

House Bill 4129

Sponsored by Representative BOWMAN, Senator PATTERSON, Representatives VALDERRAMA, SMITH G, Senator GELSER BLOUIN; Representatives ANDERSEN, BOICE, DEXTER, EVANS, GAMBA, GOMBERG, GRAYBER, HARTMAN, HIEB, NELSON, NGUYEN H, PHAM K, Senators DEMBROW, FREDERICK, SMITH DB (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act requires OHA and DHS to contract with up to two agencies to provide agency with choice services. The Act defines the services that must be provided and the rights of individuals who receive the services. The Act requires the OHA and DHS to adopt certain rules.

The Act requires people who provide agency with choice services to report any suspected child abuse or neglect to the proper powers that be. (Flesch Readability Score: 60.9).

Requires the Department of Human Services and the Oregon Health Authority to contract with up to two agencies to provide agency with choice services to individuals who are older adults or who have disabilities. Specifies the duties of the agency providing agency with choice services and rights of the individuals who are receiving agency with choice services. Requires the department and the authority to adopt rules that contain specified provisions.

Specifies that all agency with choice providers are mandatory reporters of abuse or neglect.

A BILL FOR AN ACT

1
2 Relating to in-home service providers; creating new provisions; and amending ORS 124.050 and
3 443.305.

4 Whereas quality long term in-home care services allow Oregon seniors, persons with disabilities
5 and their families the choice of remaining in their own homes and communities, including the choice
6 of whether to receive residential services, use licensed home care agencies or employ individual
7 providers; and

8 Whereas long term in-home care services are a less costly alternative to institutional care,
9 saving Oregon taxpayers significant amounts through lower reimbursement rates; and

10 Whereas thousands of Oregon seniors and persons with disabilities exercise their choice to live
11 in their own homes and receive needed assistance through in-home services; and

12 Whereas many Oregon seniors and persons with disabilities currently receive long term in-home
13 care services from individual providers hired directly by them under programs authorized through
14 the Medicaid state plan or Medicaid waiver authorities and similar state-funded in-home care pro-
15 grams; and

16 Whereas establishing a consumer-directed employer program will support the state's intent for
17 consumers to direct their own services, enhance the capacity of the home-based service system by
18 adding an entity that provides the administrative functions of an employer and supports consumers
19 to manage the services provided in their own homes, prevent or reduce unnecessary and costly
20 utilization of hospitals and institutions by taking a step toward integration of home care workers
21 into a coordinated delivery system, and support the development of new technology and inter-
22 ventions to enhance the skills of home care workers and services provided to consumers; and

23 Whereas labor and management conflicts jeopardize the state's proprietary interests as a pur-
24 chaser of self-directed home care services by substantially interfering with the quality, consistency

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 and reliability of the provision of self-directed home care services in the state; and

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

4 Whereas the lack of a mutual agreement to resolve labor and management conflicts through
5 processes that avoid disruption in the provision of self-directed home care services increases the
6 likelihood that labor and management conflicts will interfere with the provision of self-directed home
7 care services; and

8 Whereas the Legislative Assembly declares that it is the policy of this state to promote labor
9 peace in state contracts for self-directed home care services by encouraging the resolution of labor
10 disputes in a manner that reduces the likelihood of work stoppages that interrupt the provision of
11 self-directed home care services; and

12 Whereas the Legislative Assembly does not intend for the consumer-directed employer program
13 to replace the consumers' options to select an individual provider to provide in-home care from a
14 qualified home care agency or through the Home Care Commission; now, therefore,

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

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

17 **(a) "Agency" means an organization that provides agency with choice services.**

18 **(b) "Agency with choice model" means a model in which an individual is supported by an
19 agency that functions as the common law employer of direct support workers recruited by
20 the individual and provides financial management services and tasks in place of the individ-
21 ual. The individual directs the direct support workers and is considered a co-employer with
22 the agency.**

23 **(c) "Agency with choice services" means services described in subsection (3) of this sec-
24 tion that are provided to an individual by an agency using an agency with choice model.**

25 **(d)(A) "Direct support worker" means a person providing attendant or personal care
26 services identified in an individual's individualized service plan as an employee of the agency
27 and the individual.**

