

SB 570-6
(LC 1192)
4/21/23 (LHF/ps)

Requested by Senator GELSER BLOUIN

**PROPOSED AMENDMENTS TO
SENATE BILL 570**

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

3 After line 21, insert:

4 “Whereas labor and management conflicts jeopardize the state’s proprie-
5 tary interests as a purchaser of self-directed home care services by substan-
6 tially interfering with the quality, consistency and reliability of the
7 provision of self-directed home care services in the state; and

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

11 “Whereas the lack of a mutual agreement to resolve labor and manage-
12 ment conflicts through processes that avoid disruption in the provision of
13 self-directed home care services increases the likelihood that labor and
14 management conflicts will interfere with the provision of self-directed home
15 care services; and

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

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

1 **“SECTION 1. (1) As used in this section:**
2 **“(a) ‘Abuse’ has the meaning given that term in ORS 124.050.**
3 **“(b) ‘Agency with choice services’ means, with respect to care**
4 **workers who are providing home care services and supports to a client:**
5 **“(A) Assisting a client with:**
6 **“(i) Recruiting, selecting and dismissing care workers; and**
7 **“(ii) Coordinating the schedules and responsibilities of care work-**
8 **ers; and**
9 **“(B) Performing the following functions:**
10 **“(i) Withholding, filing and paying income and employment-related**
11 **taxes, including workers’ compensation premiums and unemployment**
12 **taxes;**
13 **“(ii) Verifying the qualifications of each care worker; and**
14 **“(iii) Providing other administrative and employment-related sup-**
15 **ports.**
16 **“(c) ‘Care worker’ mean an individual providing home care services.**
17 **“(d) ‘Client’ means an individual receiving home care services,**
18 **funded pursuant to ORS 410.070, or a designee of the individual.**
19 **“(e)(A) ‘Consumer-directed employer’ means an agency that con-**
20 **tracts with the Department of Human Services to provide agency with**
21 **choice services.**
22 **“(B) ‘Consumer-directed employer’ excludes an in-home care agency**
23 **as defined in ORS 443.305.**
24 **“(f) ‘Home care services’ has the meaning given that term in ORS**
25 **410.600.**
26 **“(2) The department shall contract with up to two consumer-**
27 **directed employers to provide agency with choice services. A**
28 **consumer-directed employer contracting with the department must**
29 **meet criteria prescribed by the department by rule including, but not**
30 **limited to:**

1 **“(a) Promoting consumer choice and self-direction and maximizing**
2 **consumer autonomy and control over daily decisions by:**

3 **“(A) Using a person-centered approach so that the client is at the**
4 **center of the decision-making process regarding what home care ser-**
5 **vices are needed, where and how the services are delivered, when the**
6 **services are delivered and who provides the services;**

7 **“(B) Managing the employment responsibilities of the client to-**
8 **gether with the client and with the client directing the client’s home**
9 **care services and supports;**

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

13 **“(D) Providing training to clients on self-direction and on the**
14 **clients’ roles and responsibilities as managers of their care workers**
15 **including:**

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

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

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

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

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

29 **“(e) A commitment to involving the care workers employed by the**
30 **consumer-directed employer in decision-making on the development**

1 of work processes, the establishment of performance standards, qual-
2 ity improvement, training, technology used and workplace safety.

3 “(f) The ability to build and adapt technology tools that can en-
4 hance efficiency and provide better quality of services.

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

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

13 “(3) The department shall contract with consumer-directed em-
14 ployers by issuing a request for proposal to provide agency with choice
15 services under this section that includes, but is not limited to:

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

19 “(b) Submission by the applicant of completed state and national
20 background checks for each owner of the agency and each individual
21 responsible for the day-to-day operations of the agency, including
22 background checks on sex offender registries and checking for care
23 workers who are legally excluded from providing Medicaid- or
24 Medicare-funded services.

25 “(4) A consumer-directed employer that contracts with the depart-
26 ment under subsection (2) of this section shall:

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

30 “(b) Submit claims for reimbursement that meet federal require-

1 **ments for electronic visit verification to ensure that care was provided**
2 **to clients.**

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

5 **“(d) Visit the client every six months, with at least one in-home**
6 **visit per year, to monitor the health and safety of clients and to safe-**
7 **guard against fraud, waste and abuse.**

8 **“(e) Establish and maintain an effective agency-wide quality as-**
9 **essment and performance improvement program to evaluate and**
10 **monitor the quality, safety and appropriateness of the services pro-**
11 **vided by care workers including, at a minimum:**

12 **“(A) A method for identifying, analyzing and correcting adverse**
13 **events, including immediately responding to allegations of abuse,**
14 **neglect and fiscal improprieties involving a client and reporting any**
15 **allegation of abuse or neglect to the appropriate authorities;**

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

19 **“(C) Conducting and documenting quality improvement activities.**

20 **“(f) Develop, implement and enforce written policies and procedures**
21 **regarding:**

22 **“(A) Administrative operations;**

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

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

25 **“(i) The investigation of any complaint, grievance, adverse event**
26 **or allegation of abuse, neglect or fiscal improprieties involving a cli-**
27 **ent; and**

28 **“(ii) Discontinuing a care worker’s assignment when the**
29 **consumer-directed employer has reason to believe that the health,**
30 **safety or well-being of a client is in jeopardy due to the care worker’s**

1 performance;

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

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

7 “(g) Pay employment taxes for clients and fines or penalties as-
8 sessed against a client if the taxes, fines or penalties are associated
9 with the client’s managing of the client’s care workers.

