

## **LC 1256: Paid Parent Providers (SGB version)**

*(This fact sheet was developed by Senator Sara Gelser Blouin.  
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### **What does this proposal do?**

Requires the Oregon Department of Human Services to create a plan to pay parents to provide attendant care services to their minor children. For purposes of this measure, a parent includes natural or adoptive parents, stepparents and legal guardians. ***This measure DOES NOT impact or impede the ability of parents of adult children to provide paid attendant care services.***

### **Structure**

- Except during a public health emergency, parents of minor children may be paid for attendant care services when federal matching funds are provided through a waiver approved by CMS
- Federal matching funds may not be accessed through an amendment to the State Medicaid Plan
- The department may not administer any program that pays parents to provide attendant care or personal care services to their minor child without the Centers for Medicare and Medicaid Services' approval of the demonstration project or waiver or of other arrangements with the Centers for Medicare and Medicaid Services to receive federal financial participation in the costs of the program during a state or emergency or a public health emergency.

### **Timeline**

- On or before August 1, 2023 or 30 days after effective date of measure, whichever is sooner, ODHS shall initiate the required process, including required Tribal Consultation and public comment periods, to develop an application to CMS for approval of a waiver to pay parents of minor children to provide attendant care services
- The completed application must be submitted to CMS as soon as practicable, but in no case later than January 1, 2024

### **Children eligible for parental pay**

- A child under 18 years of age with a developmental or intellectual disability, or who meets eligibility for the Medically Fragile Model Waiver or the Medically Involved Children's Waiver AND is assessed to have very high medical or very high behavioral needs.
- "Very high medical needs" means the extraordinary support needs of a minor child with a disability due to a medical condition as determined by a federally approved functional needs assessment adopted by the Department that assigns the child to the highest service level due to medical needs.
- "Very high behavioral needs" means the extraordinary support needs of a minor child with a disability due to a behavioral condition as determined by a federally approved

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functional needs assessment adopted by the Department that assigns the child to the highest service level due to behavioral needs

#### **Requirements of parent for eligibility to be paid**

- Must be employed by an agency as a Direct Services Provider (Those employed as PSW prior to July 1, 2022 may continue as PSW)
- Must not be employed by:
  - An agency owned by the parent, child or any family member
  - An agency for which the parent or other family member serves in administrative or leadership capacity

#### **Requirements of agency employing parents of minor children**

- May not displace an existing qualified DSP or PSW for the child for the purpose of employing the parent provider through:
  - Reduced hours
  - Elimination of shifts, or
  - Change in established shift schedule
    - *Note: The agency may pay the parent to substitute for shifts of an established DSP or PSW for the child due to brief periods of absence of the personal support worker due to sickness or leave*
- May not pay parent provider as an independent contractor
- Must compensate parent provider with same wages and benefits offered to DSPs who are not parent providers, including overtime when applicable
- May not allocate to parent providers of minor children more than 30 percent of the total attendant care service hours that it contracts with the department to provide to all clients during a 12 month period, except during a public health emergency

#### **Limitations**

##### ***Cap on hourly paid hours for parents of minor children***

- Parent providers in a single household are limited to providing a total of no more than 60 hours per week of paid attendant care services, regardless of the number of client children or parent providers in the household
  - Nothing prohibits a parent provider from a contract to provide 2:1 services that include the parent's minor child as long as the total number of hours for which the parents in the household are paid does not exceed 60 hours in a week

***Paid attendant care during school hours is prohibited for ALL care providers (This is and was a federal requirement which was flexed during the public health emergency, and is added here for clarity)***

