

HOUSE AMENDMENTS TO HOUSE BILL 4129

By COMMITTEE ON EARLY CHILDHOOD AND HUMAN SERVICES

February 15

1 On page 2 of the printed bill, delete lines 16 through 45 and delete pages 3 through 6.

2 On page 7, delete lines 1 through 3 and insert:

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

4 **“(a) ‘Agency’ means an organization that provides agency with choice services.**

5 **“(b) ‘Agency with choice services’ means services described in subsection (3) of this**
6 **section that are provided to an individual by an agency using a self-directed service delivery**
7 **model.**

8 **“(c) ‘Authorized representative’ means a person designated by an individual or the**
9 **individual’s legal representative to act on behalf of the individual in making decisions on**
10 **matters pertaining to the planning and implementation of an in-home service plan or an in-**
11 **dividual support plan.**

12 **“(d)(A) ‘Direct support worker’ means a person providing attendant or personal care**
13 **services identified in an individual’s individualized service plan as an employee of the agency.**

14 **“(B) ‘Direct support worker’ does not mean a home care worker or a personal support**
15 **worker as those terms are defined in ORS 410.600.**

16 **“(e) ‘Individual’ means an individual, or the authorized representative of an individual,**
17 **who receives in-home services and supports through the Department of Human Services or**
18 **the Oregon Health Authority and who is:**

19 **“(A) An older adult;**

20 **“(B) An individual with a physical disability; or**

21 **“(C) An individual with behavioral health needs.**

22 **“(f) ‘Nurse delegation’ means arranging for tasks that are normally performed only by**
23 **licensed nurses to be performed by nursing assistants or other care providers subject to the**
24 **instruction and supervision of a licensed nurse.**

25 **“(g) ‘Self-directed service delivery model’ means a model in which an individual is sup-**
26 **ported by an agency that functions as the common law employer of direct support workers**
27 **recruited by the individual and provides financial management services and tasks in place**
28 **of the individual. The individual directs the direct support workers and is considered a co-**
29 **employer with the agency.**

30 **“(2)(a) The Department of Human Services shall adopt rules for the licensing of agencies**
31 **providing services to older adults or individuals with physical disabilities.**

32 **“(b) The Oregon Health Authority shall adopt rules for the licensing of agencies to pro-**
33 **vide personal care services to individuals with behavioral health needs through a state plan**
34 **amendment authorized by 42 U.S.C. 1396n(i) and under the state’s 42 U.S.C. 1396n(k) plan.**

35 **“(3) An agency licensed under subsection (2) of this section shall:**

1 “(a) Assist individuals with the following tasks:

2 “(A) Recruiting and selecting direct support workers to be employed by the agency to

3 provide the individual’s attendant and personal care services or removing direct support

4 workers from the individual’s care team;

5 “(B) Coordinating the schedules of direct support workers, establishing the responsibil-

6 ities of direct support workers and ensuring that direct support workers do not work more

7 than the hours authorized by the department or the authority;

8 “(C) Training direct support workers with respect to the individual’s unique needs and

9 preferences in how the services and supports are delivered;

10 “(D) Supporting the individual in maintaining a safe workplace, in self-direction and in

11 the roles and responsibilities of co-employer; and

12 “(E) Performing other tasks prescribed by the department or the authority by rule.

13 “(b) Be responsible for hiring and terminating direct support workers who are employed

14 by the agency.

15 “(c) Perform the following functions:

16 “(A) Submit claims for reimbursement to the department or the authority and pay direct

17 support workers for authorized hours worked and billed in accordance with the electronic

18 visit verification requirements for providers of services;

19 “(B) Withhold, file and pay income taxes and all employment-related taxes, including but

20 not limited to workers’ compensation premiums and unemployment taxes;

21 “(C) Verify the qualifications of each direct support worker as required by federal and

22 state laws, including by ensuring that each direct support worker passes a background

23 check;

24 “(D) Ensure that direct support workers employed by the agency have access to support

25 coordination;

26 “(E) Establish a process for:

27 “(i) Identifying, analyzing and correcting adverse events;

28 “(ii) Ensuring the timely reporting of any allegation of abuse, neglect or fiscal

29 improprieties involving an individual or a direct support worker, immediately responding to

30 the allegation and reporting the allegation to the appropriate authorities;

31 “(iii) Selecting and tracking indicators of quality by high-risk, high-volume and problem-

32 prone areas and indicators of individual safety and the quality of care; and

33 “(iv) Conducting and documenting quality improvement activities;

34 “(F) Meet with individuals at least every six months, with at least one in-home visit with

35 the individual each 12 months, as determined jointly with the individual based on the pref-

36 erences and needs of the individual;

37 “(G) Provide basic, standardized training to direct support workers and ensure that di-

38 rect support workers complete and are current with all training prescribed by the depart-

39 ment and the authority by rule;

40 “(H) Retain a personnel record for each direct support worker that includes, at a mini-

41 mum:

42 “(i) Documentation of completed required training and ongoing education;

43 “(ii) Required criminal background checks; and

44 “(iii) Evidence that any health care related license or certificate held by a direct support

45 worker is current and that the direct support worker has not committed any action that

1 would prevent the direct support worker from providing services; and

2 “(I) Provide other administrative and employment-related supports.