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

12 “(i) Indemnify a client for employment or wage-related claims,
13 damages, fines or penalties associated with the client’s managing of
14 the client’s care workers.

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

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

20 “(5) The department shall make available to care workers employed
21 by consumer-directed employers a program to connect care workers
22 to licensed nurses to provide training and instruction to care workers
23 on the performance of nursing tasks.

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

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

29 “(8)(a) The department shall adopt by rule hourly rates for
30 consumer-directed employers and, if necessary, annually adjust the

1 rates, subject to a legislative appropriation for the adjusted rates,
2 considering the market, average industry wages and other factors that
3 the department considers relevant. The rates must be sufficient to:

4 “(A) Support substitute staffing needs due to canceled shifts,
5 planned and unplanned absences of care workers, respite care of cli-
6 ents and other similar needs; and

7 “(B) Allow consumer-directed employers to pay care workers wages
8 and benefits comparable to the wages and benefits provided for in the
9 collective bargaining agreement under ORS 410.612.

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

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

14 “(B) Develop policies and procedures to minimize care worker wage
15 losses due to canceled shifts or the hospitalization or death of a client.

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

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

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

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

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

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

30 “(11) Except as provided in subsection (12) of this section, a

1 **consumer-directed employer that seeks to contract with the depart-**
2 **ment to provide agency with choice services must first provide a labor**
3 **peace agreement that:**

4 **“(a) Is signed or certified by an authorized representative of a labor**
5 **organization that represents employees in this state or a neighboring**
6 **state who provide services similar to the home care services provided**
7 **by the care workers employed by the consumer-directed employer and**
8 **that seeks to represent the care workers employed by the consumer-**
9 **directed employer; and**

10 **“(b) Includes a process for the resolution of labor disputes with the**
11 **care workers employed by the consumer-directed employer.**

12 **“(12) The department may contract with a consumer-directed em-**
13 **ployer that has not provided a labor peace agreement described in**
14 **subsection (11) of this section if:**

15 **“(a)(A) A labor organization is currently certified to represent the**
16 **care workers employed by the consumer-directed employer and the**
17 **labor organization informs the consumer-directed employer that the**
18 **labor organization does not wish to enter into a labor peace agreement**
19 **with the consumer-directed employer; and**

20 **“(B) The consumer-directed employer demonstrates to the satisfac-**
21 **tion of the department that the consumer-directed employer has pro-**
22 **cesses in place to ensure the uninterrupted delivery of home care**
23 **services in the event of a labor dispute; or**

24 **“(b)(A) The consumer-directed employer notifies in writing all labor**
25 **organizations certified to represent employees in this state who pro-**
26 **vide services similar to the home care services to be provided by the**
27 **care workers employed by the consumer-directed employer that the**
28 **consumer-directed employer wishes to enter into a labor peace agree-**
29 **ment; and**

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

- 1 “(i) No labor organization responds to the notice; or
2 “(ii) No labor organization expresses an interest in representing the
3 care workers employed by the consumer-directed employer.

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

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

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

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

14 **“(C) Options for funding the program and for providing oversight
15 and monitoring of the quality of care provided through the program.**

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

18 **“(2) In conducting the study, the department shall convene an ad-
19 visory committee consisting of:**

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

21 **“(b) Consumers or consumer representatives;**

22 **“(c) Care workers and representatives of care workers; and**

23 **“(d) Other individuals or representatives of groups or organizations
24 as determined by the department.**

25 **“(3) Not later than January 1, 2026, the department shall report, as
26 provided in ORS 192.245, the findings of its study to the interim com-
27 mittees of the Legislative Assembly related to health and to human
28 services. The report may include recommendations regarding the pro-
29 vision of agency with choice services under section 1 of this 2023 Act
30 to private payers.**

1 **“SECTION 3. No later than January 1, 2027, the Department of**
2 **Human Services shall report on the implementation of section 1 of this**
3 **2023 Act, in the manner provided in ORS 192.245, to the interim com-**
4 **mittees of the Legislative Assembly related to human services.**

5 **“SECTION 4. (1) Beginning two years after the date that a**
6 **consumer-directed employer starts providing agency with choice ser-**
7 **vices under section 1 of this 2023 Act, consumer-directed employers**
8 **may serve clients who are not enrolled in the medical assistance pro-**
9 **gram.**

10 **“(2) As used in this section, ‘client’ and ‘consumer-directed em-**
11 **ployer’ have the meanings given those terms in section 1 of this 2023**
12 **Act.**

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

15 “124.050. As used in ORS 124.050 to 124.095:

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

17 “(a) Any physical injury to an elderly person caused by other than acci-
18 dental means, or which appears to be at variance with the explanation given
19 of the injury.

