

# Senate Bill 1534

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Workforce)

## 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**.

Requires Department of Human Services to establish minimum training standards for home care workers and personal support workers and to provide training. Directs department and Home Care Commission to maximize federal funding available to pay for training.

## A BILL FOR AN ACT

1  
2 Relating to training for care providers; creating new provisions; and amending ORS 124.050, 183.459,  
3 192.365, 410.596, 410.600, 410.603, 410.604, 410.606, 410.607, 410.608, 410.612, 410.614, 410.619,  
4 410.625, 410.631, 410.632, 419B.005, 430.735, 441.630, 443.004, 443.006, 653.601, 653.646, 656.039,  
5 656.268 and 657.730 and section 4, chapter 796, Oregon Laws 2015.

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

7 **SECTION 1. Section 2 of this 2018 Act is added to and made a part of ORS 410.595 to**  
8 **410.625.**

9 **SECTION 2. (1) The Department of Human Services, acting on behalf of and subject to**  
10 **the approval of the Home Care Commission, shall adopt by rule minimum training standards**  
11 **for home care workers and personal support workers and shall establish procedures for**  
12 **testing home care workers and personal support workers on their mastery of the skills and**  
13 **knowledge to be acquired through the training.**

14 **(2) The department shall provide training on the mandatory training topics established**  
15 **under this subsection and on any other training that the department or the commission**  
16 **deems appropriate for the professionalization of home care workers and personal support**  
17 **workers. The training provided pursuant to this section must include, but is not limited to,**  
18 **training on each of the following topics:**

19 **(a) Safety and emergency measures.**

20 **(b) Understanding the requirements for providers paid with Medicaid funds.**

21 **(c) Providing person-centered care.**

22 **(d) Understanding and addressing the physical and emotional needs of the individual who**  
23 **is receiving care.**

24 **(e) Managing medications.**

25 **(f) Providing personal care and assistance with activities of daily living.**

26 **(3) The training provided in accordance with this section must be geographically acces-**  
27 **sible in all areas of this state and culturally appropriate for workers of all language abilities.**

28 **(4) The department shall tailor the training provided under this section to each worker**  
29 **type, including workers who are relatives of the individuals receiving care, workers who**  
30 **provide respite care, experienced workers and new workers.**

**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 (5) The department shall consult with the Developmental Disabilities and Mental Health  
 2 Committee, unions representing home care workers and personal support workers and other  
 3 stakeholders in the adoption of rules to carry out the provisions of this section.

4 **SECTION 3. The Home Care Commission, in cooperation with the Department of Human**  
 5 **Services, shall maximize all sources of federal funding that is available to pay for the train-**  
 6 **ing described in section 2 of this 2018 Act.**

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

8 410.600. As used in ORS 410.595 to 410.625:

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

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

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

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

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

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

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

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

31 (7) “Home care registry” means the registry described in ORS 410.604 [(1)(d)] (1)(e).

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

35 (9) “Home care worker” means **a person**:

36 [(a) A person:]

37 [(A)] (a)(A) Who is hired or selected by an elderly person or a person with a physical disability  
 38 or by a parent or guardian of an elderly person or a person with a physical disability;

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

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

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

44 [(b) A personal support worker; or]

45 [(c)] (b) [A person] Who provides home care services to private payers through the program

1 described in ORS 410.605.

2 (10) "Payment rates" means the cost to a private payer to purchase home care services through  
3 the program described in ORS 410.605.

4 (11) "Person with a disability" means a person with a physical disability, developmental disa-  
5 bility or mental illness.

6 (12) "Personal support worker" means a person:

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

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

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

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

14 (13) "Private pay home care worker" means a home care worker who provides home care ser-  
15 vices purchased from the commission by a private payer through the program described in ORS  
16 410.605.

17 (14)(a) "Private payer" means an individual who purchases from the commission home care ser-  
18 vices that are not otherwise covered by the medical assistance program.

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

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

24 (a) Medication and oxygen management;

25 (b) Transportation;

26 (c) Meal preparation;

27 (d) Shopping; and

28 (e) Client-focused general household work.

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

33 **SECTION 5.** ORS 410.603 is amended to read:

34 410.603. (1) The Home Care Commission shall create a Developmental Disabilities and Mental  
35 Health Committee.

36 (2) The committee shall provide information and make recommendations to the commission **and**  
37 **to the Department of Human Services** on:

38 (a) Methods of improving the quality of services available to persons with developmental disa-  
39 bilities or mental illnesses and the family members of persons with developmental disabilities or  
40 mental illnesses;

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

44 (c) All the duties and functions under ORS 410.595 to 410.625 as those duties and functions  
45 pertain to persons with developmental disabilities or mental illnesses and the family members of

1 persons with developmental disabilities or mental illnesses, including but not limited to:

2 (A) Qualifications for personal support workers;

3 (B) Registration of personal support workers;

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

5 (D) Training opportunities for personal support workers **including, but not limited to, the**  
6 **training described in section 2 of this 2018 Act;** and

7 (E) Collective bargaining.

8 (3) The commission **and the department** shall consider the recommendations of the committee.  
9 When the commission **or the department** does not follow the recommendations of the committee,  
10 the commission **or the department** shall inform the committee of the reasons for not following the  
11 recommendations.

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

14 (a) Consumer of services, activities or purchases available to persons with developmental disa-  
15 bilities;

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

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

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

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

20 (f) Personal support worker;

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

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

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 **and personal support workers**, with the  
28 advice and consent of the Department of Human Services, to ensure the effective delivery of home  
29 care services by a qualified, committed, experienced and well-trained [*home care*] workforce;

30 (b) Conducting orientation sessions for home care workers **and personal support workers**;

31 (c) [*Establishing training requirements for home care workers, including personal support workers,*  
32 *as the commission deems appropriate, and providing*] **Ensuring** training opportunities for home care  
33 workers and **personal support workers in accordance with section 2 of this 2018 Act;**

34 (d) **Providing training opportunities to** elderly persons and persons with disabilities who em-  
35 ploy home care workers or personal support workers;

36 [(d)] (e) Establishing the home care registry and maintaining the registry with qualified home  
37 care workers **and personal support workers**;

38 [(e)] (f) Providing routine, emergency and respite referrals of home care workers **and personal**  
39 **support workers**;

40 [(f)] (g) Entering into contracts with public and private organizations and individuals for the  
41 purpose of obtaining or developing training materials and curriculum or other services as may be  
42 needed by the commission;

43 [(g)] (h) Establishing occupational health and safety standards for home care workers **and per-**  
44 **sonal support workers**, in accordance with ORS 654.003 (3), and informing home care workers **and**  
45 **personal support workers** of the standards; and

1        [(h)] (i) Working on its own, if resources are available, or cooperatively with area agencies and  
 2 state and local agencies to accomplish the duties listed in paragraphs (a) to [(g)] (h) of this sub-  
 3 section.

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

10        (A) Entering into contracts or agreements; and

11        (B) Taking reasonable or necessary actions related to the commission's role as employer of re-  
 12 cord for home care workers **and personal support workers** under ORS 410.612.

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

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

18        (a) Improving the quality of service delivered by home care workers **and personal support**  
 19 **workers;**

20        (b) Ensuring adequate hours of service are provided to elderly persons and persons with disa-  
 21 bilities by home care workers **and personal support workers;** and

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

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

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

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

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

43        **SECTION 7.** ORS 124.050, as operative until July 1, 2018, is amended to read:

44        124.050. As used in ORS 124.050 to 124.095:

45        (1) "Abuse" means one or more of the following:

1 (a) Any physical injury to an elderly person caused by other than accidental means, or which  
 2 appears to be at variance with the explanation given of the injury.

3 (b) Neglect.

4 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal  
 5 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

6 (d) Willful infliction of physical pain or injury upon an elderly person.

7 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,  
 8 163.465, 163.467 or 163.525.

9 (f) Verbal abuse.

10 (g) Financial exploitation.

11 (h) Sexual abuse.

12 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline  
 13 the person.

14 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of  
 15 restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities  
 16 that are consistent with an approved treatment plan or in connection with a court order.

17 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-  
 18 visions of ORS 441.640 to 441.665.

19 (3) "Facility" means:

20 (a) A long term care facility as that term is defined in ORS 442.015.

21 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an  
 22 assisted living facility.

23 (c) An adult foster home as that term is defined in ORS 443.705.

24 (4) "Financial exploitation" means:

25 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an  
 26 elderly person or a person with a disability.

27 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully  
 28 take or appropriate money or property of the person if the person would reasonably believe that the  
 29 threat conveyed would be carried out.

30 (c) Misappropriating, misusing or transferring without authorization any money from any ac-  
 31 count held jointly or singly by an elderly person or a person with a disability.

32 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-  
 33 tively for the support and maintenance of the person.

34 (5) "Intimidation" means compelling or deterring conduct by threat.

35 (6) "Law enforcement agency" means:

36 (a) Any city or municipal police department.

37 (b) Any county sheriff's office.

38 (c) The Oregon State Police.

39 (d) Any district attorney.

40 (e) A police department established by a university under ORS 352.121 or 353.125.

41 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the  
 42 health or safety of an elderly person.