28 **(B) "Direct support worker" does not mean a home care worker or a personal support
29 worker as those terms are defined in ORS 410.600.**

30 **(e) "Individual" means an individual, or the representative of an individual, who receives
31 in-home services and supports through the Department of Human Services or the Oregon
32 Health Authority and who is:**

33 **(A) An older adult;**

34 **(B) An individual with a physical disability; or**

35 **(C) An individual with behavioral health needs.**

36 **(f) "Nurse delegation" means arranging for tasks that are normally performed only by
37 licensed nurses to be performed by nursing assistants subject to the instruction and super-
38 vision of a licensed nurse.**

39 **(2)(a) The Department of Human Services shall adopt rules for the licensing of agencies
40 providing services to older adults or individuals with physical disabilities.**

41 **(b) The Oregon Health Authority shall adopt rules for the licensing of agencies to provide
42 personal care services to individuals with behavioral health needs through a state plan
43 amendment authorized by 42 U.S.C. 1396n(i) and under the state's 42 U.S.C. 1396n(k) plan.**

44 **(3) An agency licensed under subsection (2) of this section shall:**

45 **(a) Assist individuals with the following tasks:**

1 (A) Recruiting and selecting direct support workers to be employed by the agency to
2 provide the individual's attendant and personal care services or removing direct support
3 workers from the individual's care team;

4 (B) Coordinating the schedules of direct support workers, establishing the responsibilities
5 of direct support workers and ensuring that direct support workers do not work more than
6 the hours authorized by the department or the authority;

7 (C) Training direct support workers with respect to the individual's unique needs and
8 preferences in how the services and supports are delivered;

9 (D) Supporting the individual in maintaining a safe workplace, in self-direction and in the
10 roles and responsibilities of co-employer; and

11 (E) Performing other tasks prescribed by the department or the authority by rule.

12 (b) Be responsible for hiring and terminating direct support workers who are employed
13 by the agency.

14 (c) Perform the following functions:

15 (A) Submit claims for reimbursement to the department or the authority and pay direct
16 support workers for authorized hours worked and billed in accordance with the electronic
17 visit verification requirements for providers of services;

18 (B) Withhold, file and pay income taxes and all employment-related taxes, including but
19 not limited to workers' compensation premiums and unemployment taxes;

20 (C) Verify the qualifications of each direct support worker as required by federal and
21 state laws, including by performing a background check;

22 (D) Ensure that direct support workers employed by the agency have access to support
23 coordination;

24 (E) Establish a process for:

25 (i) Identifying, analyzing and correcting adverse events;

26 (ii) Ensuring the timely reporting of any allegation by an individual or by a direct support
27 worker of abuse, neglect or fiscal improprieties, immediately responding to the allegation and
28 reporting the allegation to the appropriate authorities;

29 (iii) Selecting and tracking indicators of quality by high-risk, high-volume and problem-
30 prone areas and indicators of individual safety and the quality of care; and

31 (iv) Conducting and documenting quality improvement activities;

32 (F) Meet with individuals at least every six months, with at least one in-home visit with
33 the individual each 12 months, as determined jointly with the individual based on the pref-
34 erences and needs of the individual;

35 (G) Provide basic, standardized training to direct support workers and ensure that direct
36 support workers complete and are current with all training prescribed by the department and
37 the authority by rule;

38 (H) Retain a personnel record for each direct support worker that includes, at a mini-
39 mum:

40 (i) Documentation of completed required training and ongoing education;

41 (ii) Required criminal background checks; and

42 (iii) Evidence that any health care related license or certificate held by a direct support
43 worker is current and that the direct support worker has not committed any action that
44 would prevent the direct support worker from providing services; and

45 (I) Provide other administrative and employment-related supports.

1 (d) Have in place a process to access and respond to a complaint or grievance submitted
 2 by an individual about the services provided to the individual by a direct support worker.

3 (e) Pay any fines or penalties that may be assessed against an individual if the agency
 4 fails to withhold the correct amounts of taxes or pay the appropriate employment-related
 5 taxes to mitigate the risk to the individual.

6 (f) Indemnify an individual for any employment or wage-related claims, damages, fines
 7 or penalties arising from the individual's management of the individual's care by direct sup-
 8 port workers.

