

A-Engrossed House Bill 3838

Ordered by the House June 16
Including House Amendments dated June 16

Sponsored by Representative GRAYBER, Senator TAYLOR, Representatives NELSON, BOWMAN, FAHEY, MUNOZ, VALDERRAMA, Senators JAMA, PATTERSON, PHAM K, WAGNER; Representatives ANDERSEN, CHAICHI, GAMBA, HUDSON, NGUYEN H, NOSSE, TRAN

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act would make new laws about a workforce standards board for some workers in the home and community-based services sector. (Flesch Readability Score: 60.6).

Establishes the Home and Community-Based Services Workforce Standards Board.

Prescribes the duties of the board. Directs the board to establish minimum working standards for the home and community-based services workforce. **Requires the board to take certain actions before adopting proposed minimum standards. Directs certain state agencies to conduct a fiscal impact analysis to determine whether a proposed minimum standard will increase the fiscal obligations of the state, including an increase in Medicaid reimbursement rates.**

[Requires the board to submit a written report to the Legislative Assembly regarding any adopted standard that is anticipated to impact the state budget. Provides that any such standard must be ratified by the Legislative Assembly before taking effect.]

Requires the board to report to the Legislative Assembly and to the Governor the increase in funding needed to implement the standard. Provides that a rule establishing a minimum standard may not take effect before the Legislative Assembly has appropriated funding and the board has received approval from the Centers for Medicare and Medicaid Services, if applicable.

Permits the Bureau of Labor and Industries to conduct investigations, issue subpoenas, administer oaths, obtain evidence and take testimony to make determinations regarding implementation and compliance with the minimum standards established by the board.

Provides remedies for allegations of violations of the minimum standards established by the board. **Clarifies that relief may be sought for alleged violations no sooner than 90 days after a rule establishing a minimum standard takes effect.**

Requires the board to conduct a *[biennial]* **quadrennial** comprehensive review, including a labor market analysis to inform the board's decisions to adopt new minimum standards or revise existing standards. *[Permits the board to establish uniform training standards for the home and community-based services workforce and to establish a process by rule for certifying worker organizations to provide the training to workers.]*

Requires the board to submit a biennial report to the Governor and the Legislative Assembly summarizing the results of the comprehensive review and any actions taken by the board in the prior biennium.

Requires the online registry administered by the Department of Human Services to include workers from the home and community-based services workforce.

Requires that any public hearing conducted by the board be accessible through electronic or virtual means, if possible.

A BILL FOR AN ACT

Relating to the Home and Community-Based Services Workforce Standards Board; creating new provisions; and amending ORS 192.670 and 443.517.

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

DEFINITIONS

SECTION 1. Definitions. As used in sections 1 to 12 of this 2025 Act:

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

(1) “Adult foster home” has the meaning given that term in ORS 443.705.

(2) “Attendant care services” has the meaning given that term in ORS 427.191.

(3) “Community-based structured housing” has the meaning given that term in ORS 443.480.

(4) “Developmental disability child foster home” has the meaning given that term in ORS 443.830.

(5)(a) “Direct care staff” means employees of an adult foster home, a residential care facility, a residential training facility or a residential training home whose primary responsibilities are to provide personal care services to residents, including but not limited to:

(A) Administering medications;

(B) Coordinating resident-focused activities;

(C) Supervising and supporting residents;

(D) Supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and

(E) Serving but not preparing meals.

(b) “Direct care staff” does not include management-level staff, including nurses, physicians and administrative staff.

(6) “Domiciliary care facilities” has the meaning given that term in ORS 443.205.

(7) “Employer organization” means a nonprofit trade association whose membership is composed of or includes entities that employ workers of the home and community-based services workforce in this state.

(8)(a) “Home and community-based services workforce” includes the following workers who provide long-term care services and supports:

(A) A home care worker, as defined in ORS 410.600;

(B) A personal support worker, as defined in ORS 410.600;

(C) A personal care attendant;

(D) A direct support professional, as defined in ORS 427.191;

(E) An individual providing in-home care services as an employee of or under an arrangement or contract with an in-home care agency, as defined in ORS 443.305;

(F) An individual providing attendant care services or personal care services as an employee of an organization that provides:

(i) Agency with choice services, as defined in ORS 427.181; or

(ii) Agency with choice services, as defined in section 1, chapter 37, Oregon Laws 2024; and

(G) Direct care staff.

