

SENATE AMENDMENTS TO SENATE BILL 570

By COMMITTEE ON RULES

May 23

1 On page 1 of the printed bill, line 2, delete “410.605” and insert “124.050”.

2 After line 21, insert:

3 “Whereas labor and management conflicts jeopardize the state’s proprietary interests as a pur-
4 chaser of self-directed home care services by substantially interfering with the quality, consistency
5 and reliability of the provision of self-directed home care services in the state; and

6 “Whereas a disruption in the provision of self-directed home care services results in additional
7 costs and otherwise avoidable expenditures of public funds; and

8 “Whereas the lack of a mutual agreement to resolve labor and management conflicts through
9 processes that avoid disruption in the provision of self-directed home care services increases the
10 likelihood that labor and management conflicts will interfere with the provision of self-directed home
11 care services; and

12 “Whereas the Legislative Assembly declares that it is the policy of this state to promote labor
13 peace in state contracts for self-directed home care services by encouraging the resolution of labor
14 disputes in a manner that reduces the likelihood of work stoppages that interrupt the provision of
15 self-directed home care services; and”.

16 Delete lines 26 through 30 and delete pages 2 through 4 and insert:

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

18 **“(a) ‘Abuse’ has the meaning given that term in ORS 124.050.**

19 **“(b) ‘Agency with choice services’ means, with respect to care workers who are providing
20 home care services and supports to a client:**

21 **“(A) Assisting a client with:**

22 **“(i) Recruiting, selecting and dismissing care workers; and**

23 **“(ii) Coordinating the schedules and responsibilities of care workers; and**

24 **“(B) Performing the following functions:**

25 **“(i) Withholding, filing and paying income and employment-related taxes, including
26 workers’ compensation premiums and unemployment taxes;**

27 **“(ii) Verifying the qualifications of each care worker; and**

28 **“(iii) Providing other administrative and employment-related supports.**

29 **“(c) ‘Care worker’ mean an individual providing home care services.**

30 **“(d) ‘Client’ means an individual receiving home care services, funded pursuant to ORS
31 410.070, or a designee of the individual.**

32 **“(e)(A) ‘Consumer-directed employer’ means an agency that contracts with the Depart-
33 ment of Human Services to provide agency with choice services.**

34 **“(B) ‘Consumer-directed employer’ excludes an in-home care agency as defined in ORS
35 443.305.**

1 “(f) ‘Home care services’ has the meaning given that term in ORS 410.600.

2 “(2) The department shall contract with up to two consumer-directed employers to pro-
3 vide agency with choice services. A consumer-directed employer contracting with the de-
4 partment must meet criteria prescribed by the department by rule including, but not limited
5 to:

6 “(a) Promoting consumer choice and self-direction and maximizing consumer autonomy
7 and control over daily decisions by:

8 “(A) Using a person-centered approach so that the client is at the center of the
9 decision-making process regarding what home care services are needed, where and how the
10 services are delivered, when the services are delivered and who provides the services;

11 “(B) Managing the employment responsibilities of the client together with the client and
12 with the client directing the client’s home care services and supports;

13 “(C) Enhancing the role of care workers as members of the client’s care team, as desired
14 and authorized by the client and reflected in the client’s care plan; and

15 “(D) Providing training to clients on self-direction and on the clients’ roles and respon-
16 sibilities as managers of their care workers including:

17 “(i) What it means to be a co-employer with the consumer-directed employer and the
18 duties under applicable employment laws; and

19 “(ii) How to provide a safe workplace for care workers.

20 “(b) A commitment to engage and work closely with clients in designing and implement-
21 ing agency with choice services by appointing clients to an advisory board, using focus
22 groups of clients or other methods for working with clients that are approved by the de-
23 partment.

24 “(c) Having a plan for recruiting and retaining qualified care workers to meet the grow-
25 ing need for long term care providers in this state.

26 “(d) The ability to provide high-quality training, health care and retirement benefits to
27 care workers, which may include participation in existing Taft-Hartley trusts that provide
28 those benefits.

29 “(e) A commitment to involving the care workers employed by the consumer-directed
30 employer in decision-making on the development of work processes, the establishment of
31 performance standards, quality improvement, training, technology used and workplace
32 safety.

33 “(f) The ability to build and adapt technology tools that can enhance efficiency and pro-
34 vide better quality of services.

35 “(g) A commitment to using caregiver registries, including the registry described in
36 section 2, chapter 95, Oregon Laws 2022.

