

HB 3838 -7 STAFF MEASURE SUMMARY

House Committee On Rules

Prepared By: Erin Seiler

Meeting Dates: 4/28, 6/12

WHAT THE MEASURE DOES:

The measure establishes the Home and Community-Based Service Workforce Standards Board (board).

Detailed Summary:

Section 1: Definitions

Defines terms.

Section 2 and 3: Home and Community-Based Service Workforce Standards Board

Establishes board for the purpose of strengthening the supply of a skilled home and community-based services workforce by examining factors that may present challenges to recruiting and retaining workers, including but not limited to compensation, work schedules, and other working conditions, as well as adopting rules that establish minimum workforce standards.

The board consists of 13 members appointed by the Governor. Specifies terms. Specifies quorum. Specifies voting requirements. Specifies appointment of chair and election of vice-chair. Governor may appoint executive director (ED). The Executive Director may hire staff.

The composition of the board is as follows:

- four members who represent the home and community-based services workforce or worker organizations,
- four members who represent employers of individuals of the home and community-based services workforce or employer organizations,
- two members who represent the interests of individuals who receive services provided by the home and community-based services workforce,
- one member who represents the Bureau of Labor and Industries,
- one member who represents the Department of Human Services, and
- one member who represents the executive department of state government.

Members of the board are eligible for compensation in accordance with ORS 292.495.

Meetings of the board are public meetings.

Section 4: Duties of board

The board will adopt rules that establish minimum standards for the home and community-based services workforce that are designed to ensure the health and welfare of such workers.

The board may not adopt any standards that are less protective of or beneficial to the home and community-based services workforce than the standards provided under any other applicable statute or rule or any standard previously established by the Board.

- At a minimum, the standards must
 - set compensation rates that are not less than the applicable minimum wage rate.
 - establish working conditions requirements, including work schedules and working hours and staffing.
 - establish curriculum and criteria for providing education and professional development opportunities.

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- establish workplace health and safety requirements specific to home and community-based services workforce that are no less protective than provided under the Oregon Safe Employment Act.
- provide for health care benefits and other paid benefits for the home and community-based services workforce, including but not limited to paid family leave, sick leave, and retirement benefits.
- establish requirements for itemized statements regarding deductions from wages that meet or exceed current requirements under ORS 652.610, including a requirement that such statements are timely provided to a worker organization.
- establish requirements for the production of workers' information to be maintained in an employer's records to the Board or to a worker organization that is the labor organization that represents the workers.

Before adopting rules, the board

- must evaluate and consider information to ensure that the standards meet or exceed labor market conditions. Specifies information that must be evaluated.
- hold at least one public hearing.

The board must issue a written report to the Legislative Assembly whenever it adopts a minimum wage or working standard that is anticipated to create a fiscal impact, require any adjustment to state funding levels or otherwise result in an increase in the fiscal obligations of the state. Specifies content of report.

The report must be provided to the Legislative Assembly at the beginning of the legislative session next following the date of the adoption of the standard. The board must obtain ratification of the standard by the Legislative Assembly before the standard may take effect.

Section 5: Comprehensive Review

Requires the board to conduct a comprehensive review of previously established minimum standards at least once every two years. Requires the board to conduct a labor market analysis of the working conditions of home and community-based services workforce. Specifies factors to be examined.

Section 6: Reporting

Requires the board to submit report to the governor and legislative assembly by April 1 of each even-numbered year on the board's activities and recommendations for changes. Specifies requirements of the report.

Section 7: Uniform Training Standards

Establishes curriculum and criteria for providing education and professional development opportunities.

Training standards must at least include training curriculum that provides information about adopted minimum standards established by the board; rights and remedies for workers for violations of standards; duties and obligations of the board; and other information the board deems necessary.

The board may adopt rules that establish uniform requirements, standards and criteria to allow a worker organization to become certified to provide the training.

Requires public hearing and public input process for training standards.

Requires employer to keep records to demonstrate compliance with training requirements.

Section 8: Investigative Authority

For purpose of determining facts related to the implementation of and compliance with minimum standards established by the board, the board may

- issue subpoenas for witnesses and production of books, records, and documents relating to the board;

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- administer oaths; and
- take or cause to be taken depositions.

Section 9: Retaliation Prohibition

An employer is prohibited from retaliating or taking adverse action against a worker because the worker

- inquired or exercised rights provided by this Act or minimum standards established by the board.
- participated in any process or proceeding or testified in any proceeding under this Act;
- participated in any training by certified worker organization.

Section 10: Remedies

A worker may file a complaint with BOLI for an alleged violation of a minimum standard. Complaint must be filed no later than one year after date of alleged violation. A worker may commence a civil action in circuit court.

Section 11: Limits

The Act is not intended to limit, interfere with, or reduce right to a collective bargaining agreement or diminish the rights or remedies that are otherwise available to a worker under federal or state law or regulation.

