



Oregon

Tina Kotek, Governor

Department of Human Services

Office of Developmental Disabilities Services

Office of the Director

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Salem, OR 97301



March 6, 2024

Co-Chair Fred Girod
Co-Chair Paul Holvey
Joint Ways and Means Subcommittee on Capital Construction
Oregon State Capitol
900 Court Street NE
Salem, OR 97301-4048

Dear Co-Chairs Girod and Holvey,

Thank you for the opportunity to testify on SB 1521. I would like to provide testimony on two separate aspects of that omnibus bill: testimony in support of the section regarding agency with choice services, and neutral testimony on the section regarding sprinklers in certain residential service settings.

Agency with Choice Providers of In-Home Services for People with Intellectual and Developmental Disabilities

The Oregon Department of Human Services' Office of Developmental Disabilities Services (ODDS) provides a wide array of home and community-based services to individuals with intellectual and developmental disabilities including attendant care services in person's own or family home, and in the community. Currently, an individual with I/DD who receives in-home services has the choice of either directly employing a personal support worker (PSW) who delivers those services, or selecting a provider agency that employs direct support professionals (DSPs) who deliver the services. Because a PSW is directly employed by the individual receiving services or a Common Law Employer designated by the individual, the individual or a common law employer designated by the individual accepts certain employment responsibilities for their PSWs. The state is a co-employer for the purposes of collective bargaining with SEIU over PSW wages and benefits. The individual receiving services has the employer authority to manage a PSW's schedule, to hire

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and fire the PSW, and generally to manage their own services and supports provided by a PSW.

Conversely, an individual has no employer responsibility when selecting a provider agency and receiving services from a DSP: the provider agency handles employer duties. They recruit and hire DSPs, ensure that they meet minimum qualifications, determines their wages and benefits, and in general play a significant role in managing the worker, their schedule, and any backup during their absences from work. Individual still has ability to direct their services and supports provided through an agency.

In 2022, Senate Bill 1548 directed the Oregon Department of Human Services (ODHS) and its Office of Developmental Disabilities Services (ODDS) to certify agencies to deliver “agency with choice services” to create a third option for individuals with intellectual and developmental disabilities who receive services in their own or their family’s home, and to adopt rules regulating minimum qualifications and reimbursement rates for such providers. Pursuant to implementation challenges highlighted in 2022 and 2023 by the advocates for SB 1548, the legislature subsequently passed Senate Bill 104 in 2023, which adjusted the provisions of SB 1548 to narrow their scope and clarify how they should be applied.

SB 104 directed that ODHS/ODDS should contract with one or more organizations to deliver what it referred to as “agency with choice services,” which in that bill were services defined as:

[]Support given to an individual in self-directing the individual’s services or in managing staff who are providing in-home services and supports to the individual, using a person-centered approach to ensure that the individual is at the center of the decision-making process regarding what services are needed[.]

SB 104 established minimum expectations for organizations contracting with ODHS/ODDS to provide these services, but the services it described would be limited to those individuals who had opted to receive services from a PSW. While this was called “agency with choice”, it did not create a co-employer relationship, but rather enhanced supports for individuals employing PSWs.

The -2 amendment to Senate Bill 1521 presently being considered by this committee would fully establish an endorsed “agency with choice services” as a

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third service delivery model, i.e., the above-mentioned third option for an individual in addition to the PSW or agency/DSP options already available.

This service delivery model known as “agency with choice” provides a new option in which the worker (in this case called a “direct support worker” or DSW) is employed by the agency, but much of the authority to direct one’s own worker still rests with the individual receiving services in a role of a managing co-employer. Additionally, agency with choice is expected to provide supports to the individual in performing their managing employer responsibilities.

In order to do this, and to avoid confusion, the amendment would rename what SB 104 (2023) referred to as “agency with choice services” so that they would instead be known as “enhanced supports to employers of personal support workers.” Were this amendment to be adopted and pass, all statutory language referring to “agency with choice services” will be interpreted by ODDS as establishing the third service delivery model described above.

The amendment would additionally lay out minimum qualifications for agencies that ODDS endorses for the delivery of, and with whom they contract to deliver, agency with choice services.

ODDS stands ready to begin this work that will increase choice options for individuals receiving in-home services and also improve recruitment and retention for a workforce that is currently experiencing significant shortages. We support the adoption of the agency with choice amendment, and the passage of those provisions into law.

Fire Safety in ODDS-Licensed Adult Foster Homes and 24-Hour Group Homes Serving Five or Fewer Individuals

In 2022, SB 1548 provided that, notwithstanding any provision of the state building code, a newly licensed adult foster home or 24-hour group home serving five or fewer individuals with I/DD should not be required to have sprinkler systems unless they were issued a license later than July 1, 2024. ODHS has since been working with the Building Codes Division of the Department of Consumer and Business Services to find a way to implement this requirement that will not lead to an unintentional reduction of capacity in ODDS’s service delivery network and disincentives for establishment of new providers.

Sprinkler systems would impose a significant cost and a logistical challenge to adult foster homes and small group homes if the state did not provide those service

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settings with funding to offset the cost, and technical support to ease the retrofitting of existing buildings. Many of these settings are rented and not owned, presenting additional barriers to sprinkler system installations during time of housing crisis in Oregon and shortage of affordable and accessible housing options.

ODHS and DCBS will continue their work to find an administrative solution that protects the service delivery system (i.e., does not deter prospective providers from opening new adult foster homes) while addressing DCBS's interest in strong fire safety through licensing rules for adult foster homes and small group homes.

However, there is a chance that this work will need to continue until later than July 2024, and the legislature is addressing that risk by proposing another extension of the enforcement timeline through a forthcoming amendment to SB 1521. ODHS is neutral on this section of the bill, and still hopes to complete its work with DCBS by July 2024, but will make good use of the additional time if it is needed.

Sincerely,

Anna Lansky, Interim Director
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