37 “(h) A commitment to minimizing the impact of the loss of pay and work hours for care
38 workers resulting from client hospitalizations and death and to meeting the demands for
39 coverage necessitated by planned and unplanned care worker absences, respite care for a
40 client’s paid and unpaid caregivers and other temporary coverage needs of a client.

41 “(3) The department shall contract with consumer-directed employers by issuing a re-
42 quest for proposal to provide agency with choice services under this section that includes,
43 but is not limited to:

44 “(a) An application form that includes the names and addresses of the owners of the
45 agency and of the individuals who are responsible for the day-to-day operations of the

1 agency; and

2 “(b) Submission by the applicant of completed state and national background checks for
3 each owner of the agency and each individual responsible for the day-to-day operations of the
4 agency, including background checks on sex offender registries and checking for care work-
5 ers who are legally excluded from providing Medicaid- or Medicare-funded services.

6 “(4) A consumer-directed employer that contracts with the department under subsection
7 (2) of this section shall:

8 “(a) Ensure that care workers employed by the consumer-directed employer have access
9 to support coordination and services from the consumer-directed employer.

10 “(b) Submit claims for reimbursement that meet federal requirements for electronic visit
11 verification to ensure that care was provided to clients.

12 “(c) Be responsible for hiring and terminating care workers who are employed by the
13 consumer-directed employer.

14 “(d) Visit the client every six months, with at least one in-home visit per year, to moni-
15 tor the health and safety of clients and to safeguard against fraud, waste and abuse.

16 “(e) Establish and maintain an effective agency-wide quality assessment and performance
17 improvement program to evaluate and monitor the quality, safety and appropriateness of the
18 services provided by care workers including, at a minimum:

19 “(A) A method for identifying, analyzing and correcting adverse events, including imme-
20 diately responding to allegations of abuse, neglect and fiscal improprieties involving a client
21 and reporting any allegation of abuse or neglect to the appropriate authorities;

22 “(B) A method to select and track quality indicators by high risk, high volume and
23 problem prone areas and indicators of client safety and the quality of care; and

24 “(C) Conducting and documenting quality improvement activities.

25 “(f) Develop, implement and enforce written policies and procedures regarding:

26 “(A) Administrative operations;

27 “(B) Pre-employment screening and criminal records checks;

28 “(C) Personnel operations including, but not limited to:

29 “(i) The investigation of any complaint, grievance, adverse event or allegation of abuse,
30 neglect or fiscal improprieties involving a client; and

31 “(ii) Discontinuing a care worker’s assignment when the consumer-directed employer has
32 reason to believe that the health, safety or well-being of a client is in jeopardy due to the
33 care worker’s performance;

34 “(D) Managing client information and records, including policies regarding
35 confidentiality, access, storage, retention and destruction of records; and

36 “(E) Compliance with Medicaid requirements for agency with choice services.

37 “(g) Pay employment taxes for clients and fines or penalties assessed against a client if
38 the taxes, fines or penalties are associated with the client’s managing of the client’s care
39 workers.

40 “(h) Retain proof that all employment taxes have been paid and filed.

41 “(i) Indemnify a client for employment or wage-related claims, damages, fines or penal-
42 ties associated with the client’s managing of the client’s care workers.

43 “(j) Maintain a drug-free workplace that prohibits care workers from being under the
44 influence of drugs or alcohol when providing home care services.

45 “(k) Immediately respond to allegations of mistreatment of a care worker by a client.

1 “(5) The department shall make available to care workers employed by consumer-directed
2 employers a program to connect care workers to licensed nurses to provide training and in-
3 struction to care workers on the performance of nursing tasks.

4 “(6) Any qualified and willing person may apply for employment as a care worker with a
5 consumer-directed employer.

6 “(7) Care workers employed by a consumer-directed employer are required to have an
7 active identification number assigned by the consumer-directed employer.

8 “(8)(a) The department shall adopt by rule hourly rates for consumer-directed employers
9 and, if necessary, annually adjust the rates, subject to a legislative appropriation for the
10 adjusted rates, considering the market, average industry wages and other factors that the
11 department considers relevant. The rates must be sufficient to:

12 “(A) Support substitute staffing needs due to canceled shifts, planned and unplanned ab-
13 sences of care workers, respite care of clients and other similar needs; and

14 “(B) Allow consumer-directed employers to pay care workers wages and benefits compa-
15 rable to the wages and benefits provided for in the collective bargaining agreement under
16 ORS 410.612.

