

Enrolled Senate Bill 1521

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CHAPTER

AN ACT

Relating to care for vulnerable individuals; creating new provisions; amending ORS 427.181 and 443.889 and sections 3 and 9, chapter 91, Oregon Laws 2022, and section 2, chapter 568, Oregon Laws 2023; and declaring an emergency.

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

ENHANCED SUPPORTS TO EMPLOYERS OF PERSONAL SUPPORT WORKERS

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

(a) “Enhanced supports to employers of personal support workers” means support given to an individual in self-directing the individual’s services or in managing personal support workers who are providing in-home services and supports to the individual, using a person-centered approach to ensure that the individual is at the center of the decision-making process regarding what services are needed, including by providing:

(A) Training, coaching and other forms of support to the individual on:

(i) Self-direction; and

(ii) The roles and responsibilities of the individual and the personal support worker;

(B) Training, coaching and other forms of support to the individual in the overall management of personal support workers providing personal support services to the individual, including in the recruitment, hiring, scheduling and training of personal support workers, performance assessments of personal support workers and dismissal of personal support workers; and

(C) Other administrative and employment-related supports.

(b) “Individual” means a child or adult with an intellectual or developmental disability, or the representative of the child or adult, who receives in-home services and supports through the Department of Human Services.

(2) The department shall contract with one or more organizations to provide enhanced supports to employers of personal support workers.

(3) An organization contracting with the department under subsection (2) of this section shall be expected, at a minimum, to:

(a) Maximize an individual's self-direction and autonomy by supporting the individual to direct the individual's personal support workers and manage the day-to-day services of the individual's personal support workers;

(b) Have a commitment to work with a broad coalition of stakeholders in an effort to understand the changing needs of the workforce and of individuals' needs, rights and preferences; and

(c) Have the ability to meet the state's interest in preventing or mitigating disruptions to individuals' in-home services and supports.

(4) The department may not contract with an organization under subsection (2) of this section to provide enhanced supports to employers of personal support workers if the owner or an executive officer of the organization has been convicted of Medicaid fraud in any state within the 25-year period prior to entering into the contract.

SECTION 2. The Department of Human Services shall contract with at least one organization to provide enhanced supports to employers of personal support workers, as defined in section 1 of this 2024 Act, no later than July 1, 2024.

AGENCY WITH CHOICE SERVICES

SECTION 3. ORS 427.181 is amended to read:

427.181. (1) As used in this section **and section 5 of this 2024 Act:**

(a) "Agency with choice services" means support given to an individual in self-directing the individual's services or in managing staff who are providing in-home services and supports to the individual, using a person-centered approach to ensure that the individual is at the center of the decision-making process regarding what services are needed, including by providing:

(A) Training, coaching and other forms of support to the individual on:

(i) Self-direction; and

(ii) The roles and responsibilities of the individual and the agency with choice services provider;

(B) Training, coaching and other forms of support to the individual in the overall management of staff providing direct support services to the individual, including in the recruitment, hiring, scheduling and training of staff, performance assessments of staff and dismissal of staff; and

(C) Other administrative and employment-related supports.

(b) "Individual" means a child or adult with an intellectual or developmental disability[, or the representative of the child or adult,] who receives in-home services and supports through the Department of Human Services.

(2) The department shall contract with one or more **endorsed** organizations to deliver agency with choice services as a community-based services option under ORS 427.007 (1)(d).

[(3) An organization contracting with the department under subsection (2) of this section shall be expected, at a minimum, to:]

[(a) Maximize an individual's self-direction and autonomy by supporting the individual to direct the individual's staff hired to provide direct support services to the individual and manage the day-to-day services of the individual's staff hired to provide direct support services to the individual;]

[(b) Have a commitment to work with a broad coalition of stakeholders in an effort to understand the changing needs of the workforce and of individuals' needs, rights and preferences; and]

[(c) Have the ability to meet the state's interest in preventing or mitigating disruptions to individuals' in-home services and supports.]

[(4) The department may not contract with an organization under subsection (2) of this section to provide agency with choice services if the owner of or an executive officer of the organization has been convicted of Medicaid fraud in any state within the 25-year period prior to entering into the contract.]

(3) The department shall adopt by rule minimum qualifications for agencies to be endorsed by the department to deliver agency with choice services.

(4) Minimum qualifications for agencies endorsed to deliver agency with choice services include, but are not limited to:

(a) The ability to provide support for individuals in directing the individual's direct support worker and the day-to-day services of the direct support worker;

(b) A commitment to work with a broad coalition of stakeholders in an effort to understand the changing needs of the workforce and of individuals' needs, rights and preferences; and

(c) The ability to meet the state's interest in preventing or mitigating disruptions to individuals' in-home services and supports.