3 “(d) Have in place a process to access and respond to a complaint or grievance submitted
4 by an individual about the services provided to the individual by a direct support worker.

5 “(e) Pay any fines or penalties that may be assessed against an individual if the agency
6 fails to withhold the correct amounts of taxes or pay the appropriate employment-related
7 taxes to mitigate the risk to the individual.

8 “(f) Indemnify an individual for any employment or wage-related claims, damages, fines
9 or penalties arising from the individual’s relationship with the agency.

10 “(g) Maintain a drug-free workplace that prohibits direct support workers from being
11 under the influence of drugs or alcohol when providing services to an individual.

12 “(h) Commit to involving direct support workers employed by the agency and individuals
13 served by the agency in the development of and decision-making about work processes, per-
14 formance standards, quality improvement strategies, training, technology use and workplace
15 safety.

16 “(i) Commit to minimizing the impact of the loss of pay and work hours for direct sup-
17 port workers resulting from the hospitalization or death of an individual or the dismissal of
18 the direct support worker by the individual.

19 “(j) Commit to engage and work closely with individuals in designing and implementing
20 agency with choice services by appointing individuals to an advisory board, using focus
21 groups of individuals or employing other methods, approved by the department or the au-
22 thority, for working with individuals.

23 “(k) Promote each individual’s self-direction and choice and maximize an individual’s
24 autonomy and control over the decisions regarding the individual’s daily service needs, in-
25 cluding by:

26 “(A) Using a person-centered approach so that the individual is at the center of the
27 decision-making process regarding:

28 “(i) Which attendant and personal care services are needed to assist the individual in
29 activities of daily living, instrumental activities of daily living and health-related tasks, as
30 defined by the department or the authority by rule;

31 “(ii) Which services are consistent with the individual’s personal and cultural values and
32 preferences;

33 “(iii) Where and how the services are delivered;

34 “(iv) When the services are delivered; and

35 “(v) Who provides the services;

36 “(B) Enhancing the role of direct support workers as members of the individual’s care
37 team, as desired and authorized by the individual and reflected in the individual’s individ-
38 ualized service plan developed in accordance with rules adopted by the department or the
39 authority; and

40 “(C) Complying with other requirements as prescribed by the department or the author-
41 ity, as applicable, by rule.

42 “(L) Have in place a plan for recruiting and retaining qualified direct support workers to
43 meet the growing need for direct support workers in this state.

44 “(m) Assist an individual in planning for direct support worker absences or similar situ-
45 ations which call for replacement workers, consistent with the individual’s choice of direct

1 support workers to provide the services.

2 “(n) Have in place a quality assurance system and a performance improvement plan to
3 evaluate and monitor the quality, safety and appropriateness of the services provided by di-
4 rect support workers.

5 “(4) Each agency must enter into a provider agreement with the department or the au-
6 thority to submit billings to and receive payments from the department or the authority for
7 the services furnished by the direct support workers.

8 “(5) An individual has the right to:

9 “(a) Select or otherwise approve the direct support workers who provide services to the
10 individual before the direct support workers begin providing the services;

11 “(b) Train direct support workers in the individual’s specific service needs and in the
12 provision of services to the individual;

13 “(c) Direct the individual’s own services that are provided by direct support workers;

14 “(d) Require an agency to remove a direct support worker from the individual’s care
15 team;

16 “(e) Report concerns and submit grievances about a direct support worker to the agency,
17 the relevant licensing agency or any other appropriate third party, such as law enforcement
18 in cases of abuse, neglect or financial misappropriation or improprieties;

19 “(f) Schedule a direct support worker’s time in accordance with the individual’s desires,
20 needs and authorized hours; and

21 “(g) Receive employer-related training, as required by federal rules, from a third party.

22 “(6) An individual’s exercise of any of the functions described in subsection (5) of this
23 section does not create an employer-employee relationship between the direct support
24 workers and the individual except as a co-employer with the agency.

25 “(7) The department and the authority shall establish reimbursement rates for agencies
26 in accordance with rate methodologies approved by the Centers for Medicare and Medicaid
27 Services. The baseline rates established by the department and the authority must be suffi-
28 cient to:

29 “(a) Support substitute staffing needs due to canceled shifts, planned and unplanned ab-
30 sences of direct support workers, respite care for individuals’ unpaid caregivers and other
31 similar needs;

32 “(b) Allow an agency to pay direct support workers wages and benefits at least equal to
33 the wages and benefits provided to home care workers in the collective bargaining agreement
34 under ORS 410.612; and

35 “(c) Meet the requirements for training and supports for direct support workers and for
36 individuals as prescribed by the department or the authority by rule.

37 “(8) The department and the authority shall establish by rule financial transparency re-
38 quirements for agencies that include but are not limited to:

39 “(a) Establishing a maximum allowable percentage of the hourly reimbursement rate paid
40 to the agency that may be spent on overhead and administrative costs;

41 “(b) Requiring agencies to submit to the department or the authority detailed cost re-
42 ports that include, at a minimum, actual spending by the agency on direct support worker
43 wages, benefits and other personnel expenses; and

44 “(c) Requiring agencies to pass through to direct support workers reimbursement rate
45 increases that are targeted for wages and benefits of direct support workers.