43 (8) "Person with a disability" means a person described in:

44 (a) ORS 410.040 (7); or

45 (b) ORS 410.715.

- 1 (9) "Public or private official" means:
- 2 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
- 3 chiropractor, including any intern or resident.
- 4 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 5 or employee of an in-home health service.
- 6 (c) Employee of the Department of Human Services or community developmental disabilities
- 7 program.
- 8 (d) Employee of the Oregon Health Authority, local health department or community mental
- 9 health program.
- 10 (e) Peace officer.
- 11 (f) Member of the clergy.
- 12 (g) Regulated social worker.
- 13 (h) Physical, speech or occupational therapist.
- 14 (i) Senior center employee.
- 15 (j) Information and referral or outreach worker.
- 16 (k) Licensed professional counselor or licensed marriage and family therapist.
- 17 (L) Member of the Legislative Assembly.
- 18 (m) Firefighter or emergency medical services provider.
- 19 (n) Psychologist.
- 20 (o) Provider of adult foster care or an employee of the provider.
- 21 (p) Audiologist.
- 22 (q) Speech-language pathologist.
- 23 (r) Attorney.
- 24 (s) Dentist.
- 25 (t) Optometrist.
- 26 (u) Chiropractor.
- 27 (v) Personal support worker, as defined [*by rule adopted by the Home Care Commission*] **in ORS**
- 28 **410.600.**
- 29 (w) Home care worker, as defined in ORS 410.600.
- 30 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
- 31 medical services, assistance with bathing or personal hygiene or any other service essential to the
- 32 well-being of an elderly person.
- 33 (11)(a) "Sexual abuse" means:
- 34 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
- 35 consenting to a sexual act under ORS 163.315;
- 36 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
- 37 pervasive exposure to sexually explicit material or language;
- 38 (C) Sexual exploitation;
- 39 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
- 40 son served by the facility or caregiver; or
- 41 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 42 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:
- 43 (A) An employee of a facility who is also the spouse of the elderly person; or
- 44 (B) A paid caregiver.
- 45 (12) "Sexual contact" has the meaning given that term in ORS 163.305.

1 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly  
2 person or a person with a disability through the use of:

3 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

4 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate  
5 sexual comments.

6 **SECTION 8.** ORS 124.050 is amended to read:

7 124.050. As used in ORS 124.050 to 124.095:

8 (1) "Abuse" means one or more of the following:

9 (a) Any physical injury to an elderly person caused by other than accidental means, or which  
10 appears to be at variance with the explanation given of the injury.

11 (b) Neglect.

12 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal  
13 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

14 (d) Willful infliction of physical pain or injury upon an elderly person.

15 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,  
16 163.465, 163.467 or 163.525.

17 (f) Verbal abuse.

18 (g) Financial exploitation.

19 (h) Sexual abuse.

20 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline  
21 the person.

22 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of  
23 restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities  
24 that are consistent with an approved treatment plan or in connection with a court order.

25 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-  
26 visions of ORS 441.640 to 441.665.

27 (3) "Facility" means:

28 (a) A long term care facility as that term is defined in ORS 442.015.

29 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an  
30 assisted living facility.

31 (c) An adult foster home as that term is defined in ORS 443.705.

32 (4) "Financial exploitation" means:

33 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an  
34 elderly person or a person with a disability.

35 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully  
36 take or appropriate money or property of the person if the person would reasonably believe that the  
37 threat conveyed would be carried out.

38 (c) Misappropriating, misusing or transferring without authorization any money from any ac-  
39 count held jointly or singly by an elderly person or a person with a disability.

40 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-  
41 tively for the support and maintenance of the person.

42 (5) "Intimidation" means compelling or deterring conduct by threat.

43 (6) "Law enforcement agency" means:

44 (a) Any city or municipal police department.

45 (b) Any county sheriff's office.



- 1 (c) The Oregon State Police.
- 2 (d) Any district attorney.
- 3 (e) A police department established by a university under ORS 352.121 or 353.125.
- 4 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the  
5 health or safety of an elderly person.
- 6 (8) "Person with a disability" means a person described in:
- 7 (a) ORS 410.040 (7); or
- 8 (b) ORS 410.715.
- 9 (9) "Public or private official" means:
- 10 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or  
11 chiropractor, including any intern or resident.
- 12 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide  
13 or employee of an in-home health service.
- 14 (c) Employee of the Department of Human Services or community developmental disabilities  
15 program.
- 16 (d) Employee of the Oregon Health Authority, local health department or community mental  
17 health program.
- 18 (e) Peace officer.
- 19 (f) Member of the clergy.
- 20 (g) Regulated social worker.
- 21 (h) Physical, speech or occupational therapist.
- 22 (i) Senior center employee.
- 23 (j) Information and referral or outreach worker.
- 24 (k) Licensed professional counselor or licensed marriage and family therapist.
- 25 (L) Member of the Legislative Assembly.
- 26 (m) Firefighter or emergency medical services provider.
- 27 (n) Psychologist.
- 28 (o) Provider of adult foster care or an employee of the provider.
- 29 (p) Audiologist.
- 30 (q) Speech-language pathologist.
- 31 (r) Attorney.
- 32 (s) Dentist.
- 33 (t) Optometrist.
- 34 (u) Chiropractor.
- 35 (v) Personal support worker, as defined [*by rule adopted by the Home Care Commission*] **in ORS**  
36 **410.600.**
- 37 (w) Home care worker, as defined in ORS 410.600.
- 38 (x) Referral agent, as defined in ORS 443.370.
- 39 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,  
40 medical services, assistance with bathing or personal hygiene or any other service essential to the  
41 well-being of an elderly person.
- 42 (11)(a) "Sexual abuse" means:
- 43 (A) Sexual contact with an elderly person who does not consent or is considered incapable of  
44 consenting to a sexual act under ORS 163.315;
- 45 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or

1 pervasive exposure to sexually explicit material or language;

2 (C) Sexual exploitation;

3 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-  
4 son served by the facility or caregiver; or

5 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.

6 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:

7 (A) An employee of a facility who is also the spouse of the elderly person; or

8 (B) A paid caregiver.

9 (12) "Sexual contact" has the meaning given that term in ORS 163.305.

10 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly  
11 person or a person with a disability through the use of:

12 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

13 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate  
14 sexual comments.

15 **SECTION 9.** ORS 183.459 is amended to read:

16 183.459. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, a home care worker **or personal sup-**  
17 **port worker**, as defined in ORS 410.600, who is a party in a contested case hearing conducted by  
18 the Department of Human Services may be represented in the hearing by a labor union represen-  
19 tative.

20 (2) The hearing officer at a contested case hearing in which a labor union representative ap-  
21 pears under the provisions of this section shall allow the representative to present evidence, exam-  
22 ine and cross-examine witnesses and make arguments relating to the:

23 (a) Application of statutes and rules to the facts in the contested case;

24 (b) Actions taken by the agency in the past in similar situations;

25 (c) Literal meaning of the statutes or rules at issue in the contested case;

26 (d) Admissibility of evidence; and

27 (e) Proper procedures to be used in the contested case hearing.

28 **SECTION 10.** ORS 192.365 is amended to read:

29 192.365. (1) Upon compliance with ORS 192.363, a public body that is the custodian of or is  
30 otherwise in possession of the following information pertaining to a home care worker **or personal**  
31 **support worker** as defined in ORS 410.600, an operator of a child care facility as defined in ORS  
32 329A.250, an exempt family child care provider as defined in ORS 329A.430 or an operator of an  
33 adult foster home as defined in ORS 443.705 shall disclose that information in response to a request  
34 to inspect public records under ORS 192.311 to 192.478:

35 (a) Residential address and telephone numbers;

36 (b) Personal electronic mail addresses and personal cellular telephone numbers;

37 (c) Social Security numbers and employer-issued identification card numbers; and

38 (d) Emergency contact information.

39 (2) Subsection (1) of this section does not apply to the Judicial Department or the Department  
40 of Transportation or to any records in the custody of the Judicial Department or the Department  
41 of Transportation.

42 **SECTION 11.** ORS 410.596 is amended to read:

43 410.596. (1) The Home Care Commission shall adopt a statewide plan to:

44 (a) Increase participation in the home care registry maintained by the commission under ORS  
45 410.604;

1 (b) Increase the number of home care workers **and personal support workers** in this state in  
2 order to meet the need that will arise with the implementation of the Fair Labor Standards Act;

3 (c) Continue the commission's work to create a career ladder for home care workers **and per-**  
4 **sonal support workers** so that they may become greater skilled and gain certifications from the  
5 commission to provide advanced or extensive medical or behavioral health services and support; and

6 (d) Continue in-person home care worker **and personal support worker** orientation sessions in  
7 each geographic region of this state.

8 (2) The plan must include an outreach and marketing strategy to recruit home care workers **and**  
9 **personal support workers** to provide home care services and support to individuals who require  
10 higher levels of services and support.

11 (3) The commission shall contract with a public or private entity with appropriate expertise to  
12 recommend the design for the statewide plan described in this section.

