

SB 570-4
(LC 1192)
4/3/23 (LHF/ps)

Requested by SENATE COMMITTEE ON HUMAN SERVICES (at the request of Service Employees International Union)

**PROPOSED AMENDMENTS TO
SENATE BILL 570**

1 On page 1 of the printed bill, line 2, delete “410.605” and insert
2 “124.050”.

3 Delete lines 26 through 30 and delete pages 2 through 4 and insert:

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

5 **“(a) ‘Agency with choice services’ means, with respect to care**
6 **workers who are providing home care services and supports to a client:**

7 **“(A) Assisting a client with:**

8 **“(i) Recruiting, selecting and dismissing care workers; and**

9 **“(ii) Coordinating the schedules and responsibilities of care work-**
10 **ers; and**

11 **“(B) Performing the following functions:**

12 **“(i) Withholding, filing and paying income and employment-related**
13 **taxes, including workers’ compensation premiums and unemployment**
14 **taxes;**

15 **“(ii) Verifying the qualifications of each care worker; and**

16 **“(iii) Providing other administrative and employment-related sup-**
17 **ports.**

18 **“(b) ‘Care worker’ mean an individual providing home care services.**

19 **“(c) ‘Client’ means an individual receiving home care services or a**
20 **designee of the individual funded pursuant to ORS 410.070.**

21 **“(d) ‘Consumer-directed employer’ means an agency that contracts**

1 with the Department of Human Services to provide agency with choice
2 services.

3 “(e) ‘Home care services’ has the meaning given that term in ORS
4 410.600.

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

10 “(a) Promoting consumer choice and self-direction and maximizing
11 consumer autonomy and control over daily decisions by:

12 “(A) Using a person-centered approach so that the client is at the
13 center of the decision-making process regarding what home care ser-
14 vices are needed, where and how the services are delivered, when the
15 services are delivered and who provides the services;

16 “(B) Managing the employment responsibilities of the client to-
17 gether with the client and with the client directing the client’s home
18 care services and supports;

19 “(C) Enhancing the role of care workers as members of the client’s
20 care team, as desired and authorized by the client and reflected in the
21 client’s care plan; and

22 “(D) Providing training to clients on self-direction and on the
23 clients’ roles and responsibilities as managers of their care workers
24 including:

25 “(i) What it means to be a co-employer with the consumer-directed
26 employer and the duties under applicable employment laws; and

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

28 “(b) A commitment to engage and work closely with clients in de-
29 signing and implementing agency with choice services by appointing
30 clients to an advisory board, using focus groups of clients or other

1 **methods for working with clients that are approved by the department.**

2 **“(c) Having a plan for recruiting and retaining qualified care**
3 **workers to meet the growing need for long term care providers in this**
4 **state.**

5 **“(d) The ability to provide high-quality training, health care and**
6 **retirement benefits to care workers, which may include participation**
7 **in existing Taft-Hartley trusts that provide those benefits.**

8 **“(e) A commitment to involving the consumer-directed employer’s**
9 **care workers in decision-making on the development of work pro-**
10 **cesses, the establishment of performance standards, quality improve-**
11 **ment, training, technology used and workplace safety.**

12 **“(f) The ability to build and adapt technology tools that can en-**
13 **hance efficiency and provide better quality of services.**

14 **“(g) A commitment to using caregiver registries, including the**
15 **registry described in section 2, chapter 95, Oregon Laws 2022.**

16 **“(h) A commitment to minimizing the impact of the loss of pay and**
17 **work hours for care workers resulting from client hospitalizations and**
18 **death and to meeting the demands for coverage necessitated by**
19 **planned and unplanned care worker absences, respite care for a**
20 **client’s paid and unpaid caregivers and other temporary coverage**
21 **needs of a client.**

22 **“(3) The department shall contract with consumer-directed em-**
23 **ployers by issuing a request for proposal to provide agency with choice**
24 **services under this section that includes, but is not limited to:**

25 **“(a) An application form that includes the names and addresses of**
26 **the owners of the agency and of the individuals who are responsible**
27 **for the day-to-day operations of the agency; and**

28 **“(b) Submission by the applicant of completed state and national**
29 **background checks for each owner of the agency and each individual**
30 **responsible for the day-to-day operations of the agency, including**

1 background checks on sex offender registries and checking for care
2 workers who are legally excluded from providing Medicaid- or
3 Medicare-funded services.

