

## HB 3838 A STAFF MEASURE SUMMARY

### House Committee On Rules

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**Action Date:** 06/12/25

**Action:** Do pass with amendments and be referred to Ways and Means. (Printed A-Eng.)

**Vote:** 4-3-0-0

**Yeas:** 4 - Bowman, Kropf, Pham H, Valderrama

**Nays:** 3 - Boshart Davis, Drazan, Elmer

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

**Prepared By:** Erin Seiler

**Meeting Dates:** 4/28, 6/12

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#### WHAT THE MEASURE DOES:

The measure establishes the Home and Community-Based Service Workforce Standards Board.

#### Detailed Summary:

##### SECTION 1: Definitions

Defines terms.

##### SECTION 2: Establishment of Board

Establishes the 11-member Home and Community-Based Services Workforce Standards Board at the Department of Consumer and Business Services (DCBS).

Sets purpose of the Board to:

- Strengthen and maintain the supply of skilled home and community-based services workforce (workforce) by:
  - Examining factors that may present challenges to recruiting and retaining workers. Factors may include compensation, work schedules, and other working conditions.
  - Addressing barriers that may impact sustainability of workforce, including affordability, access, quality, and satisfaction regarding home and community-based services.
- Make recommendations to revise minimum workforce standards by the Board and adopt new standards to protect health and welfare of workforce.

Sets Board composition.

- 8 members of the public appointed by the Governor:
  - 3 representatives of home and community-based services workforce or labor organizations;
  - 3 representatives of workforce employers or employer organizations;
  - 2 representatives who represent the interests of individuals who receive services provided by the workforce;
- 3 members representing state agencies:
  - 1 representative of the Bureau of Labor and Industries (BOLI) appointed by the Commissioner;
  - 1 representative from the Department of Human Services (DHS) appointed by the Governor; and
  - 1 representative from the Oregon Health Authority (OHA) appointed by the Governor.

Specifies that public members are subject to Senate confirmation.

Requires public members to collectively represent specific experience and knowledge in sector. Set 3-year terms for members. Requires Governor to appoint co-chairs, one representing workforce/labor and one representing employers.

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Requires members of the board to comply with state and federal antitrust laws related to anticompetitive behavior, including, but not limited to, laws prohibiting collusion, price-fixing, and other unfair trade practices.

Permits the Governor to appoint the executive director; permits executive director to hire staff. Limits the executive director to no more than 3 staff in the 2027-2029 biennium.

### **SECTION 3: Initial Terms**

Stagger term lengths for the appointments of initial board members. Requires all appointments be completed no later than December 31, 2026.

### **SECTION 4: Compensation; Meetings**

Makes Board members eligible for compensation under ORS 292.495.

Requires Board to adopt rules. Establishes quorum as a majority of members. Requires an affirmative vote of the majority of Board to take action.

Requires Board to meet once per calendar quarter at times and places specified by the co-chairs.

### **SECTION 5: Minimum Workforce Standards**

Requires Board to establish minimum standards for the workforce to ensure the health and welfare of such workers, and may be tailored to specific categories of worker types and across different care settings.

Establishes that Board may not adopt standards that:

- Are less protective of or beneficial to the workforce than provided by other applicable statute or rule.
- Infringe on an individual's right to self-determination, as defined in ORS 427.101.

Establishes the minimum standards that the Board must establish, including to:

- Set compensation rates that are not less than the applicable minimum wage rate.
- Establish curriculum and criteria for providing education and professional development opportunities.
- Provide for health care benefits and other paid benefits for the home and community-based services workforce, including but not limited to paid family leave, sick leave, and retirement benefits.

Before adopting rules, the Board is required to:

- Obtain and evaluate information to ensure that the standards meet or exceed labor market conditions. Specifies labor market data and other information that must be evaluated.
- Hold at least one public hearing.
- Consult with OHA to determine if any of the minimum standards require the approval of the Centers for Medicare and Medicaid Services (CMS). Requires OHA to seek approval from CMS upon determination of necessity.
- Consult with the Home Care Commission to ensure that proposed minimum standards do not conflict with any rule or standard established pursuant the Commission's constitutional authority.

Requires BOLI, DHS, DCBS, and OHA to conduct a fiscal analysis to determine whether a proposed minimum standard will require an increase in state funding or will increase fiscal obligations, including an increase in Medicaid reimbursement rates. If a proposed standard requires an increase in state funding or fiscal obligation, the Board must report to the Legislative Assembly and Governor the necessary increase in funding. If the Legislative Assembly appropriates less than needed, the Board must amend the rule to align with funding appropriated.

Requires that implementation and enforcement of a rule establishing a minimum standard cannot take effect before a legislative appropriation is made and, when necessary, the Board receives approval from CMS.

Directs all state government agencies to furnish necessary information to the Board upon request.

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Requires the Board to adopt minimum standards in accordance with the Administrative Procedures Act.

### **SECTION 6: Comprehensive Review**

Requires the Board to conduct a comprehensive review of previously established minimum standards at least once every four years. Requires the Board to conduct a labor market analysis of the working conditions of the workforce. Specifies factors to be examined.

### **SECTION 7: Reporting**

Requires the Board to submit a report to the Governor and Legislative Assembly by June 30 of each even-numbered year on the Board's activities and recommendations for changes. Specifies requirements of the report.

