

B-Engrossed
Senate Bill 1548

Ordered by the Senate February 25
Including Senate Amendments dated February 14 and February 25

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services, Mental Health and Recovery for Senator Sara Gelser Blouin)

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.

Requires Department of Human Services to allow specified individuals receiving in-home services and supports to receive agency with choice services to perform employment-related functions with respect to direct support professionals employed by individuals to provide in-home services and supports. Specifies criteria for agencies to be certified by department to provide agency with choice services. Includes persons providing agency with choice services as mandatory reporters of abuse.

Requires department to adopt rules to ensure fiscal transparency in, and high quality of, services provided to individuals with intellectual or developmental disabilities and specifies minimum requirements for rules.

Prohibits department and Oregon Health Authority from requiring single-family dwellings used for residential training homes or adult foster homes to have sprinkler systems if dwelling has been operated as residential training home or adult foster home pursuant to license issued prior to July 1, 2024, and operator meets other specified criteria. Sunsets January 2, 2026.

Requires department to submit various reports to certain committees of Legislative Assembly regarding options for community-based services, licensing fees and civil penalties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to community-based services; creating new provisions; amending ORS 124.050; and declaring
3 an emergency.

4 Whereas the Legislative Assembly finds that it is essential to support Oregonians with intel-
5 lectual or developmental disabilities to live and participate in their communities as independently
6 as possible and to ensure an array of services that empower and respect the individuals' choices and
7 dignity; and

8 Whereas workers who provide home- and community-based services often lack access to high
9 quality training or adequate compensation in the form of wages, health care benefits and retirement
10 benefits; and

11 Whereas meeting the growing demand for high quality home- and community-based services will
12 require workforce investments, including worker recruitment, retention and support and the devel-
13 opment of career opportunities; and

14 Whereas Oregon has an interest in preventing or mitigating any disruptions to home- and
15 community-based services; now, therefore,

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

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

18 (a) **"Agency with choice services" means performing, on behalf of an individual, the fol-**
19 **lowing functions as the employer of record for direct support professionals who are providing**

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 in-home services and supports to the individual:

2 (A) Coordinating the schedules and responsibilities of direct support professionals who
3 are providing in-home services and supports to the individual;

4 (B) For each direct support professional providing in-home services and supports to the
5 individual, withholding, filing and paying income and employment-related taxes, including
6 workers' compensation premiums and unemployment taxes;

7 (C) Verifying the qualifications of each direct support professional; and

8 (D) Providing other administrative and employment-related supports.

9 (b) "Individual" means a child or adult with an intellectual or developmental disability
10 who receives in-home services and supports through the Department of Human Services.

11 (2) The department shall certify agencies to deliver agency with choice services as a
12 community-based services option under ORS 427.007 (1)(d).

13 (3) The department shall adopt by rule:

14 (a) Minimum qualifications for agencies to be certified by the department to deliver
15 agency with choice services; and

16 (b) Reimbursement rates for the services.

17 (4) Minimum qualifications for agencies certified to deliver agency with choice services
18 include, but are not limited to:

19 (a) The ability to provide support for individuals in directing the individual's direct sup-
20 port professional and the day-to-day services of the direct support professional;

21 (b) A commitment to recruit and retain a high quality and diverse workforce to provide
22 agency with choice services;

23 (c) A commitment to work with a broad coalition of stakeholders in an effort to under-
24 stand the changing needs of the workforce and of individuals' needs, rights and preferences;

25 (d) The ability to meet the state's interest in preventing or mitigating disruptions to
26 individuals' in-home services and supports; and

27 (e) The ability to implement an electronic visit verification system that complies with
28 state and federal requirements or, in the absence of an electronic visit verification system,
29 to monitor a statistically valid sample of each claim for reimbursement for the cost of ser-
30 vices to the receipt of the services by the individual.

31 (5) The department may not certify an agency to provide agency with choice services if
32 the owner of the agency or an executive officer of the agency has been convicted of Medicaid
33 fraud in any state within the 25-year period prior to the certification.

