

SB 91 -1, -4, -5 STAFF MEASURE SUMMARY

Senate Committee On Human Services

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 2/6, 3/29

WHAT THE MEASURE DOES:

Directs Department of Human Services (DHS) to administer a program with federal financial participation to compensate parents that provide attendant care services to children with very high medical or behavioral needs. Permits DHS to adopt rules to manage cost, size, and growth rate of program; requires DHS to report to the Legislative Assembly annually. Specifies requirements of parent eligibility and requirements of agency employing parents. Permits DHS to require a parent provider to assign an alternative legal representative for the client child if the Centers for Medicare and Medicaid Services (CMS) requires it and sets requirements for the assignment. Subjects parent providers to requirements of mandatory reporting of abuse. Prohibits certain activities during hours a parent of minor child is paid to provide attendant care services. Requires that DHS obtain approval from CMS of the Medically Fragile Model Waiver or a Medically Involved Children’s Waiver before administering program. Prohibits DHS from administering program using General Fund moneys that are not matched by federal Medicaid funds. Declares emergency, effective on passage.

ISSUES DISCUSSED:

EFFECT OF AMENDMENT:

-1 **Replaces the measure.** Directs the Department of Human Services (DHS) to administer a program (the program) to compensate parents to provide attendant care services to the parents’ minor children who have been assessed by the department to have very high medical or behavioral needs. Requires that parent providers be employed by an agency and not by the child or the other parent of the child. Prohibits parent providers to be paid by an agency that is owned by the parent, the child, or any family member or for which the parent or other family member serves in any administrative or leadership capacity, including as a member of a board of directors. Prohibits agencies to employ a parent provider as an independent contractor. Requires agencies to pay parent providers overtime at the same rate and under the same circumstances as direct support professionals. Prohibits agencies to pay providers of attendant care services for providing services to a minor child during school hours unless the minor child is temporarily at home recovering from surgery or illness and the temporary absence from school is recommended by the child’s health care provider. Prohibits agencies to pay parent providers for care if client’s child is homeschooled, is enrolled in private school with fewer school hours, or regularly attends school less than the number of school hours attended by students without disabilities due to a school district determination or parent choice. Permits school districts or other entities to compensate parents for providing support for educational activities that would otherwise be the responsibility of the school district. Prohibits parent providers to engage in specific activities during the hours paid to provide one-on-one attendant care services to the client’s child. Permits DHS to require a parent provider to assign an alternative legal representative for the client child to manage the development and implementation of the child’s individual support plan. Specifies requirements of the assignment. Makes parent providers mandatory reporters. Requires DHS to use an advisory committee to adopt rules for program safeguard strategies, agency requirements, training requirements, objection to hires, consistent and equitable implementation, appeal requirements, and any other requirements. Permits DHS to manage the cost, size, and growth rate of the program to protect the eligibility for and levels of services. Requires DHS to report to the Legislative Assembly annually, specifies reporting requirements. Prohibits

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DHS to administer the program without approval of a new waiver, without other federal financial participation in the costs of the program, or using General Fund moneys that are not matched by federal funds. Directs DHS to initiate an application for approval of a new waiver on or before the earlier of August 1, 2023, or 30 days after the effective date of the measure. Directs DHS to continue paying parent providers by applying for federal funds until parent provider program is approved. Appropriates \$3,000,000 to DHS for administering the program and applying for matching federal funds. Declares emergency, effective on passage.

-4 Replaces the measure. Requires the Department of Human Services (DHS) to administer a program to compensate parents to provide attendant care services for children with very high support needs or extraordinary physical, mental, or emotional needs. Prohibits parent providers paid to provide attendant care services to the client child by an agency that is owned by the parent, child, or any family member or for which the parent or other family member serves in any administrative or leadership capacity, including as a member of a board of directors. Prohibits agency employing to employ a parent provider as an independent contractor. Directs the agency employing the parent provider to offer same wages, benefits, and overtime at the same rate as direct support professionals. Prohibits the agency to pay for more than fifty hours per client child per week. Prohibits agency to pay any provider of attendant care services to a minor child during instructional time, specifies exemptions. Permits school districts or other entities to compensate parents of students with disabilities for providing support for educational activities that would otherwise be the responsibility of the school district. Prohibits parent providers to care for a vulnerable adult who requires physical care and monitoring, care for other children under the age of ten, or performing tasks that are not for the benefit of the client child. Permits DHS to ask a parent provider to assign an alternative legal representative for the client child to make decisions about or manage the client child's attendant care services, specifies assignment requirements. Makes parent providers mandatory reporters. Directs DHS to make rules to administer program and consult with an advisory committee to safeguard nonparent caregivers, avoid displacement of nonparent caregivers, training requirements for parent providers, client children, community developmental disability programs, process for a client child to object or raise concerns about a provider, consistent and equitable program implementation, and appeals related to the implementation of a waiver. Permits DHS to adopt rules to limit the number of client children served by the program. Prohibits DHS to find client's child ineligible to participate in the program due to achievement of skills that result in a need for a lower level of service. Requires DHS to report to the Legislative Assembly, specifies reporting requirements. Permits DHS to manage the cost, size, and growth rate of the program as necessary to maintain service levels. Directs DHS to evaluate options to reduce costs in the program by paying lower rates to agencies. Prohibits DHS from paying parents for attendant care services without prior approval of a waiver from the Centers for Medicare and Medicaid Services or by using General Fund moneys that are not matched by federal Medicaid funds. Directs DHS to apply for federal funding to continue to compensate paid parent providers who were paid parent providers as of March 1, 2023. Declares emergency, effective on passage.