(b) “Home and community-based services workforce” does not include:

(A) A private pay home care worker, as defined in ORS 410.600.

(B) Management-level staff, including nurses, physicians and administrative staff.

(9) “In-home care services” has the meaning given that term in ORS 443.305.

(10) “Labor organization” has the meaning given that term in ORS 663.005.

(11) “Personal care attendant” means an individual who:

(a) Provides in-home care services to a person with a behavioral health condition or disability; and

(b) Meets the eligibility requirements established by rule by the Oregon Health Authority in order to receive Medicaid reimbursement for such services.

(12) "Public hearing" means an open hearing conducted in accordance with the requirements for a public meeting under ORS 192.610 to 192.705.

(13) "Residential care facility" has the meaning given that term in ORS 443.400.

(14) "Residential training facility" and "residential training home" have the meanings given those terms in ORS 443.400.

(15) "Supported living services" means services that provide an individual with an intellectual or developmental disability the ability to live in the community where the individual wants, with whom the individuals wants, for as long as the individual desires.

HOME AND COMMUNITY-BASED SERVICES WORKFORCE STANDARDS BOARD

SECTION 2. Establishment; members; term; vacancies. (1) There is established the Home and Community-Based Services Workforce Standards Board within the Department of Consumer and Business Services. The purposes of the board are to:

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

(A) Examining factors that may present challenges to recruiting and retaining workers, including but not limited to compensation, work schedules and other working conditions; and

(B) Addressing barriers that may impact the sustainability of the workforce including affordability, access, quality and satisfaction regarding home and community-based services; and

(b) Make recommendations to revise the minimum workforce standards established by the board under section 5 of this 2025 Act and adopt new standards, as needed, to improve the working conditions of the home and community-based services workforce.

(2) The board shall consist of 11 members appointed as follows:

(a) Three members appointed by the Governor who represent the home and community-based services workforce or labor organizations;

(b) Three members appointed by the Governor who represent employers of individuals of the home and community-based services workforce or employer organizations;

(c) Two members appointed by the Governor who represent the interests of individuals who receive services provided by the home and community-based services workforce, including representatives from organizations that represent such interests;

(d) One member appointed by the Commissioner of the Bureau of Labor and Industries who represents the bureau;

(e) One member appointed by the Governor who represents the Department of Human Services; and

(f) One member appointed by the Governor who represents the Oregon Health Authority.

(3) The appointments of the Governor under subsection (2)(a) to (c) of this section:

(a) Shall be subject to confirmation by the Senate in the manner provided by ORS 171.562 and 171.565.

(b) Must be individuals who, collectively, have current knowledge and experience in the following home and community-based services or care settings:

(A) In-home care services;

(B) Attendant care services;

1 (C) Supported living services;

2 (D) Adult foster homes;

3 (E) Residential care facilities, including facilities with a memory care endorsement under
4 ORS 443.886 and assisted living facilities;

5 (F) Residential training facilities or residential training homes;

6 (G) Developmental disability child foster homes;

7 (H) Domiciliary care facilities; and

8 (I) Community-based structured housing.

9 (4) Members of the board shall comply with applicable state and federal antitrust laws
10 concerning anticompetitive behavior, including, but not limited to, laws prohibiting collusion,
11 price-fixing and other unfair trade practices.

12 (5) The term of a member of the board is three years and the member may be reap-
13 pointed. An appointed member serves at the pleasure of the appointing authority.

14 (6) Each successor board member shall be appointed by the appointing authority, before
15 the expiration of the term of a member, but not later than January 1 of each even-numbered
16 year. If a vacancy occurs for any cause before the expiration of the term of a member, the
17 appointing authority shall make an appointment to fill the vacancy, in the same manner as
18 an appointment to a full term, to become immediately effective for the unexpired term.

19 (7) The Governor shall appoint two members, one from each of the appointments made
20 under subsection (2)(a) and (b) of this section, to serve as cochairs who shall preside over
21 meetings on a quarterly rotating basis, unless agreed upon otherwise by the cochairs.

22 (8) The Governor may appoint an executive director for the board who is responsible for
23 the performance of duties assigned by the board. The executive director may employ appro-
24 priate staff to carry out the duties assigned by the board.