20 “(b) Neglect.

21 “(c) Abandonment, including desertion or willful forsaking of an elderly
22 person or the withdrawal or neglect of duties and obligations owed an el-
23 derly person by a caretaker or other person.

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

25 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
26 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

27 “(f) Verbal abuse.

28 “(g) Financial exploitation.

29 “(h) Sexual abuse.

30 “(i) Involuntary seclusion of an elderly person for the convenience of a

1 caregiver or to discipline the person.

2 “(j) A wrongful use of a physical or chemical restraint of an elderly per-
3 son, excluding an act of restraint prescribed by a physician licensed under
4 ORS chapter 677 and any treatment activities that are consistent with an
5 approved treatment plan or in connection with a court order.

6 “(2) ‘Elderly person’ means any person 65 years of age or older who is not
7 subject to the provisions of ORS 441.640 to 441.665.

8 “(3) ‘Facility’ means:

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

10 “(b) A residential facility as that term is defined in ORS 443.400, includ-
11 ing but not limited to an assisted living facility.

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

13 “(4) ‘Financial exploitation’ means:

14 “(a) Wrongfully taking the assets, funds or property belonging to or in-
15 tended for the use of an elderly person or a person with a disability.

16 “(b) Alarming an elderly person or a person with a disability by convey-
17 ing a threat to wrongfully take or appropriate money or property of the
18 person if the person would reasonably believe that the threat conveyed would
19 be carried out.

20 “(c) Misappropriating, misusing or transferring without authorization any
21 money from any account held jointly or singly by an elderly person or a
22 person with a disability.

23 “(d) Failing to use the income or assets of an elderly person or a person
24 with a disability effectively for the support and maintenance of the person.

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

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

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

28 “(b) Any county sheriff’s office.

29 “(c) The Oregon State Police.

30 “(d) Any district attorney.

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

3 “(7) ‘Neglect’ means failure to provide basic care or services that are
4 necessary to maintain the health or safety of an elderly person.

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

6 “(a) ORS 410.040 (7); or

7 “(b) ORS 410.715.

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

9 “(a) Physician or physician assistant licensed under ORS chapter 677,
10 naturopathic physician or chiropractor, including any intern or resident.

11 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s
12 aide, home health aide or employee of an in-home health service.

13 “(c) Employee of the Department of Human Services or community de-
14 velopmental disabilities program.

15 “(d) Employee of the Oregon Health Authority, local health department
16 or community mental health program.

17 “(e) Peace officer.

18 “(f) Member of the clergy.

19 “(g) Regulated social worker.

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

21 “(i) Senior center employee.

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

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

25 “(L) Elected official of a branch of government of this state or a state
26 agency, board, commission or department of a branch of government of this
27 state or of a city, county or other political subdivision in this state.

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

29 “(n) Psychologist.

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

1 “(p) Audiologist.
2 “(q) Speech-language pathologist.
3 “(r) Attorney.
4 “(s) Dentist.
5 “(t) Optometrist.
6 “(u) Chiropractor.
7 “(v) Personal support worker, as defined in ORS 410.600.
8 “(w) Home care worker, as defined in ORS 410.600.
9 “(x) Referral agent, as defined in ORS 443.370.
10 “(y) A person providing agency with choice services under section 1,
11 chapter 91, Oregon Laws 2022, **or section 1 of this 2023 Act.**
12 “(10) ‘Services’ includes but is not limited to the provision of food,
13 clothing, medicine, housing, medical services, assistance with bathing or
14 personal hygiene or any other service essential to the well-being of an el-
15 derly person.
16 “(11)(a) ‘Sexual abuse’ means:
17 “(A) Sexual contact with an elderly person who does not consent or is
18 considered incapable of consenting to a sexual act under ORS 163.315;
19 “(B) Verbal or physical harassment of a sexual nature, including but not
20 limited to severe or pervasive exposure to sexually explicit material or lan-
21 guage;
22 “(C) Sexual exploitation;
23 “(D) Any sexual contact between an employee of a facility or paid
24 caregiver and an elderly person served by the facility or caregiver; or
25 “(E) Any sexual contact that is achieved through force, trickery, threat
26 or coercion.
27 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an
28 elderly person and:
29 “(A) An employee of a facility who is also the spouse of the elderly per-
30 son; or

1 “(B) A paid caregiver.

2 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

3 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional
4 harm to an elderly person or a person with a disability through the use of:

5 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity
6 or ridicule; or

7 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
8 elty or inappropriate sexual comments.

9 **“SECTION 6. (1) The Department of Human Services shall complete
10 the rulemaking for implementing section 1 of this 2023 Act no later
11 than December 31, 2024.**

12 **“(2) The department shall open a request for proposals for
13 consumer-directed employers under section 1 of this 2023 Act no later
14 than July 1, 2025.**

15 **“SECTION 7. (1) Sections 2 and 3 of this 2023 Act are repealed on
16 January 2, 2027.**

17 **“(2) Section 4 of this 2023 Act is repealed on January 2, 2029.”.**

18