

Senate Bill 432

Sponsored by Senator MANNING JR (at the request of Kyndall Mason - SEIU Local 503 - OPEU) (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 and to pay such employees no less than \$16 per hour or base salary of \$2,752 per month.

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

1
2 Relating to compensation for employees who provide services to vulnerable individuals; creating new
3 provisions; and amending ORS 443.439.

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

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

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

8 (A) **Administering medications;**

9 (B) **Coordinating resident-focused activities;**

10 (C) **Supervising and supporting residents;**

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

13 (E) **Serving but not preparing meals.**

14 (b) **“Long term care facility” has the meaning given that term in ORS 442.015.**

15 (2) **It is the intent of the Legislative Assembly that, when the Legislative Assembly ap-**
16 **proves increases in funding for services provided by long term care facilities, not less than**
17 **90 percent of the increase in funding must be passed through as compensation to employees**
18 **described in subsection (3) of this section in the form of increased wages or salaries, asso-**
19 **ciated payroll taxes and health benefits.**

20 (3) **A long term care facility must pay no less than \$16 per hour or a base salary of \$2,752**
21 **per month and must pass through the increased funding described in subsection (2) of this**
22 **section to:**

23 (a) **Housekeeping staff;**

24 (b) **Laundry staff;**

25 (c) **Food services staff;**

26 (d) **Direct care staff;**

27 (e) **Certified nursing assistants;**

28 (f) **Certified medical assistants; and**

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 (g) Licensed practical nurses.

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

4 (a) Registered nurses; or

5 (b) Administrators or administrative staff.

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

9 (a) Hourly wages or base salaries paid to employees described in subsection (3) of this
10 section on the date of the certification;

11 (b) Hourly wages or base salaries paid to employees described in subsection (3) of this
12 section prior to and after an increase in compensation due to a pass-through under sub-
13 section (2) of this section;

14 (c) Hours worked by employees described in subsection (3) of this section prior to and
15 after the increase in compensation due to a pass-through under subsection (2) of this section;

16 (d) The amount of increased associated payroll taxes; and

17 (e) Other information prescribed by the department that is necessary for the department
18 to ensure a facility is complying with this section.

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

21 (7) The department shall:

22 (a) Recover from any long term care facility that fails to comply with the pass-through
23 requirements of this section the amount of funding paid to the facility that was not spent
24 on compensation for staff designated in subsection (3) of this section in accordance with this
25 section; and

26 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the facility
27 that was not spent on compensation for staff designated in subsection (3) of this section in
28 accordance with this section. The department shall impose a civil penalty under this sub-
29 section in accordance with ORS 183.745.

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

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

33 **SECTION 3.** A long term care facility licensed in this state shall:

34 (1) Employ the number of licensed nursing staff and direct care staff, as defined in sec-
35 tion 1 of this 2021 Act, necessary to:

36 (a) Properly assess the needs of residents;

37 (b) Develop and implement resident care plans;

38 (c) Provide direct care services to residents; and

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

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

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

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

1 (c) Comply with state and federal staffing requirements.

2 **SECTION 4.** The Oregon Health Authority and the Department of Human Services shall
 3 work together to adopt uniform financial reporting requirements for all licensed long term
 4 care facilities, as defined in ORS 442.015, and licensed residential facilities, as defined in ORS
 5 443.400.

6 **SECTION 5.** Section 6 of this 2021 Act is added to and made a part of ORS 443.400 to
 7 443.455.

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

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

10 (a) Properly assess the needs of residents;

11 (b) Develop and implement resident care plans;

12 (c) Provide direct care services to residents; and

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

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

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

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

20 (c) Comply with state and federal staffing requirements.

21 **SECTION 7.** ORS 443.439 is amended to read:

22 443.439. (1) It is the intent of the Legislative Assembly that, when the Legislative Assembly
 23 approves increases in funding *[of]* for services provided by residential *[training]* facilities *[or resi-*
 24 *dential training homes]*, **not less than 90 percent of the increase in funding must be passed**
 25 **through as compensation to employees described in subsection (2) of this section in the form**
 26 **of increased wages or salaries, associated payroll taxes and health benefits** *[paid to direct support*
 27 *professionals in the residential training facilities or residential training homes be increased at a com-*
 28 *parable rate]*.

