

# A-Engrossed Senate Bill 570

Ordered by the Senate May 23  
Including Senate Amendments dated May 23

Sponsored by Senators GELSER BLOUIN, PATTERSON, MANNING JR, Representative SMITH G; Senators CAMPOS, SMITH DB, Representative NELSON (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.

Requires Department of Human Services to contract with up to two agencies providing agency with choice services. Specifies criteria for agencies that contract with department.

*[Allows consumers to use private pay home care program through Home Care Commission to access agency with choice services and other home care services.]*

**Directs department to conduct study of barriers to implementing private pay home care worker program and prescribes elements of study. Requires department to report findings of study to interim committees of Legislative Assembly related to health and to human services by January 1, 2026.**

**Requires department to report on implementation of agency with choice services to interim committees of Legislative Assembly related to human services by January 1, 2027.**

**Allows provider of agency with choice services to serve individuals who are not enrolled in state medical assistance program beginning two years after provider starts offering agency with choice services.**

**Makes persons providing agency with choice services mandatory reporters.**

## A BILL FOR AN ACT

1  
2 Relating to home care services; creating new provisions; and amending ORS 124.050.

3       Whereas quality long term in-home care services allow Oregon seniors, persons with disabilities  
4 and their families the choice of remaining in their own homes and communities, including the choice  
5 of whether to receive residential services, use licensed home care agencies or employ individual  
6 providers; and

7       Whereas long term in-home care services are a less costly alternative to institutional care,  
8 saving Oregon taxpayers significant amounts through lower reimbursement rates; and

9       Whereas thousands of Oregon seniors and persons with disabilities exercise their choice to live  
10 in their own homes and receive needed assistance through in-home services; and

11       Whereas many Oregon seniors and persons with disabilities currently receive long term in-home  
12 care services from individual providers hired directly by them under programs authorized through  
13 the Medicaid state plan or Medicaid waiver authorities and similar state-funded in-home care pro-  
14 grams; and

15       Whereas establishing a consumer-directed employer program will support the state's intent for  
16 consumers to direct their own services, enhance the capacity of the home-based service system by  
17 adding an entity that provides the administrative functions of an employer and supports consumers  
18 to manage the services provided in their own homes, prevent or reduce unnecessary and costly  
19 utilization of hospitals and institutions by taking a step toward integration of home care workers  
20 into a coordinated delivery system, and support the development of new technology and inter-

**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 ventions to enhance the skills of home care workers and services provided to consumers; and

2 Whereas labor and management conflicts jeopardize the state's proprietary interests as a pur-  
3 chaser of self-directed home care services by substantially interfering with the quality, consistency  
4 and reliability of the provision of self-directed home care services in the state; and

5 Whereas a disruption in the provision of self-directed home care services results in additional  
6 costs and otherwise avoidable expenditures of public funds; and

7 Whereas the lack of a mutual agreement to resolve labor and management conflicts through  
8 processes that avoid disruption in the provision of self-directed home care services increases the  
9 likelihood that labor and management conflicts will interfere with the provision of self-directed home  
10 care services; and

11 Whereas the Legislative Assembly declares that it is the policy of this state to promote labor  
12 peace in state contracts for self-directed home care services by encouraging the resolution of labor  
13 disputes in a manner that reduces the likelihood of work stoppages that interrupt the provision of  
14 self-directed home care services; and

15 Whereas the Legislative Assembly does not intend for the consumer-directed employer program  
16 to replace the consumers' options to select an individual provider to provide in-home care from a  
17 qualified home care agency or through the Home Care Commission; now, therefore,

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

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

20 (a) "Abuse" has the meaning given that term in ORS 124.050.

