

Senate Bill 431

Sponsored by Senator MANNING JR (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**.

Requires long term care facilities, residential facilities, in-home care agencies and home health agencies to pass through to specified low wage employees at least 90 percent of increased funding provided by state.

Requires Oregon Health Authority and Department of Human Services to work together to adopt uniform financial reporting requirements across all long term care facilities and residential facilities.

A BILL FOR AN ACT

1
2 Relating to compensation for employees who provide services to vulnerable individuals; creating new
3 provisions; and amending ORS 443.439.

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

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

6 (a) **“Direct care staff” means employees of a long term care facility whose primary re-**
7 **sponsibilities are to provide personal care services to residents, including but not limited to:**

8 (A) **Administering medications;**

9 (B) **Coordinating resident-focused activities;**

10 (C) **Supervising and supporting residents;**

11 (D) **Supporting activities of daily living, including but not limited to bathing, dressing,**
12 **eating and transferring; and**

13 (E) **Serving but not preparing meals.**

14 (b) **“Long term care facility” has the meaning given that term in ORS 442.015.**

15 (2) **It is the intent of the Legislative Assembly that, when the Legislative Assembly ap-**
16 **proves increases in funding for services provided by long term care facilities, not less than**
17 **90 percent of the increase in funding must be passed through as compensation to employees**
18 **described in subsection (3) of this section in the form of increased wages or salaries, asso-**
19 **ciated payroll taxes and health benefits.**

20 (3) **A long term care facility must pass through the increased funding described in sub-**
21 **section (2) of this section to:**

22 (a) **Housekeeping staff;**

23 (b) **Laundry staff;**

24 (c) **Food services staff;**

25 (d) **Direct care staff;**

26 (e) **Certified nursing assistants;**

27 (f) **Certified medical assistants; and**

28 (g) **Licensed practical nurses.**

29 (4) **A long term care facility may not pass through increased funding described in sub-**

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 section (2) of this section to:

2 (a) Registered nurses; or

3 (b) Administrators or administrative staff.

4 (5) On or before July 31, 2021, and each year thereafter, a long term care facility shall
5 certify to the Department of Human Services, in the form and manner prescribed by the
6 department, that the facility has complied with this section. The certification must include:

7 (a) Hourly wages or base salaries paid to employees described in subsection (3) of this
8 section prior to and after an increase in compensation due to a pass-through under sub-
9 section (2) of this section;

10 (b) Hours worked by employees receiving the increased compensation prior to and after
11 the increase in compensation;

12 (c) The amount of increased associated payroll taxes; and

13 (d) Other information prescribed by the department that is necessary for the department
14 to ensure a facility is complying with this section.

15 (6) A collective bargaining agreement may be submitted in lieu of a certification under
16 subsection (5) of this section for any represented employees.

17 (7) The department shall:

18 (a) Recover from any long term care facility that fails to comply with this section the
19 amount of funding paid to the facility that was not spent on compensation for staff desig-
20 nated in subsection (3) of this section in accordance with this section; and

21 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the facility
22 that was not spent on compensation for staff designated in subsection (3) of this section in
23 accordance with this section. The department shall impose a civil penalty under this sub-
24 section in accordance with ORS 183.745.

25 (8) The department may not renew the license of a long term care facility that owes
26 amounts under subsection (7) of this section until the amounts have been paid.

27 **SECTION 2.** Section 3 of this 2021 Act is added to and made a part of ORS chapter 441.

28 **SECTION 3.** A long term care facility licensed in this state shall:

29 (1) Employ the number of licensed nursing staff and direct care staff, as defined in sec-
30 tion 1 of this 2021 Act, necessary to:

31 (a) Properly assess the needs of residents;

32 (b) Develop and implement resident care plans;

33 (c) Provide direct care services to residents; and

34 (d) Perform other related activities to maintain the health, safety and welfare of the
35 residents; and

36 (2) Have a registered nurse in each facility 24 hours per day and employ and schedule
37 additional staff in each facility as needed to:

38 (a) Ensure quality care for residents in the case of a disease outbreak, fire or other
39 similar occurrence;

40 (b) Address the medical acuity of the residents of the facility; and

41 (c) Comply with state and federal staffing requirements.