29 (2) A residential facility must pay no less than \$16 per hour or a base salary of \$2,752 per
 30 month and must pass through the increased funding described in subsection (1) of this sec-
 31 tion to:

32 (a) Housekeeping staff;

33 (b) Laundry staff;

34 (c) Food services staff;

35 (d) Direct care staff;

36 (e) Certified nursing assistants;

37 (f) Certified medical assistants; and

38 (g) Licensed practical nurses.

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

41 (a) Registered nurses; or

42 (b) Administrators or administrative staff.

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

1 (a) Hourly wages or base salaries paid to employees described in subsection (2) of this
2 section on the date of the certification;

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

6 (c) Hours worked by employees described in subsection (2) of this section prior to and
7 after the increase in compensation due to a pass-through under subsection (1) of this section;

8 (d) The amount of increased associated payroll taxes; and

9 (e) Other information prescribed by the department that is necessary for the department
10 to ensure a facility is complying with this section.

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

13 (6) The department shall:

14 (a) Recover from any residential facility that fails to comply with the pass-through re-
15 quirements of this section the amount of funding paid to the facility that was not spent on
16 compensation for staff designated in subsection (2) of this section in accordance with this
17 section; and

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

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

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

25 (a) "Direct care staff" means employees of an in-home care agency whose primary re-
26 sponsibilities are to provide personal care services to clients of the in-home care agency,
27 including but not limited to:

28 (A) Administering medications;

29 (B) Coordinating client activities;

30 (C) Supervising and supporting clients;

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

33 (E) Serving or preparing meals.

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

35 (2) An in-home care agency licensed in this state that receives state funds must pay di-
36 rect care staff no less than \$16 per hour or a base salary of \$2,752 per month.

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

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

45 (a) Hourly wages or base salaries paid to direct care staff on the date of the certification;

1 (b) Hourly wages or base salaries paid to direct care staff prior to and after an increase
 2 in compensation due to a pass-through under subsection (3) of this section;

3 (c) Hours worked by direct care staff prior to and after the increase in compensation due
 4 to a pass-through under subsection (3) of this section;

5 (d) The amount of increased associated payroll taxes; and

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

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

10 (6) The department shall:

11 (a) Recover from any in-home care agency that fails to comply with the pass-through
 12 requirements of this section the amount of funding paid to the agency under subsection (3)
 13 of this section that was not spent on compensation for direct care staff in accordance with
 14 this section; and

15 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency
 16 under subsection (3) of this section that was not spent on compensation for direct care staff
 17 in accordance with this section. The department shall impose a civil penalty under this sub-
 18 section in accordance with ORS 183.745.

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

21 **SECTION 9.** (1) As used in this section:

22 (a) “Direct care staff” means employees of a home health agency whose primary re-
 23 sponsibilities are to provide personal care services to clients of the home health agency, in-
 24 cluding but not limited to:

25 (A) Administering medications;

26 (B) Coordinating client activities;

27 (C) Supervising and supporting clients;

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

30 (E) Serving or preparing meals.

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

32 (2) A home health agency licensed in this state that receives state funds must pay direct
 33 care staff no less than \$16 per hour or a base salary of \$2,752 per month.

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

38 (4) On or before July 31, 2021, and each year thereafter, a home health agency that re-
 39 ceives state funds shall certify to the Department of Human Services, in the form and
 40 manner prescribed by the department, that the agency has complied with this section. The
 41 certification must include:

42 (a) Hourly wages or base salaries paid to direct care staff on the date of the certification;

43 (b) Hourly wages or base salaries paid to direct care staff prior to and after an increase
 44 in compensation due to a pass-through under subsection (3) of this section;

45 (c) Hours worked by direct care staff prior to and after the increase in compensation due

1 to a pass-through under subsection (3) of this section;

2 (d) The amount of increased associated payroll taxes; and

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

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

7 (6) The department shall:

8 (a) Recover from any home health agency that fails to comply with the pass-through
9 provisions of this section the amount of funding paid to the agency under subsection (3) of
10 this section that was not spent on compensation for direct care staff in accordance with this
11 section; and

12 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency
13 under subsection (3) of this section that was not spent on compensation for direct care staff
14 in accordance with this section. The department shall impose a civil penalty under this sub-
15 section in accordance with ORS 183.745.

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

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