21 (b) "Agency with choice services" means, with respect to care workers who are providing  
22 home care services and supports to a client:

23 (A) Assisting a client with:

24 (i) Recruiting, selecting and dismissing care workers; and

25 (ii) Coordinating the schedules and responsibilities of care workers; and

26 (B) Performing the following functions:

27 (i) Withholding, filing and paying income and employment-related taxes, including  
28 workers' compensation premiums and unemployment taxes;

29 (ii) Verifying the qualifications of each care worker; and

30 (iii) Providing other administrative and employment-related supports.

31 (c) "Care worker" mean an individual providing home care services.

32 (d) "Client" means an individual receiving home care services, funded pursuant to ORS  
33 410.070, or a designee of the individual.

34 (e)(A) "Consumer-directed employer" means an agency that contracts with the Depart-  
35 ment of Human Services to provide agency with choice services.

36 (B) "Consumer-directed employer" excludes an in-home care agency as defined in ORS  
37 443.305.

38 (f) "Home care services" has the meaning given that term in ORS 410.600.

39 (2) The department shall contract with up to two consumer-directed employers to provide  
40 agency with choice services. A consumer-directed employer contracting with the department  
41 must meet criteria prescribed by the department by rule including, but not limited to:

42 (a) Promoting consumer choice and self-direction and maximizing consumer autonomy  
43 and control over daily decisions by:

44 (A) Using a person-centered approach so that the client is at the center of the decision-  
45 making process regarding what home care services are needed, where and how the services

1 are delivered, when the services are delivered and who provides the services;

2 (B) Managing the employment responsibilities of the client together with the client and  
3 with the client directing the client's home care services and supports;

4 (C) Enhancing the role of care workers as members of the client's care team, as desired  
5 and authorized by the client and reflected in the client's care plan; and

6 (D) Providing training to clients on self-direction and on the clients' roles and responsi-  
7 bilities as managers of their care workers including:

8 (i) What it means to be a co-employer with the consumer-directed employer and the du-  
9 ties under applicable employment laws; and

10 (ii) How to provide a safe workplace for care workers.

11 (b) A commitment to engage and work closely with clients in designing and implementing  
12 agency with choice services by appointing clients to an advisory board, using focus groups  
13 of clients or other methods for working with clients that are approved by the department.

14 (c) Having a plan for recruiting and retaining qualified care workers to meet the growing  
15 need for long term care providers in this state.

16 (d) The ability to provide high-quality training, health care and retirement benefits to  
17 care workers, which may include participation in existing Taft-Hartley trusts that provide  
18 those benefits.

19 (e) A commitment to involving the care workers employed by the consumer-directed  
20 employer in decision-making on the development of work processes, the establishment of  
21 performance standards, quality improvement, training, technology used and workplace  
22 safety.

23 (f) The ability to build and adapt technology tools that can enhance efficiency and provide  
24 better quality of services.

25 (g) A commitment to using caregiver registries, including the registry described in sec-  
26 tion 2, chapter 95, Oregon Laws 2022.

27 (h) A commitment to minimizing the impact of the loss of pay and work hours for care  
28 workers resulting from client hospitalizations and death and to meeting the demands for  
29 coverage necessitated by planned and unplanned care worker absences, respite care for a  
30 client's paid and unpaid caregivers and other temporary coverage needs of a client.

31 (3) The department shall contract with consumer-directed employers by issuing a request  
32 for proposal to provide agency with choice services under this section that includes, but is  
33 not limited to:

34 (a) An application form that includes the names and addresses of the owners of the  
35 agency and of the individuals who are responsible for the day-to-day operations of the  
36 agency; and

37 (b) Submission by the applicant of completed state and national background checks for  
38 each owner of the agency and each individual responsible for the day-to-day operations of the  
39 agency, including background checks on sex offender registries and checking for care work-  
40 ers who are legally excluded from providing Medicaid- or Medicare-funded services.

41 (4) A consumer-directed employer that contracts with the department under subsection  
42 (2) of this section shall:

43 (a) Ensure that care workers employed by the consumer-directed employer have access  
44 to support coordination and services from the consumer-directed employer.