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- Providers of attendant care services, including parent providers, can only be paid to provide attendant care services to a minor child during school hours when the minor child is temporarily at home recovering from surgery or illness and the temporary absence is recommended by the child's licensed health care provider
- Unless the child is temporarily home due to the medical need described above, providers of attendant care services to minor children **may not** be paid during regular school hours.
  - This includes circumstances such as:
    - Enrollment in a private school with shorter hours
    - An abbreviated school day or week, regardless of whether parents provided written consent for the abbreviated school day or week
    - Suspension or expulsion from school
    - Homeschooling
    - Online School
- School hours are defined as the hours that the child's boundary school operates for the majority of children who are the same age as the client child.
- School districts are NOT prohibited from compensating parents of students with disabilities or other DSPs for providing support for educational activities that would otherwise be the responsibility of the school district or for attendant care, personal care or supervision provided by parents of students with disabilities or other DSPs during hours that a school district would ordinarily be responsible for the support and supervision of the student
- Attendant care providers may not be paid to transport a client child to or from school

***Prohibited activities during hours a parent of minor child is paid to provide attendant care services*** (Note: these limitations only apply during hours the parent provider is being paid for attendant care services for the client child)

During the hours that a parent is being paid to provide attendant care services to their minor child, the parent provider:

- May not be responsible for care, supervision or support a vulnerable adult
- May not be responsible for the care of a child, other than the contracted client child. Another caregiver must be immediately available on site at all times to attend to the needs of any child under the age of 10 who is not the client child and is in the same location as the parent provider and client child
- May not perform tasks that are not for the primary disability related need and benefit of the client child, including but not limited to:
  - Grocery shopping for the household
  - Housekeeping not exclusively required for the direct care of the client child
  - Remote work or operation of a home business
  - Transporting the child or other individuals to or from school

- Transporting individuals, including the client child, to or from activities or appointments that are not for the primary benefit of the client child
- Attending outside activities, performances or athletic events of children in the household other than the client child except for the primary purpose of supporting the client child's active participation in a community activity of the client child's choosing; or
- Travel with the client child that includes an overnight stay away from the child's home unless the travel is for the primary purpose of supporting the client child to travel as part of a team or community activity

### ***Alternative Medicaid representative***

If CMS regulations require a parent provider to assign an alternative legal representative for the client child to make decisions about or manage the child's ISP, the Department must create a standard form for such designation.

The form must clearly state that the assignment is limited to the development and implementation of the client child's Individualized Service Plan and does not limit the authority of the parent provider to make decisions for the client child with respect to health care, education or religious training.

### ***Mandatory abuse reporting***

- A parent provider is subject to the requirements of mandatory reporting of abuse of children and vulnerable adults under ORS 124.060, ORS 430.737 and 419B.010, 24 hours per day, seven days per week

### ***Required rulemaking***

The department is required to adopt rules to implement the paid parent caregiver program, including but not limited to:

- Strategies to safeguard the nonparent caregiver workforce and avoid displacement of nonparent caregivers by parent providers
- Requirements for agencies to demonstrate consistent efforts to recruit, train and retain nonparent caregivers
- Training requirements for:
  - *Parent providers* regarding the impact of federal and state administrative rules regulating home based and community based services on the parent-child relationship with respect to discipline, supervision, physical intervention and self-determination of client children during the hours that the parent provider is being paid to provide attendant care services
  - *Client children* to learn to advocate for themselves with respect to choosing and managing DSPs before and after age 18

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- *Community developmental disability programs* related to employment of parent providers, including how to support families to manage issues of conflict of interest, provider recruitment and retention and empowerment of client child to have meaningful voice in selection of child's direct support professionals
- A process for client child to object to the hiring of the child's parent as a parent provider, or to raise concerns about a parent provider's caregiving
- Procedures to ensure the program is implemented consistently and equitably across the state
- Rules that require any appeals to the implementation and administration of the paid parent caregiver program to be handled exclusively by staff of the Oregon Department of Human Services, and not by the Community Developmental Disabilities Programs
- Rules to manage cost, size and growth rate of program in a manner that protects the eligibility for and levels of services under all programs serving individuals receiving developmental disability services under the State Medicaid Plan

### ***Reporting***

The department shall provide annual updates to the Legislature regarding:

- The number of children receiving attendant care services from parent providers
- The number of hours of attendant care services provided by parent providers
- A comparison of the average cost per case per child receiving attendant care services from paid parents and those receiving attendant care services only from nonparent providers
- Adequacy of the direct care workforce of non-parent caregivers to provide attendant care services to eligible children