1 “(9) Nurse delegation is the responsibility of the department or the authority and not the
2 responsibility of an agency and shall be operated in the same manner as nurse delegation for
3 home care workers, as defined in ORS 410.600.

4 “(10) The department and the authority shall conduct a competitive procurement process
5 to select agency with choice services providers. The department and the authority may
6 contract with no more than two agencies in total to provide agency with choice services.

7 “(11) Except as provided in subsection (13) of this section, an agency that seeks to con-
8 tract with the department or the authority to provide agency with choice services must first
9 provide a labor peace agreement that:

10 “(a) Is signed or certified by an authorized representative of a labor organization that
11 represents employees in this state or a neighboring state who provide services similar to the
12 direct support worker services provided by the direct support workers employed by the
13 agency and that seeks to represent the direct support workers employed by the agency; and

14 “(b) Includes a process for the resolution of labor disputes with the direct support
15 workers employed by the agency.

16 “(12) The department or the authority may contract with an agency that has not pro-
17 vided a labor peace agreement described in subsection (11) of this section if:

18 “(a)(A) A labor organization is currently certified to represent the direct support workers
19 employed by the agency and the labor organization informs the agency that the labor or-
20 ganization does not wish to enter into a labor peace agreement with the agency; and

21 “(B) The agency demonstrates to the satisfaction of the department or the authority that
22 the agency has processes in place to ensure the uninterrupted delivery of direct support
23 worker services in the event of a labor dispute; or

24 “(b)(A) The agency notifies in writing all labor organizations certified to represent em-
25 ployees in this state who provide services similar to the services to be provided by the direct
26 support workers employed by the consumer-directed employer that the agency wishes to
27 enter into a labor peace agreement; and

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

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

30 “(ii) No labor organization expresses an interest in representing the direct support
31 workers employed by the agency.

32 “(13) The department or the authority may deny, suspend or revoke the license, certif-
33 icate or endorsement, as applicable, of an agency or may impose a civil penalty, in accord-
34 ance with ORS 183.745, on an agency for the agency’s failure to comply with this section or
35 rules adopted in accordance with this section. A failure to comply includes but is not limited
36 to a:

37 “(a) Failure by the agency to provide required agency with choice services;

38 “(b) Failure by the agency to correct deficiencies identified during a program review or
39 an investigation by the department or authority;

40 “(c) Demonstrated pattern, over the previous two years, of significant and substantiated
41 violations of employment or wage laws in the state by:

42 “(A) An agency as an employer of direct support workers; or

43 “(B) A person applying to become an agency providing agency with choice services in any
44 business owned or operated by the person; or

45 “(d) Failure of an agency to comply with ORS 443.004.

1 “(14) This section does not supersede or limit any other authority of the department or
2 the authority with regard to oversight of contracting entities or the imposition of civil pen-
3 alties.”.

4 After line 6, insert:

5 “**SECTION 3.** (1) As used in this section ‘agency with choice services’ and ‘self-directed
6 service delivery model’ have the meanings given those terms in section 1 of this 2024 Act.

7 “(2) After the self-directed service delivery model of providing agency with choice ser-
8 vices under section 1 of this 2024 Act has been in operation for at least two years serving
9 individuals receiving medical assistance:

10 “(a) The Department of Human Services may expand the categories of individuals who
11 can be served by an agency with choice services provider under section 1 of this 2024 Act to
12 include clients of the Oregon Project Independence program described in ORS 410.430,
13 410.435, 410.440 and 410.450.

14 “(b) Subject to subsection (3) of this section, the Home Care Commission, created under
15 ORS 410.602, may expand the categories of individuals who can be served by an agency with
16 choice services provider under section 1 of this 2024 Act to include clients of the private pay
17 home care worker program described in ORS 410.605.

18 “(3) Before the commission may choose to expand the categories of individuals to include
19 private pay home care worker clients, the department shall convene a group of stakeholders
20 to assist the department in conducting an analysis of data to inform the commission’s deci-
21 sion. The data must be collected from the prior two years, at least, of operation of the self-
22 directed service delivery model of providing agency with choice services to medical assistance
23 recipients and must include:

24 “(a) The options accessible to Oregonians for receiving in-home care and services, in-
25 cluding the cost of the care and trends in the supply and demand for in-home services;

26 “(b) The feasibility of and process for contracting with a third party to administer, in
27 whole or in part, a program to provide agency with choice services to private pay home care
28 worker clients;

29 “(c) Whether new regulatory or oversight structures need to be put in place to ensure
30 the safety of private pay home care worker clients and the quality of care; and

31 “(d) The costs and benefits to the state for expanding agency with choice services to
32 private pay home care worker clients and the options for funding the expansion.”.

33 In line 7, delete “3” and insert “4”.

34 On page 9, line 19, delete “4” and insert “5”.

35 In line 23, after “or” insert “an” and delete the rest of the line.

36 In line 24, delete “provides” and after “services” insert “provider”.