45 (b) Submit claims for reimbursement that meet federal requirements for electronic visit

1 verification to ensure that care was provided to clients.

2 (c) Be responsible for hiring and terminating care workers who are employed by the  
3 consumer-directed employer.

4 (d) Visit the client every six months, with at least one in-home visit per year, to monitor  
5 the health and safety of clients and to safeguard against fraud, waste and abuse.

6 (e) Establish and maintain an effective agency-wide quality assessment and performance  
7 improvement program to evaluate and monitor the quality, safety and appropriateness of the  
8 services provided by care workers including, at a minimum:

9 (A) A method for identifying, analyzing and correcting adverse events, including imme-  
10 diately responding to allegations of abuse, neglect and fiscal improprieties involving a client  
11 and reporting any allegation of abuse or neglect to the appropriate authorities;

12 (B) A method to select and track quality indicators by high risk, high volume and prob-  
13 lem prone areas and indicators of client safety and the quality of care; and

14 (C) Conducting and documenting quality improvement activities.

15 (f) Develop, implement and enforce written policies and procedures regarding:

16 (A) Administrative operations;

17 (B) Pre-employment screening and criminal records checks;

18 (C) Personnel operations including, but not limited to:

19 (i) The investigation of any complaint, grievance, adverse event or allegation of abuse,  
20 neglect or fiscal improprieties involving a client; and

21 (ii) Discontinuing a care worker's assignment when the consumer-directed employer has  
22 reason to believe that the health, safety or well-being of a client is in jeopardy due to the  
23 care worker's performance;

24 (D) Managing client information and records, including policies regarding confidentiality,  
25 access, storage, retention and destruction of records; and

26 (E) Compliance with Medicaid requirements for agency with choice services.

27 (g) Pay employment taxes for clients and fines or penalties assessed against a client if  
28 the taxes, fines or penalties are associated with the client's managing of the client's care  
29 workers.

30 (h) Retain proof that all employment taxes have been paid and filed.

31 (i) Indemnify a client for employment or wage-related claims, damages, fines or penalties  
32 associated with the client's managing of the client's care workers.

33 (j) Maintain a drug-free workplace that prohibits care workers from being under the in-  
34 fluence of drugs or alcohol when providing home care services.

35 (k) Immediately respond to allegations of mistreatment of a care worker by a client.

36 (5) The department shall make available to care workers employed by consumer-directed  
37 employers a program to connect care workers to licensed nurses to provide training and in-  
38 struction to care workers on the performance of nursing tasks.

39 (6) Any qualified and willing person may apply for employment as a care worker with a  
40 consumer-directed employer.

41 (7) Care workers employed by a consumer-directed employer are required to have an ac-  
42 tive identification number assigned by the consumer-directed employer.

43 (8)(a) The department shall adopt by rule hourly rates for consumer-directed employers  
44 and, if necessary, annually adjust the rates, subject to a legislative appropriation for the  
45 adjusted rates, considering the market, average industry wages and other factors that the

1 department considers relevant. The rates must be sufficient to:

2 (A) Support substitute staffing needs due to canceled shifts, planned and unplanned ab-  
3 sences of care workers, respite care of clients and other similar needs; and

4 (B) Allow consumer-directed employers to pay care workers wages and benefits compa-  
5 rable to the wages and benefits provided for in the collective bargaining agreement under  
6 ORS 410.612.

7 (b) The department shall work with consumer-directed employers and care workers to:

8 (A) Implement a system to assist clients and prospective clients in finding care workers;  
9 and

10 (B) Develop policies and procedures to minimize care worker wage losses due to canceled  
11 shifts or the hospitalization or death of a client.

12 (9) Out of the rates paid to consumer-directed employers by the department under sub-  
13 section (8) of this section, the department shall establish:

14 (a) A maximum percentage that may be used for administrative costs or overhead costs.

15 (b) A minimum percentage that must be used for care worker compensation.

