

D R A F T

SUMMARY

Requires Department of Human Services to allow specified individuals receiving home- and community-based care to receive agency with choice services to perform employment-related functions with respect to workers employed by individuals to provide in-home care and services. Specifies criteria for agencies to be certified by department to provide agency with choice services. Includes workers providing agency with choice services as mandatory reporters of abuse.

Requires department to adopt rules to ensure fiscal transparency in, and high quality of, services provided to individuals with intellectual or developmental disabilities and specifies minimum requirements for rules.

Prohibits department and Oregon Health Authority from requiring certain applicants for initial license or certification to have sprinkler systems if applicant meets specified criteria. Sunsets January 2, 2026.

Prohibits department and authority from requiring certain applicants for renewal of license or certification to have sprinkler systems if applicant meets specified criteria. Sunsets January 2, 2036.

Requires department to submit various reports to certain committees of Legislative Assembly regarding options for community-based services, licensing fees and civil penalties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to community-based services; creating new provisions; amending
3 ORS 124.050; and declaring an emergency.

4 Whereas the Legislative Assembly finds that it is essential to support
5 Oregonians with intellectual or developmental disabilities to live and par-
6 ticipate in their communities as independently as possible and to ensure an
7 array of services that empower and respect the individuals' choices and dig-
8 nity; and

1 Whereas workers who provide home- and community-based services often
2 lack access to high quality training or adequate compensation in the form
3 of wages, health care benefits and retirement benefits; and

4 Whereas meeting the growing demand for high quality home- and
5 community-based services will require workforce investments, including
6 worker recruitment, retention and support and the development of career
7 opportunities; and

8 Whereas Oregon has an interest in preventing or mitigating any dis-
9 ruptions to home- and community-based services; now, therefore,

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

11 **SECTION 1. (1) As used in this section:**

12 **(a) “Agency with choice services” means performing, on behalf of**
13 **an individual, the following functions as the employer of record for**
14 **direct support professionals who are providing in-home services and**
15 **supports to the individual:**

16 **(A) Coordinating the in-home services and supports with the indi-**
17 **vidual or the individual’s representative;**

18 **(B) For each direct support professional providing in-home services**
19 **and supports to the individual, withholding, filing and paying income**
20 **and employment-related taxes, including workers’ compensation pre-**
21 **miums and unemployment taxes;**

22 **(C) Verifying the qualifications of each direct support professional;**
23 **and**

24 **(D) Providing other administrative and employment-related sup-**
25 **ports.**

26 **(b) “Individual” means a child or adult with an intellectual or de-**
27 **velopmental disability who receives in-home services and supports**
28 **through the Department of Human Services.**

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

31 **(d) “Worker” means a person employed by or under contract or**

1 other arrangement with an agency to provide agency with choice ser-
2 vices.

3 (2) The department shall certify agencies to deliver agency with
4 choice services as a community-based services option under ORS
5 427.007 (1)(d).

6 (3) The department shall adopt by rule:

7 (a) Minimum qualifications for agencies to be certified by the de-
8 partment to deliver agency with choice services; and

9 (b) Reimbursement rates for the services.

10 (4) Minimum qualifications for agencies certified to deliver agency
11 with choice services include, but are not limited to:

12 (a) The ability to provide maximum support to individuals in exer-
13 cising the individuals' rights and responsibilities under the agency
14 with choice services model;

15 (b) A commitment to recruit and retain a high quality and diverse
16 workforce to provide agency with choice services;

17 (c) A commitment to work with a broad coalition of stakeholders
18 in an effort to understand the changing needs of the workforce and
19 of individuals' needs, rights and preferences;

20 (d) The ability to meet the state's interest in preventing or miti-
21 gating disruptions to individuals' in-home services and supports; and

22 (e) The ability to implement an electronic visit verification system
23 that complies with federal requirements or, in the absence of an elec-
24 tronic visit verification system, to monitor a statistically valid sample
25 of each claim for reimbursement for the cost of services to the receipt
26 of the services by the individual.

27 (5) The department may not certify an agency to provide agency
28 with choice services if the owner of the agency or an executive officer
29 of the agency has been convicted of Medicaid fraud in any state within
30 the 25 year period prior to the certification.

31 (6) The department shall adopt rules requiring agencies certified to

1 provide agency with choice services to ensure workers are offered
2 wages and benefits that are at least commensurate with the standards
3 in contracts with personal support workers.