13 **SECTION 12.** ORS 410.606 is amended to read:

14 410.606. (1)(a) The Department of Human Services, an area agency, other public agency or sup-  
15 port services brokerage shall provide to an individual seeking a home care worker **or a personal**  
16 **support worker** names of qualified individuals, in the appropriate geographic area, who have been  
17 placed on the home care registry.

18 (b) The Home Care Commission may adopt criteria for referrals in order to ensure the effective  
19 delivery of home care services from qualified, committed, experienced and well-trained home care  
20 workers **and personal support workers** and to ensure that, for private pay home care workers, the  
21 requirements of ORS 410.605 are met.

22 (2) To facilitate the development and maintenance of the home care registry and any training  
23 opportunity offered by the commission, and to meet the requirements of providing workers' com-  
24 pensation, the department, the Oregon Health Authority, area agencies, other public agencies and  
25 support services brokerages shall report to the commission:

26 (a) The name and address of any home care worker **or personal support worker**:

27 (A) Who provides home care services;

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

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

30 (b) The name of the program under which the home care worker **or personal support worker**  
31 provides the home care services;

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

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

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

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

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

40 (4) If the commission, with the assistance of the department, determines that the supply of home  
41 care workers is inadequate to meet the needs of medical assistance recipients who qualify for home  
42 care services, the commission may suspend or reduce the number of referrals of home care workers  
43 under the program described in ORS 410.605.

44 **SECTION 13.** ORS 410.607 is amended to read:

45 410.607. (1) The Home Care Commission shall convene a subcommittee of the commission to de-

1 fine and establish classifications of home care workers **and personal support workers**. The clas-  
2 sifications shall be based on the [*home care*] worker's **training**, level of skill and the scope of the  
3 services provided by the worker.

4 (2) The commission shall establish payment rates for each classification of home care worker  
5 participating in the program described in ORS 410.605.

6 **SECTION 14.** ORS 410.608 is amended to read:

7 410.608. (1) An elderly person or a person with a disability who hires a home care worker **or**  
8 **personal support worker** has the right to select the home care worker **or personal support**  
9 **worker**, including a family member.

10 (2) An elderly person or a person with a disability who hires a home care worker **or personal**  
11 **support worker** has the right to terminate the employment of the home care worker **or personal**  
12 **support worker** at any time and for any reason.

13 (3) The Department of Human Services shall determine the eligibility of an elderly person or a  
14 person with a disability to receive home care services under the Medicaid program and state-funded  
15 long term care services.

16 **SECTION 15.** ORS 410.612 is amended to read:

17 410.612. (1) For purposes of collective bargaining under ORS 243.650 to 243.782, the Home Care  
18 Commission is the employer of record for home care workers **and personal support workers**.

19 (2) Except as provided in ORS 410.614 and 410.619, home care workers **and personal support**  
20 **workers** may not be considered to be employees of the State of Oregon, an area agency or other  
21 public agency.

22 (3) The Oregon Department of Administrative Services shall represent the commission in col-  
23 lective bargaining negotiations with the certified or recognized exclusive representatives of all ap-  
24 propriate bargaining units of home care workers **and personal support workers**. The department  
25 is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the  
26 commission and the Department of Human Services.

27 **SECTION 16.** ORS 410.614 is amended to read:

28 410.614. (1) Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be  
29 considered a public employer and home care workers **and personal support workers** shall be con-  
30 sidered public employees governed by ORS 243.650 to 243.782.

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

37 (3) Home care workers **and personal support workers** are not public employees with respect  
38 to the Public Employees Retirement System, the Oregon Public Service Retirement Plan or the  
39 Public Employees' Benefit Board.

40 (4) Home care workers **and personal support workers** do not have the right to strike.

41 **SECTION 17.** ORS 410.619 is amended to read:

42 410.619. (1) A home care worker **or personal support worker** who is not otherwise employed  
43 by the Home Care Commission, the Department of Human Services, the Oregon Health Authority,  
44 an area agency or a support services brokerage shall not be deemed to be an employee of the state,  
45 whether or not the state selects the home care worker **or personal support worker** for employment

1 or exercises any direction or control over the home care worker **or personal support worker**, for  
 2 the purpose of the state's liability for the [*home care worker's*] actions **of the home care worker**  
 3 **or personal support worker**.

4 (2) The state shall be deemed an employer of home care workers **or personal support workers**  
 5 for the purposes of:

6 (a) ORS 410.605, 410.606, 410.612 and 410.614; and

7 (b) ORS chapter 657, except as provided in ORS 657.730 (4).

8 **SECTION 18.** ORS 410.625 is amended to read:

9 410.625. (1) In carrying out its duties under ORS 410.595 to 410.625, the Home Care Commission  
 10 may:

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

13 (b) Provide nonemployee compensation to home care workers **and personal support workers**  
 14 or prospective home care workers **and personal support workers** who attend training sessions  
 15 approved or sponsored by the commission;

16 (c) On behalf of an elderly person or a person with a disability who hires a home care worker  
 17 **or personal support worker** through the home care registry, elect workers' compensation coverage  
 18 or arrange for health insurance coverage, including group coverage, for the person's home care  
 19 workers **or personal support workers**; and

20 (d) As prescribed by rule, charge fees to and collect fees from persons who attend training ses-  
 21 sions sponsored by the commission and who currently are not home care workers **or personal**  
 22 **support workers**.

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

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

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

30 **SECTION 19.** ORS 410.631 is amended to read:

31 410.631. Notwithstanding ORS 653.295, a noncompetition agreement as defined in ORS 653.295  
 32 made in the context of an employment relationship or contract with a home care worker **or per-**  
 33 **sonal support worker**, as defined in ORS 410.600, is voidable by the home care worker **or personal**  
 34 **support worker** and may not be enforced by a court of this state.

35 **SECTION 20.** ORS 410.632 is amended to read:

36 410.632. A covenant between an employee and an employer not to solicit employees of the em-  
 37 ployer or solicit or transact business with customers of the employer made in the context of an  
 38 employment relationship or contract with a home care worker **or personal support worker**, as  
 39 defined in ORS 410.600, is voidable by the home care worker **or personal support worker** and may  
 40 not be enforced by a court of this state.

41 **SECTION 21.** ORS 419B.005 is amended to read:

42 419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

43 (1)(a) "Abuse" means:

44 (A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child  
 45 which has been caused by other than accidental means, including any injury which appears to be

1 at variance with the explanation given of the injury.

2 (B) Any mental injury to a child, which shall include only observable and substantial impairment  
 3 of the child’s mental or psychological ability to function caused by cruelty to the child, with due  
 4 regard to the culture of the child.

5 (C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual pene-  
 6 tration and incest, as those acts are described in ORS chapter 163.

7 (D) Sexual abuse, as described in ORS chapter 163.

8 (E) Sexual exploitation, including but not limited to:

9 (i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any  
 10 other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage  
 11 in the performing for people to observe or the photographing, filming, tape recording or other ex-  
 12 hibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or  
 13 described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-  
 14 cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or  
 15 which is designed to serve educational or other legitimate purposes; and

16 (ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution as described in  
 17 ORS 167.007 or a commercial sex act as defined in ORS 163.266, to purchase sex with a minor as  
 18 described in ORS 163.413 or to engage in commercial sexual solicitation as described in ORS 167.008.

19 (F) Negligent treatment or maltreatment of a child, including but not limited to the failure to  
 20 provide adequate food, clothing, shelter or medical care that is likely to endanger the health or  
 21 welfare of the child.

22 (G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm  
 23 to the child’s health or welfare.

24 (H) Buying or selling a person under 18 years of age as described in ORS 163.537.

25 (I) Permitting a person under 18 years of age to enter or remain in or upon premises where  
 26 methamphetamines are being manufactured.

27 (J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, or to the unlawful  
 28 manufacturing of a cannabinoid extract, as defined in ORS 475B.015, that subjects a child to a sub-  
 29 stantial risk of harm to the child’s health or safety.

30 (b) “Abuse” does not include reasonable discipline unless the discipline results in one of the  
 31 conditions described in paragraph (a) of this subsection.

32 (2) “Child” means an unmarried person who:

33 (a) Is under 18 years of age; or

34 (b) Is under 21 years of age and residing in or receiving care or services at a child-caring  
 35 agency as that term is defined in ORS 418.205.

36 (3) “Higher education institution” means:

37 (a) A community college as defined in ORS 341.005;

38 (b) A public university listed in ORS 352.002;

39 (c) The Oregon Health and Science University; and

40 (d) A private institution of higher education located in Oregon.

41 (4) “Law enforcement agency” means:

42 (a) A city or municipal police department.

43 (b) A county sheriff’s office.

44 (c) The Oregon State Police.

45 (d) A police department established by a university under ORS 352.121 or 353.125.

