

Requested by Representative BOWMAN

**PROPOSED AMENDMENTS TO
HOUSE BILL 4129**

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

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

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

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

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

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

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

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

20 **“(e) ‘Individual’ means an individual, or the authorized represen-**
21 **tative of an individual, who receives in-home services and supports**

1 through the Department of Human Services or the Oregon Health
2 Authority and who is:

3 “(A) An older adult;

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

5 “(C) An individual with behavioral health needs.

6 “(f) ‘Nurse delegation’ means arranging for tasks that are normally
7 performed only by licensed nurses to be performed by nursing assist-
8 ants or other care providers subject to the instruction and supervision
9 of a licensed nurse.

10 “(g) ‘Self-directed service delivery model’ means a model in which
11 an individual is supported by an agency that functions as the common
12 law employer of direct support workers recruited by the individual and
13 provides financial management services and tasks in place of the in-
14 dividual. The individual directs the direct support workers and is
15 considered a co-employer with the agency.

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

19 “(b) The Oregon Health Authority shall adopt rules for the licensing
20 of agencies to provide personal care services to individuals with be-
21 havioral health needs through a state plan amendment authorized by
22 42 U.S.C. 1396n(i) and under the state’s 42 U.S.C. 1396n(k) plan.

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

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

25 “(A) Recruiting and selecting direct support workers to be employed
26 by the agency to provide the individual’s attendant and personal care
27 services or removing direct support workers from the individual’s care
28 team;

29 “(B) Coordinating the schedules of direct support workers, estab-
30 lishing the responsibilities of direct support workers and ensuring that

1 **direct support workers do not work more than the hours authorized**
2 **by the department or the authority;**

3 **“(C) Training direct support workers with respect to the individual’s**
4 **unique needs and preferences in how the services and supports are**
5 **delivered;**

6 **“(D) Supporting the individual in maintaining a safe workplace, in**
7 **self-direction and in the roles and responsibilities of co-employer; and**

8 **“(E) Performing other tasks prescribed by the department or the**
9 **authority by rule.**

10 **“(b) Be responsible for hiring and terminating direct support**
11 **workers who are employed by the agency.**

12 **“(c) Perform the following functions:**

13 **“(A) Submit claims for reimbursement to the department or the**
14 **authority and pay direct support workers for authorized hours worked**
15 **and billed in accordance with the electronic visit verification require-**
16 **ments for providers of services;**

17 **“(B) Withhold, file and pay income taxes and all employment-**
18 **related taxes, including but not limited to workers’ compensation**
19 **premiums and unemployment taxes;**

20 **“(C) Verify the qualifications of each direct support worker as re-**
21 **quired by federal and state laws, including by ensuring that each di-**
22 **rect support worker passes a background check;**

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

25 **“(E) Establish a process for:**

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

27 **“(ii) Ensuring the timely reporting of any allegation of abuse, neg-**
28 **lect or fiscal improprieties involving an individual or a direct support**
29 **worker, immediately responding to the allegation and reporting the**
30 **allegation to the appropriate authorities;**

1 “(iii) Selecting and tracking indicators of quality by high-risk,
2 high-volume and problem-prone areas and indicators of individual
3 safety and the quality of care; and

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

5 “(F) Meet with individuals at least every six months, with at least
6 one in-home visit with the individual each 12 months, as determined
7 jointly with the individual based on the preferences and needs of the
8 individual;

9 “(G) Provide basic, standardized training to direct support workers
10 and ensure that direct support workers complete and are current with
11 all training prescribed by the department and the authority by rule;

12 “(H) Retain a personnel record for each direct support worker that
13 includes, at a minimum:

14 “(i) Documentation of completed required training and ongoing ed-
15 ucation;

16 “(ii) Required criminal background checks; and

17 “(iii) Evidence that any health care related license or certificate
18 held by a direct support worker is current and that the direct support
19 worker has not committed any action that would prevent the direct
20 support worker from providing services; and

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

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

25 “(e) Pay any fines or penalties that may be assessed against an in-
26 dividual if the agency fails to withhold the correct amounts of taxes
27 or pay the appropriate employment-related taxes to mitigate the risk
28 to the individual.

29 “(f) Indemnify an individual for any employment or wage-related
30 claims, damages, fines or penalties arising from the individual’s re-

1 relationship with the agency.

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

5 “(h) Commit to involving direct support workers employed by the
6 agency and individuals served by the agency in the development of and
7 decision-making about work processes, performance standards, quality
8 improvement strategies, training, technology use and workplace
9 safety.

10 “(i) Commit to minimizing the impact of the loss of pay and work
11 hours for direct support workers resulting from the hospitalization or
12 death of an individual or the dismissal of the direct support worker
13 by the individual.

14 “(j) Commit to engage and work closely with individuals in design-
15 ing and implementing agency with choice services by appointing indi-
16 viduals to an advisory board, using focus groups of individuals or
17 employing other methods, approved by the department or the author-
18 ity, for working with individuals.

19 “(k) Promote each individual’s self-direction and choice and maxi-
20 mize an individual’s autonomy and control over the decisions regard-
21 ing the individual’s daily service needs, including by:

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

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

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

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

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

2 “(v) Who provides the services;

3 “(B) Enhancing the role of direct support workers as members of
4 the individual’s care team, as desired and authorized by the individual
5 and reflected in the individual’s individualized service plan developed
6 in accordance with rules adopted by the department or the authority;
7 and

8 “(C) Complying with other requirements as prescribed by the de-
9 partment or the authority, as applicable, by rule.