-5 Replaces the measure. Directs the Department of Human Services (DHS) to administer a program (the program) to compensate parents for providing attendant care services to the parents' children who need extraordinary care with an assessment tool adopted by DHS and approved by the Centers for Medicare and Medicaid Services. Requires parent providers to be employed by an agency and not by the child or the other parent of the child unless the parent provider was paid as a personal support worker for the child on or before July 1, 2022. Prohibits parent providers to be paid to provide attendant care services by an agency that is owned by the parent, the child, or any family member or for which the parent or other family member serves in any administrative or leadership capacity, including as a member of a board of directors. Directs agencies employing the parent provider to work with the parent provider and the client child to schedule attendant care services according to the needs of the child. Prohibits agencies to employ a parent provider as an independent contractor. Requires agencies to offer parent providers same wages, benefits, and overtime rates offered to direct support

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professionals. Permits agencies to pay parent providers for up to 60 hours per week of attendant care services. Prohibits agencies to pay attendant care services providers during instructional time unless the minor child is temporarily disengaged from instructional time while recovering from surgery or illness and the temporary disengagement from instructional time is recommended by the child's health care provider. Clarifies that the measure does not prohibit a school district or other entity from compensating parents of students with disabilities for providing support for educational activities that are the responsibility of the school district. Permits DHS to require a parent provider to assign an alternative legal representative for the client child to manage the client child's attendant care services, specifies assignment requirements. Makes provider parents mandatory reporters. Directs DHS to adopt rules in consultation with an advisory committee for training requirements, process for hiring objections, consistent and equitable implementation, appeal processes, and any other necessary requirements. Specifies requirements for advisory committee membership. Requires DHS to report to the Legislative Assembly annually, specifies reporting requirements. Permits DHS to cap the number of parents eligible for the program if necessary to stay within the legislatively approved budget. Permits DHS to increase the number of parent providers if federal funding increases or program costs decrease. Directs DHS to apply for any federal funding available to continue to compensate parent providers. Requires parent provider to be compensated for a 12-month period following a determination that the child needs a lower level of services or support. Requires DHS to study state expenditures per child client for attendant care services, hospitalization, and recruiting, training, and retention of workers; race; socioeconomic status; education level of the parent providers; primary language of the parent providers; location where the client child resides; diagnosis that qualifies the client child to receive attendant care services from parent providers. Requires DHS to report results of study to the Legislative Assembly by September 15, 2024, specifies reporting requirements. Prohibits DHS to administer program using General Fund moneys that are not matched by federal Medicaid funds or without federal approval or waiver, or other arrangements for federal financial participation in the costs of the program. Directs DHS to initiate an application for approval of a new waiver on or before the earlier of August 1, 2023, or 30 days after the effective date of the measure.

Declares emergency, effective on passage.

BACKGROUND:

Federal and state governments fund services for people with intellectual and developmental disabilities. Federal funds come through the Centers for Medicare and Medicaid Services (CMS). CMS regulates overarching requirements all states must follow. Office of Developmental Disabilities Services (ODDS) and the Oregon Health Authority work together to ensure compliance with CMS regulations. Oregon Law permits the Governor to declare a state of public health emergency upon the occurrence of a public health emergency to protect the public health (ORS 433.441 to ORS 433.452). During the COVID-19 public health emergency (PHE), the federal government extended health care coverage, long term services and supports, and provided extra food benefits. These temporary changes would end after the PHE ends. In January 2021, ODDS implemented processes to allow parents of minor children to be paid caregivers. Under normal circumstances, parents of minor children in Oregon are considered the child's representative as part of their parenting role. CMS approved a 1135 waiver of 42 CFR § 441.505 to temporarily allow payment for attendant services and supports rendered by an individual's representative provided that the state makes a reasonable assessment that the caregiver is capable of rendering such services. In February 2022, Oregon's Governor declared the public health emergency would end, effective April 1, 2022.

Senate Bill 91 requires the Department of Human Services to obtain a new waiver that would allow parents of minor children in the service tiers "Very High Needs due to Medical" or "Very High Needs due to Behavior" to be paid for up to 60 hours a week of attendant care for their minor child.