42 **SECTION 4.** The Oregon Health Authority and the Department of Human Services shall
43 work together to adopt uniform financial reporting requirements for all licensed long term
44 care facilities, as defined in ORS 442.015, and licensed residential facilities, as defined in ORS
45 443.400.

1 **SECTION 5.** Section 6 of this 2021 Act is added to and made a part of ORS 443.400 to
 2 **443.455.**

3 **SECTION 6.** A residential facility licensed in this state shall:

4 (1) Employ the number of licensed nursing staff and direct care staff necessary to:

5 (a) Properly assess the needs of residents;

6 (b) Develop and implement resident care plans;

7 (c) Provide direct care services to residents; and

8 (d) Perform other related activities to maintain the health, safety and welfare of the
 9 residents; and

10 (2) Have a registered nurse in each facility 24 hours per day and employ and schedule
 11 additional staff in each facility as needed to:

12 (a) Ensure quality care for residents in the case of a disease outbreak, fire or other
 13 similar occurrence;

14 (b) Address the medical acuity of the residents of the facility; and

15 (c) Comply with state and federal staffing requirements.

16 **SECTION 7.** ORS 443.439 is amended to read:

17 443.439. (1) It is the intent of the Legislative Assembly that, when the Legislative Assembly
 18 approves increases in funding [*of*] for services provided by residential [*training*] facilities [*or resi-*
 19 *dential training homes*], **not less than 90 percent of the increase in funding must be passed**
 20 **through as compensation to employees described in subsection (2) of this section in the form**
 21 **of increased wages or salaries, associated payroll taxes** and health benefits [*paid to direct support*
 22 *professionals in the residential training facilities or residential training homes be increased at a com-*
 23 *parable rate*].

24 (2) A residential facility must pass through the increased funding described in subsection
 25 (1) of this section to:

26 (a) Housekeeping staff;

27 (b) Laundry staff;

28 (c) Food services staff;

29 (d) Direct care staff;

30 (e) Certified nursing assistants;

31 (f) Certified medical assistants; and

32 (g) Licensed practical nurses.

33 (3) A residential facility may not pass through increased funding described in subsection
 34 (1) of this section to:

35 (a) Registered nurses; or

36 (b) Administrators or administrative staff.

37 (4) On or before July 31, 2021, and each year thereafter, a residential facility shall certify
 38 to the Department of Human Services, in the form and manner prescribed by the depart-
 39 ment, that the facility has complied with this section. The certification must include:

40 (a) Hourly wages or base salaries paid to employees described in subsection (2) of this
 41 section prior to and after an increase in compensation due to a pass-through under sub-
 42 section (1) of this section;

43 (b) Hours worked by employees receiving the increased compensation prior to and after
 44 the increase in compensation;

45 (c) The amount of increased associated payroll taxes; and

1 (d) Other information prescribed by the department that is necessary for the department
2 to ensure a facility is complying with this section.

3 (5) A collective bargaining agreement may be submitted in lieu of a certification under
4 subsection (4) of this section for any represented employees.

5 (6) The department shall:

6 (a) Recover from any residential facility that fails to comply with this section the amount
7 of funding paid to the facility that was not spent on compensation for staff designated in
8 subsection (2) of this section in accordance with this section; and

9 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the facility
10 that was not spent on compensation for staff designated in subsection (2) of this section in
11 accordance with this section. The department shall impose a civil penalty under this sub-
12 section in accordance with ORS 183.745.

13 (7) The department may not renew the license of a residential facility that owes amounts
14 under subsection (6) of this section until the amounts have been paid.

15 **SECTION 8.** (1) As used in this section:

16 (a) "Direct care staff" means employees of an in-home care agency whose primary re-
17 sponsibilities are to provide personal care services to clients of the in-home care agency,
18 including but not limited to:

19 (A) Administering medications;

20 (B) Coordinating client activities;

21 (C) Supervising and supporting clients;

22 (D) Supporting activities of daily living, including but not limited to bathing, dressing,
23 eating and transferring; and

24 (E) Serving or preparing meals.