4 “(4) A consumer-directed employer that contracts with the depart-
5 ment under subsection (2) of this section shall:

6 “(a) Ensure that care workers employed by the consumer-directed
7 employer have access to a supervisor while they are on duty.

8 “(b) Submit claims for reimbursement that meet federal require-
9 ments for electronic visit verification to ensure that care workers are
10 serving clients at the times that the care workers are scheduled to be
11 serving the clients.

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

14 “(d) Visit the client every six months, with at least one in-home
15 visit per year, to monitor the health and safety of clients and to safe-
16 guard against fraud, waste and abuse.

17 “(e) Establish and maintain an effective agency-wide quality as-
18 sessment and performance improvement program to evaluate and
19 monitor the quality, safety and appropriateness of the services pro-
20 vided by care workers including, at a minimum:

21 “(A) A method for identifying, analyzing and correcting adverse
22 events, including immediately responding to allegations of abuse,
23 neglect and fiscal improprieties involving a client and reporting any
24 allegation of abuse or neglect to the appropriate authorities;

25 “(B) A method to select and track quality indicators by high risk,
26 high volume and problem prone areas and indicators of client safety
27 and the quality of care; and

28 “(C) Conducting and documenting quality improvement activities.

29 “(f) Develop, implement and enforce written policies and procedures
30 regarding:

- 1 **“(A) Administrative operations;**
- 2 **“(B) Pre-employment screening and criminal records checks;**
- 3 **“(C) Personnel operations including, but not limited to:**
- 4 **“(i) The investigation of any complaint, grievance, adverse event**
5 **or allegation of abuse, neglect or fiscal improprieties involving a cli-**
6 **ent; and**
- 7 **“(ii) Discontinuing a care worker’s assignment when the**
8 **consumer-directed employer has reason to believe that the health,**
9 **safety or well-being of a client is in jeopardy due to the care worker’s**
10 **performance;**
- 11 **“(D) Managing client information and records, including policies**
12 **regarding confidentiality, access, storage, retention and destruction**
13 **of records; and**
- 14 **“(E) Compliance with Medicaid requirements for agency with choice**
15 **services.**
- 16 **“(g) Pay employment taxes for clients and fines or penalties as-**
17 **essed against a client if the taxes, fines or penalties are associated**
18 **with the client’s managing of the client’s care workers.**
- 19 **“(h) Retain proof that all employment taxes have been paid and**
20 **filed.**
- 21 **“(i) Indemnify a client for employment or wage-related claims,**
22 **damages, fines or penalties associated with the client’s managing of**
23 **the client’s care workers.**
- 24 **“(j) Maintain a drug-free workplace that prohibits care workers**
25 **from being under the influence of drugs or alcohol when providing**
26 **home care services.**
- 27 **“(k) Immediately respond to allegations of abuse of a care worker**
28 **by a client.**
- 29 **“(5) The department shall make available to care workers employed**
30 **by consumer-directed employers a program to connect care workers**

1 to licensed nurses to provide training and instruction to care workers
2 on the performance of nursing tasks.

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

5 “(7) Care workers employed by a consumer-directed employer are
6 required to have an active home care worker identification number
7 issued by the department or an identification number assigned by the
8 consumer-directed employer.

9 “(8) The department shall adopt by rule hourly rates for
10 consumer-directed employers and, if necessary, annually adjust the
11 rates, subject to a legislative appropriation for the adjusted rates,
12 considering the market, average industry wages and other factors that
13 the department considers relevant. The methodology for establishing
14 the rates must:

15 “(a) Factor in the need for a consumer-directed employer to hire
16 enough staff to address canceled shifts, planned and unplanned ab-
17 sences of care workers, respite care for clients and other similar
18 needs; and

19 “(b) Be sufficient to pay care workers the wages and benefits pro-
20 vided for in a collective bargaining agreement under ORS 410.612.

21 “(9) Out of the rates paid to consumer-directed employers by the
22 department under subsection (8) of this section, the department shall
23 establish:

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

26 “(b) A minimum percentage that must be used for care worker
27 compensation.