17 “(b) The department shall work with consumer-directed employers and care workers to:

18 “(A) Implement a system to assist clients and prospective clients in finding care workers;
19 and

20 “(B) Develop policies and procedures to minimize care worker wage losses due to can-
21 celed shifts or the hospitalization or death of a client.

22 “(9) Out of the rates paid to consumer-directed employers by the department under
23 subsection (8) of this section, the department shall establish:

24 “(a) A maximum percentage that may be used for administrative costs or overhead costs.

25 “(b) A minimum percentage that must be used for care worker compensation.

26 “(10) The department shall require consumer-directed employers to:

27 “(a) Demonstrate that any increases in rates paid under subsection (8) of this section are
28 passed through to care workers in wages and benefits; and

29 “(b) Provide full financial transparency by reporting to the department the costs of care
30 workers broken down by wages, benefits, workers’ compensation and any other personnel-
31 related expenses.

32 “(11) Except as provided in subsection (12) of this section, a consumer-directed employer
33 that seeks to contract with the department to provide agency with choice services must first
34 provide a labor peace agreement that:

35 “(a) Is signed or certified by an authorized representative of a labor organization that
36 represents employees in this state or a neighboring state who provide services similar to the
37 home care services provided by the care workers employed by the consumer-directed em-
38 ployer and that seeks to represent the care workers employed by the consumer-directed
39 employer; and

40 “(b) Includes a process for the resolution of labor disputes with the care workers em-
41 ployed by the consumer-directed employer.

42 “(12) The department may contract with a consumer-directed employer that has not
43 provided a labor peace agreement described in subsection (11) of this section if:

44 “(a)(A) A labor organization is currently certified to represent the care workers em-
45 ployed by the consumer-directed employer and the labor organization informs the

1 consumer-directed employer that the labor organization does not wish to enter into a labor
2 peace agreement with the consumer-directed employer; and

3 “(B) The consumer-directed employer demonstrates to the satisfaction of the department
4 that the consumer-directed employer has processes in place to ensure the uninterrupted
5 delivery of home care services in the event of a labor dispute; or

6 “(b)(A) The consumer-directed employer notifies in writing all labor organizations certi-
7 fied to represent employees in this state who provide services similar to the home care ser-
8 vices to be provided by the care workers employed by the consumer-directed employer that
9 the consumer-directed employer wishes to enter into a labor peace agreement; and

10 “(B) Three weeks following the date on which the notice was given:

11 “(i) No labor organization responds to the notice; or

12 “(ii) No labor organization expresses an interest in representing the care workers em-
13 ployed by the consumer-directed employer.

14 “SECTION 2. (1) The Department of Human Services shall conduct:

15 “(a) A study of the barriers to the implementation of the private pay home care worker
16 program established in ORS 410.605. The study shall include:

17 “(A) An analysis of the gaps in access to home care workers based on race, ethnicity,
18 citizenship status, income, disability, insurance coverage and other factors;

19 “(B) The feasibility of contracting with a third party to administer the program, including
20 a care worker or consumer-directed employer; and

21 “(C) Options for funding the program and for providing oversight and monitoring of the
22 quality of care provided through the program.

23 “(b) An assessment of the impact of the private pay home care worker program on the
24 full continuum of in-home care services.

25 “(2) In conducting the study, the department shall convene an advisory committee con-
26 sisting of:

27 “(a) Representatives of licensed in-home care agencies;

28 “(b) Consumers or consumer representatives;

29 “(c) Care workers and representatives of care workers; and

30 “(d) Other individuals or representatives of groups or organizations as determined by the
31 department.

32 “(3) Not later than January 1, 2026, the department shall report, as provided in ORS
33 192.245, the findings of its study to the interim committees of the Legislative Assembly re-
34 lated to health and to human services. The report may include recommendations regarding
35 the provision of agency with choice services under section 1 of this 2023 Act to private
36 payers.

37 “SECTION 3. No later than January 1, 2027, the Department of Human Services shall
38 report on the implementation of section 1 of this 2023 Act, in the manner provided in ORS
39 192.245, to the interim committees of the Legislative Assembly related to human services.

40 “SECTION 4. (1) Beginning two years after the date that a consumer-directed employer
41 starts providing agency with choice services under section 1 of this 2023 Act, consumer-
42 directed employers may serve clients who are not enrolled in the medical assistance pro-
43 gram.

44 “(2) As used in this section, ‘client’ and ‘consumer-directed employer’ have the meanings
45 given those terms in section 1 of this 2023 Act.

