

## **HB 4129 A STAFF MEASURE SUMMARY**

### **House Committee On Early Childhood and Human Services**

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**Action Date:** 02/14/24

**Action:** Do pass with amendments and be referred to Ways and Means by prior reference.  
(Printed A-Eng.)

**Vote:** 6-3-1-0

**Yeas:** 6 - Andersen, Hartman, Nelson, Neron, Nguyen H, Reynolds

**Nays:** 3 - Elmer, Hieb, Scharf

**Exc:** 1 - Cramer

**Fiscal:** Fiscal impact issued

**Revenue:** No revenue impact

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**Meeting Dates:** 2/12, 2/14

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#### **WHAT THE MEASURE DOES:**

The measure defines "agency with choice services" as personal care services for older adults, individuals with physical disabilities, and individuals with behavioral health needs that are provided under self-directed service delivery model of co-employment for direct support workers. The measure requires the Department of Human Services (DHS) and the Oregon Health Authority (OHA) to adopt rules for the licensing of organizations that provide agency with choice services and to contract with up to two agencies by January 1, 2026. The measure specifies requirements and responsibilities of licensed agencies, clients' rights, employment conditions, reimbursement structures, and contract provisions.

#### Detailed Summary

##### **Definitions**

- Defines "self-directed service delivery model" as a co-employment model in which an agency functions as a common law employer of direct support workers who are recruited by individuals receiving attendant or personal care services.
- Defines "direct support worker" as a person who provides attendant or personal care services and is co-employed by an agency and an individual and provides for a legal distinction between direct support workers, personal support workers, and home care workers.
- Defines "agency with choice services" as services provided by the above model and specifies requirements for agencies providing services.
- Adds persons providing agency with choice services to list of mandatory reporters of abuse of elderly persons.
- Exempts only agency with choice service providers for intellectual and developmental disabilities from the definition of "in-home care agency" in ORS chapter 443.

##### **Requirements for Agency with Choice Providers**

- Requires licensed agencies to be responsible for the following:
  - recruiting, hiring, terminating, scheduling, training direct support workers while supporting individuals receiving services as co-employers;
  - handling administrative tasks including reimbursements, tax withholding, regulatory compliance, records and documentation, abuse reporting, background checks, and quality improvement;
  - maintaining workplace safety standards; and
  - promoting a person-centered approach to service delivery.
- Guarantees the rights of individuals receiving services to select, train, direct, report, remove, and schedule direct support workers according to their needs and preferences, and to receive training as required by federal rules.

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- Clarifies that an individual's exercise of the above actions does not establish an employer-employee relationship.
- Requires agencies to implement labor peace agreements with labor organizations and provides conditions for DHS and OHA to contract with agencies that do not implement labor peace agreements.

### Requirements for Agency with Choice Licensing and Contracting

- Requires DHS to adopt rules for the licensing of agencies providing services to older adults or individuals with physical disabilities.
- Requires OHA to adopt rules for the licensing of agencies providing services to individuals with behavioral health needs through the state Medicaid plan.
- Requires OHA and DHS to conduct a competitive procurement process and to contract with up to two agencies to provide agency with choice services by January 1, 2026.
- Requires DHS and OHA to establish reimbursement rates for agencies according to standards from the Centers for Medicare and Medicaid Services.
- Requires DHS and OHA to adopt rules establishing financial transparency requirements for agencies.
- Requires DHS and OHA to be responsible for nurse delegation as already required for home care workers.
- Allows DHS and the Home Care Commission to expand eligibility for agency with choice services to individuals in Oregon Project Independence and individuals in the private pay home care worker program after two years of serving individuals through Medicaid after analyzing data from the two year period to inform the Commission's decision.
- Allows DHS and OHA to deny, suspend, or revoke licenses and impose civil penalties on agencies that fail to comply with requirements.

### ISSUES DISCUSSED:

- Compensation of home care workers
- Rights of workers to choose to affiliate with a labor organization
- Comparison with models used in other states
- Late payments to home care workers
- Legislative intent in measure preamble

### EFFECT OF AMENDMENT:

The amendment makes changes to the rights of individuals receiving services, or their authorized representatives, to make decisions and receive training. The amendment also modifies the responsibilities of DHS, OHA, and the Home Care Commission when implementing the program.

#### Detailed Summary

- Redefines "agency with choice model" as "self-directed service delivery model."
- Adds the ability for an individual's authorized representative to make decisions regarding services on an individual's behalf.
- Adds the right of an individual receiving services to receive employer-related training as required by federal rules.
- Requires DHS and OHA to conduct a competitive procurement process when selecting agencies for contracting.
- Requires that DHS may only expand eligibility to Oregon Project Independence clients after two years of serving individuals through Medicaid.
- Requires that the Home Care Commission, rather than DHS, be responsible for deciding whether to expand access to clients of the private pay home care program and requires the commission to convene stakeholders before issuing a decision.

### BACKGROUND:

Agency with choice (AWC) is a service model for in-home care and support services in which support workers are employed by an agency but individuals who receive services are empowered to select, dismiss, and direct the

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support workers according to their needs and preferences. It is an alternative to the traditional agency model, in which agencies employ home care workers who care for individuals, and the personal employment model, in which individuals employ home care workers directly and are responsible for the administrative functions of managing the employer-employee relationship. AWC utilizes a co-employment model in which agencies are responsible for the administrative functions of the employer-employee relationship, such as hiring, training, regulatory compliance, and compensation, while individuals retain the ability to have personal control and decision-making over the care and support services they receive.

In 2022, the Legislative Assembly passed Senate Bill 1548, which directed the Department of Human Services to begin a process of contracting with AWC providers for individuals with intellectual and developmental disabilities (IDD). Senate Bill 104 (2023) modified the requirements in response to feedback during the rulemaking process and set a timeline for contracting with AWC providers for individuals with IDD by July 1, 2024.