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

29 “(a) Demonstrate that any increases in rates paid under subsection
30 (8) of this section are passed through to care workers in wages and

1 **benefits; and**

2 **“(b) Provide full financial transparency by reporting to the depart-**
3 **ment the costs of care workers broken down by wages, benefits,**
4 **workers’ compensation and any other personnel-related expenses.**

5 **“(11)(a) Except as provided in paragraph (b) of this subsection, a**
6 **consumer-directed employer that contracts with the department under**
7 **this section must have:**

8 **“(A) A signed labor peace agreement with a labor organization that**
9 **includes a process for the resolution of labor disputes with the**
10 **consumer-directed employer’s employees; or**

11 **“(B) A signed collective bargaining agreement with a labor organ-**
12 **ization that represents employees in this state who provide services**
13 **similar to the consumer-directed employer’s employees or that re-**
14 **presents or seeks to represent any group of the consumer-directed**
15 **employer’s employees.**

16 **“(b) If a bona fide labor organization is not representing or seeking**
17 **to represent any group of the consumer-directed employer’s employees**
18 **or has not requested to enter into a labor peace agreement with the**
19 **consumer-directed employer, the consumer-directed employer must**
20 **attest that the consumer-directed employer will enter into a labor**
21 **peace agreement if a labor organization requests to enter into one.**

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

23 **“(a) A study of the barriers to the implementation of the private**
24 **pay home care worker program established in ORS 410.605. The study**
25 **shall include:**

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

29 **“(B) The feasibility of contracting with a third party to administer**
30 **the program, including a care worker or consumer-directed employer;**

1 and

2 “(C) Options for funding the program and for providing oversight
3 and monitoring of the quality of care provided through the program.

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

6 “(2) In conducting the study, the department shall convene an ad-
7 visory committee consisting of:

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

9 “(b) Consumers or consumer representatives;

10 “(c) Care workers and representatives of care workers; and

11 “(d) Other individuals or representatives of groups or organizations
12 as determined by the department.

13 “(3) Not later than January 1, 2026, the department shall report, as
14 provided in ORS 192.245, the findings of its study to the interim com-
15 mittees of the Legislative Assembly related to health and to human
16 services. The report may include recommendations regarding the pro-
17 vision of agency with choice services under section 1 of this 2023 Act
18 to private payers.

19 “SECTION 3. No later than January 1, 2027, the Department of
20 Human Services shall report on the implementation of section 1 of this
21 2023 Act, in the manner provided in ORS 192.245, to the interim com-
22 mittees of the Legislative Assembly related to human services.

23 “SECTION 4. (1) Beginning two years after the date that a
24 consumer-directed employer starts providing agency with choice ser-
25 vices under section 1 of this 2023 Act, consumer-directed employers
26 may serve clients who are not enrolled in the medical assistance pro-
27 gram.

28 “(2) As used in this section, ‘client’ and ‘consumer-directed em-
29 ployer’ have the meanings given those terms in section 1 of this 2023
30 Act.

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

3 “124.050. As used in ORS 124.050 to 124.095:

4 “(1) ‘Abuse’ means one or more of the following:

5 “(a) Any physical injury to an elderly person caused by other than acci-
6 dental means, or which appears to be at variance with the explanation given
7 of the injury.

8 “(b) Neglect.

9 “(c) Abandonment, including desertion or willful forsaking of an elderly
10 person or the withdrawal or neglect of duties and obligations owed an el-
11 derly person by a caretaker or other person.

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

13 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
14 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

15 “(f) Verbal abuse.

16 “(g) Financial exploitation.

17 “(h) Sexual abuse.

18 “(i) Involuntary seclusion of an elderly person for the convenience of a
19 caregiver or to discipline the person.

20 “(j) A wrongful use of a physical or chemical restraint of an elderly per-
21 son, excluding an act of restraint prescribed by a physician licensed under
22 ORS chapter 677 and any treatment activities that are consistent with an
23 approved treatment plan or in connection with a court order.

24 “(2) ‘Elderly person’ means any person 65 years of age or older who is not
25 subject to the provisions of ORS 441.640 to 441.665.