4 **SECTION 2.** The Department of Human Services shall adopt rules
5 to ensure fiscal transparency in the provision of community-based
6 services to individuals with intellectual or developmental disabilities
7 and to ensure individuals with intellectual or developmental disabili-
8 ties receive high quality services from providers that are newly li-
9 censed or certified. At a minimum, the rules must establish, for
10 providers of community-based services to individuals with intellectual
11 or developmental disabilities:

12 (1) Requirements to annually submit staffing data to a nationally
13 standardized reporting survey organization specified by the depart-
14 ment;

15 (2) Requirements to submit an annual report to the department
16 that includes:

17 (a) A disclosure of executive compensation and benefits;

18 (b) A disclosure of starting, average and highest wages for direct
19 support professional;

20 (c) A disclosure of the provider's overhead expenses and expendi-
21 tures; and

22 (d) Any other fiscal matters prescribed by the department;

23 (3) Requirements for providers to demonstrate wages and health
24 benefits paid to direct support professionals delivering community-
25 based supports comparably reflect any increases in rates approved by
26 the Legislative Assembly or the department for the services;

27 (4) Criteria for conditions under which a provider may be prohibited
28 from applying for a license or certificate;

29 (5) Criteria for the inclusion of information about the organiza-
30 tional history of an applicant for a new license or certification, not to
31 exceed the 10 previous years; and

1 (6) A process for the consideration of the regulatory and safety
2 compliance and operational experience of all providers in this state or
3 in any other jurisdiction when issuing an initial license or certification
4 or renewing a license or certification.

5 **SECTION 3.** Notwithstanding ORS 443.760 or any Low-Rise Resi-
6 dential Dwelling Code requirements established pursuant to ORS
7 455.610, an applicant for an initial license or certification to provide
8 foster care or residential treatment for children under ORS chapter
9 418, to operate a foster family home under ORS chapter 419A or 419B
10 or to operate an adult foster home, as defined in ORS 443.705, may not
11 be required by the Department of Human Services or the Oregon
12 Health Authority to have installed a commercial or residential sprin-
13 kler system if the applicant:

14 (1) Will be serving five or fewer individuals; and

15 (2) Meets all other fire, life and safety requirements established by
16 the department or the authority by rule.

17 **SECTION 4.** Notwithstanding ORS 443.760 or any Low-Rise Resi-
18 dential Dwelling Code requirements established pursuant to ORS
19 455.610, an applicant for a renewal of a license or certification to pro-
20 vide foster care or residential treatment for children under ORS
21 chapter 418, to operate a foster family home under ORS chapter 419A
22 or 419B or to operate an adult foster home, as defined in ORS 443.705,
23 may not be required by the Department of Human Services or the
24 Oregon Health Authority to have installed a commercial or residential
25 sprinkler system if the applicant:

26 (1) Will be serving five or fewer individuals; and

27 (2) Meets all other fire, life and safety requirements established by
28 the department or the authority by rule.

29 **SECTION 5.** No later than October 1, 2022, the Department of Hu-
30 man Services and the Oregon Health Authority shall provide to the
31 interim committees of the Legislative Assembly related to human

1 services and to health a report, in the manner provided in ORS 192.245,
2 regarding the impact of residential sprinkler system requirements on
3 programs and facilities regulated by the department and the authority.

4 The report shall include, but not be limited to:

5 (1) The potential impact on capacity to serve individuals discharged
6 from the Oregon State Hospital into community-based settings;

7 (2) The potential impact on capacity to serve individuals with
8 physical, intellectual or developmental disabilities in community-based
9 settings;

10 (3) The potential impact on capacity to serve seniors and aging
11 Oregonians in community-based settings;

12 (4) The potential impact on capacity to serve children and youth in
13 the child welfare and juvenile justice systems in family homes;

14 (5) The estimated cost of retrofitting existing residential facilities
15 to comply with sprinkler system mandates; and

16 (6) Proposals for how to implement modern standards for fire sup-
17 pression efforts in a way that minimizes disruption of services for
18 Oregonians in need of residential care, supports or services.

19 SECTION 6. No later than October 1, 2022, the Department of Hu-
20 man Services shall report to the interim committees of the Legislative
21 Assembly related to human services and to health, in the manner
22 provided in ORS 192.245, options for community-based services offered
23 by agencies with consumer-directed hiring of personal care workers
24 and direct support workers. The report should include options for of-
25 fering such programs to seniors and people with disabilities in this
26 state and a description of models currently implemented by other
27 states.

28 SECTION 7. No later than October 1, 2022, the Department of Hu-
29 man Services shall report to the interim committees of the Legislative
30 Assembly related to human services and to health, in the manner
31 provided in ORS 192.245, recommendations for modernizing the licens-

1 **ing fee schedule and the administration of civil penalties related to**
2 **services provided to individuals with intellectual or developmental**
3 **disabilities including, at a minimum:**

4 **(1) How fees and penalties may be adjusted for inflation;**

5 **(2) Whether the department should have the authority to decrease**
6 **or waive fees in certain circumstances;**

7 **(3) Whether licensing fees should be required for agencies providing**
8 **supported living, community living supports or other certifications**
9 **and endorsements offered by the division of the department that is**
10 **responsible for developmental disability services;**

11 **(4) Whether licensing fees should reflect the size of the agency or**
12 **number of individuals served by the agency;**

13 **(5) The extent to which licensing fees cover the cost of licensing**
14 **activities;**

15 **(6) Any legislative changes to simplify civil penalties or structure**
16 **civil penalties to ensure fairness, equity and effectiveness in improving**
17 **the quality of services to individuals with intellectual or develop-**
18 **mental disabilities; and**

19 **(7) Any legislative changes necessary to implement modern,**
20 **sustainable and equitable licensing fee and civil penalty schedules.**

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

22 124.050. As used in ORS 124.050 to 124.095:

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

24 (a) Any physical injury to an elderly person caused by other than acci-
25 dental means, or which appears to be at variance with the explanation given
26 of the injury.

