

Requested by SENATE COMMITTEE ON HUMAN SERVICES

**PROPOSED AMENDMENTS TO
SENATE BILL 91**

1 On page 1 of the printed bill, delete lines 4 through 25 and delete pages
2 2 through 5 insert:

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

4 **“(a) ‘Agency’ means an agency that hires, trains and supervises**
5 **direct support professionals using state funds received from the De-**
6 **partment of Human Services.**

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

10 **“(c) ‘Child’ means an individual under 18 years of age:**

11 **“(A) With a developmental or intellectual disability; or**

12 **“(B) Who meets the eligibility requirements for services under the**
13 **Medically Fragile Model Waiver or the Medically Involved Children’s**
14 **Waiver granted by the Centers for Medicare and Medicaid Services.**

15 **“(d) ‘Client’ means an individual who receives attendant care ser-**
16 **vices.**

17 **“(e) ‘Client child’ means a child who receives attendant care ser-**
18 **vices from the child’s parent.**

19 **“(f) ‘Developmental disability services’ has the meaning given that**
20 **term in ORS 427.101.**

21 **“(g) ‘Direct support professional’ means an individual who is hired,**

1 employed, trained, paid and supervised by an agency to provide at-
2 tendant care services to a client of the agency.

3 “(h) ‘Extraordinary needs’ means the needs of a child with a diag-
4 nosed condition that render it unsafe for the child to employ a non-
5 parent caregiver as determined by the child’s health care provider.

6 “(i) ‘Instructional time’ means the hours, designated in a child’s
7 individual support plan, throughout a 12-month period during which
8 the child is engaged in regularly scheduled instruction, learning ac-
9 tivities or learning assessments as required by rules adopted by the
10 Department of Education.

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

14 “(k) ‘Parent’ includes a:

15 “(A) Natural or adoptive parent of a child;

16 “(B) Stepparent of a child; and

17 “(C) Legal guardian of a child.

18 “(L)(A) ‘Parent provider’ means a parent who is paid to provide
19 attendant care services to the parent’s minor child.

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

23 “(m)(A) ‘Personal support worker’ means an individual who is em-
24 ployed by a client or the client’s representative and paid to provide
25 attendant care services to the client.

26 “(B) ‘Personal support worker’ does not include a direct support
27 professional.

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

1 “(o) ‘Very high support needs’ means a minor child’s needs for the
2 highest level of support, as indicated by a federally approved func-
3 tional needs assessment, including the needs of children who meet the
4 eligibility requirements for the Children’s Intensive In-Home Services
5 Waiver granted by the Centers for Medicare and Medicaid Services or
6 who are receiving developmental disability services under the state
7 plan.

8 “(2) Subject to subsection (8) of this section and section 2 of this
9 2023 Act, the Department of Human Services shall administer a pro-
10 gram to compensate parents to provide attendant care services to the
11 parents’ children if:

12 “(a) The client child has been assessed by the department to have
13 very high support needs; or

14 “(b) The client child is not assessed as having very high support
15 needs but the department grants an exception for the client child
16 through a process established by the department based on the deter-
17 mination of the child’s medical provider that the client child needs a
18 parent provider due to the client child’s extraordinary physical, mental
19 or emotional needs.

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

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

26 “(b) The agency employing the parent provider to provide attendant
27 care services to the client child:

28 “(A) May not employ a parent provider as an independent contrac-
29 tor;

30 “(B) Must offer a parent provider the same wages and benefits of-

1 **ferred to direct support professionals who are not parent providers re-**
2 **gardless of the rate paid by the department to the agency for parent**
3 **providers;**

4 **“(C) May pay parent providers to provide a total of no more than**
5 **50 hours per client child per week of attendant care services;**

6 **“(D) Subject to subparagraph (C) of this paragraph, shall pay parent**
7 **providers overtime at the same rate and under the same circum-**
8 **stances as direct support professionals who are not parent providers;**
9 **and**

10 **“(E) Except as authorized by the department by rule, may not pay**
11 **providers of attendant care services, including parent providers, to**
12 **provide services to a minor child during instructional time unless the**
13 **minor child is temporarily disengaged from instructional time while**
14 **recovering from surgery or illness and the temporary disengagement**
15 **from instructional time is recommended by the child’s health care**
16 **provider.**

