Senate Bill 431

Sponsored by Senator MANNING JR (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure as introduced.

Requires long term care facilities, residential facilities, in-home care agencies and home health agencies to pass through to specified low wage employees at least 90 percent of increased funding provided by state.

Requires Oregon Health Authority and Department of Human Services to work together to adopt uniform financial reporting requirements across all long term care facilities and residential facilities.

A BILL FOR AN ACT

Relating to compensation for employees who provide services to vulnerable individuals; creating new provisions; and amending ORS 443.439.

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

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

(a) “Direct care staff” means employees of a long term care facility whose primary responsibilities are to provide personal care services to residents, including but not limited to:

(A) Administering medications;
(B) Coordinating resident-focused activities;
(C) Supervising and supporting residents;
(D) Supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and
(E) Serving but not preparing meals.
(b) “Long term care facility” has the meaning given that term in ORS 442.015.

(2) It is the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding for services provided by long term care facilities, not less than 90 percent of the increase in funding must be passed through as compensation to employees described in subsection (3) of this section in the form of increased wages or salaries, associated payroll taxes and health benefits.

(3) A long term care facility must pass through the increased funding described in subsection (2) of this section to:

(a) Housekeeping staff;
(b) Laundry staff;
(c) Food services staff;
(d) Direct care staff;
(e) Certified nursing assistants;
(f) Certified medical assistants; and
(g) Licensed practical nurses.

(4) A long term care facility may not pass through increased funding described in subsection (2) of this section to:

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.

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section (2) of this section to:
(a) Registered nurses; or
(b) Administrators or administrative staff.

(5) On or before July 31, 2021, and each year thereafter, a long term care facility shall certify to the Department of Human Services, in the form and manner prescribed by the department, that the facility has complied with this section. The certification must include:
(a) Hourly wages or base salaries paid to employees described in subsection (3) of this section prior to and after an increase in compensation due to a pass-through under subsection (2) of this section;
(b) Hours worked by employees receiving the increased compensation prior to and after the increase in compensation;
(c) The amount of increased associated payroll taxes; and
(d) Other information prescribed by the department that is necessary for the department to ensure a facility is complying with this section.

(6) A collective bargaining agreement may be submitted in lieu of a certification under subsection (5) of this section for any represented employees.

(7) The department shall:
(a) Recover from any long term care facility that fails to comply with this section the amount of funding paid to the facility that was not spent on compensation for staff designated in subsection (3) of this section in accordance with this section; and
(b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the facility that was not spent on compensation for staff designated in subsection (3) of this section in accordance with this section. The department shall impose a civil penalty under this subsection in accordance with ORS 183.745.

(8) The department may not renew the license of a long term care facility that owes amounts under subsection (7) of this section until the amounts have been paid.

SECTION 2. Section 3 of this 2021 Act is added to and made a part of ORS chapter 441.

SECTION 3. A long term care facility licensed in this state shall:
(1) Employ the number of licensed nursing staff and direct care staff, as defined in section 1 of this 2021 Act, necessary to:
(a) Properly assess the needs of residents;
(b) Develop and implement resident care plans;
(c) Provide direct care services to residents; and
(d) Perform other related activities to maintain the health, safety and welfare of the residents; and
(2) Have a registered nurse in each facility 24 hours per day and employ and schedule additional staff in each facility as needed to:
(a) Ensure quality care for residents in the case of a disease outbreak, fire or other similar occurrence;
(b) Address the medical acuity of the residents of the facility; and
(c) Comply with state and federal staffing requirements.

SECTION 4. The Oregon Health Authority and the Department of Human Services shall work together to adopt uniform financial reporting requirements for all licensed long term care facilities, as defined in ORS 442.015, and licensed residential facilities, as defined in ORS 443.400.
SECTION 5. Section 6 of this 2021 Act is added to and made a part of ORS 443.400 to 443.455.

SECTION 6. A residential facility licensed in this state shall:

(1) Employ the number of licensed nursing staff and direct care staff necessary to:

(a) Properly assess the needs of residents;

(b) Develop and implement resident care plans;

(c) Provide direct care services to residents; and

(d) Perform other related activities to maintain the health, safety and welfare of the residents; and

(2) Have a registered nurse in each facility 24 hours per day and employ and schedule additional staff in each facility as needed to:

(a) Ensure quality care for residents in the case of a disease outbreak, fire or other similar occurrence;

(b) Address the medical acuity of the residents of the facility; and

(c) Comply with state and federal staffing requirements.

SECTION 7. ORS 443.439 is amended to read:

443.439. (1) It is the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding for services provided by residential training facilities or residential training homes, not less than 90 percent of the increase in funding must be passed through as compensation to employees described in subsection (2) of this section in the form of increased wages or salaries, associated payroll taxes and health benefits paid to direct support professionals in the residential training facilities or residential training homes be increased at a comparable rate.

