pursuant to sec-
 31 tion 11, Article XV of the Oregon Constitution, and ORS 410.595 to 410.625.

32 (6) “Elderly person” has the meaning given that term in ORS 410.040.

33 (7) “Home care services” means assistance with activities of daily living, activities of community
 34 inclusion and self-management provided by a home care worker for an elderly person or a person
 35 with a disability.

36 (8) “Home care worker” means:

37 (a) A person:

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

40 (B) Who receives [*moneys*] **compensation** from the Department of Human Services for the pur-
 41 pose of providing care to [*the*] **at least one** elderly person or [*the*] person with a physical disability;

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

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

45 (b) A personal support worker.

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

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

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

6 (b) Who receives [*moneys*] **compensation** from the department for the purpose of providing care
7 to [*the*] **at least one** person with a developmental disability or mental illness;

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

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

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

14 (a) Medication and oxygen management;

15 (b) Transportation;

16 (c) Meal preparation;

17 (d) Shopping; and

18 (e) Client-focused general household work.

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

23 **SECTION 5.** ORS 410.614 is amended to read:

24 410.614. Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be con-
25 sidered a public employer and home care workers shall be considered public employees governed
26 by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate in the
27 activities of labor organizations of their own choosing for the purpose of representation and collec-
28 tive bargaining with the commission on matters concerning employment relations. These rights shall
29 be exercised in accordance with the rights granted to public employees with mediation and interest
30 arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Home
31 care workers do not have the right to strike, **to participate in the Public Employees Retirement**
32 **System or to receive benefits offered by the Public Employees' Benefit Board.**

33 **SECTION 6.** ORS 410.619 is amended to read:

34 410.619. (1) **Except as provided in subsection (2) of this section,** a person who is hired as a
35 housekeeper, [*or*] homemaker[,] or home care worker[,] and is not otherwise employed by the **Home**
36 **Care Commission,** the Department of Human Services[,] **or** an area agency [*or other public*
37 *agency,*] shall not for any purposes be deemed to be an employee of the State of Oregon or an area
38 agency whether or not the **commission,** department or **area** agency selects the person for employ-
39 ment or exercises any direction or control over the person's employment. [*However, nothing in this*
40 *section precludes the state or an area agency from being considered the employer of the person for*
41 *purposes of ORS chapter 657.*]

42 (2) **The commission, the department or an area agency shall be deemed a joint employer,**
43 **along with the person hiring the housekeeper, homemaker or home care worker, only for the**
44 **purposes described in ORS 410.606, 410.612 and 410.614 and section 2 of this 2014 Act. A**
45 **housekeeper, homemaker and home care worker described in this section is not eligible to**

1 participate in the Public Employees Retirement System or to receive benefits offered by the
2 Public Employees' Benefit Board.

3 **SECTION 7.** Section 3 of this 2014 Act is repealed on January 1, 2015.

4 **SECTION 8.** (1) Section 2 of this 2014 Act and the amendments to ORS 410.600 and 410.619
5 by sections 4 and 6 of this 2014 Act become operative July 1, 2015.

6 (2) The commission may take any action before July 1, 2015, that is necessary to imple-
7 ment section 2 of this 2014 Act and the amendments to ORS 410.600 and 410.619 by sections
8 4 and 6 of this 2014 Act on and after July 1, 2015.

9 **SECTION 9.** This 2014 Act being necessary for the immediate preservation of the public
10 peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect
11 on its passage.

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