10 “(L) Have in place a plan for recruiting and retaining qualified di-
11 rect support workers to meet the growing need for direct support
12 workers in this state.

13 “(m) Assist an individual in planning for direct support worker ab-
14 sences or similar situations which call for replacement workers, con-
15 sistent with the individual’s choice of direct support workers to
16 provide the services.

17 “(n) Have in place a quality assurance system and a performance
18 improvement plan to evaluate and monitor the quality, safety and
19 appropriateness of the services provided by direct support workers.

20 “(4) Each agency must enter into a provider agreement with the
21 department or the authority to submit billings to and receive pay-
22 ments from the department or the authority for the services furnished
23 by the direct support workers.

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

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

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

30 “(c) Direct the individual’s own services that are provided by direct

1 support workers;

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

4 “(e) Report concerns and submit grievances about a direct support
5 worker to the agency, the relevant licensing agency or any other ap-
6 propriate third party, such as law enforcement in cases of abuse,
7 neglect or financial misappropriation or improprieties;

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

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

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

16 “(7) The department and the authority shall establish reimburse-
17 ment rates for agencies in accordance with rate methodologies ap-
18 proved by the Centers for Medicare and Medicaid Services. The
19 baseline rates established by the department and the authority must
20 be sufficient to:

21 “(a) Support substitute staffing needs due to canceled shifts,
22 planned and unplanned absences of direct support workers, respite
23 care for individuals’ unpaid caregivers and other similar needs;

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

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

30 “(8) The department and the authority shall establish by rule fi-

1 **nancial transparency requirements for agencies that include but are**
2 **not limited to:**

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

6 **“(b) Requiring agencies to submit to the department or the au-**
7 **thority detailed cost reports that include, at a minimum, actual**
8 **spending by the agency on direct support worker wages, benefits and**
9 **other personnel expenses; and**

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

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

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

21 **“(11) Except as provided in subsection (13) of this section, an**
22 **agency that seeks to contract with the department or the authority**
23 **to provide agency with choice services must first provide a labor peace**
24 **agreement that:**

25 **“(a) Is signed or certified by an authorized representative of a labor**
26 **organization that represents employees in this state or a neighboring**
27 **state who provide services similar to the direct support worker ser-**
28 **vices provided by the direct support workers employed by the agency**
29 **and that seeks to represent the direct support workers employed by**
30 **the agency; and**

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

3 **“(12) The department or the authority may contract with an agency**
4 **that has not provided a labor peace agreement described in subsection**
5 **(11) of this section if:**

6 **“(a)(A) A labor organization is currently certified to represent the**
7 **direct support workers employed by the agency and the labor organ-**
8 **ization informs the agency that the labor organization does not wish**
9 **to enter into a labor peace agreement with the agency; and**

10 **“(B) The agency demonstrates to the satisfaction of the department**
11 **or the authority that the agency has processes in place to ensure the**
12 **uninterrupted delivery of direct support worker services in the event**
13 **of a labor dispute; or**

14 **“(b)(A) The agency notifies in writing all labor organizations certi-**
15 **fied to represent employees in this state who provide services similar**
16 **to the services to be provided by the direct support workers employed**
17 **by the consumer-directed employer that the agency wishes to enter**
18 **into a labor peace agreement; and**

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

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

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

23 **“(13) The department or the authority may deny, suspend or revoke**
24 **the license, certificate or endorsement, as applicable, of an agency or**
25 **may impose a civil penalty, in accordance with ORS 183.745, on an**
26 **agency for the agency’s failure to comply with this section or rules**
27 **adopted in accordance with this section. A failure to comply includes**
28 **but is not limited to a:**

29 **“(a) Failure by the agency to provide required agency with choice**
30 **services;**

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

3 **“(c) Demonstrated pattern, over the previous two years, of signif-**
4 **icant and substantiated violations of employment or wage laws in the**
5 **state by an:**

6 **“(A) Agency as an employer of direct support workers; or**

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

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

10 **“(14) This section does not supersede or limit any other authority**
11 **of the department or the authority with regard to oversight of con-**
12 **tracting entities or the imposition of civil penalties.”.**

13 After line 6, insert:

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

17 **“(2) After the self-directed service delivery model of providing**
18 **agency with choice services under section 1 of this 2024 Act has been**
19 **in operation for at least two years serving individuals receiving med-**
20 **ical assistance:**

21 **“(a) The Department of Human Services may expand the categories**
22 **of individuals who can be served by an agency with choice services**
23 **provider under section 1 of this 2024 Act to include clients of the**
24 **Oregon Project Independence program described in ORS 410.430,**
25 **410.435, 410.440 and 410.450.**

26 **“(b) Subject to subsection (3) of this section, the Home Care Com-**
27 **mission, created under ORS 410.602, may expand the categories of in-**
28 **dividuals who can be served by an agency with choice services provider**
29 **under section 1 of this 2024 Act to include clients of the private pay**
30 **home care worker program described in ORS 410.605.**

1 **“(3) Before the commission may choose to expand the categories**
2 **of individuals to include private pay home care worker clients, the**
3 **department shall convene a group of stakeholders to assist the de-**
4 **partment in conducting an analysis of data to inform the commission’s**
5 **decision. The data must be collected from the prior two years, at least,**
6 **of operation of the self-directed service delivery model of providing**
7 **agency with choice services to medical assistance recipients and must**
8 **include:**

9 **“(a) The options accessible to Oregonians for receiving in-home**
10 **care and services, including the cost of the care and trends in the**
11 **supply and demand for in-home services;**

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

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

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

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

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

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

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

25