### **SECTION 8: Investigative Authority**

Permits BOLI to exercise existing statutory authority to investigate and determine facts related to the implementation of and compliance with minimum standards established by the Board.

### **SECTION 9: Retaliation**

Establishes as an unlawful practice, under ORS chapter 659A, to terminate, penalize, discipline, retaliate, or take adverse action against a worker because the worker:

- Inquired or exercised rights provided by this Act or minimum standards established by the Board.
- Participates in any process or proceeding or testifies in any proceeding under this Act.

### **SECTION 10: Remedies**

Permits a worker to file a complaint with BOLI for an alleged violation of a minimum standard. Requires complaint to be filed no later than one year after date of alleged violation. Allows BOLI to assess a civil penalty not exceeding \$1,000 for each violation of a minimum standard, in addition to any other penalty provided by law.

Permits a worker to commence a civil action in circuit court.

- Requires a person alleging a violation, prior to commencing civil action, to provide written notice that the person alleged to have violated the standard has 30 days from receipt of notice to cure the violation. If violation is cured during the 30-day time period, a civil action may not be filed.
- Permits a labor organization to file civil action only on behalf of a represented worker.

Permits a worker to file a complaint or civil action no sooner than 90 days after the rule establishing minimum standards becomes effective.

### **SECTION 11: Limits**

Specifies that the Act is not intended to limit, interfere with, or reduce the right to a collective bargaining agreement or diminish the rights or remedies that are otherwise available to a worker under federal or state law or regulation.

### **SECTION 12: Employer Notice**

Requires employers to provide notice to workers regarding the rights of workers regarding minimum standards established by the Board; duties and functions of the Board; and contact information for agencies that have enforcement authority.

Specifies that the notice must be provided at the time of hire and in the language the employer typically uses to communicate with employees. Requires notice be posted in a conspicuous location in the workplace and sent by email to each worker of the employer.

Requires the Board to review and update the notice annually.

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*This Summary has not been adopted or officially endorsed by action of the committee.*

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### **SECTION 13: Caregiver Registry**

Requires the DHS online home and community-based services caregiver registry include "workers" from the home and community-based services workforce.

### **SECTION 14: Public Meeting**

Requires that any public meeting conducted by the Board through electronic communication must ensure that the public has opportunities for access, oral testimony, and written testimony.

### **SECTION 15: Timelines**

Requires the Board to consider prevailing labor market conditions by September 30, 2027, for purpose of adopting initial minimum standards on or after March 1, 2028.

Establishes that if a proposed standard requires an increase in state funding or fiscal obligation, the rule may not take effect until the regular legislative session next following, provided an appropriation has been made for the purposes of implementing and enforcing the standard in the next regular legislative session.

### **ISSUES DISCUSSED:**

- Current wages, working conditions, and workforce challenges in home care sector
- Opportunity for workers and employers to work together
- Different care settings and different payment modalities
- Medicaid reimbursement rates
- Affordability of care
- Ability of Bureau of Labor and Industries to investigate and respond to complaints
- Delegation of legislative authority

### **EFFECT OF AMENDMENT:**

Replaces the measure.

### **BACKGROUND:**

A state or municipality may use a wage board to either recommend or establish wages, hours, and working conditions for an industry sector. Wage boards are typically composed of equal representation from industry employers and employees who must either together or with other members of the board achieve a majority to either adopt or recommend the adoption of wages, hours, or working conditions for the industry.

Wage boards may be advisory boards, making recommendations regarding minimum wages and working conditions to either the legislature or an executive official, such as a labor commissioner, or may be a policymaking body, having the ability to adopt minimum wages and working conditions, establish training requirements, and establish minimum content and posting requirements for workers' rights.

Currently, Colorado, Minnesota, and Nevada have labor standards boards related to home care or direct care employees. The Colorado Direct Care Workforce Stabilization Board (DCWSB) was established in the Division of Labor Standards and Statistics in 2023. The DCWSB is composed of 15 members representing direct care employers, direct care workers, direct care consumers, individuals with disabilities, and older adults. It is an advisory body required to develop and report to the legislature and governor recommendations for minimum direct care employment standards.

The Minnesota Nursing Home Workforce Standards Board (NHWSB) was established in 2023 as a policymaking body for the purpose of investigating market conditions and existing wages, benefits, and working conditions for nursing home workers as well as adopting rules establishing minimum nursing home employment standards. The NHWSB has equal representation from nursing home employers, nursing home workers, and state officials. Members representing employers and employees are appointed by the Governor. A majority vote of the

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members is required to take any action, including establishing minimum nursing home employment standards.

The Nevada Home Care Employment Standards Board (HCESB) is an advisory body established by the Director of the Department of Health and Human Services upon their own judgment or petition of 50 or more home care employees. The membership includes the Director, who serves as chair and nonvoting member, the Labor Commissioner, three representatives of home care employers, three representatives of home care employees, and three persons who receive or are representatives of persons who receive services from a home care employee. The HCESB must investigate and develop recommendations regarding minimum wages and safe and healthful working conditions for home care employees and may administer oaths, take testimony, and subpoena witnesses and materials relevant to the investigation.