(5) The department may not endorse an agency to provide agency with choice services if the owner of the agency or an executive officer of the agency has been convicted of Medicaid fraud in any state within the 25-year period prior to the certification.

(6) For the purpose of monitoring and evaluating workforce capacity and trends, an agency endorsed to provide agency with choice services must annually provide to the department in the manner and at intervals specified by the department by rule:

(a) A list of direct support workers for which the agency billed the department for services provided through the agency with choice model;

(b) The zip codes where the direct support workers provided services; and

(c) Verification of the completion of training required for each direct support worker.

SECTION 4. Section 2, chapter 568, Oregon Laws 2023, is amended to read:

Sec. 2. The Department of Human Services shall contract with [an] at least one organization to deliver agency with choice services under [section 1, chapter 91, Oregon Laws 2022,] **ORS 427.181** no later than [July 1, 2024] **January 1, 2026**.

AGENCIES THAT EMPLOY DIRECT SUPPORT WORKERS

SECTION 5. (1) As used in this section:

(a) "Assessed hours" means the number of hours of direct support services that the Department of Human Services determines is needed by an individual in a month.

(b) "Client" means an individual who enrolls with an agency that provides direct support services to the individual.

(2) An agency that employs staff to provide direct support services may not:

(a) Offer bonus prizes or other forms of consideration to a potential client in exchange for the client enrolling with the agency;

(b) Offer bonus payments, prizes, wage enhancements or other forms of consideration to direct support staff in exchange for the direct support staff agreeing to work for the agency;

(c) Require a client to commit the majority of the client's assessed hours to the agency as a condition of enrollment;

(d) Limit services only to individuals who agree to bring the individual's direct support staff to the agency;

(e) Require direct support staff, as a condition of employment with the agency, to bring to the agency the individuals to whom the direct support staff provide services;

(f) Enroll only clients who receive direct support services exclusively from family members or close associates of the client; or

(g) Facilitate financial exploitation by engaging in targeted communications that encourage a health care provider to steer a client to the agency.

(3) It is solely the choice of an individual to select an agency to provide direct support services.

PROGRAM INTEGRITY UNIT

SECTION 6. The Oregon Health Authority shall hire for one position in the authority's unit that is responsible for Medicaid program integrity and taking enforcement actions, in addition to the positions in the unit on the effective date of this 2024 Act.

USE OF ACUITY-BASED STAFFING TOOL BY FACILITIES

SECTION 7. ORS 443.889 is amended to read:

443.889. (1) The Department of Human Services shall adopt rules:

(a) Establishing minimum requirements for an acuity-based staffing tool adopted by a facility and the frequency with which a facility must reassess the facility's staffing patterns with the acuity-based staffing tool.

(b) Establishing requirements for the design of an acuity-based staffing tool adopted by a facility to ensure that the tool recommends staffing levels, intensity and qualifications necessary to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.

(c) For carrying out subsection [(4)] (5) of this section.

(2) Before finalizing any changes to rules adopted under subsection (1)(a) or (b) of this section, to promote quality care or sufficient staffing levels the department shall assess the administrative and operational impact on facilities and on the safety of the residents and staff of facilities.

[(2)] (3) The department shall assess the staffing levels of a facility, at a minimum, each time the department conducts a survey, license approval or renewal or an investigation into a complaint regarding:

(a) Abuse of a resident;

(b) Injury to a resident;

(c) Resident safety; or

(d) Staffing levels.

[(3)] (4) The assessment under subsection [(2)] (3) of this section must include a determination of whether the facility is:

(a) Using an acuity-based staffing tool that meets the requirements of rules adopted under subsection (1) of this section;

(b) Recalculating the facility's staffing patterns using the acuity-based staffing tool with the frequency required by rules adopted under subsection (1) of this section;

(c) Consistently staffing to the levels, intensity and qualifications indicated by the acuity-based staffing tool; and

(d) Consistently meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.

[(4)] (5) If the department finds, during an assessment under subsection [(2)] (3) of this section, that a facility is:

(a) Not using an acuity-based staffing tool, the department shall require the facility to adopt the acuity-based staffing tool developed by the department **until the facility has in place the facility's own acuity-based staffing tool.**

(b) **Using an acuity-based staffing tool but is** not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week, the department shall:

(A) Place a condition on the facility's license as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F) *[until the facility implements an acuity-based staffing tool and meets the minimum staffing levels identified by the department as necessary to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week; and];*

(B) Establish staffing levels in a corrective action plan;

[(B)] (C) Impose fines, penalties or conditions required by law or that the department deems necessary to compel compliance; **and**

(D) Continuously monitor the facility for compliance with the staffing levels indicated by the acuity-based staffing tool for six months or until the department removes the condition placed under subparagraph (A) of this paragraph.