Section 12: Employer Notice Requirements

Employers must provide notice to workers regarding the rights of workers regarding minimum standards established by the board; duties and functions of the board; and contact information for agency that have enforcement authority. The notice must be provided in the language the employer typically uses to communicate with employees. The notice must be posted in a conspicuous location in the workplace and sent by email to each worker of the employer.

Fiscal impact: Statement not yet issued

Revenue impact: Statement not yet issued

ISSUES DISCUSSED:

- Current wages, working conditions, and workforce challenges in home care sector
- Opportunity for workers and employers to work together
- Different care settings and different payment modalities
- Medicaid reimbursement rates
- Affordability of care

EFFECT OF AMENDMENT:

-7 Replaces the measure

The measure establishes the Home and Community-Based Service Workforce Standards Board (board).

SECTION 1: Definitions

Defines terms.

SECTION 2: Establishment of Board; Members; Term; Vacancies

Establishes the 11-member Home and Community-Based Services Workforce Standards Board (board) at the Department of Consumer and Business Services (DCBS).

Establishes the board purposes:

- Strengthen and maintain the supply of skilled home and community-based services workforce (workforce) by:

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- Examining factors that may present challenges to recruiting and retaining the workers. Factors may include compensation, work schedules, and other working conditions.
- Addressing barriers that may impact sustainability of the workforce including affordability, access, quality and satisfaction regarding home and community-based services.
- Make recommendations to revise minimum workforce standards by the board and adopt new standards to protect health and welfare of workforce.

Board is comprised of 11-members.

- 8 members appointed by the Governor:
 - 3 representatives of home and community-based services workforce or labor organizations;
 - 3 representatives of workforce employers or employer organizations;
 - 2 representatives who represent the interests of individual who receive services provided by the workforce;
- 3 members representing state agencies:
 - 1 representative of the Bureau of Labor and Industries (BOLI) appointed by the Commissioner;
 - 1 representative from the Department of Human Services (DHS) appointed by the Governor; and
 - 1 representative from the Oregon Health Authority (OHA) appointed by the Governor.

Specifies that public members are subject to Senate confirmation.

Requires public members to, collectively, represent specific experience and knowledge in sector. Establishes 3-year terms for members. Requires Governor to appoint Co-Chairs, one representing workforce/labor and one representing employers.

Requires members of the board to comply with state and federal antitrust laws related to anticompetitive behavior, including, but not limited to laws prohibiting collusion, price-fixing and other unfair trade practices.

Permits the Governor to appoint the Executive Director; permits Executive Director to hire staff. Limits the Executive Director to no more than 3 staff in the 2027-2029.

SECTION 3: Initial Terms

Stagger term lengths for the appointments of initial board members. Requires all appointments be completed no later than December 31, 2026.

SECTION 4: Compensation; Meetings

Board members are eligible for compensation under ORS 292.495.

Requires board adopt rules. Establishes quorum as a majority of members. Requires an affirmative vote of the majority of the board to take action.

Requires the board to meet once per calendar quarter at times and places specified by the cochairs.

SECTION 5: Minimum Workforce Standards

Requires the board to establish minimum standards for the workforce to ensure the health and welfare of such workers and maybe tailored to specific categories of worker types and across different care settings.

Establishes that board may not adopt standards that:

- Are less protective of or beneficial to the workforce than provided by other applicable statute or rule.
- Infringe on an individual's right to self-determination, as defined in ORS 427.101.

Establishes the minimum standards that the board must establish:

- Set compensation rates that are not less than the applicable minimum wage rate.
- Establish curriculum and criteria for providing education and professional development opportunities.

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- Provide for health care benefits and other paid benefits for the home and community-based services workforce, including but not limited to paid family leave, sick leave and retirement benefits.

Before adopting rules, the board is required to:

- Obtain and evaluate information to ensure that the standards meet or exceed labor market conditions. Specifies labor market data and other information that must be evaluated. (Expands on data submitted from state and local governments and any other info regarding working conditions the home and community-based services workforce)
- Hold at least one public hearing.
- Consult with Oregon Health Authority (OHA) to determine if any of the minimum standards require the approval of the Centers for Medicare and Medicaid Services (CMS). Requires OHA to seek approval from CMS upon determination of necessity.
- Consult with the Home Care Commission (Commission) to ensure that purposed minimum standards do not conflict with any rule or standard established pursuant the Commission's constitutional authority.

Requires BOLI, DHS, DCBS, and OHA to conduct a fiscal analysis to determine whether a proposed minimum standard will require an increase in state funding or increase fiscal obligations including an increase in Medicaid reimbursement rates. If a proposed standard requires an increase in state funding or fiscal obligation, the board must report to the Legislature and Governor the necessary increase in funding. If the Legislature appropriates less than needed, the board must amend the rule to align with funding appropriated.

The implementation and enforcement of a rule establishing a minimum standard cannot take effect before a legislative appropriation is made and the board receives approval from CMS, if applicable.

Directs all state government agencies to furnish necessary information to the board upon request.

Requires the board adopt minimum standards in accordance with the Administrative Procedures Act.