16 (10) The department shall require consumer-directed employers to:

17 (a) Demonstrate that any increases in rates paid under subsection (8) of this section are  
18 passed through to care workers in wages and benefits; and

19 (b) Provide full financial transparency by reporting to the department the costs of care  
20 workers broken down by wages, benefits, workers' compensation and any other personnel-  
21 related expenses.

22 (11) Except as provided in subsection (12) of this section, a consumer-directed employer  
23 that seeks to contract with the department to provide agency with choice services must first  
24 provide a labor peace agreement that:

25 (a) Is signed or certified by an authorized representative of a labor organization that  
26 represents employees in this state or a neighboring state who provide services similar to the  
27 home care services provided by the care workers employed by the consumer-directed em-  
28 ployer and that seeks to represent the care workers employed by the consumer-directed  
29 employer; and

30 (b) Includes a process for the resolution of labor disputes with the care workers em-  
31 ployed by the consumer-directed employer.

32 (12) The department may contract with a consumer-directed employer that has not pro-  
33 vided a labor peace agreement described in subsection (11) of this section if:

34 (a)(A) A labor organization is currently certified to represent the care workers employed  
35 by the consumer-directed employer and the labor organization informs the consumer-  
36 directed employer that the labor organization does not wish to enter into a labor peace  
37 agreement with the consumer-directed employer; and

38 (B) The consumer-directed employer demonstrates to the satisfaction of the department  
39 that the consumer-directed employer has processes in place to ensure the uninterrupted  
40 delivery of home care services in the event of a labor dispute; or

41 (b)(A) The consumer-directed employer notifies in writing all labor organizations certified  
42 to represent employees in this state who provide services similar to the home care services  
43 to be provided by the care workers employed by the consumer-directed employer that the  
44 consumer-directed employer wishes to enter into a labor peace agreement; and

45 (B) Three weeks following the date on which the notice was given:

1 (i) No labor organization responds to the notice; or

2 (ii) No labor organization expresses an interest in representing the care workers em-  
3 ployed by the consumer-directed employer.

4 **SECTION 2.** (1) The Department of Human Services shall conduct:

5 (a) A study of the barriers to the implementation of the private pay home care worker  
6 program established in ORS 410.605. The study shall include:

7 (A) An analysis of the gaps in access to home care workers based on race, ethnicity,  
8 citizenship status, income, disability, insurance coverage and other factors;

9 (B) The feasibility of contracting with a third party to administer the program, including  
10 a care worker or consumer-directed employer; and

11 (C) Options for funding the program and for providing oversight and monitoring of the  
12 quality of care provided through the program.

13 (b) An assessment of the impact of the private pay home care worker program on the  
14 full continuum of in-home care services.

15 (2) In conducting the study, the department shall convene an advisory committee con-  
16 sisting of:

17 (a) Representatives of licensed in-home care agencies;

18 (b) Consumers or consumer representatives;

19 (c) Care workers and representatives of care workers; and

20 (d) Other individuals or representatives of groups or organizations as determined by the  
21 department.

22 (3) Not later than January 1, 2026, the department shall report, as provided in ORS  
23 192.245, the findings of its study to the interim committees of the Legislative Assembly re-  
24 lated to health and to human services. The report may include recommendations regarding  
25 the provision of agency with choice services under section 1 of this 2023 Act to private  
26 payers.

27 **SECTION 3.** No later than January 1, 2027, the Department of Human Services shall re-  
28 port on the implementation of section 1 of this 2023 Act, in the manner provided in ORS  
29 192.245, to the interim committees of the Legislative Assembly related to human services.

30 **SECTION 4.** (1) Beginning two years after the date that a consumer-directed employer  
31 starts providing agency with choice services under section 1 of this 2023 Act, consumer-  
32 directed employers may serve clients who are not enrolled in the medical assistance pro-  
33 gram.

34 (2) As used in this section, “client” and “consumer-directed employer” have the meanings  
35 given those terms in section 1 of this 2023 Act.