- 1 (e) A county juvenile department.
- 2 (5) "Public or private official" means:
- 3 (a) Physician or physician assistant licensed under ORS chapter 677 or naturopathic physician,
- 4 including any intern or resident.
- 5 (b) Dentist.
- 6 (c) School employee, including an employee of a higher education institution.
- 7 (d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 8 or employee of an in-home health service.
- 9 (e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning
- 10 Division, Youth Development Division, Office of Child Care, the Oregon Youth Authority, a local
- 11 health department, a community mental health program, a community developmental disabilities
- 12 program, a county juvenile department, a child-caring agency as that term is defined in ORS 418.205
- 13 or an alcohol and drug treatment program.
- 14 (f) Peace officer.
- 15 (g) Psychologist.
- 16 (h) Member of the clergy.
- 17 (i) Regulated social worker.
- 18 (j) Optometrist.
- 19 (k) Chiropractor.
- 20 (L) Certified provider of foster care, or an employee thereof.
- 21 (m) Attorney.
- 22 (n) Licensed professional counselor.
- 23 (o) Licensed marriage and family therapist.
- 24 (p) Firefighter or emergency medical services provider.
- 25 (q) A court appointed special advocate, as defined in ORS 419A.004.
- 26 (r) A child care provider registered or certified under ORS 329A.030 and 329A.250 to 329A.450.
- 27 (s) Member of the Legislative Assembly.
- 28 (t) Physical, speech or occupational therapist.
- 29 (u) Audiologist.
- 30 (v) Speech-language pathologist.
- 31 (w) Employee of the Teacher Standards and Practices Commission directly involved in investi-
- 32 gations or discipline by the commission.
- 33 (x) Pharmacist.
- 34 (y) An operator of a preschool recorded program under ORS 329A.255.
- 35 (z) An operator of a school-age recorded program under ORS 329A.257.
- 36 (aa) Employee of a private agency or organization facilitating the provision of respite services,
- 37 as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS
- 38 109.056.
- 39 (bb) Employee of a public or private organization providing child-related services or activities:
- 40 (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day
- 41 camps, survival camps or groups, centers or camps that are operated under the guidance, super-
- 42 vision or auspices of religious, public or private educational systems or community service organ-
- 43 izations; and
- 44 (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide
- 45 confidential, direct services to victims of domestic violence, sexual assault, stalking or human traf-

1   ficking.

2       (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete,  
3 if compensated and if the athlete is a child.

4       (dd) Personal support worker, as defined [*by rule adopted by the Home Care Commission*] in **ORS**  
5 **410.600**.

6       (ee) Home care worker, as defined in ORS 410.600.

7       **SECTION 22.** ORS 430.735 is amended to read:

8       430.735. As used in ORS 430.735 to 430.765:

9       (1) "Abuse" means one or more of the following:

10      (a) Abandonment, including desertion or willful forsaking of a person with a developmental dis-  
11 ability or the withdrawal or neglect of duties and obligations owed a person with a developmental  
12 disability by a caregiver or other person.

13      (b) Any physical injury to an adult caused by other than accidental means, or that appears to  
14 be at variance with the explanation given of the injury.

15      (c) Willful infliction of physical pain or injury upon an adult.

16      (d) Sexual abuse of an adult.

17      (e) Neglect.

18      (f) Verbal abuse of a person with a developmental disability.

19      (g) Financial exploitation of a person with a developmental disability.

20      (h) Involuntary seclusion of a person with a developmental disability for the convenience of the  
21 caregiver or to discipline the person.

22      (i) A wrongful use of a physical or chemical restraint upon a person with a developmental dis-  
23 ability, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677,  
24 physician assistant licensed under ORS 677.505 to 677.525, naturopathic physician licensed under  
25 ORS chapter 685 or nurse practitioner licensed under ORS 678.375 to 678.390 and any treatment  
26 activities that are consistent with an approved treatment plan or in connection with a court order.

27      (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,  
28 163.465 or 163.467.

29      (k) Any death of an adult caused by other than accidental or natural means.

30      (2) "Adult" means a person 18 years of age or older with:

31      (a) A developmental disability who is currently receiving services from a community program  
32 or facility or was previously determined eligible for services as an adult by a community program  
33 or facility; or

34      (b) A mental illness who is receiving services from a community program or facility.

35      (3) "Adult protective services" means the necessary actions taken to prevent abuse or exploi-  
36 tation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and  
37 funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to  
38 protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides  
39 for the greatest degree of independence.

40      (4) "Caregiver" means an individual, whether paid or unpaid, or a facility that has assumed re-  
41 sponsibility for all or a portion of the care of an adult as a result of a contract or agreement.

42      (5) "Community program" means a community mental health program or a community develop-  
43 mental disabilities program as established in ORS 430.610 to 430.695.

44      (6) "Facility" means a residential treatment home or facility, residential care facility, adult fos-  
45 ter home, residential training home or facility or crisis respite facility.



- 1 (7) “Financial exploitation” means:  
2 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a  
3 person with a developmental disability.  
4 (b) Alarming a person with a developmental disability by conveying a threat to wrongfully take  
5 or appropriate money or property of the person if the person would reasonably believe that the  
6 threat conveyed would be carried out.  
7 (c) Misappropriating, misusing or transferring without authorization any money from any ac-  
8 count held jointly or singly by a person with a developmental disability.  
9 (d) Failing to use the income or assets of a person with a developmental disability effectively  
10 for the support and maintenance of the person.  
11 (8) “Intimidation” means compelling or deterring conduct by threat.  
12 (9) “Law enforcement agency” means:  
13 (a) Any city or municipal police department;  
14 (b) A police department established by a university under ORS 352.121 or 353.125;  
15 (c) Any county sheriff’s office;  
16 (d) The Oregon State Police; or  
17 (e) Any district attorney.  
18 (10) “Neglect” means:  
19 (a) Failure to provide the care, supervision or services necessary to maintain the physical and  
20 mental health of a person with a developmental disability that may result in physical harm or sig-  
21 nificant emotional harm to the person;  
22 (b) The failure of a caregiver to make a reasonable effort to protect a person with a develop-  
23 mental disability from abuse; or  
24 (c) Withholding of services necessary to maintain the health and well-being of an adult that  
25 leads to physical harm of an adult.  
26 (11) “Person with a developmental disability” means a person described in subsection (2)(a) of  
27 this section.  
28 (12) “Public or private official” means:  
29 (a) Physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505  
30 to 677.525, naturopathic physician, psychologist or chiropractor, including any intern or resident;  
31 (b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an  
32 in-home health service;  
33 (c) Employee of the Department of Human Services or Oregon Health Authority, local health  
34 department, community mental health program or community developmental disabilities program or  
35 private agency contracting with a public body to provide any community mental health service;  
36 (d) Peace officer;  
37 (e) Member of the clergy;  
38 (f) Regulated social worker;  
39 (g) Physical, speech or occupational therapist;  
40 (h) Information and referral, outreach or crisis worker;  
41 (i) Attorney;  
42 (j) Licensed professional counselor or licensed marriage and family therapist;  
43 (k) Any public official;  
44 (L) Firefighter or emergency medical services provider;  
45 (m) Member of the Legislative Assembly;

1 (n) Personal support worker, as defined [*by rule adopted by the Home Care Commission*] **in ORS**  
 2 **410.600**; or

3 (o) Home care worker, as defined in ORS 410.600.

4 (13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,  
 5 medical services, assistance with bathing or personal hygiene or any other service essential to the  
 6 well-being of an adult.

7 (14)(a) "Sexual abuse" means:

8 (A) Sexual contact with a nonconsenting adult or with an adult considered incapable of con-  
 9 senting to a sexual act under ORS 163.315;

10 (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-  
 11 rial or language;

12 (C) Any sexual contact between an employee of a facility or paid caregiver and an adult served  
 13 by the facility or caregiver;

14 (D) Any sexual contact between a person with a developmental disability and a relative of the  
 15 person with a developmental disability other than a spouse; or

16 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.

17 (b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid  
 18 caregiver who is the spouse of the adult.

19 (15) "Sexual contact" has the meaning given that term in ORS 163.305.

20 (16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with  
 21 a developmental disability through the use of:

22 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

23 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate  
 24 sexual comments.

25 **SECTION 23.** ORS 441.630 is amended to read:

26 441.630. As used in ORS 441.630 to 441.680:

27 (1) "Abuse" means:

28 (a) Any physical injury to a resident of a long term care facility which has been caused by other  
 29 than accidental means.

30 (b) Failure to provide basic care or services, which failure results in physical harm or unrea-  
 31 sonable discomfort or serious loss of human dignity.

32 (c) Sexual contact with a resident caused by an employee, agent or other resident of a long term  
 33 care facility by force, threat, duress or coercion.

34 (d) Illegal or improper use of a resident's resources for the personal profit or gain of another  
 35 person.

36 (e) Verbal or mental abuse as prohibited by federal law.

37 (f) Corporal punishment.

38 (g) Involuntary seclusion for convenience or discipline.

39 (2) "Abuse complaint" means any oral or written communication to the department, one of its  
 40 agents or a law enforcement agency alleging abuse.

41 (3) "Department" means the Department of Human Services or a designee of the department.

42 (4) "Facility" means a long term care facility, as defined in ORS 442.015.

43 (5) "Law enforcement agency" means:

44 (a) Any city or municipal police department.

45 (b) A police department established by a university under ORS 352.121 or 353.125.