9 (g) Maintain a drug-free workplace that prohibits direct support workers from being un-
 10 der the influence of drugs or alcohol when providing services to an individual.

11 (h) Commit to involving direct support workers employed by the agency and individuals
 12 served by the agency in the development of and decision-making about work processes, per-
 13 formance standards, quality improvement strategies, training, technology use and workplace
 14 safety.

15 (i) Commit to minimizing the impact of the loss of pay and work hours for direct support
 16 workers resulting from the hospitalization or death of an individual or the dismissal of the
 17 direct support worker by the individual.

18 (j) Commit to engage and work closely with individuals in designing and implementing
 19 agency with choice services by appointing individuals to an advisory board, using focus
 20 groups of individuals or employing other methods, approved by the department or the au-
 21 thority, for working with individuals.

22 (k) Promote each individual's self-direction and choice and maximize an individual's au-
 23 tonomy and control over the decisions regarding the individual's daily service needs, includ-
 24 ing by:

25 (A) Using a person-centered approach so that the individual is at the center of the
 26 decision-making process regarding:

27 (i) Which attendant and personal care services are needed to assist the individual in ac-
 28 tivities of daily living, instrumental activities of daily living and health-related tasks, as de-
 29 fined by the department or the authority by rule;

30 (ii) Where and how the services are delivered;

31 (iii) When the services are delivered; and

32 (iv) Who provides the services;

33 (B) Enhancing the role of direct support workers as members of the individual's care
 34 team, as desired and authorized by the individual and reflected in the individual's individ-
 35 ualized service plan developed in accordance with rules adopted by the department or the
 36 authority; and

37 (C) Complying with other requirements as prescribed by the department or the authority,
 38 as applicable, by rule.

39 (L) Have in place a plan for recruiting and retaining qualified direct support workers to
 40 meet the growing need for direct support workers in this state.

41 (m) Assist an individual in planning for direct support worker absences or similar situ-
 42 ations which call for replacement workers, consistent with the individual's choice of direct
 43 support workers to provide the services.

44 (n) Have in place a quality assurance system and a performance improvement plan to
 45 evaluate and monitor the quality, safety and appropriateness of the services provided by di-

1 **rect support workers.**

2 **(4) Each agency must enter into a provider agreement with the department or the au-**
3 **thority to submit billings to and receive payments from the department or the authority for**
4 **the services furnished by the direct support workers.**

5 **(5) An individual has the right to:**

6 **(a) Select or otherwise approve the direct support workers who provide services to the**
7 **individual before the direct support workers begin providing the services;**

8 **(b) Train direct support workers in the individual's specific service needs and in the**
9 **provision of services to the individual;**

10 **(c) Direct the individual's own services that are provided by a direct support workers;**

11 **(d) Require an agency to remove a direct support worker from the individual's care team;**

12 **(e) Report concerns and submit grievances about a direct support worker to the agency,**
13 **the relevant licensing agency or any other appropriate third party, such as law enforcement**
14 **in cases of abuse; and**

15 **(f) Schedule a direct support worker's time in accordance with the individual's desires,**
16 **needs and authorized hours.**

17 **(6) An individual's exercise of any of the functions described in subsection (5) of this**
18 **section does not create an employer-employee relationship between the direct support**
19 **workers and the individual except as a co-employer with the agency.**

20 **(7) The department and the authority shall establish reimbursement rates for agencies**
21 **in accordance with rate methodologies approved by the Centers for Medicare and Medicaid**
22 **Services. The baseline rates established by the department and the authority must be suffi-**
23 **cient to:**

24 **(a) Support substitute staffing needs due to canceled shifts, planned and unplanned ab-**
25 **sences of direct support workers, respite care for individuals' unpaid caregivers and other**
26 **similar needs;**

27 **(b) Allow an agency to pay direct support workers wages and benefits at least equal to**
28 **the wages and benefits provided to home care workers in the collective bargaining agreement**
29 **under ORS 410.612; and**

30 **(c) Meet the requirements for training and supports for direct support workers and for**
31 **individuals as prescribed by the department or the authority by rule.**

32 **(8) The department and the authority shall establish by rule financial transparency re-**
33 **quirements for agencies that include but are not limited to:**