(c) Using an acuity-based staffing tool but *[is not consistently staffing to the levels, intensity and qualifications indicated by the tool or is not recalculating the facility's staffing patterns with the tool at the frequency required by rule]* **the tool does not meet the requirements of the rules adopted**

under subsection (1)(a) and (b) of this section or the facility is not using the tool to review its staffing levels at the frequency required by the rules, the department shall:

(A) Assess whether the facility is meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week; **and**

(B) *[Place a condition on the facility's license as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F) until the facility implements an acuity-based staffing tool and demonstrates the facility's ability to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week; and]* **Impose fines, penalties or conditions on the facility's license that are required by law or that the department deems necessary to compel compliance.**

[(C) Continuously monitor the facility, for at least six months, for compliance with the staffing levels, intensity and qualifications indicated by the acuity-based staffing tool.]

[(d) Not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week, the department shall establish staffing standards in a corrective action plan and place a condition on the facility's license as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F) until the facility complies with the corrective action plan.]

AUTOMATIC SPRINKLER SYSTEMS

SECTION 8. Section 3, chapter 91, Oregon Laws 2022, is amended to read:

Sec. 3. Notwithstanding any provision of the state building code, as defined in ORS 455.010, a single-family detached dwelling that is used to operate a residential training home, as defined in ORS 443.400, or an adult foster home, as defined in ORS 443.705, is not required to have installed an automatic sprinkler system if:

(1) The dwelling has been operated as a residential training home or an adult foster home pursuant to a license issued prior to July 1, [2024] **2026**;

(2) The operator is licensed to serve five or fewer individuals in the dwelling; and

(3) The operator and the dwelling meet all other fire, life and safety requirements established by the Department of Human Services or the Oregon Health Authority by rule.

SECTION 9. Section 9, chapter 91, Oregon Laws 2022, is amended to read:

Sec. 9. *[(1)]* Section 3, **chapter 91, Oregon Laws 2022**, *[of this 2022 Act]* is repealed on January 2, [2026] **2027**.

[(2) Sections 4, 5 and 6 of this 2022 Act are repealed on January 2, 2023.]

APPROPRIATIONS AND EXPENDITURE LIMITATIONS

SECTION 10. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (7), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, for intellectual/developmental disabilities programs, is increased by \$78,216 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 11. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limits for payment of expenses from federal funds, excluding federal funds not described in section 2, chapter 610, Oregon Laws 2023, collected or received by the Department of Human Services, for intellectual/developmental disabilities programs, is increased by \$78,216 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 12. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (2), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, for state assessments and enterprise-wide costs, is

increased by \$8,331 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 13. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (2), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limits for payment of expenses from federal funds, excluding federal funds not described in section 2, chapter 610, Oregon Laws 2023, collected or received by the Department of Human Services, for state assessments and enterprise-wide costs, is increased by \$8,331 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 14. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (1), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, for central services, is increased by \$888 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 15. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (1), chapter 610, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limits for payment of expenses from federal funds, excluding federal funds not described in section 2, chapter 610, Oregon Laws 2023, collected or received by the Department of Human Services, for central services, is increased by \$888 for carrying out the provisions of sections 1 and 2 of this 2024 Act and the amendments to ORS 427.181 and 443.889 and section 2, chapter 568, Oregon Laws 2023, by sections 3, 4 and 7 of this 2024 Act.

SECTION 16. Notwithstanding any other provision of law, the General Fund appropriation made to the Oregon Health Authority by section 1 (1), chapter 591, Oregon Laws 2023, for the biennium ending June 30, 2025, for Health Systems Division -Administration, is increased by \$62,208, for carrying out the provisions of section 6 of this 2024 Act.

SECTION 17. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 5 (1), chapter 591, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter 591, Oregon Laws 2023, collected or received by the Oregon Health Authority, for Health Services Division - Administration, is increased by \$62,208, for carrying out the provisions of section 6 of this 2024 Act.

SECTION 18. Notwithstanding any other provision of law, the General Fund appropriation made to the Oregon Health Authority by section 1 (7), chapter 591, Oregon Laws 2023, for the biennium ending June 30, 2025, for state assessments and enterprise-wide costs, is increased by \$3,516, for carrying out the provisions of section 6 of this 2024 Act.

SECTION 19. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 5 (7), chapter 591, Oregon Laws 2023, for the biennium ending June 30, 2025, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter 591, Oregon Laws 2023, collected or received by the Oregon Health Authority, for state assessments and enterprise-wide costs, is increased by \$3,516, for carrying out the provisions of section 6 of this 2024 Act.

CAPTIONS

SECTION 20. The unit captions used in this 2024 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2024 Act.

EMERGENCY CLAUSE

SECTION 21. This 2024 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect on its passage.

Passed by Senate March 7, 2024

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Obadiah Rutledge, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House March 7, 2024

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2024

Approved:

.....M,....., 2024

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2024

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LaVonne Griffin-Valade, Secretary of State