

Enrolled Senate Bill 91

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CHAPTER

AN ACT

Relating to home-based care for children with disabilities; and declaring an emergency.

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

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

(a) “Agency” means an agency that hires, trains and supervises direct support professionals using state funds received from the Department of Human Services.

(b) “Attendant care services” means services provided directly to an individual with a disability to assist with activities of daily living, instrumental activities of daily living and health-related tasks.

(c) “Child” means an individual under 18 years of age who:

(A) Has a developmental or intellectual disability; or

(B) Meets the eligibility criteria to receive services under the Medically Fragile (Hospital) Model Waiver or the Medically Involved Children’s Waiver approved by the Centers for Medicare and Medicaid Services under 42 U.S.C. 1396n(c).

(d) “Client” means an individual who receives attendant care services.

(e) “Client child” means a child who receives attendant care services from the child’s parent.

(f) “Developmental disability services” has the meaning given that term in ORS 427.101.

(g) “Direct support professional” means an individual who is hired, employed, trained, paid and supervised by an agency to provide attendant care services to a client of the agency.

(h) “Nonparent caregiver” means a direct support professional, personal support worker or similar provider who is paid to provide attendant care services to clients who are not the provider’s children.

(i) “Parent” includes a:

(A) Natural or adoptive parent of a child;

(B) Stepparent of a child; and

(C) Legal guardian of a child.

(j)(A) “Parent provider” means a parent who is paid to provide attendant care services to the parent’s minor child.

(B) “Parent provider” does not include a parent who is paid to provide attendant care services to a child who is 18 years of age or older.

(k)(A) “Personal support worker” means an individual who is employed by a client or the client’s representative and paid to provide attendant care services to the client.

(B) “Personal support worker” does not include a direct support professional.

(L) “State plan” means Oregon’s state plan for medical assistance, described in 42 U.S.C. 1396a, approved by the Centers for Medicare and Medicaid Services.

(m) “Very high behavioral needs” means a minor child’s extraordinary needs for support due to the child’s behavioral condition as indicated by a federally approved functional needs assessment adopted by the department that assigns the child to the highest service level.

(n) “Very high medical needs” means a minor child’s extraordinary needs for support due to the child’s medical condition as indicated by a federally approved functional needs assessment adopted by the department that assigns the child to the highest service level.

(2) Subject to rules adopted under subsection (8) of this section, to section 2 of this 2023 Act and to available funding, the department shall administer a program to compensate parents to provide attendant care services to the parents’ children who have been assessed by the department to have very high medical or very high behavioral needs.

(3) To be eligible for the program described in this section:

(a) A parent provider must be employed by an agency and not by the child or the other parent of the child;

(b) The parent provider may not be paid to provide attendant care services to the client child by an agency that is owned by the parent, the child or any family member or for which the parent or other family member serves in any administrative or leadership capacity, including as a member of a board of directors; and

(c) The agency employing the parent provider to provide attendant care services to the client child:

(A) May not employ a parent provider as an independent contractor;

(B) Shall pay parent providers overtime at the same rate and under the same circumstances as direct support professionals who are not parent providers;

(C) Except as authorized by the department by rule, may not pay providers of attendant care services, including parent providers, to provide services to a minor child during school hours unless the minor child is temporarily at home recovering from surgery or illness and the temporary absence from school is recommended by the child’s health care provider; and

(D) May not pay providers of attendant care services, including parent providers, to provide services to a minor child during school hours due to the determination of a school district or due to the choice of a parent of the client child to:

(i) Have the child regularly attend school less than the number of school hours attended by students without disabilities who are in the same grade and the same school district as the client child;

(ii) Homeschool the client child; or

(iii) Enroll the client child in a private school that offers fewer school hours than the school hours offered by the local public school to the majority of students in the same grade as the client child.

(4) Subsection (3)(c)(D) of this section does not prohibit a school district or other entity from compensating parents of students with disabilities for providing support for educational activities that would otherwise be the responsibility of the school district.

(5) A parent provider, during the hours that the parent provider is paid to provide one-on-one attendant care services to the client child:

(a) May not be responsible for a vulnerable adult who requires physical care and monitoring;

(b) May not be responsible for the care of a child, other than the client child, who is under 10 years of age and shall have another caregiver immediately available at all times to attend to the needs of the child; and

(c) Unless they are included as a goal or service in the child's individual support plan and related to the child's disability-related support needs, may not perform tasks that are not for the primary benefit of the client child, including but not limited to:

- (A) Grocery shopping for the household;
- (B) Housekeeping not required for the disability-related support needs of the client child;
- (C) Remote work or operation of a home business; or
- (D) Transporting individuals other than the client child to or from activities or appointments.

(6) If required by the Centers for Medicare and Medicaid Services, the department may require a parent provider to assign an alternative legal representative for the client child to make decisions about or manage the development and implementation of the client child's individual support plan. The assignment:

- (a) Must be on a form prescribed by the department; and
- (b) Must clearly state that the assignment is limited to decisions regarding the development and implementation of the child's individual support 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.