- 1 (c) Any county sheriff's office.
- 2 (d) The Oregon State Police.
- 3 (e) Any district attorney.
- 4 (6) "Public or private official" means:
- 5 (a) Physician, including any intern or resident.
- 6 (b) Licensed practical nurse or registered nurse.
- 7 (c) Employee of the Department of Human Services, a community developmental disabilities
- 8 program or a long term care facility or person who contracts to provide services to a long term care
- 9 facility.
- 10 (d) Employee of the Oregon Health Authority, local health department or community mental
- 11 health program.
- 12 (e) Peace officer.
- 13 (f) Member of the clergy.
- 14 (g) Regulated social worker.
- 15 (h) Physical, speech and occupational therapists.
- 16 (i) Legal counsel for a resident or guardian or family member of the resident.
- 17 (j) Member of the Legislative Assembly.
- 18 (k) Personal support worker, as defined [*by rule adopted by the Home Care Commission*] **in ORS**
- 19 **410.600.**
- 20 (L) Home care worker, as defined in ORS 410.600.

21 **SECTION 24.** ORS 443.004 is amended to read:

22 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete

23 a criminal records check under ORS 181A.195 on:

- 24 (a) An employee of a residential facility or an adult foster home;
  - 25 (b) Any individual who is paid directly or indirectly with public funds who has or will have
  - 26 contact with a recipient of support services or a resident of an adult foster home or a residential
  - 27 facility; and
  - 28 (c) A home care worker **or personal support worker** registering with the Home Care Com-
  - 29 mission or renewing a registration with the Home Care Commission.
- 30 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
- 31 tracting with an individual and before allowing an individual to volunteer to provide services on
- 32 behalf of the home health agency, if the individual will have direct contact with a patient of the
- 33 home health agency.
- 34 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
  - 35 tracting with an individual and before allowing an individual to volunteer to provide services on
  - 36 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
  - 37 home care agency.
  - 38 (c) The authority shall prescribe by rule the process for conducting a criminal background
  - 39 check.
- 40 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
- 41 having contact with a recipient of support services or a resident of a residential facility or an adult
- 42 foster home, of an individual, other than a mental health or substance abuse treatment provider,
- 43 who has been convicted:

- 44 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
- 45 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,

1 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or  
 2 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,  
 3 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

4 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,  
 5 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the  
 6 five years immediately preceding employment in any capacity of an individual, other than a mental  
 7 health or substance abuse treatment provider, having contact with a recipient of support services,  
 8 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-  
 9 dent is 65 years of age or older;

10 (c) Of a crime listed in ORS 163A.005;

11 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
 12 stance;

13 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to  
 14 (d) of this subsection; or

15 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
 16 crime described in paragraphs (a) to (e) of this subsection.

17 (4) If the criminal background check conducted by a home health agency or in-home care agency  
 18 under subsection (2) of this section reveals that the individual who is subject to the criminal back-  
 19 ground check has been convicted of any of the crimes described in subsection (3) of this section, the  
 20 home health agency or in-home care agency may not employ the individual.

21 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-  
 22 pacity having contact with a recipient of support services or a resident of a residential facility or  
 23 an adult foster home, of a mental health or substance abuse treatment provider who has been con-  
 24 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-  
 25 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

26 (6) Upon the request of a mental health or substance abuse treatment provider, the department  
 27 or authority shall maintain a record of the results of any fitness determination made under ORS  
 28 181A.195 (10). The department or authority may disclose the record only to a person the provider  
 29 specifically authorizes, by a written release, to receive the information.

30 (7) If the department or authority has a record of substantiated abuse committed by an employee  
 31 or potential employee of a home health agency, in-home care agency, adult foster home or residen-  
 32 tial facility, regardless of whether criminal charges were filed, the department or authority shall  
 33 notify, in writing, the employer and the employee or potential employee.

34 (8) As used in this section:

35 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

36 (b) "Home care worker" has the meaning given that term in ORS 410.600.

37 (c) "Home health agency" has the meaning given that term in ORS 443.014.

38 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

39 (e) "Mental health or substance abuse treatment provider" means:

40 (A) A peer support specialist;

41 (B) An employee of a residential treatment facility or a residential treatment home that is li-  
 42 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

43 (C) An individual who provides treatment or services for persons with substance use disorders;  
 44 or

45 (D) An individual who provides mental health treatment or services.

(f) “Peer support specialist” has the meaning given that term in ORS 414.025.

**(g) “Personal support worker” has the meaning given that term in ORS 410.600.**

[(g)] **(h) “Residential facility” has the meaning given that term in ORS 443.400.**

**SECTION 25.** ORS 443.006 is amended to read:

443.006. (1) As used in this section:

(a) “Care” has the meaning given that term in ORS 181A.200.

(b) “Facility” means:

(A) A long term care facility as defined in ORS 442.015;

(B) A residential care facility as defined in ORS 443.400, including but not limited to an assisted living facility; and

(C) An adult foster home as defined in ORS 443.705.

(c) “Home care worker” has the meaning given that term in ORS 410.600.

**(d) “Personal support worker” has the meaning given that term in ORS 410.600.**

(2) The Department of Human Services shall augment the department’s existing criminal background check system with a regularly updated registry of all persons who work or are seeking to work to provide care.

(3) The department shall adopt rules designating the persons who may be listed on the registry. The registry must list persons who work or are seeking to work to provide care:

(a) In a facility; or

(b) As a home care worker **or personal support worker.**

(4) The department shall adopt rules establishing:

(a) The information that must be reported by facilities;

(b) The form and frequency of reporting by facilities;

(c) Procedures and standards for the administration of the registry; and

(d) Guidelines and procedures for requests for and release of information from the registry.

**SECTION 26.** ORS 653.601 is amended to read:

653.601. As used in ORS 653.601 to 653.661:

(1)(a) “Employee” means an individual who renders personal services at a fixed rate to an employer if the employer either pays or agrees to pay for personal services or permits the individual to perform personal services.

(b) “Employee” includes, but is not limited to:

(A) An individual who is paid on a piece-rate basis or the basis of the number of operations accomplished or quantity produced or handled;

(B) Individuals paid on an hourly, salary or commission basis;

(C) Individuals for whom withholding is required under ORS 316.162 to 316.221; *and*

(D) Home care workers as defined in ORS 410.600; **and**

**(E) Personal support workers as defined in ORS 410.600.**

(c) “Employee” does not include:

(A) An employee who receives paid sick time under federal law;

(B) An independent contractor;

(C) A participant in a work training program administered under a state or federal assistance program;

(D) A participant in a work-study program that provides students in secondary or post-secondary educational institutions with employment opportunities for financial assistance or vocational training;

1 (E) A railroad worker exempted under the federal Railroad Unemployment Insurance Act; and

2 (F) An individual employed by that individual's parent, spouse or child.

3 (2)(a) "Employer" means any person that employs one or more employees working anywhere in  
4 this state, a political subdivision of the state and any county, city, district, authority, public corpo-  
5 ration or entity, and any instrumentality of a county, city, district, authority, public corporation or  
6 entity, organized and existing under law or charter.

7 (b) "Employer" includes an employer located in a city with a population exceeding 500,000.

8 (c) "Employer" does not include the federal government.

9 (3)(a) "Employer located in a city with a population exceeding 500,000" includes, but is not  
10 limited to, an employer that maintains any office, store, restaurant or establishment in that city.

11 (b) "Employer located in a city with a population exceeding 500,000" does not include an em-  
12 ployer that maintains only a seasonal farm stand or a trailer that is used temporarily on a con-  
13 struction site for office purposes only.

14 (4) "Family member" has the meaning given that term in ORS 659A.150.

15 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection, means to assign and  
16 make available a certain number of hours of sick time to an employee as soon as the employee be-  
17 comes eligible to use sick time and on the first day of the immediately subsequent year without re-  
18 gard to an accrual rate.

19 (b) For employees employed by an employer for less than a full year, "front-load" means to as-  
20 sign and make available to an employee as soon as the employee becomes eligible to use sick time  
21 a number of hours of sick time that is the pro rata percentage of the hours the employee would be  
22 entitled to for an entire year based on the number of hours the employee was actually employed by  
23 the employer for the year.

24 (6) "Paid sick time" means time off:

25 (a) That is provided to an employee by an employer that employs 10 or more employees;

26 (b) That may be used for the purposes specified in ORS 653.616; and

27 (c) That is compensated at the regular rate of pay and without reductions in benefits, including  
28 but not limited to health care benefits, that the employee earns from the employer at the time the  
29 employee uses the paid sick time.

30 (7) "Sick time" means time during which an employee is permitted to be absent from work for  
31 a reason authorized under ORS 653.616 without a reduction in benefits, including but not limited to  
32 health care benefits, that the employee earns from the employer.

33 (8) "Year" includes any consecutive 12-month period, such as a calendar year, a tax year, a  
34 fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of em-  
35 ployment of the employee.

36 **SECTION 27.** ORS 653.646 is amended to read:

37 653.646. (1) The requirements of ORS 653.601 to 653.661 do not apply to an employee:

38 (a) Whose terms and conditions of employment are covered by a collective bargaining agree-  
39 ment;

40 (b) Who is employed through a hiring hall or similar referral system operated by the labor or-  
41 ganization or a third party; and

42 (c) Whose employment-related benefits are provided by a joint multiemployer-employee trust or  
43 benefit plan.