36 **SECTION 5.** ORS 124.050, as amended by section 7, chapter 91, Oregon Laws 2022, is amended  
37 to read:

38 124.050. As used in ORS 124.050 to 124.095:

39 (1) “Abuse” means one or more of the following:

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

42 (b) Neglect.

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

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

1 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,  
2 163.465, 163.467 or 163.525.

3 (f) Verbal abuse.

4 (g) Financial exploitation.

5 (h) Sexual abuse.

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

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

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

13 (3) "Facility" means:

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

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

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

18 (4) "Financial exploitation" means:

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

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

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

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

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

29 (6) "Law enforcement agency" means:

30 (a) Any city or municipal police department.

31 (b) Any county sheriff's office.

32 (c) The Oregon State Police.

33 (d) Any district attorney.

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

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

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

38 (a) ORS 410.040 (7); or

39 (b) ORS 410.715.

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

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

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

45 (c) Employee of the Department of Human Services or community developmental disabilities

- 1 program.
- 2 (d) Employee of the Oregon Health Authority, local health department or community mental  
3 health program.
- 4 (e) Peace officer.
- 5 (f) Member of the clergy.
- 6 (g) Regulated social worker.
- 7 (h) Physical, speech or occupational therapist.
- 8 (i) Senior center employee.
- 9 (j) Information and referral or outreach worker.
- 10 (k) Licensed professional counselor or licensed marriage and family therapist.
- 11 (L) Elected official of a branch of government of this state or a state agency, board, commission  
12 or department of a branch of government of this state or of a city, county or other political subdi-  
13 vision in this state.
- 14 (m) Firefighter or emergency medical services provider.
- 15 (n) Psychologist.
- 16 (o) Provider of adult foster care or an employee of the provider.
- 17 (p) Audiologist.
- 18 (q) Speech-language pathologist.
- 19 (r) Attorney.
- 20 (s) Dentist.
- 21 (t) Optometrist.
- 22 (u) Chiropractor.
- 23 (v) Personal support worker, as defined in ORS 410.600.
- 24 (w) Home care worker, as defined in ORS 410.600.
- 25 (x) Referral agent, as defined in ORS 443.370.
- 26 (y) A person providing agency with choice services under section 1, chapter 91, Oregon Laws  
27 2022, **or section 1 of this 2023 Act.**
- 28 (10) “Services” includes but is not limited to the provision of food, clothing, medicine, housing,  
29 medical services, assistance with bathing or personal hygiene or any other service essential to the  
30 well-being of an elderly person.
- 31 (11)(a) “Sexual abuse” means:
- 32 (A) Sexual contact with an elderly person who does not consent or is considered incapable of  
33 consenting to a sexual act under ORS 163.315;
- 34 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or  
35 pervasive exposure to sexually explicit material or language;
- 36 (C) Sexual exploitation;
- 37 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-  
38 son served by the facility or caregiver; or
- 39 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 40 (b) “Sexual abuse” does not mean consensual sexual contact between an elderly person and:
- 41 (A) An employee of a facility who is also the spouse of the elderly person; or
- 42 (B) A paid caregiver.
- 43 (12) “Sexual contact” has the meaning given that term in ORS 163.305.
- 44 (13) “Verbal abuse” means to threaten significant physical or emotional harm to an elderly  
45 person or a person with a disability through the use of:

- 1 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or  
2 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate  
3 sexual comments.

4 **SECTION 6. (1) The Department of Human Services shall complete the rulemaking for**  
5 **implementing section 1 of this 2023 Act no later than December 31, 2024.**

6 **(2) The department shall open a request for proposals for consumer-directed employers**  
7 **under section 1 of this 2023 Act no later than July 1, 2025.**

8 **SECTION 7. (1) Sections 2 and 3 of this 2023 Act are repealed on January 2, 2027.**

9 **(2) Section 4 of this 2023 Act is repealed on January 2, 2029.**

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