34 **(a) Establishing a maximum allowable percentage of the hourly reimbursement rate paid**
35 **to the agency that may be spent on overhead and administrative costs;**

36 **(b) Requiring agencies to submit to the department or the authority detailed cost reports**
37 **that include, at a minimum, actual spending by the agency on direct support worker wages,**
38 **benefits and other personnel expenses; and**

39 **(c) Requiring agencies to pass through to direct support workers reimbursement rate**
40 **increases that are targeted for wages and benefits of direct support workers.**

41 **(9) Nurse delegation is the responsibility of the department or the authority and not the**
42 **responsibility of an agency and shall be operated in the same manner as nurse delegation for**
43 **home care workers, as defined in ORS 410.600.**

44 **(10) The department and the authority shall contract with up to two agencies to provide**
45 **agency with choice services.**

1 (11) The department and the authority may expand the categories on individuals who can
2 be served by an agency to include:

3 (a) Clients of the Oregon Project Independence program described in ORS 410.430, 410.435,
4 410.440 and 410.450; and

5 (b) Individuals receiving services through the private pay home care worker program
6 described in ORS 410.605.

7 (12) Except as provided in subsection (13) of this section, an agency that seeks to
8 contract with the department or the authority to provide agency with choice services must
9 first provide a labor peace agreement that:

10 (a) Is signed or certified by an authorized representative of a labor organization that
11 represents employees in this state or a neighboring state who provide services similar to the
12 direct support worker services provided by the direct support workers employed by the
13 agency and that seeks to represent the direct support workers employed by the agency; and

14 (b) Includes a process for the resolution of labor disputes with the direct support workers
15 employed by the agency.

16 (13) The department or the authority may contract with a agency that has not provided
17 a labor peace agreement described in subsection (12) of this section if:

18 (a)(A) A labor organization is currently certified to represent the direct support workers
19 employed by the agency and the labor organization informs the agency that the labor or-
20 ganization does not wish to enter into a labor peace agreement with the agency; and

21 (B) The agency demonstrates to the satisfaction of the department or the authority that
22 the agency has processes in place to ensure the uninterrupted delivery of direct support
23 worker services in the event of a labor dispute; or

24 (b)(A) The agency notifies in writing all labor organizations certified to represent em-
25 ployees in this state who provide services similar to the services to be provided by the direct
26 support workers employed by the consumer-directed employer that the agency wishes to
27 enter into a labor peace agreement; and

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

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

30 (ii) No labor organization expresses an interest in representing the direct support work-
31 ers employed by the agency.

32 (14) The department or the authority may deny, suspend or revoke the license, certificate
33 or endorsement, as applicable, of an agency or may impose a civil penalty, in accordance with
34 ORS 183.745, on an agency for the agency's failure to comply with this section or rules
35 adopted in accordance with this section. A failure to comply includes, but is not limited to
36 a:

37 (a) Failure by the agency to provide required agency with choice services;

38 (b) Failure by the agency to correct deficiencies identified during a program review or
39 an investigation by the department or authority;

40 (c) Demonstrated pattern, over the previous two years, of significant and substantiated
41 violations or employment or wage laws in the state by an:

42 (A) Agency as an employer of direct support workers; or

43 (B) A person applying to become an agency providing agency with choice services in any
44 business owned or operated by the person; or

45 (d) Failure of an agency to comply with ORS 443.004.

1 **(15) This section does not supersede or limit any other authority of the department or**
2 **the authority with regard to oversight of contracting entities or the imposition of civil pen-**
3 **alties.**

4 **SECTION 2. The Oregon Health Authority and the Department of Human Services shall**
5 **contract with up to two agencies to provide agency with choice services in accordance with**
6 **section 1 of this 2024 Act no later than January 1, 2026.**

7 **SECTION 3.** ORS 124.050 is amended to read:

8 124.050. As used in ORS 124.050 to 124.095:

9 (1) “Abuse” means one or more of the following:

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

12 (b) Neglect.

13 (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal
14 or neglect of duties and obligations owed an elderly person by a caretaker or other person.

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

16 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
17 163.465, 163.467 or 163.525.

18 (f) Verbal abuse.

19 (g) Financial exploitation.

20 (h) Sexual abuse.

21 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
22 the person.