44 (2)(a) The Home Care Commission created under ORS 410.602 shall establish a paid sick time  
45 policy for consumer employed home care workers **and consumer employed personal support**

1 **workers.**

2 (b) A policy for paid sick time for consumer employed home care workers **and consumer em-**  
 3 **ployed personal support workers** implemented by the Home Care Commission that allows an eli-  
 4 gible home care worker **or personal support worker** to accrue and use up to 40 hours of paid time  
 5 off a year, including but not limited to sick time, is deemed to meet the requirements of ORS 653.601  
 6 to 653.661 and is exempt from the provisions of ORS 653.601 (6), 653.606 (5), 653.611, 653.621, 653.626  
 7 and 653.631.

8 (3) As used in this section[,]:

9 (a) “Consumer employed home care worker” has the meaning given the term “home care  
 10 worker” in ORS 410.600.

11 (b) **“Consumer employed personal support worker” has the meaning given the term**  
 12 **“personal support worker” in ORS 410.600.**

13 **SECTION 28.** ORS 656.039 is amended to read:

14 656.039. (1) An employer of one or more persons defined as nonsubject workers or not defined  
 15 as subject workers may elect to make them subject workers. If the employer is or becomes a  
 16 carrier-insured employer, the election shall be made by filing written notice thereof with the insurer  
 17 with a copy to the Director of the Department of Consumer and Business Services. The effective  
 18 date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured em-  
 19 ployer, the election shall be made by filing written notice thereof with the director, the effective  
 20 date of coverage to be the date specified in the notice.

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

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

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

36 (5)(a) The Home Care Commission created by ORS 410.602 shall elect coverage on behalf of  
 37 persons who employ home care workers **or personal support workers** to make home care workers  
 38 **and personal support workers** subject workers.

39 (b) As used in this subsection[,]:

40 (A) “Home care worker” has the meaning given that term in ORS 410.600.

41 (B) **“Personal support worker” has the meaning given that term in ORS 410.600.**

42 **SECTION 29.** ORS 656.268 is amended to read:

43 656.268. (1) One purpose of this chapter is to restore the injured worker as soon as possible and  
 44 as near as possible to a condition of self support and maintenance as an able-bodied worker. The  
 45 insurer or self-insured employer shall close the worker’s claim, as prescribed by the Director of the

1 Department of Consumer and Business Services, and determine the extent of the worker's permanent  
2 disability, provided the worker is not enrolled and actively engaged in training according to rules  
3 adopted by the director pursuant to ORS 656.340 and 656.726, when:

4 (a) The worker has become medically stationary and there is sufficient information to determine  
5 permanent disability;

6 (b) The accepted injury is no longer the major contributing cause of the worker's combined or  
7 consequential condition or conditions pursuant to ORS 656.005 (7). When the claim is closed because  
8 the accepted injury is no longer the major contributing cause of the worker's combined or conse-  
9 quential condition or conditions, and there is sufficient information to determine permanent disabil-  
10 ity, the likely permanent disability that would have been due to the current accepted condition shall  
11 be estimated;

12 (c) Without the approval of the attending physician or nurse practitioner authorized to provide  
13 compensable medical services under ORS 656.245, the worker fails to seek medical treatment for a  
14 period of 30 days or the worker fails to attend a closing examination, unless the worker  
15 affirmatively establishes that such failure is attributable to reasons beyond the worker's control; or

16 (d) An insurer or self-insured employer finds that a worker who has been receiving permanent  
17 total disability benefits has materially improved and is capable of regularly performing work at a  
18 gainful and suitable occupation.

19 (2) If the worker is enrolled and actively engaged in training according to rules adopted pursu-  
20 ant to ORS 656.340 and 656.726, the temporary disability compensation shall be proportionately re-  
21 duced by any sums earned during the training.

22 (3) A copy of all medical reports and reports of vocational rehabilitation agencies or counselors  
23 shall be furnished to the worker, if requested by the worker.

24 (4) Temporary total disability benefits shall continue until whichever of the following events  
25 first occurs:

26 (a) The worker returns to regular or modified employment;

27 (b) The attending physician or nurse practitioner who has authorized temporary disability ben-  
28 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker  
29 is released to return to regular employment;

30 (c) The attending physician or nurse practitioner who has authorized temporary disability ben-  
31 efits for the worker under ORS 656.245 advises the worker and documents in writing that the worker  
32 is released to return to modified employment, such employment is offered in writing to the worker  
33 and the worker fails to begin such employment. However, an offer of modified employment may be  
34 refused by the worker without the termination of temporary total disability benefits if the offer:

35 (A) Requires a commute that is beyond the physical capacity of the worker according to the  
36 worker's attending physician or the nurse practitioner who may authorize temporary disability un-  
37 der ORS 656.245;

38 (B) Is at a work site more than 50 miles one way from where the worker was injured unless the  
39 site is less than 50 miles from the worker's residence or the intent of the parties at the time of hire  
40 or as established by the pattern of employment prior to the injury was that the employer had mul-  
41 tiple or mobile work sites and the worker could be assigned to any such site;

42 (C) Is not with the employer at injury;

43 (D) Is not at a work site of the employer at injury;

44 (E) Is not consistent with the existing written shift change policy or is not consistent with  
45 common practice of the employer at injury or aggravation; or



1 (F) Is not consistent with an existing shift change provision of an applicable collective bar-  
2 gaining agreement;

3 (d) Any other event that causes temporary disability benefits to be lawfully suspended, withheld  
4 or terminated under ORS 656.262 (4) or other provisions of this chapter; or

5 (e) Notwithstanding paragraph (c)(C), (D), (E) and (F) of this subsection, the attending physician  
6 or nurse practitioner who has authorized temporary disability benefits under ORS 656.245 for a home  
7 care worker **or a personal support worker** who has been made a subject worker pursuant to ORS  
8 656.039 advises the home care worker **or personal support worker** and documents in writing that  
9 the home care worker **or personal support worker** is released to return to modified employment,  
10 appropriate modified employment is offered in writing by the Home Care Commission or a designee  
11 of the commission to the home care worker **or personal support worker** for any client of the De-  
12 partment of Human Services who employs a home care worker **or personal support worker** and  
13 the [*home care*] worker fails to begin the employment.

14 (5)(a) Findings by the insurer or self-insured employer regarding the extent of the worker's dis-  
15 ability in closure of the claim shall be pursuant to the standards prescribed by the director.

16 (b) The insurer or self-insured employer shall issue a notice of closure of the claim to the  
17 worker, to the worker's attorney if the worker is represented, and to the director. If the worker is  
18 deceased at the time the notice of closure is issued, the insurer or self-insured employer shall mail  
19 the worker's copy of the notice of closure, addressed to the estate of the worker, to the worker's last  
20 known address and may mail copies of the notice of closure to any known or potential beneficiaries  
21 to the estate of the deceased worker.

22 (c) The notice of closure must inform:

23 (A) The parties, in boldfaced type, of the proper manner in which to proceed if they are dissat-  
24 isfied with the terms of the notice of closure;

25 (B) The worker of:

26 (i) The amount of any further compensation, including permanent disability compensation to be  
27 awarded;

28 (ii) The duration of temporary total or temporary partial disability compensation;

29 (iii) The right of the worker or beneficiaries of the worker who were mailed a copy of the notice  
30 of closure under paragraph (b) of this subsection to request reconsideration by the director under  
31 this section within 60 days of the date of the notice of closure;

32 (iv) The right of beneficiaries who were not mailed a copy of the notice of closure under para-  
33 graph (b) of this subsection to request reconsideration by the director under this section within one  
34 year of the date the notice of closure was mailed to the estate of the worker under paragraph (b)  
35 of this subsection;

36 (v) The right of the insurer or self-insured employer to request reconsideration by the director  
37 under this section within seven days of the date of the notice of closure;

38 (vi) The aggravation rights; and

39 (vii) Any other information as the director may require; and

40 (C) Any beneficiaries of death benefits to which they may be entitled pursuant to ORS 656.204  
41 and 656.208.

42 (d) If the insurer or self-insured employer has not issued a notice of closure, the worker may  
43 request closure. Within 10 days of receipt of a written request from the worker, the insurer or  
44 self-insured employer shall issue a notice of closure if the requirements of this section have been  
45 met or a notice of refusal to close if the requirements of this section have not been met. A notice

1 of refusal to close shall advise the worker of:

2 (A) The decision not to close;

3 (B) The right of the worker to request a hearing pursuant to ORS 656.283 within 60 days of the  
4 date of the notice of refusal to close;

5 (C) The right to be represented by an attorney; and

6 (D) Any other information as the director may require.

7 (e) If a worker, a worker's beneficiary, an insurer or a self-insured employer objects to the no-  
8 tice of closure, the objecting party first must request reconsideration by the director under this  
9 section. A worker's request for reconsideration must be made within 60 days of the date of the no-  
10 tice of closure. If the worker is deceased at the time the notice of closure is issued, a request for  
11 reconsideration by a beneficiary of the worker who was mailed a copy of the notice of closure under  
12 paragraph (b) of this subsection must be made within 60 days of the date of the notice of closure.  
13 A request for reconsideration by a beneficiary to the estate of a deceased worker who was not  
14 mailed a copy of the notice of closure under paragraph (b) of this subsection must be made within  
15 one year of the date the notice of closure was mailed to the estate of the worker under paragraph  
16 (b) of this subsection. A request for reconsideration by an insurer or self-insured employer may be  
17 based only on disagreement with the findings used to rate impairment and must be made within  
18 seven days of the date of the notice of closure.