SECTION 6: Comprehensive Review

Requires the board to conduct a comprehensive review of previously established minimum standards at least once every four years. Requires the board to conduct a labor market analysis of the working conditions of the workforce. Specifies factors to be examined.

SECTION 7: Reporting

Requires the board to submit report to the governor and legislative assembly by June 30 of each even-numbered year on the board's activities and recommendations for changes. Specifies requirements of the report.

SECTION 8: Investigative Authority

For purpose of determining facts related to the implementation of and compliance with minimum standards established by the board, the Commissioner of the Bureau of Labor and Industries may exercise existing statutorily prescribed investigative authority including issuing subpoenas, administration of oaths, obtain evidence and take testimony.

SECTION 9: Retaliation

Establishes as an unlawful practice, under ORS chapter 659A, to terminate, penalize, discipline, retaliate, or take adverse action against a worker because the worker:

- Inquired or exercised rights provided by this Act or minimum standards established by the Board.
- Participates in any process or proceeding or testifies in any proceeding under this Act.

SECTION 10 Remedies:

Permits a worker to file a complaint with BOLI for an alleged violation of a minimum standard. Complaint must be filed no later than one year after date of alleged violation. BOLI may assess a civil penalty not exceeding \$1,000 for each violation of a minimum standard, in addition to any other penalty provided by law.

Permits a worker to commence a civil action in circuit court.

- Prior to commencing civil action, a person alleging the violation must provide written notice that the person alleged to have violated the standard has 30 days from receipt of notice to cure the violation. If violation is cured during the 30 day time period, a civil action may not be filed.
- Permits a labor organization to file civil action only on behalf of a represented worker.

Permits a worker to file a complaint or civil action no sooner than 90-days after rule establishing minimum standards becomes effective.

SECTION 11: Limits

The Act is not intended to limit, interfere with or reduce right to a collective bargaining agreement or diminish the rights or remedies that are otherwise available to a worker under federal or state law or regulation.

SECTION 12: Employer Notice

Employers must provide notice to workers regarding the rights of workers regarding minimum standards established by the board; duties and functions of the board; and contact information for agency that have enforcement authority.

The notice must be provided at the time of hire and in the language the employer typically uses to communicate with employees. Requires notice be posted in a conspicuous location in the workplace and sent by email to each worker of the employer.

Requires the board to review and update the notice annually.

SECTION 13: Caregiver Registry

Requires the DHS online home and community-based services caregiver registry include "workers" from the home and community-based services workforce.

SECTION 14: Public Meeting

Requires that any public meeting conducted by the board through electronic communication must ensure that the public has opportunities for access, oral testimony, and written testimony.

SECTION 15: Timelines

Requires the board to consider prevailing labor market conditions by September 30, 2027 for purpose of adopting initial minimum standards on or after March 1, 2028.

If a proposed standard requires an increase in state funding or fiscal obligation, the rule may not take effect until the regular legislative session next following provided an appropriation has been made for purposes of implementing and enforcing the standard in the regular legislative session next following.

BACKGROUND:

A state or municipality may use a wage board to either recommend or establish wages, hours, and working conditions for an industry sector. Wage boards are typically composed of equal representation from industry employers and employees who must either together or with other members of the board achieve a majority to either adopt or recommend the adoption of wages, hours, or working conditions for the industry.

Wage boards may be advisory boards, making recommendations regarding minimum wages and working conditions to either the legislature or executive official, such as a labor commissioner or may be policymaking body, having the ability to adopt minimum wages and working conditions, establish training requirements, and establish minimum content and posting requirements for workers' rights.

Currently, Colorado, Minnesota, and Nevada have labor standards board related to home care or direct care employees. The Colorado Direct Care Workforce Stabilization Board (DCWSB) was established in the Division of Labor Standards and Statistics in 2023. The DCWSB is composed of 15 members representing direct care employers, direct care workers, direct care consumers, individuals with disabilities, and older adults. It is an advisory body required to develop and report to the legislature and governor recommendations for minimum direct care employment standards.

The Minnesota Nursing Home Workforce Standards Board (NHWSB) was established in 2023 as a policymaking body for the purpose of investigating market conditions and existing wages, benefits, and working conditions for nursing home workers as well as adopting rules establishing minimum nursing home employment standards. The NHWSB has equal representation from nursing home employers, nursing home workers, and state officials. Members representing employer and employees are appointed by the Governor. A majority vote of the members is required to take any action, including establishing minimum nursing home employment standards.

The Nevada Home Care Employment Standards Board (HCESB) is an advisory body established by the Director of the Department of Health and Human Services upon their own judgment or petition of 50 or home care employees. The membership includes the Director who serves as chair and nonvoting member, the Labor Commissioner, three representatives of home care employers, three representatives of home care employees, and three persons who receive or are representatives of persons who receive services from a home care employee. The HCESB must investigate and develop recommendations regarding minimum wages and safe and healthful working conditions for home care employees and may administer oaths, take testimony, and subpoena witnesses and materials relevant to the investigation.