25 **SECTION 3. Initial terms.** (1) All appointments to the board made under section 2 of this
26 2025 Act must be completed on or before December 31, 2026.

27 (2) Notwithstanding the term of office specified by section 2 of this 2025 Act, of the
28 members first appointed to the board:

29 (a) Four shall serve for a term ending January 1, 2028.

30 (b) Four shall serve for a term ending January 1, 2029.

31 (c) Three shall serve for a term ending January 1, 2030.

32 **SECTION 3a. Initial staff support.** Notwithstanding section 2 (8) of this 2025 Act, the
33 executive director may employ no more than three staff members to carry out the duties
34 of the board during the biennium immediately following the date by which board appoint-
35 ments must be completed, as specified in section 3 of this 2025 Act.

36 **SECTION 4. Compensation; meetings.** (1) Members of the Home and Community-Based
37 Services Workforce Standards Board shall receive such compensation as authorized under
38 ORS 292.495.

39 (2) The board shall adopt rules for conducting meetings.

40 (3) A majority of members of the board constitutes a quorum for the transaction of
41 business.

42 (4) An affirmative vote by a majority of members of the board is necessary for the board
43 to take any action.

44 (5) The board shall meet once per calendar quarter at times and places specified by the
45 call of the cochairs.

(6) All meetings of the board shall be held as public meetings in accordance with ORS 192.610 to 192.705.

DUTIES OF THE BOARD

SECTION 5. Minimum workforce standards. (1) Subject to subsections (4), (5) and (6) of this section, the Home and Community-Based Services Workforce Standards Board shall adopt rules establishing minimum standards for the home and community-based services workforce that are designed to improve the working conditions of such workers and that may be tailored to specific categories of worker types and across different care settings. The board may not adopt any standards that:

(a) 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

(b) Infringe on an individual's right to self-determination, as defined in ORS 427.101.

(2) At a minimum, the standards must:

(a) Set compensation rates for paying individuals in the home and community-based services workforce, provided that the rates are not less than the minimum wage rate established under ORS 653.025.

(b) Establish curriculum and criteria for providing education and professional development opportunities and career pathways for the home and community-based services workforce.

(c) Provide for the provision of 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.

(3) Before establishing any minimum standards under this section, the board shall:

(a) Obtain and evaluate the following information in relation to the home and community-based services workforce to ensure that the standards adopted by the board meet or exceed prevailing labor market conditions:

(A) Labor market data, including but not limited to:

(i) Wage levels and benefit data from comparable occupations and industries within different geographic regions in this state;

(ii) Collective bargaining agreements applicable to workers in comparable occupations and industries within different geographic regions in this state; and

(iii) Existing federal, state and local minimum standards for the home and community-based services workforce;

(B) Testimony from current and former workers from the home and community-based services workforce, labor organizations, employers and other interested stakeholders;

(C) Data submitted by or obtained from state and local government entities related to consumers of home and community-based services, including service levels needed by consumers and consumers' ability to timely access affordable home and community-based services; and

(D) Any other information the board deems relevant and reflective of trends concerning the working conditions of the home and community-based services workforce, consumer and family satisfaction with home and community-based services and consumer access to affordable home and community-based services.

(b) Hold at least one public hearing at which members of the public, including workers in the home and community-based services workforce, shall have the opportunity to provide input on any matter relating to the minimum standards being considered by the board.

(c) Consult with the director of the division of the Oregon Health Authority that administers the state medical assistance program to determine whether any minimum standards proposed by the board require the approval of the Centers for Medicare and Medicaid Services.

(d) Consult with the Home Care Commission to ensure that the minimum standards proposed by the board do not conflict with any rule or standard established by the commission pursuant to Article XV, section 11, of the Oregon Constitution, or ORS 410.595 to 410.625.

(4)(a) The Bureau of Labor and Industries, the Department of Consumer and Business Services, the Department of Human Services and the Oregon Health Authority shall conduct a fiscal impact analysis to determine whether a proposed minimum standard of the board will require any increase to state funding levels or otherwise result in an increase in the fiscal obligations of the state, including but not limited to an increase in Medicaid reimbursement rates.