19 (f) If an insurer or self-insured employer has closed a claim or refused to close a claim pursuant  
20 to this section, if the correctness of that notice of closure or refusal to close is at issue in a hearing  
21 on the claim and if a finding is made at the hearing that the notice of closure or refusal to close  
22 was not reasonable, a penalty shall be assessed against the insurer or self-insured employer and paid  
23 to the worker in an amount equal to 25 percent of all compensation determined to be then due the  
24 claimant.

25 (g) If, upon reconsideration of a claim closed by an insurer or self-insured employer, the director  
26 orders an increase by 25 percent or more of the amount of compensation to be paid to the worker  
27 for permanent disability and the worker is found upon reconsideration to be at least 20 percent  
28 permanently disabled, a penalty shall be assessed against the insurer or self-insured employer and  
29 paid to the worker in an amount equal to 25 percent of all compensation determined to be then due  
30 the claimant. If the increase in compensation results from information that the insurer or self-  
31 insured employer demonstrates the insurer or self-insured employer could not reasonably have  
32 known at the time of claim closure, from new information obtained through a medical arbiter ex-  
33 amination or from a determination order issued by the director that addresses the extent of the  
34 worker's permanent disability that is not based on the standards adopted pursuant to ORS 656.726  
35 (4)(f), the penalty shall not be assessed.

36 (6)(a) Notwithstanding any other provision of law, only one reconsideration proceeding may be  
37 held on each notice of closure. At the reconsideration proceeding:

38 (A) A deposition arranged by the worker, limited to the testimony and cross-examination of the  
39 worker about the worker's condition at the time of claim closure, shall become part of the recon-  
40 sideration record. The deposition must be conducted subject to the opportunity for cross-examination  
41 by the insurer or self-insured employer and in accordance with rules adopted by the director. The  
42 cost of the court reporter, interpreter services, if necessary, and one original of the transcript of the  
43 deposition for the Department of Consumer and Business Services and one copy of the transcript  
44 of the deposition for each party shall be paid by the insurer or self-insured employer. The recon-  
45 sideration proceeding may not be postponed to receive a deposition taken under this subparagraph.

1 A deposition taken in accordance with this subparagraph may be received as evidence at a hearing  
2 even if the deposition is not prepared in time for use in the reconsideration proceeding.

3 (B) Pursuant to rules adopted by the director, the worker or the insurer or self-insured employer  
4 may correct information in the record that is erroneous and may submit any medical evidence that  
5 should have been but was not submitted by the attending physician or nurse practitioner authorized  
6 to provide compensable medical services under ORS 656.245 at the time of claim closure.

7 (C) If the director determines that a claim was not closed in accordance with subsection (1) of  
8 this section, the director may rescind the closure.

9 (b) If necessary, the director may require additional medical or other information with respect  
10 to the claims and may postpone the reconsideration for not more than 60 additional calendar days.

11 (c) In any reconsideration proceeding under this section in which the worker was represented  
12 by an attorney, the director shall order the insurer or self-insured employer to pay to the attorney,  
13 out of the additional compensation awarded, an amount equal to 10 percent of any additional com-  
14 pensation awarded to the worker.

15 (d) Except as provided in subsection (7) of this section, the reconsideration proceeding shall be  
16 completed within 18 working days from the date the reconsideration proceeding begins, and shall  
17 be performed by a special evaluation appellate unit within the department. The deadline of 18  
18 working days may be postponed by an additional 60 calendar days if within the 18 working days the  
19 department mails notice of review by a medical arbiter. If an order on reconsideration has not been  
20 mailed on or before 18 working days from the date the reconsideration proceeding begins, or within  
21 18 working days plus the additional 60 calendar days where a notice for medical arbiter review was  
22 timely mailed or the director postponed the reconsideration pursuant to paragraph (b) of this sub-  
23 section, or within such additional time as provided in subsection (8) of this section when reconsid-  
24 eration is postponed further because the worker has failed to cooperate in the medical arbiter  
25 examination, reconsideration shall be deemed denied and any further proceedings shall occur as  
26 though an order on reconsideration affirming the notice of closure was mailed on the date the order  
27 was due to issue.

28 (e) The period for completing the reconsideration proceeding described in paragraph (d) of this  
29 subsection begins upon receipt by the director of a worker's or a beneficiary's request for recon-  
30 sideration pursuant to subsection (5)(e) of this section. If the insurer or self-insured employer re-  
31 quests reconsideration, the period for reconsideration begins upon the earlier of the date of the  
32 request for reconsideration by the worker or beneficiary, the date of receipt of a waiver from the  
33 worker or beneficiary of the right to request reconsideration or the date of expiration of the right  
34 of the worker or beneficiary to request reconsideration. If a party elects not to file a separate re-  
35 quest for reconsideration, the party does not waive the right to fully participate in the reconsider-  
36 ation proceeding, including the right to proceed with the reconsideration if the initiating party  
37 withdraws the request for reconsideration.

38 (f) Any medical arbiter report may be received as evidence at a hearing even if the report is  
39 not prepared in time for use in the reconsideration proceeding.

40 (g) If any party objects to the reconsideration order, the party may request a hearing under ORS  
41 656.283 within 30 days from the date of the reconsideration order.

42 (7)(a) The director may delay the reconsideration proceeding and toll the reconsideration  
43 timeline established under subsection (6) of this section for up to 45 calendar days if:

44 (A) A request for reconsideration of a notice of closure has been made to the director within  
45 60 days of the date of the notice of closure;

1 (B) The parties are actively engaged in settlement negotiations that include issues in dispute  
2 at reconsideration;

3 (C) The parties agree to the delay; and

4 (D) Both parties notify the director before the 18th working day after the reconsideration pro-  
5 ceeding has begun that they request a delay under this subsection.

6 (b) A delay of the reconsideration proceeding granted by the director under this subsection ex-  
7 pires:

8 (A) If a party requests the director to resume the reconsideration proceeding before the expi-  
9 ration of the delay period;

10 (B) If the parties reach a settlement and the director receives a copy of the approved settlement  
11 documents before the expiration of the delay period; or

12 (C) On the next calendar day following the expiration of the delay period authorized by the di-  
13 rector.

14 (c) Upon expiration of a delay granted under this subsection, the timeline for the completion of  
15 the reconsideration proceeding shall resume as if the delay had never been granted.

16 (d) Compensation due the worker shall continue to be paid during the period of delay authorized  
17 under this subsection.

18 (e) The director may authorize only one delay period for each reconsideration proceeding.

19 (8)(a) If the basis for objection to a notice of closure issued under this section is disagreement  
20 with the impairment used in rating of the worker's disability, the director shall refer the claim to  
21 a medical arbiter appointed by the director.

22 (b) If the director determines that insufficient medical information is available to determine  
23 disability, the director may appoint, and refer the claim to, a medical arbiter.

24 (c) At the request of either of the parties, the director shall appoint a panel of as many as three  
25 medical arbiters in accordance with criteria that the director sets by rule.

26 (d) The arbiter, or panel of medical arbiters, must be chosen from among a list of physicians  
27 qualified to be attending physicians referred to in ORS 656.005 (12)(b)(A) whom the director selected  
28 in consultation with the Oregon Medical Board and the committee referred to in ORS 656.790.

29 (e)(A) The medical arbiter or panel of medical arbiters may examine the worker and perform  
30 such tests as may be reasonable and necessary to establish the worker's impairment.

31 (B) If the director determines that the worker failed to attend the examination without good  
32 cause or failed to cooperate with the medical arbiter, or panel of medical arbiters, the director shall  
33 postpone the reconsideration proceedings for up to 60 days from the date of the determination that  
34 the worker failed to attend or cooperate, and shall suspend all disability benefits resulting from this  
35 or any prior opening of the claim until such time as the worker attends and cooperates with the  
36 examination or the request for reconsideration is withdrawn. Any additional evidence regarding  
37 good cause must be submitted prior to the conclusion of the 60-day postponement period.

38 (C) At the conclusion of the 60-day postponement period, if the worker has not attended and  
39 cooperated with a medical arbiter examination or established good cause, the worker may not attend  
40 a medical arbiter examination for this claim closure. The reconsideration record must be closed, and  
41 the director shall issue an order on reconsideration based upon the existing record.

42 (D) All disability benefits suspended under this subsection, including all disability benefits  
43 awarded in the order on reconsideration, or by an Administrative Law Judge, the Workers' Com-  
44 pensation Board or upon court review, are not due and payable to the worker.

45 (f) The insurer or self-insured employer shall pay the costs of examination and review by the

1 medical arbiter or panel of medical arbiters.

2 (g) The findings of the medical arbiter or panel of medical arbiters must be submitted to the  
3 director for reconsideration of the notice of closure.

4 (h) After reconsideration, no subsequent medical evidence of the worker's impairment is admis-  
5 sible before the director, the Workers' Compensation Board or the courts for purposes of making  
6 findings of impairment on the claim closure.