34 **SECTION 2.** (1) The Department of Human Services shall adopt rules to ensure fiscal
35 transparency in the provision of community-based services to individuals with intellectual
36 or developmental disabilities and to ensure individuals with intellectual or developmental
37 disabilities receive high quality services from providers that are licensed, certified or en-
38 dorsed by the department to provide community-based services. At a minimum, the rules
39 must establish, for providers of community-based services to individuals with intellectual or
40 developmental disabilities:

41 (a) Requirements to annually submit staffing data to a reporting survey organization
42 specified by the department;

43 (b) Requirements to submit an annual report to the department that includes:

44 (A) A disclosure of executive compensation and benefits;

45 (B) A disclosure of starting, average and highest wages for direct support professionals

1 that are employed by, under contract with or otherwise engaged with the provider to deliver
2 community-based services to individuals with intellectual or developmental disabilities;

3 (C) A disclosure of the provider's overhead expenses and expenditures; and

4 (D) Any other fiscal matters prescribed by the department;

5 (e) Requirements to ensure that wages and health benefits paid to direct support pro-
6 fessionals delivering community-based supports reflect any increase in rates approved by the
7 Legislative Assembly for the purpose of improving wages and health benefits;

8 (d) Criteria for conditions under which a provider may be prohibited from applying for a
9 license, certificate or endorsement;

10 (e) Criteria for the inclusion of information about the organizational history of an appli-
11 cant for a new license, certification or endorsement, not to exceed the 10 previous years; and

12 (f) A process for the consideration of the regulatory and safety compliance and opera-
13 tional experience of all providers in this state or in any other jurisdiction when issuing an
14 initial license, certification or endorsement or renewing a license, certification or endorse-
15 ment.

16 (2) Rules adopted by the department must, to the greatest extent practicable, consolidate
17 new reporting requirements with existing reporting requirements to avoid the need for pro-
18 viders to make duplicative reports of the same information.

19 **SECTION 3.** Notwithstanding any provision of the state building code, as defined in ORS
20 455.010, a single-family detached dwelling that is used to operate a residential training home,
21 as defined in ORS 443.400, or an adult foster home, as defined in ORS 443.705, is not required
22 to have installed an automatic sprinkler system if:

23 (1) The dwelling has been operated as a residential training home or an adult foster home
24 pursuant to a license issued prior to July 1, 2024;

25 (2) The operator is licensed to serve five or fewer individuals in the dwelling; and

26 (3) The operator and the dwelling meet all other fire, life and safety requirements es-
27 tablished by the Department of Human Services or the Oregon Health Authority by rule.

28 **SECTION 4.** No later than October 1, 2022, the Department of Human Services and the
29 Oregon Health Authority shall provide to the interim committees of the Legislative Assembly
30 related to human services and to health a report, in the manner provided in ORS 192.245,
31 regarding the impact of residential sprinkler system requirements on programs and facilities
32 regulated by the department and the authority. The report shall include, but not be limited
33 to:

34 (1) The potential impact on capacity to serve individuals discharged from the Oregon
35 State Hospital into community-based settings;

36 (2) The potential impact on capacity to serve individuals with physical, intellectual or
37 developmental disabilities in community-based settings;

38 (3) The potential impact on capacity to serve seniors and aging Oregonians in
39 community-based settings;

40 (4) The potential impact on capacity to serve children and youth in the child welfare and
41 juvenile justice systems in family homes;

42 (5) The estimated cost of retrofitting existing residential facilities to comply with sprin-
43 kler system mandates; and

44 (6) Proposals for how to implement modern standards for fire suppression efforts in a
45 way that minimizes disruption of services for Oregonians in need of residential care, sup-

1 ports or services.

2 **SECTION 5.** No later than October 1, 2022, the Department of Human Services shall re-
3 port to the interim committees of the Legislative Assembly related to human services and
4 to health, in the manner provided in ORS 192.245, program options for community-based
5 services for seniors and people with disabilities offered by agencies with consumer-directed
6 hiring of personal care workers and direct support professionals. The report should include
7 a description of models currently implemented by other states.

8 **SECTION 6.** No later than October 1, 2022, the Department of Human Services shall re-
9 port to the interim committees of the Legislative Assembly related to human services and
10 to health, in the manner provided in ORS 192.245, recommendations for modernizing the li-
11 censing, certification and endorsement fee schedules and the administration of civil penalties
12 related to services provided to individuals with intellectual or developmental disabilities in-
13 cluding, at a minimum:

14 (1) How fees and penalties may be adjusted for inflation;

15 (2) Whether the department should have the authority to decrease or waive fees in cer-
16 tain circumstances;

17 (3) Whether licensing, certification or endorsement fees should be required for agencies
18 providing supported living, community living supports or other licenses, certifications and
19 endorsements offered by the division of the department that is responsible for developmental
20 disability services;

21 (4) Whether licensing, certification or endorsement fees should reflect the size of the
22 agency or number of individuals served by the agency;

23 (5) The extent to which licensing, certification and endorsement fees cover the cost of
24 licensing, certification and endorsement activities;

25 (6) Any legislative changes to simplify civil penalties or structure civil penalties to ensure
26 fairness, equity and effectiveness in improving the quality of services to individuals with in-
27 tellectual or developmental disabilities; and

28 (7) Any legislative changes necessary to implement modern, sustainable and equitable li-
29 censing, certification and endorsement fee and civil penalty schedules.