27 (b) Neglect.

28 (c) Abandonment, including desertion or willful forsaking of an elderly
29 person or the withdrawal or neglect of duties and obligations owed an el-
30 derly person by a caretaker or other person.

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

1 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
2 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

3 (f) Verbal abuse.

4 (g) Financial exploitation.

5 (h) Sexual abuse.

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

8 (j) A wrongful use of a physical or chemical restraint of an elderly person,
9 excluding an act of restraint prescribed by a physician licensed under ORS
10 chapter 677 and any treatment activities that are consistent with an ap-
11 proved treatment plan or in connection with a court order.

12 (2) "Elderly person" means any person 65 years of age or older who is not
13 subject to the provisions of ORS 441.640 to 441.665.

14 (3) "Facility" means:

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

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

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

19 (4) "Financial exploitation" means:

20 (a) Wrongfully taking the assets, funds or property belonging to or in-
21 tended for the use of an elderly person or a person with a disability.

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

26 (c) Misappropriating, misusing or transferring without authorization any
27 money from any account held jointly or singly by an elderly person or a
28 person with a disability.

29 (d) Failing to use the income or assets of an elderly person or a person
30 with a disability effectively for the support and maintenance of the person.

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

1 (6) “Law enforcement agency” means:

2 (a) Any city or municipal police department.

3 (b) Any county sheriff’s office.

4 (c) The Oregon State Police.

5 (d) Any district attorney.

6 (e) A police department established by a university under ORS 352.121 or
7 353.125.

8 (7) “Neglect” means failure to provide basic care or services that are
9 necessary to maintain the health or safety of an elderly person.

10 (8) “Person with a disability” means a person described in:

11 (a) ORS 410.040 (7); or

12 (b) ORS 410.715.

13 (9) “Public or private official” means:

14 (a) Physician or physician assistant licensed under ORS chapter 677,
15 naturopathic physician or chiropractor, including any intern or resident.

16 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s
17 aide, home health aide or employee of an in-home health service.

18 (c) Employee of the Department of Human Services or community devel-
19 opmental disabilities program.

20 (d) Employee of the Oregon Health Authority, local health department or
21 community mental health program.

22 (e) Peace officer.

23 (f) Member of the clergy.

24 (g) Regulated social worker.

25 (h) Physical, speech or occupational therapist.

26 (i) Senior center employee.

27 (j) Information and referral or outreach worker.

28 (k) Licensed professional counselor or licensed marriage and family ther-
29 apist.

30 (L) Elected official of a branch of government of this state or a state
31 agency, board, commission or department of a branch of government of this

1 state or of a city, county or other political subdivision in this state.

2 (m) Firefighter or emergency medical services provider.

3 (n) Psychologist.

4 (o) Provider of adult foster care or an employee of the provider.

5 (p) Audiologist.

6 (q) Speech-language pathologist.

7 (r) Attorney.

8 (s) Dentist.

9 (t) Optometrist.

10 (u) Chiropractor.

11 (v) Personal support worker, as defined in ORS 410.600.

12 (w) Home care worker, as defined in ORS 410.600.

13 (x) Referral agent, as defined in ORS 443.370.

14 **(y) A worker providing agency with choice services under section 1**
15 **of this 2022 Act.**

16 (10) "Services" includes but is not limited to the provision of food,
17 clothing, medicine, housing, medical services, assistance with bathing or
18 personal hygiene or any other service essential to the well-being of an el-
19 derly person.

20 (11)(a) "Sexual abuse" means:

21 (A) Sexual contact with an elderly person who does not consent or is
22 considered incapable of consenting to a sexual act under ORS 163.315;

23 (B) Verbal or physical harassment of a sexual nature, including but not
24 limited to severe or pervasive exposure to sexually explicit material or lan-
25 guage;

26 (C) Sexual exploitation;

27 (D) Any sexual contact between an employee of a facility or paid
28 caregiver and an elderly person served by the facility or caregiver; or

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

31 (b) "Sexual abuse" does not mean consensual sexual contact between an

1 elderly person and:

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

3 or

4 (B) A paid caregiver.

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

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

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

10 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
11 elty or inappropriate sexual comments.

12 **SECTION 9. The Department of Human Services shall adopt the**
13 **rules described in section 2 of this 2022 Act no later than October 1,**
14 **2023.**

15 **SECTION 10. (1) Section 3 of this 2022 Act is repealed on January**
16 **2, 2026.**

17 **(2) Section 4 of this 2022 Act is repealed on January 2, 2036.**

18 **(3) Sections 5, 6 and 7 of this 2022 Act are repealed on January 2,**
19 **2023.**

20 **SECTION 11. This 2022 Act being necessary for the immediate**
21 **preservation of the public peace, health and safety, an emergency is**
22 **declared to exist, and this 2022 Act takes effect on its passage.**

23