26 “(3) ‘Facility’ means:

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

28 “(b) A residential facility as that term is defined in ORS 443.400, includ-
29 ing but not limited to an assisted living facility.

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

1 “(4) ‘Financial exploitation’ means:

2 “(a) Wrongfully taking the assets, funds or property belonging to or in-
3 tended for the use of an elderly person or a person with a disability.

4 “(b) Alarming an elderly person or a person with a disability by convey-
5 ing a threat to wrongfully take or appropriate money or property of the
6 person if the person would reasonably believe that the threat conveyed would
7 be carried out.

8 “(c) Misappropriating, misusing or transferring without authorization any
9 money from any account held jointly or singly by an elderly person or a
10 person with a disability.

11 “(d) Failing to use the income or assets of an elderly person or a person
12 with a disability effectively for the support and maintenance of the person.

13 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

14 “(6) ‘Law enforcement agency’ means:

15 “(a) Any city or municipal police department.

16 “(b) Any county sheriff’s office.

17 “(c) The Oregon State Police.

18 “(d) Any district attorney.

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

21 “(7) ‘Neglect’ means failure to provide basic care or services that are
22 necessary to maintain the health or safety of an elderly person.

23 “(8) ‘Person with a disability’ means a person described in:

24 “(a) ORS 410.040 (7); or

25 “(b) ORS 410.715.

26 “(9) ‘Public or private official’ means:

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

29 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s
30 aide, home health aide or employee of an in-home health service.

1 “(c) Employee of the Department of Human Services or community de-
2 velopmental disabilities program.

3 “(d) Employee of the Oregon Health Authority, local health department
4 or community mental health program.

5 “(e) Peace officer.

6 “(f) Member of the clergy.

7 “(g) Regulated social worker.

8 “(h) Physical, speech or occupational therapist.

9 “(i) Senior center employee.

10 “(j) Information and referral or outreach worker.

11 “(k) Licensed professional counselor or licensed marriage and family
12 therapist.

13 “(L) Elected official of a branch of government of this state or a state
14 agency, board, commission or department of a branch of government of this
15 state or of a city, county or other political subdivision in this state.

16 “(m) Firefighter or emergency medical services provider.

17 “(n) Psychologist.

18 “(o) Provider of adult foster care or an employee of the provider.

19 “(p) Audiologist.

20 “(q) Speech-language pathologist.

21 “(r) Attorney.

22 “(s) Dentist.

23 “(t) Optometrist.

24 “(u) Chiropractor.

25 “(v) Personal support worker, as defined in ORS 410.600.

26 “(w) Home care worker, as defined in ORS 410.600.

27 “(x) Referral agent, as defined in ORS 443.370.

28 “(y) A person providing agency with choice services under section 1,
29 chapter 91, Oregon Laws 2022, **or section 1 of this 2023 Act.**

30 “(10) ‘Services’ includes but is not limited to the provision of food,

1 clothing, medicine, housing, medical services, assistance with bathing or
2 personal hygiene or any other service essential to the well-being of an el-
3 derly person.

4 “(11)(a) ‘Sexual abuse’ means:

5 “(A) Sexual contact with an elderly person who does not consent or is
6 considered incapable of consenting to a sexual act under ORS 163.315;

7 “(B) Verbal or physical harassment of a sexual nature, including but not
8 limited to severe or pervasive exposure to sexually explicit material or lan-
9 guage;

10 “(C) Sexual exploitation;

11 “(D) Any sexual contact between an employee of a facility or paid
12 caregiver and an elderly person served by the facility or caregiver; or

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

15 “(b) ‘Sexual abuse’ does not mean consensual sexual contact between an
16 elderly person and:

17 “(A) An employee of a facility who is also the spouse of the elderly per-
18 son; or

19 “(B) A paid caregiver.

20 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

21 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional
22 harm to an elderly person or a person with a disability through the use of:

23 “(a) Derogatory or inappropriate names, insults, verbal assaults, profanity
24 or ridicule; or

25 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
26 elty or inappropriate sexual comments.

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

30 **“(2) The department shall open a request for proposals for**

1 **consumer-directed employers under section 1 of this 2023 Act no later**
2 **than July 1, 2025.**

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

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

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