

HB 4129 -1, -4, -6, -7, -8 STAFF MEASURE SUMMARY

House Committee On Early Childhood and Human Services

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/12, 2/14

WHAT THE MEASURE DOES:

The measure defines "agency with choice services" as personal care services for older adults, individuals with physical disabilities, and individuals with behavioral health needs that are provided under an agency with choice model of co-employment for direct support workers. The measure requires the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to adopt rules for the licensing of organizations that provide agency with choice services and to contract with up to two agencies by January 1, 2026. The measure specifies requirements and responsibilities of licensed agencies, clients' rights, employment conditions, reimbursement structures, and contract provisions.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

Detailed Summary

Definitions

- Defines "agency with choice model" as a co-employment model in which an agency functions as a common law employer of direct support workers who are recruited by individuals receiving attendant or personal care services.
- Defines "direct support worker" as a person who provides attendant or personal care services and is co-employed by an agency and an individual and provides for a legal distinction between direct support workers, personal support workers, and direct support professionals.
- Defines "agency with choice services" as services provided by the above model and specifies requirements for agencies providing services.
- Adds persons providing agency with choice services to list of mandatory reporters of abuse of elderly persons.
- Exempts only agency with choice service providers for intellectual and developmental disabilities from the definition of "in-home care agency" in ORS chapter 443.

Requirements for Agency with Choice Providers

- Requires licensed agencies to be responsible for the following:
 - recruiting, hiring, terminating, scheduling, training direct support workers while supporting individuals receiving services as co-employers;
 - handling administrative tasks including reimbursements, tax withholding, regulatory compliance, records and documentation, abuse reporting, background checks, and quality improvement;
 - maintaining workplace safety standards; and
 - promoting a person-centered approach to service delivery.
- Guarantees the rights of individuals receiving services to select, train, direct, report, remove, and schedule direct support workers according to their needs and preferences.
- Clarifies that an individual's exercise of the above actions does not establish an employer-employee relationship.
- Requires agencies to implement labor peace agreements with labor organizations and provides conditions for DHS and OHA to contract with agencies that do not implement labor peace agreements.

Requirements for Agency with Choice Licensing and Contracting

- Requires DHS to adopt rules for the licensing of agencies providing services to older adults or individuals with physical disabilities.
- Requires OHA to adopt rules for the licensing of agencies providing services to individuals with behavioral health needs through the state Medicaid plan.
- Requires OHA and DHS to contract with up to two agencies to provide agency with choice services by January 1, 2026.
- Requires DHS and OHA to establish reimbursement rates for agencies according to standards from the Centers for Medicare and Medicaid Services.
- Requires DHS and OHA to adopt rules establishing financial transparency requirements for agencies.
- Requires DHS and OHA to be responsible for nurse delegation as already required for home care workers.
- Allows DHS and OHA to expand eligibility for agency with choice services to individuals in Oregon Project Independence and individuals in the private pay home care worker program.
- Allows DHS and OHA to deny, suspend, or revoke licenses and impose civil penalties on agencies that fail to comply with requirements.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 The amendment replaces Section 1 of the measure. The amendment

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Detailed Summary

- Redefines "agency with choice model" as "self-directed service delivery model."
- Adds the ability for an individual's authorized representative to make decisions regarding services on an individual's behalf.
- Adds the right of an individual receiving services to receive employer-related training as required by federal rules.
- Requires DHS and OHA to conduct a competitive procurement process when selecting agencies for contracting.
- Requires that DHS may only expand eligibility to Oregon Project Independence clients after two years of serving individuals through Medicaid.
- Requires that the Home Care Commission, rather than DHS, be responsible for deciding whether to expand access to clients of the private pay home care program and requires the commission to convene stakeholders before issuing a decision.

-4 The amendment designates a provider of agency with choice services as a public body with respect to public records laws.

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-6 The amendment restricts the length of a contract between DHS or OHA and an agency to five years and requires that DHS and OHA evaluate alternative providers when renewing a contract.

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-7 The amendment modifies the measure's preamble. The amendment also guarantees a direct support worker's right to join, resign from, or decline to join a labor organization, and provides that the worker cannot be required to join an organization as a condition of employment. The amendment exempts the measure's provisions from existing collective bargaining agreements to the extent that there would be a conflict.

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-8 The amendment prohibits DHS or OHA from contracting with an agency that shares an affiliation with a labor organization that represents the direct support workers employed by the agency, including shared officers or any financial relationships.

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BACKGROUND:

Agency with choice (AWC) is a service model for in-home care and support services in which support workers are employed by an agency but individuals who receive services are empowered to select, dismiss, and direct the support workers according to their needs and preferences. It is an alternative to the traditional agency model, in which agencies employ home care workers who care for individuals, and the personal employment model, in which individuals employ home care workers directly and are responsible for the administrative functions of managing the employer-employee relationship. AWC utilizes a co-employment model in which agencies are responsible for the administrative functions of the employer-employee relationship, such as hiring, training, regulatory compliance, and compensation, while individuals retain the ability to have personal control and decision-making over the care and support services they receive.

In 2022, the Legislative Assembly passed Senate Bill 1548, which directed the Department of Human Services to begin a process of contracting with AWC providers for individuals with intellectual and developmental disabilities (IDD). Senate Bill 104 (2023) modified the requirements in response to feedback during the rulemaking process and set a timeline for contracting with AWC providers for individuals with IDD by July 1, 2024.

House Bill 4129 requires the Department of Human Services and the Oregon Health Authority to begin licensing and contracting with AWC providers for older adults, individuals with physical disabilities, and individuals with behavioral health needs.