(b) If a determination is made under paragraph (a) of this subsection that a proposed minimum standard will require any increase to state funding levels or otherwise result in an increase in the fiscal obligations of the state, the board shall report to the Legislative Assembly and to the Governor the increase in funding needed to implement the standard.

(c) If the Legislative Assembly appropriates less than what is necessary for implementation and enforcement of the rule establishing the minimum standard, the board shall amend or repeal the rule to align the minimum standard with the level of funding appropriated by the Legislative Assembly.

(5) If the director of the division of the Oregon Health Authority that administers the state medical assistance program determines that approval from the Centers for Medicare and Medicaid Services is necessary to implement a minimum standard proposed by the board, the authority shall seek the necessary approval.

(6) In no event may a rule establishing a minimum standard under this section take effect before the Legislative Assembly appropriates funding under subsection (4) of this section and the board has received approval from the Centers for Medicare and Medicaid Services under subsection (5) of this section, if applicable.

(7) All agencies of state government, as defined in ORS 174.111, are directed to furnish information to the board, upon request, that the board considers necessary for the board to carry out the board's duties under subsection (3) of this section, unless such information is exempt from public disclosure under federal or state law.

(8) Rules establishing minimum standards under this section shall be adopted by the board in accordance with applicable provisions of ORS chapter 183.

SECTION 6. Comprehensive review. (1) At least once every four years, the Home and Community-Based Services Workforce Standards Board shall conduct a comprehensive review of the minimum standards previously adopted by the board to determine whether the standards have continuing applicability or whether the board should adopt new standards or revise the existing standards.

(2)(a) As part of the review, the board shall conduct a labor market analysis of the

working conditions for the home and community-based services workforce that examines factors that may include, but need not be limited to:

- (A) Supply and demand estimates and projections for such workers;
- (B) Education, training and skill requirements;
- (C) Compensation rates for the home and community-based services workforce;
- (D) Industry profits; and
- (E) Professional development and training opportunities.

(b) In conducting the labor market analysis, the board shall consider whether and to what extent the board's minimum standards regarding compensation rates for paying workers in the home and community-based services workforce should be adjusted relative to the Medicaid reimbursement rates for services provided by such workers. Such a determination shall be made pursuant to a process specified by the board by rule.

SECTION 7. Reporting. (1) The Home and Community-Based Services Workforce Standards Board shall prepare and submit a biennial report to the Governor and to the Legislative Assembly by June 30 of each even-numbered year on the board's activities and recommendations.

(2) The report must include, at a minimum:

(a) A statement of findings and conclusions of the most recently completed comprehensive review required under section 6 of this 2025 Act, including recommendations:

- (A) For statutory changes;
- (B) For revisions to amounts appropriated to the board, if any; and
- (C) For proposed adjustments to Medicaid reimbursement rates to ensure that such rates directly correspond to the board's minimum standards for compensation rates paid to the home and community-based services workforce.

(b) A copy of the budget documents of the board showing:

- (A) The Medicaid reimbursement rates for the home and community-based services workforce; and
- (B) Statements showing aggregate data regarding compensation paid and benefits provided to the home and community-based services workforce.

(c) A description of the public hearing process used to inform the minimum standards established by the board.

(d) A description of the current minimum standards established by the board and recommended changes to the standards, along with any supporting documentation for the proposed changes.

(e) The number and types of complaints or civil actions filed alleging a violation of any of the standards established by the board, if any.

(f) A summary of all other actions taken during the prior biennium in the performance of the board's statutory responsibilities that is adequate to allow evaluation of the board's performance.

BOARD AUTHORITY

SECTION 8. Investigative authority. In order to determine any facts relevant to matters concerning implementation of and compliance with the minimum standards established by the Home and Community-Based Services Workforce Board under section 5 of this 2025 Act,

1 the Commissioner of the Bureau of Labor and Industries may conduct investigations, issue
2 subpoenas and subpoenas duces tecum, administer oaths, obtain evidence and take testimony
3 to the same extent that the commissioner may exercise such authority with respect to the
4 bureau's duties as described under ORS 651.060.

5
6 **WORKER PROTECTIONS**
7

8 **SECTION 9. Retaliation prohibited.** It is an unlawful practice under ORS chapter 659A for
9 an employer to terminate, discipline, penalize, retaliate or take any other adverse action
10 against any worker from the home and community-based services workforce because the
11 worker has:

12 (1) Inquired about or exercised any right afforded to a worker under sections 1 to 12 of
13 this 2025 Act or under any minimum standards established by the board under section 5 of
14 this 2025 Act.