1 “**SECTION 5.** ORS 124.050, as amended by section 7, chapter 91, Oregon Laws 2022, is amended
2 to read:

3 “124.050. As used in ORS 124.050 to 124.095:

4 “(1) ‘Abuse’ means one or more of the following:

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

7 “(b) Neglect.

8 “(c) Abandonment, including desertion or willful forsaking of an elderly person or the with-
9 drawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

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

11 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425,
12 163.427, 163.465, 163.467 or 163.525.

13 “(f) Verbal abuse.

14 “(g) Financial exploitation.

15 “(h) Sexual abuse.

16 “(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
17 the person.

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

21 “(2) ‘Elderly person’ means any person 65 years of age or older who is not subject to the pro-
22 visions of ORS 441.640 to 441.665.

23 “(3) ‘Facility’ means:

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

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

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

28 “(4) ‘Financial exploitation’ means:

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

31 “(b) Alarming an elderly person or a person with a disability by conveying a threat to
32 wrongfully take or appropriate money or property of the person if the person would reasonably be-
33 lieve that the threat conveyed would be carried out.

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

36 “(d) Failing to use the income or assets of an elderly person or a person with a disability ef-
37 fectively for the support and maintenance of the person.

38 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

39 “(6) ‘Law enforcement agency’ means:

40 “(a) Any city or municipal police department.

41 “(b) Any county sheriff’s office.

42 “(c) The Oregon State Police.

43 “(d) Any district attorney.

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

45 “(7) ‘Neglect’ means failure to provide basic care or services that are necessary to maintain the

1 health or safety of an elderly person.

2 “(8) ‘Person with a disability’ means a person described in:

3 “(a) ORS 410.040 (7); or

4 “(b) ORS 410.715.

5 “(9) ‘Public or private official’ means:

6 “(a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician

7 or chiropractor, including any intern or resident.

8 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health

9 aide or employee of an in-home health service.

10 “(c) Employee of the Department of Human Services or community developmental disabilities

11 program.

12 “(d) Employee of the Oregon Health Authority, local health department or community mental

13 health program.

14 “(e) Peace officer.

15 “(f) Member of the clergy.

16 “(g) Regulated social worker.

17 “(h) Physical, speech or occupational therapist.

18 “(i) Senior center employee.

19 “(j) Information and referral or outreach worker.

20 “(k) Licensed professional counselor or licensed marriage and family therapist.

21 “(L) Elected official of a branch of government of this state or a state agency, board, commission

22 or department of a branch of government of this state or of a city, county or other political subdi-

23 vision in this state.

24 “(m) Firefighter or emergency medical services provider.

25 “(n) Psychologist.

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

27 “(p) Audiologist.

28 “(q) Speech-language pathologist.

29 “(r) Attorney.

30 “(s) Dentist.

31 “(t) Optometrist.

32 “(u) Chiropractor.

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

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

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

36 “(y) A person providing agency with choice services under section 1, chapter 91, Oregon Laws

37 **2022, or section 1 of this 2023 Act.**

38 “(10) ‘Services’ includes but is not limited to the provision of food, clothing, medicine, housing,

39 medical services, assistance with bathing or personal hygiene or any other service essential to the

40 well-being of an elderly person.

41 “(11)(a) ‘Sexual abuse’ means:

42 “(A) Sexual contact with an elderly person who does not consent or is considered incapable of

43 consenting to a sexual act under ORS 163.315;

44 “(B) Verbal or physical harassment of a sexual nature, including but not limited to severe or

45 pervasive exposure to sexually explicit material or language;

1 “(C) Sexual exploitation;
2 “(D) Any sexual contact between an employee of a facility or paid caregiver and an elderly
3 person served by the facility or caregiver; or
4 “(E) Any sexual contact that is achieved through force, trickery, threat or coercion.
5 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an elderly person and:
6 “(A) An employee of a facility who is also the spouse of the elderly person; or
7 “(B) A paid caregiver.
8 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.
9 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional harm to an elderly
10 person or a person with a disability through the use of:
11 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
12 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
13 sexual comments.
14 **“SECTION 6. (1) The Department of Human Services shall complete the rulemaking for
15 implementing section 1 of this 2023 Act no later than December 31, 2024.
16 “(2) The department shall open a request for proposals for consumer-directed employers
17 under section 1 of this 2023 Act no later than July 1, 2025.
18 “SECTION 7. (1) Sections 2 and 3 of this 2023 Act are repealed on January 2, 2027.
19 “(2) Section 4 of this 2023 Act is repealed on January 2, 2029.”.**
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