7 (i)(A) If the basis for objection to a notice of closure issued under this section is a disagreement  
8 with the impairment used in rating the worker's disability, and the director determines that the  
9 worker is not medically stationary at the time of the reconsideration or that the closure was not  
10 made pursuant to this section, the director is not required to appoint a medical arbiter before  
11 completing the reconsideration proceeding.

12 (B) If the worker's condition has substantially changed since the notice of closure, upon the  
13 consent of all the parties to the claim, the director shall postpone the proceeding until the worker's  
14 condition is appropriate for claim closure under subsection (1) of this section.

15 (9) No hearing shall be held on any issue that was not raised and preserved before the director  
16 at reconsideration. However, issues arising out of the reconsideration order may be addressed and  
17 resolved at hearing.

18 (10) If, after the notice of closure issued pursuant to this section, the worker becomes enrolled  
19 and actively engaged in training according to rules adopted pursuant to ORS 656.340 and 656.726,  
20 any permanent disability payments due for work disability under the closure shall be suspended, and  
21 the worker shall receive temporary disability compensation and any permanent disability payments  
22 due for impairment while the worker is enrolled and actively engaged in the training. When the  
23 worker ceases to be enrolled and actively engaged in the training, the insurer or self-insured em-  
24 ployer shall again close the claim pursuant to this section if the worker is medically stationary or  
25 if the worker's accepted injury is no longer the major contributing cause of the worker's combined  
26 or consequential condition or conditions pursuant to ORS 656.005 (7). The closure shall include the  
27 duration of temporary total or temporary partial disability compensation. Permanent disability  
28 compensation shall be redetermined for work disability only. If the worker has returned to work or  
29 the worker's attending physician has released the worker to return to regular or modified employ-  
30 ment, the insurer or self-insured employer shall again close the claim. This notice of closure may  
31 be appealed only in the same manner as are other notices of closure under this section.

32 (11) If the attending physician or nurse practitioner authorized to provide compensable medical  
33 services under ORS 656.245 has approved the worker's return to work and there is a labor dispute  
34 in progress at the place of employment, the worker may refuse to return to that employment without  
35 loss of reemployment rights or any vocational assistance provided by this chapter.

36 (12) Any notice of closure made under this section may include necessary adjustments in com-  
37 pensation paid or payable prior to the notice of closure, including disallowance of permanent disa-  
38 bility payments prematurely made, crediting temporary disability payments against current or future  
39 permanent or temporary disability awards or payments and requiring the payment of temporary  
40 disability payments which were payable but not paid.

41 (13) An insurer or self-insured employer may take a credit or offset of previously paid workers'  
42 compensation benefits or payments against any further workers' compensation benefits or payments  
43 due a worker from that insurer or self-insured employer when the worker admits to having obtained  
44 the previously paid benefits or payments through fraud, or a civil judgment or criminal conviction  
45 is entered against the worker for having obtained the previously paid benefits through fraud. Bene-

1 fits or payments obtained through fraud by a worker may not be included in any data used for  
2 ratemaking or individual employer rating or dividend calculations by an insurer, a rating organiza-  
3 tion licensed pursuant to ORS chapter 737, the State Accident Insurance Fund Corporation or the  
4 director.

5 (14)(a) An insurer or self-insured employer may offset any compensation payable to the worker  
6 to recover an overpayment from a claim with the same insurer or self-insured employer. When  
7 overpayments are recovered from temporary disability or permanent total disability benefits, the  
8 amount recovered from each payment shall not exceed 25 percent of the payment, without prior  
9 authorization from the worker.

10 (b) An insurer or self-insured employer may suspend and offset any compensation payable to the  
11 beneficiary of the worker, and recover an overpayment of permanent total disability benefits caused  
12 by the failure of the worker's beneficiaries to notify the insurer or self-insured employer about the  
13 death of the worker.

14 (15) Conditions that are direct medical sequelae to the original accepted condition shall be in-  
15 cluded in rating permanent disability of the claim unless they have been specifically denied.

16 **SECTION 30.** ORS 657.730 is amended to read:

17 657.730. (1) As used in this section, unless the context requires otherwise:

18 (a) "Labor market area" means an economically integrated geographic area within which indi-  
19 viduals can reside and find employment within a reasonable distance or can readily change em-  
20 ployment without changing their place of residence. Such areas shall be identified in accordance  
21 with criteria used by the Bureau of Labor Statistics of the United States Department of Labor in  
22 defining such areas or similar criteria established by the Director of the Employment Department.  
23 The boundaries depend primarily on economic and geographic factors. The State of Oregon is di-  
24 vided into labor market areas, including local workforce areas, which usually include a county or  
25 group of contiguous counties.

26 (b) "Workforce and labor market information" means the body of information generated from  
27 measurement and evaluation of the socioeconomic factors and variables influencing the employment  
28 process in the state and specific labor market areas. These socioeconomic factors and variables in-  
29 clude:

30 (A) Labor force information, which includes but is not limited to employment, unemployment,  
31 labor force participation and characteristics of the population and labor force;

32 (B) Occupational information, which includes but is not limited to occupational supply and de-  
33 mand estimates and projections, characteristics of occupations, skill requirements, wage levels, job  
34 duties, training and education requirements, conditions of employment, unionization, retirement  
35 practices and training opportunities;

36 (C) Economic information, which includes but is not limited to number of business starts and  
37 stops by industry and labor market area, information on employment growth and decline by industry  
38 and labor market area, employment projections by industry, employer establishment data and num-  
39 ber of union disputes and strikes by industry and labor market area; and

40 (D) Program information, which includes but is not limited to program participant or student  
41 information gathered in cooperation with other state and local agencies along with related labor  
42 market information to evaluate the effectiveness, efficiency and impact of state and local employ-  
43 ment, training, education and job creation efforts in support of planning, management, implementa-  
44 tion and evaluation.

45 (2) The Director of the Employment Department shall have the following duties:

1 (a) Overseeing, operating and managing a statewide comprehensive workforce and labor market  
2 information system.

3 (b) Supporting Oregon's state and local workforce boards by providing foundational workforce  
4 data and special studies in support of state and local employment, training, education and job crea-  
5 tion programs, especially activities that prevent job loss, reduce unemployment and create jobs.

6 (c) Supporting other Oregon customers of workforce and labor market information, including,  
7 but not limited to, businesses, job seekers, policy makers, educational agencies and students, and  
8 providing foundational workforce data and analysis of trends at the state and local levels.

9 (d) Coordinating with state workforce agencies and other federal, state and local government  
10 partners to improve workforce and labor market information products and services.

11 (e) Producing workforce and labor market information and economic analysis needed to facili-  
12 tate the efficient and effective matching of the supply and demand of labor critical to an effective  
13 labor exchange in Oregon.

14 (f) Administering other appropriate workforce and labor market information activities including  
15 support of efforts by local workforce development boards, as defined in ORS 660.300, to align eco-  
16 nomic development, education and training with workforce development investments and services for  
17 job seekers and businesses to efficiently address local labor market needs and statewide workforce  
18 development priorities.

19 (3) To implement this section, the director shall have authority to:

20 (a) Establish rules and procedures to recover reasonable costs incurred in producing and pro-  
21 viding:

22 (A) Workforce and labor market information products developed by the Employment Department  
23 in the ordinary course of business when the request results in costs over and above the ordinary  
24 costs of production including, but not limited to, special publication runs, photocopying or supplying  
25 the copy in some other medium; and

26 (B) Special workforce and labor market information products in response to individual requests  
27 that incur costs beyond the ordinary costs of doing business including, but not limited to, computer  
28 time, staff costs, preparation and distribution of surveys, electronic scanning, and special data col-  
29 lection, formatting and analysis. The director may enter into agreements with other public agencies  
30 to provide special workforce and labor market information products in a quid pro quo arrangement.

31 (b) Receive federal set aside funds from federal programs that are authorized to fund state and  
32 local workforce and labor market information and are required to use such information in support  
33 of their programs.

34 (c) Enter into agreements for statistical analysis, research or evaluation studies of privately and  
35 publicly funded employment, training, education and economic development programs.

36 (4) Home care workers **and personal support workers** described in ORS 410.619 (1) are not  
37 employees of state government for the purposes of workforce and labor market information.

38 **SECTION 31.** Section 4, chapter 796, Oregon Laws 2015, is amended to read:

39 **Sec. 4.** (1) The Legislative Assembly encourages the Department of Human Services to:

40 (a) Implement a single online application for all home care workers and personal support  
41 workers, as defined in ORS 410.600, to apply to be included on the registry maintained by the Home  
42 Care Commission under ORS 410.604.

43 (b) Assign a universal provider number to each home care worker **and personal support**  
44 **worker** who is providing home care services in this state, regardless of whether the recipient of the  
45 services:

1 (A) Has a physical disability, a mental illness or a developmental disability; or

2 (B) Is an elderly person, an adult or a child.

3 (2) The department shall report to the interim committees of the Legislative Assembly related  
4 to human services, as appropriate, no later than December 1 of each year beginning in 2015, on the  
5 status of implementing an online application for, and assigning a universal provider number to, home  
6 care workers and personal support workers.

7 **SECTION 32. Section 3 of this 2018 Act is repealed on December 31, 2019.**

8

---