17 **“(4) Subsection (3)(b)(E) of this section does not prohibit a school**
18 **district or other entity from compensating parents of students with**
19 **disabilities for providing support for educational activities that would**
20 **otherwise be the responsibility of the school district.**

21 **“(5) A parent provider, during the hours that the parent provider**
22 **is paid to provide attendant care services to the client child:**

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

25 **“(b) Unless approved by the department through the client child’s**
26 **individual support plan, may not be responsible for the care of a child,**
27 **other than the client child, who is under 10 years of age and shall have**
28 **another caregiver immediately available at all times to attend to the**
29 **needs of the child; and**

30 **“(c) May not perform tasks that are not for the primary benefit of**

1 the client child or as included in the client child’s individual support
2 plan, including but not limited to:

3 “(A) Grocery shopping for the household;

4 “(B) Housekeeping not required for the care of the client child;

5 “(C) Remote work or operation of a home business;

6 “(D) Transporting individuals other than the client child to or from
7 activities or appointments;

8 “(E) Attending outside activities, performances or athletic events
9 of children in the household other than the client child except for the
10 primary purpose of supporting the client child’s participation in a
11 community activity of the client child’s choosing; or

12 “(F) Travel with the client child, if the travel includes an overnight
13 stay away from the child’s home, unless the travel is for the primary
14 purpose of supporting the client child to travel.

15 “(6) If required by the Centers for Medicare and Medicaid Services,
16 the department may require a parent provider to assign an alternative
17 legal representative for the client child to make decisions about or
18 manage the client child’s attendant care services. The assignment:

19 “(a) Must be on a form prescribed by the department; and

20 “(b) Must clearly state that the assignment is limited to decisions
21 regarding the development and implementation of the child’s individ-
22 ual support plan and does not limit the authority of the parent pro-
23 vider to make decisions for the client child with respect to health care,
24 education or religious training.

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

28 “(8) The department shall adopt rules for the program described in
29 this section using an advisory committee appointed under ORS 183.333
30 that represents the interests of parents, children with developmental

1 or intellectual disabilities, adults with disabilities, agencies, organiza-
2 tions of direct support professionals and personal support workers and
3 organizations that advocate for persons with disabilities. The rules
4 must include all of the following:

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

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

9 “(c) Training requirements for:

10 “(A) Parent providers regarding federal and state administrative
11 rules regulating home-based and community-based services, including
12 the impact of the rules on parent-child relationships with respect to
13 discipline, supervision, physical intervention and self-determination
14 of client children during the hours that the parent provider is being
15 paid to provide attendant care services;

16 “(B) Client children to learn to advocate for themselves with re-
17 spect to choosing and managing direct support professionals before
18 and after reaching 18 years of age; and

19 “(C) Community developmental disability programs related to the
20 employment of parent providers, including on how to support families
21 to manage issues concerning conflicts of interest, provider recruit-
22 ment and retention and the empowerment of the client child to have
23 a meaningful voice in the selection of the client child’s direct support
24 professionals;

25 “(d) A process for a client child to object to the hiring of a provider
26 or to raise concerns about a provider’s caregiving;

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

29 “(f) A requirement that any appeal related to the implementation
30 of a waiver granted by the Centers for Medicare and Medicaid Services

1 is the sole responsibility of the central office staff of the department;
2 and

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

5 “(9)(a) The department may adopt rules necessary to limit the
6 number of client children served by the program to no less than 440
7 children based on criteria adopted by the department by rule that
8 prioritize:

9 “(A) Client children with paid parent providers as of May 11, 2023,
10 under the temporary program established during the public health
11 emergency;

12 “(B) Client children with very high support needs; and

13 “(C) Children granted an exception in accordance with subsection
14 (2)(b) of this section.

15 “(b) A client child’s eligibility to participate in the program may
16 not be terminated due to the child’s achievement of skills that result
17 in a need for a lower level of service.