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

31 124.050. As used in ORS 124.050 to 124.095:

32 (1) "Abuse" means one or more of the following:

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

35 (b) Neglect.

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

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

39 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,
40 163.465, 163.467 or 163.525.

41 (f) Verbal abuse.

42 (g) Financial exploitation.

43 (h) Sexual abuse.

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

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

4 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
5 visions of ORS 441.640 to 441.665.

6 (3) "Facility" means:

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

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

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

11 (4) "Financial exploitation" means:

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

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

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

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

21 (5) "Intimidation" means compelling or deterring conduct by threat.

22 (6) "Law enforcement agency" means:

23 (a) Any city or municipal police department.

24 (b) Any county sheriff's office.

25 (c) The Oregon State Police.

26 (d) Any district attorney.

27 (e) A police department established by a university under ORS 352.121 or 353.125.

28 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
29 health or safety of an elderly person.

30 (8) "Person with a disability" means a person described in:

31 (a) ORS 410.040 (7); or

32 (b) ORS 410.715.

33 (9) "Public or private official" means:

34 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
35 chiropractor, including any intern or resident.

36 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
37 or employee of an in-home health service.

38 (c) Employee of the Department of Human Services or community developmental disabilities
39 program.

40 (d) Employee of the Oregon Health Authority, local health department or community mental
41 health program.

42 (e) Peace officer.

43 (f) Member of the clergy.

44 (g) Regulated social worker.

45 (h) Physical, speech or occupational therapist.

- 1 (i) Senior center employee.
- 2 (j) Information and referral or outreach worker.
- 3 (k) Licensed professional counselor or licensed marriage and family therapist.
- 4 (L) Elected official of a branch of government of this state or a state agency, board, commission
- 5 or department of a branch of government of this state or of a city, county or other political subdi-
- 6 vision in this state.
- 7 (m) Firefighter or emergency medical services provider.
- 8 (n) Psychologist.
- 9 (o) Provider of adult foster care or an employee of the provider.
- 10 (p) Audiologist.
- 11 (q) Speech-language pathologist.
- 12 (r) Attorney.
- 13 (s) Dentist.
- 14 (t) Optometrist.
- 15 (u) Chiropractor.
- 16 (v) Personal support worker, as defined in ORS 410.600.
- 17 (w) Home care worker, as defined in ORS 410.600.
- 18 (x) Referral agent, as defined in ORS 443.370.

19 **(y) A person providing agency with choice services under section 1 of this 2022 Act.**

20 (10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,

21 medical services, assistance with bathing or personal hygiene or any other service essential to the

22 well-being of an elderly person.

23 (11)(a) "Sexual abuse" means:

24 (A) Sexual contact with an elderly person who does not consent or is considered incapable of

25 consenting to a sexual act under ORS 163.315;

26 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or

27 pervasive exposure to sexually explicit material or language;

28 (C) Sexual exploitation;

29 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-

30 son served by the facility or caregiver; or

31 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.

32 (b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:

33 (A) An employee of a facility who is also the spouse of the elderly person; or

34 (B) A paid caregiver.

35 (12) "Sexual contact" has the meaning given that term in ORS 163.305.

36 (13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly

37 person or a person with a disability through the use of:

38 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

39 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate

40 sexual comments.

41 **SECTION 8. The Department of Human Services shall adopt the rules described in sec-**

42 **tion 2 of this 2022 Act no later than October 1, 2023.**

43 **SECTION 9. (1) Section 3 of this 2022 Act is repealed on January 2, 2026.**

44 **(2) Sections 4, 5 and 6 of this 2022 Act are repealed on January 2, 2023.**

45 **SECTION 10. Notwithstanding any other provision of law, the General Fund appropriation**

1 made to the Department of Human Services by section 1 (7), chapter 606, Oregon Laws 2021,
2 for the biennium ending June 30, 2023, for intellectual/developmental disabilities programs,
3 is increased by \$766,789 to implement the requirements of this 2022 Act.

4 SECTION 11. Notwithstanding any other law limiting expenditures, the limitation on
5 expenditures established by section 3 (7), chapter 606, Oregon Laws 2021, for the biennium
6 ending June 30, 2023, as the maximum limit for payment of expenses from federal funds
7 collected or received by the Department of Human Services for intellectual/developmental
8 disabilities programs, is increased by \$2,487,751 to implement the requirements of this 2022
9 Act.

10 SECTION 12. This 2022 Act being necessary for the immediate preservation of the public
11 peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect
12 on its passage.
13