(2) A residential facility must pass through the increased funding described in subsection (1) of this section to:

(a) Housekeeping staff;

(b) Laundry staff;

(c) Food services staff;

(d) Direct care staff;

(e) Certified nursing assistants;

(f) Certified medical assistants; and

(g) Licensed practical nurses.

(3) A residential facility may not pass through increased funding described in subsection (1) of this section to:

(a) Registered nurses; or

(b) Administrators or administrative staff.

(4) On or before July 31, 2021, and each year thereafter, a residential facility shall certify to the Department of Human Services, in the form and manner prescribed by the department, that the facility has complied with this section. The certification must include:

(a) Hourly wages or base salaries paid to employees described in subsection (2) of this section prior to and after an increase in compensation due to a pass-through under subsection (1) of this section;

(b) Hours worked by employees receiving the increased compensation prior to and after the increase in compensation;

(c) The amount of increased associated payroll taxes; and
(d) Other information prescribed by the department that is necessary for the department to ensure a facility is complying with this section.

(5) A collective bargaining agreement may be submitted in lieu of a certification under subsection (4) of this section for any represented employees.

(6) The department shall:

(a) Recover from any residential facility that fails to comply with this section the amount of funding paid to the facility that was not spent on compensation for staff designated in subsection (2) of this section in accordance with this section; and

(b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the facility that was not spent on compensation for staff designated in subsection (2) of this section in accordance with this section. The department shall impose a civil penalty under this subsection in accordance with ORS 183.745.

(7) The department may not renew the license of a residential facility that owes amounts under subsection (6) of this section until the amounts have been paid.

SECTION 8. (1) As used in this section:

(a) “Direct care staff” means employees of an in-home care agency whose primary responsibilities are to provide personal care services to clients of the in-home care agency, including but not limited to:

(A) Administering medications;

(B) Coordinating client activities;

(C) Supervising and supporting clients;

(D) Supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and

(E) Serving or preparing meals.

(b) “In-home care agency” has the meaning given that term in ORS 443.305.

(2) It is the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding for services provided by in-home care agencies, not less than 90 percent of the increase in funding must be passed through as compensation for direct care staff in the form of increased wages or salaries, associated payroll taxes and health benefits.

(3) On or before July 31, 2021, and each year thereafter, an in-home care agency that receives state funds shall certify to the Department of Human Services, in the form and manner prescribed by the department, that the agency has complied with this section. The certification must include:

(a) Hourly wages or base salaries paid to direct care staff prior to and after an increase in compensation due to a pass-through under subsection (2) of this section;

(b) Hours worked by direct care staff prior to and after the increase in compensation;

(c) The amount of increased associated payroll taxes; and

(d) Other information prescribed by the department that is necessary for the department to ensure that an agency is complying with this section.

(4) A collective bargaining agreement may be submitted in lieu of a certification under subsection (3) of this section for any represented employees.

(5) The department shall:

(a) Recover from any in-home care agency that fails to comply with this section the amount of funding paid to the agency under subsection (2) of this section that was not spent on compensation for direct care staff in accordance with this section; and
(b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency under subsection (2) of this section that was not spent on compensation for direct care staff in accordance with this section. The department shall impose a civil penalty under this subsection in accordance with ORS 183.745.

(6) The department may not renew the license of an in-home care agency that owes amounts under subsection (5) of this section until the amounts have been paid.

SECTION 9. (1) As used in this section:
(a) “Direct care staff” means employees of a home health agency whose primary responsibilities are to provide personal care services to clients of the home health agency, including but not limited to:
(A) Administering medications;
(B) Coordinating client activities;
(C) Supervising and supporting clients;
(D) Supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and
(E) Serving or preparing meals.

(b) “Home health care agency” has the meaning given that term in ORS 443.014.

(2) It is the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding for services provided by home health agencies, not less than 90 percent of the increase in funding must be passed through as compensation for direct care staff in the form of increased wages or salaries, associated payroll taxes and health benefits.

(3) On or before July 31, 2021, and each year thereafter, a home health agency that receives state funds shall certify to the Department of Human Services, in the form and manner prescribed by the department, that the agency has complied with this section. The certification must include:
(a) Hourly wages or base salaries paid to direct care staff prior to and after an increase in compensation due to a pass-through under subsection (2) of this section;
(b) Hours worked by direct care staff prior to and after the increase in compensation;
(c) The amount of increased associated payroll taxes; and
(d) Other information prescribed by the department that is necessary for the department to ensure that an agency is complying with this section.

(4) A collective bargaining agreement may be submitted in lieu of a certification under subsection (3) of this section for any represented employees.

(5) The department shall:
(a) Recover from any home health agency that fails to comply with this section the amount of funding paid to the agency under subsection (2) of this section that was not spent on compensation for direct care staff in accordance with this section; and
(b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency under subsection (2) of this section that was not spent on compensation for direct care staff in accordance with this section. The department shall impose a civil penalty under this subsection in accordance with ORS 183.745.

(6) The department may not renew the license of a home health agency that owes amounts under subsection (5) of this section until the amounts have been paid.