(7) A parent provider is subject to the requirements of mandatory reporting of abuse under ORS 124.060 and 419B.010, 24 hours per day, seven days per week.

(8) The department shall adopt rules for the program described in this section using an advisory committee appointed under ORS 183.333 that represents the interests of parents, children with developmental or intellectual disabilities, adults with disabilities, agencies, organizations of direct support professionals and personal support workers and organizations that advocate for persons with disabilities. The rules must include all of the following:

(a) Strategies to safeguard nonparent caregivers and avoid the displacement of nonparent caregivers by parent providers;

(b) Requirements for agencies to demonstrate consistent efforts to recruit, train and retain nonparent caregivers;

(c) Training requirements for:

(A) Parent providers regarding federal and state administrative rules regulating home-based and community-based services, including the impact of the rules on parent-child relationships 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;

(B) Client children to learn to advocate for themselves with respect to choosing and managing direct support professionals before and after reaching 18 years of age; and

(C) Community developmental disability programs related to the employment of parent providers, including on how to support families to manage issues concerning conflicts of interest, provider recruitment and retention and the empowerment of the client child to have a meaningful voice in the selection of the client child's direct support professionals;

(d) A process for a client child to object to the hiring of any caregiver, including the child's parent, or to raise concerns about a provider's caregiving;

(e) Procedures to ensure that the program described in this section is implemented consistently and equitably throughout this state;

(f) A requirement that any appeal related to the requirements of or benefits under the program is the sole responsibility of the central office staff of the department; and

(g) Other requirements that the department deems necessary to carry out the provisions of this section.

(9) The department may adopt rules necessary to manage the cost, size and growth rate of the program described in this section that are necessary to protect the eligibility for and levels of services under programs serving individuals receiving developmental disability ser-

VICES provided for in the state plan, including the development of criteria to limit the number of children eligible to participate in the program.

(10) Annually, the department shall report to the interim committees of the Legislative Assembly related to human services or, if the Legislative Assembly is in session, to the committees of the Legislative Assembly related to human services, in the manner provided in ORS 192.245, updates on the program described in this section, including:

(a) The number of client children receiving attendant care services, the number of children receiving the services from parent providers and the number of children receiving the services from nonparent caregivers;

(b) The number of hours of attendant care services provided by parent providers and number of hours of attendant care services provided by nonparent caregivers;

(c) A comparison of the cost per child of providing attendant care services by parent providers under the program with the cost per child of providing attendant care services by nonparent caregivers; and

(d) A report on the adequacy of the direct care workforce in this state to provide services to all children with developmental disability services who are eligible for attendant care services.

SECTION 2. (1) Except as provided in section 4 of this 2023 Act, the Department of Human Services may not administer the program described in section 1 of this 2023 Act without the Centers for Medicare and Medicaid Services' approval of a new waiver or without other arrangements with the Centers for Medicare and Medicaid Services to receive federal financial participation in the costs of the program during a state of emergency or a public health emergency.

(2) The department may not administer a program that pays a parent to provide attendant care or personal care services to the parent's minor child, including but not limited to the program described in section 1 of this 2023 Act, using General Fund moneys that are not matched by federal Medicaid funds.

SECTION 3. On or before the earlier of August 1, 2023, or 30 days after the effective date of this 2023 Act, the Department of Human Services shall initiate the process, including consulting with tribes and requesting public comments, to apply to the Centers for Medicare and Medicaid Services for approval of a new waiver as described in section 4 of this 2023 Act.

SECTION 4. The Department of Human Services shall apply for any short-term program that is made available by the Centers for Medicare and Medicaid Services that provides federal matching funds to continue paying parents who were paid parent providers as of March 1, 2023, to be paid parent providers until the program described in section 1 of this 2023 Act can be implemented. The department shall submit an application for a short-term program as provided in this section no later than January 1, 2024.

SECTION 5. (1) Section 3 of this 2023 Act is repealed on January 2, 2025.

(2) Section 4 of this 2023 Act is repealed on June 30, 2025.

SECTION 6. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (7), chapter __, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, for intellectual/developmental disabilities programs, is increased by \$3,415,121, for the purpose of carrying out the provisions of sections 1 and 4 of this 2023 Act.

SECTION 7. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), for the biennium beginning July 1, 2023, as the maximum limit for payment of expenses from federal funds, excluding funds described in section 2, chapter _____, Oregon Laws 2023 (Enrolled House Bill 5026), collected or received by the Department of Human Services, for intellectual/developmental disabilities programs, is increased by \$4,380,000, for the purpose of carrying out the provisions of sections 1 and 4 of this 2023 Act.

SECTION 8. This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect on its passage.

Passed by Senate June 23, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House June 24, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State