18 “(10) Annually, the department shall report to the interim com-
19 mittees of the Legislative Assembly related to human services or, if
20 the Legislative Assembly is in session, to the committees of the Leg-
21 islative Assembly related to human services, in the manner provided
22 in ORS 192.245, updates on the program described in this section, in-
23 cluding:

24 “(a) The number of client children receiving attendant care services
25 from parent providers, other relatives and nonparent caregivers;

26 “(b) The number of hours of attendant care services provided by
27 parent providers, other relatives and nonparent caregivers;

28 “(c) A comparison of the cost per child, for each service level, of
29 providing attendant care services by parent providers under the pro-
30 gram with the cost per child of providing attendant care services by

1 **other relatives and nonparent caregivers;**

2 **“(d) A comparison of the expenditures and impact on the direct care**
3 **workforce of the program versus other expenditures designed to in-**
4 **crease the direct care workforce;**

5 **“(e) A report on the adequacy of the direct care workforce of non-**
6 **parent caregivers in this state to provide services to all children with**
7 **developmental disability services who are eligible for attendant care**
8 **services; and**

9 **“(f) A report on the overall costs and benefits to the state for the**
10 **program, including but not limited to the costs and benefits to the**
11 **medical assistance program, the Supplemental Nutrition Assistance**
12 **Program, Temporary Assistance for Needy Families, housing voucher**
13 **programs and other state benefit programs.**

14 **“(11) Based on the data reported to the Legislative Assembly under**
15 **subsection (10) of this section, the department may manage the cost,**
16 **size and growth rate of the program as necessary to maintain service**
17 **levels of client children with paid parent providers and individuals re-**
18 **ceiving services under the state plan by:**

19 **“(a) Reducing the number of new client children eligible to partic-**
20 **ipate in the program;**

21 **“(b) Adopting by rule income limits to qualify for the program that**
22 **are no less than the Portland area median income; or**

23 **“(c) Taking other cost reduction measures that prioritize main-**
24 **taining the existing service levels of children participating in the pro-**
25 **gram.**

26 **“(12)(a) Notwithstanding subsection (9) of this section, the depart-**
27 **ment may increase the growth of the program or the service levels**
28 **provided in the program as described in paragraph (b) of this sub-**
29 **section based on:**

30 **“(A) Increases in federal funding;**

1 **“(B) Changes to policy or guidance from by the Centers for Medi-**
2 **care and Medicaid Services;**

3 **“(C) Cost reductions achieved in other programs administered by**
4 **the department; and**

5 **“(D) A determination by the department that the program has in-**
6 **creased the direct care workforce or that actual costs of the program**
7 **are less than predicted.**

8 **“(b) The department may increase the growth of or service levels**
9 **provided in the program by:**

10 **“(A) Increasing the limit on hours that parent providers may be**
11 **compensated for providing attendant care services to the parent’s**
12 **child; or**

13 **“(B) Increasing the number of new client children that may par-**
14 **ticipate in the program.**

15 **“(13) The department shall evaluate options to reduce costs in the**
16 **program by paying lower rates to agencies for paid parent provider**
17 **services while ensuring that paid parent providers employed by the**
18 **agency are paid the same rate as nonparent caregivers employed by**
19 **the agency.**

20 **“SECTION 2. (1) The Department of Human Services may not ad-**
21 **minister the program described in section 1 of this 2023 Act without**
22 **the Centers for Medicare and Medicaid Services’ approval of a waiver**
23 **or without other arrangements with the Centers for Medicare and**
24 **Medicaid Services.**

25 **“(2) The department may not administer a program that pays a**
26 **parent to provide attendant care or personal care services to the**
27 **parent’s minor child, including but not limited to the program de-**
28 **scribed in section 1 of this 2023 Act, using General Fund moneys that**
29 **are not matched by federal Medicaid funds.**

30 **“SECTION 3. The Department of Human Services shall apply for**

1 any federal funding available, including but not limited to funds from
2 the American Rescue Plan Act of 2021 (P.L. 117-2), to continue to
3 compensate paid parent providers, as defined in section 1 of this 2023
4 Act, who were paid parent providers as of March 1, 2023, until the
5 earlier of:

6 “(1) July 1, 2025; and

7 “(2) The implementation of section 1 of this 2023 Act.

8 **“SECTION 4.** On or before the earlier of August 1, 2023, or 30 days
9 after the effective date of this 2023 Act, the Department of Human
10 Services shall initiate the process, including tribal consultation and a
11 request for public comments, to apply to the Centers for Medicare and
12 Medicaid Services for approval of a waiver to implement section 1 of
13 this 2023 Act.

14 **“SECTION 5.** Section 4 of this 2023 Act is repealed on January 2,
15 2026.

16 **“SECTION 6.** This 2023 Act being necessary for the immediate
17 preservation of the public peace, health and safety, an emergency is
18 declared to exist, and this 2023 Act takes effect on its passage.”.

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