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

26 (2) “Elderly person” means any person 65 years of age or older who is not subject to the pro-
27 visions of ORS 441.640 to 441.665.

28 (3) “Facility” means:

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

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

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

33 (4) “Financial exploitation” means:

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

36 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully
37 take or appropriate money or property of the person if the person would reasonably believe that the
38 threat conveyed would be carried out.

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

41 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
42 tively for the support and maintenance of the person.

43 (5) “Intimidation” means compelling or deterring conduct by threat.

44 (6) “Law enforcement agency” means:

45 (a) Any city or municipal police department.

- 1 (b) Any county sheriff's office.
- 2 (c) The Oregon State Police.
- 3 (d) Any district attorney.
- 4 (e) A police department established by a university under ORS 352.121 or 353.125.
- 5 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
- 6 health or safety of an elderly person.
- 7 (8) "Person with a disability" means a person described in:
- 8 (a) ORS 410.040 (7); or
- 9 (b) ORS 410.715.
- 10 (9) "Public or private official" means:
- 11 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
- 12 chiropractor, including any intern or resident.
- 13 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 14 or employee of an in-home health service.
- 15 (c) Employee of the Department of Human Services or community developmental disabilities
- 16 program.
- 17 (d) Employee of the Oregon Health Authority, local health department or community mental
- 18 health program.
- 19 (e) Peace officer.
- 20 (f) Member of the clergy.
- 21 (g) Regulated social worker.
- 22 (h) Physical, speech or occupational therapist.
- 23 (i) Senior center employee.
- 24 (j) Information and referral or outreach worker.
- 25 (k) Licensed professional counselor or licensed marriage and family therapist.
- 26 (L) Elected official of a branch of government of this state or a state agency, board, commission
- 27 or department of a branch of government of this state or of a city, county or other political subdi-
- 28 vision in this state.
- 29 (m) Firefighter or emergency medical services provider.
- 30 (n) Psychologist.
- 31 (o) Provider of adult foster care or an employee of the provider.
- 32 (p) Audiologist.
- 33 (q) Speech-language pathologist.
- 34 (r) Attorney.
- 35 (s) Dentist.
- 36 (t) Optometrist.
- 37 (u) Chiropractor.
- 38 (v) Personal support worker, as defined in ORS 410.600.
- 39 (w) Home care worker, as defined in ORS 410.600.
- 40 (x) Referral agent, as defined in ORS 443.370.
- 41 (y) A person providing agency with choice services under ORS 427.181 **or section 1 of this 2024**
- 42 **Act.**
- 43 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,
- 44 medical services, assistance with bathing or personal hygiene or any other service essential to the
- 45 well-being of an elderly person.

- 1 (11)(a) "Sexual abuse" means:
- 2 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
- 3 consenting to a sexual act under ORS 163.315;
- 4 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
- 5 pervasive exposure to sexually explicit material or language;
- 6 (C) Sexual exploitation;
- 7 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
- 8 son served by the facility or caregiver; or
- 9 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 10 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:
- 11 (A) An employee of a facility who is also the spouse of the elderly person; or
- 12 (B) A paid caregiver.
- 13 (12) "Sexual contact" has the meaning given that term in ORS 163.305.
- 14 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly
- 15 person or a person with a disability through the use of:
- 16 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- 17 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
- 18 sexual comments.
- 19 **SECTION 4.** ORS 443.305 is amended to read:
- 20 443.305. As used in ORS 443.305 to 443.350:
- 21 (1) "In-home care agency" means an agency primarily engaged in providing in-home care ser-
- 22 vices for compensation to an individual in that individual's place of residence. "In-home care
- 23 agency" does not include a home health agency as defined in ORS 443.014 **or a person that only**
- 24 **provides agency with choice services under ORS 427.181.**
- 25 (2) "In-home care services" means personal care services furnished by an in-home care agency,
- 26 or an individual under an arrangement or contract with an in-home care agency, that are necessary
- 27 to assist an individual in meeting the individual's daily needs, but does not include curative or
- 28 rehabilitative services.
- 29 (3) "Subunit" means an in-home care agency that provides services for a parent agency in a
- 30 geographic area different from that of the parent agency and more than 60 miles from the location
- 31 of the parent agency.
- 32
-