25 (b) "In-home care agency" has the meaning given that term in ORS 443.305.

26 (2) It is the intent of the Legislative Assembly that, when the Legislative Assembly ap-
27 proves increases in funding for services provided by in-home care agencies, not less than 90
28 percent of the increase in funding must be passed through as compensation for direct care
29 staff in the form of increased wages or salaries, associated payroll taxes and health benefits.

30 (3) On or before July 31, 2021, and each year thereafter, an in-home care agency that
31 receives state funds shall certify to the Department of Human Services, in the form and
32 manner prescribed by the department, that the agency has complied with this section. The
33 certification must include:

34 (a) Hourly wages or base salaries paid to direct care staff prior to and after an increase
35 in compensation due to a pass-through under subsection (2) of this section;

36 (b) Hours worked by direct care staff prior to and after the increase in compensation;

37 (c) The amount of increased associated payroll taxes; and

38 (d) Other information prescribed by the department that is necessary for the department
39 to ensure that an agency is complying with this section.

40 (4) A collective bargaining agreement may be submitted in lieu of a certification under
41 subsection (3) of this section for any represented employees.

42 (5) The department shall:

43 (a) Recover from any in-home care agency that fails to comply with this section the
44 amount of funding paid to the agency under subsection (2) of this section that was not spent
45 on compensation for direct care staff in accordance with this section; and

1 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency
 2 under subsection (2) of this section that was not spent on compensation for direct care staff
 3 in accordance with this section. The department shall impose a civil penalty under this sub-
 4 section in accordance with ORS 183.745.

5 (6) The department may not renew the license of an in-home care agency that owes
 6 amounts under subsection (5) of this section until the amounts have been paid.

7 **SECTION 9.** (1) As used in this section:

8 (a) "Direct care staff" means employees of a home health agency whose primary re-
 9 sponsibilities are to provide personal care services to clients of the home health agency, in-
 10 cluding but not limited to:

11 (A) Administering medications;

12 (B) Coordinating client activities;

13 (C) Supervising and supporting clients;

14 (D) Supporting activities of daily living, including but not limited to bathing, dressing,
 15 eating and transferring; and

16 (E) Serving or preparing meals.

17 (b) "Home health care agency" has the meaning given that term in ORS 443.014.

18 (2) It is the intent of the Legislative Assembly that, when the Legislative Assembly ap-
 19 proves increases in funding for services provided by home health agencies, not less than 90
 20 percent of the increase in funding must be passed through as compensation for direct care
 21 staff in the form of increased wages or salaries, associated payroll taxes and health benefits.

22 (3) On or before July 31, 2021, and each year thereafter, a home health agency that re-
 23 ceives state funds shall certify to the Department of Human Services, in the form and
 24 manner prescribed by the department, that the agency has complied with this section. The
 25 certification must include:

26 (a) Hourly wages or base salaries paid to direct care staff prior to and after an increase
 27 in compensation due to a pass-through under subsection (2) of this section;

28 (b) Hours worked by direct care staff prior to and after the increase in compensation;

29 (c) The amount of increased associated payroll taxes; and

30 (d) Other information prescribed by the department that is necessary for the department
 31 to ensure that an agency is complying with this section.

32 (4) A collective bargaining agreement may be submitted in lieu of a certification under
 33 subsection (3) of this section for any represented employees.

34 (5) The department shall:

35 (a) Recover from any home health agency that fails to comply with this section the
 36 amount of funding paid to the agency under subsection (2) of this section that was not spent
 37 on compensation for direct care staff in accordance with this section; and

38 (b) Impose a civil penalty equal to 25 percent of the amount of funding paid to the agency
 39 under subsection (2) of this section that was not spent on compensation for direct care staff
 40 in accordance with this section. The department shall impose a civil penalty under this sub-
 41 section in accordance with ORS 183.745.

42 (6) The department may not renew the license of a home health agency that owes
 43 amounts under subsection (5) of this section until the amounts have been paid.

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