15 (2) Participated in any process or proceeding under or related to sections 1 to 12 of this
16 2025 Act, or has testified or is about to testify in any such proceeding.

17 **SECTION 10. Remedies.** (1) No sooner than 90 days after a rule establishing a minimum
18 standard under section 5 of this 2025 Act takes effect, a worker from the home and
19 community-based services workforce or a labor organization may seek relief for an alleged
20 violation of a minimum standard established by the Home and Community-Based Services
21 Workforce Standards Board under section 5 of this 2025 Act by:

22 (a) Commencing a civil action in the circuit court of appropriate jurisdiction for
23 injunctive relief, damages or other appropriate equitable relief against any person alleged to
24 have violated a minimum standard; or

25 (b) Filing a complaint with the Commissioner of the Bureau of Labor and Industries in
26 the manner provided by ORS 659A.820, not later than one year after the date of the alleged
27 violation. In addition to any other penalty provided by law, the Commissioner of the Bureau
28 of Labor and Industries may assess a civil penalty under ORS 183.745 not to exceed \$1,000 for
29 each violation of a minimum standard adopted by the board under section 5 of this 2025 Act.

30 (2) Prior to commencing a civil action under subsection (1)(a) of this section, the person
31 alleging the violation shall provide written notice to the person alleged to have violated the
32 minimum standard stating that the person shall have 30 days from receipt of the notice to
33 correct the alleged violation. A civil action may not be brought against the person alleged
34 to have violated the minimum standard if the person has corrected the alleged violation
35 within the time period specified under this subsection.

36 (3) A labor organization may file a civil action under this section only on behalf of
37 workers from the home and community-based services workforce whom the labor organiza-
38 tion represents. A labor organization may not file a civil action on behalf of workers who are
39 not represented by the labor organization.

40 (4) Upon prevailing in an action under this section, the plaintiff may recover actual
41 damages and the court shall award reasonable attorney fees and costs to the prevailing
42 plaintiff.

43 **SECTION 11. Limits.** Nothing in sections 1 to 12 of this 2025 Act is intended to:

44 (1) Limit, interfere with or reduce the rights of any parties to a collective bargaining
45 agreement.

(2) Diminish the rights or remedies that are otherwise available to a worker from the home and community-based services workforce under federal or state law or regulation, including but not limited to the right to file a wage claim under ORS 652.310 to 652.414.

SECTION 12. Employer notice requirements. (1) Each employer of workers of the home and community-based services workforce shall provide notice to the workers of the following:

(a) The rights of the workers with respect to the minimum standards established by the Home and Community-Based Services Workforce Standards Board under section 5 of this 2025 Act.

(b) The duties and functions of the board.

(c) Contact information for each state agency responsible with enforcement authority over matters that relate to the same subjects over which the board has authority.

(2) The employer shall provide the notice required under this section as follows:

(a) At the time of hire;

(b) In the same language that the employer typically communicates with the worker;

(c) By posting the notice in a conspicuous location in the workplace; and

(d) By sending the notice to the electronic mail address of each worker of the employer.

(3) The board shall annually review and update the notice required under this section insofar as necessary to reflect changes to any minimum standards that are adopted by the board.

MISCELLANEOUS

SECTION 13. ORS 443.517 is amended to read:

443.517. (1) The Department of Human Services shall maintain an online [*home or community-based services caregiver*] registry **that is** accessible to the public **and that lists home or community-based services caregivers and workers.** The information to be displayed on the registry for each caregiver **and worker, respectively,** shall be limited to the:

(a) Name of the caregiver **or worker;**

(b) County and, if applicable, city where the caregiver **or worker** resides;

(c)(A) Certification status of the caregiver under ORS 443.515 and any endorsements earned by the caregiver; [*and*] **or**

(B) Certification status of the worker and any endorsements earned by the worker, if applicable; and

(d) Criminal records check status of the caregiver **or worker.**

(2) The registry shall contain links to:

(a) Sites that explain the training requirements for the certification of each type of home or community-based services caregiver described in ORS 443.515 (1)(b); and

(b) The home care registry, as defined in ORS 410.600, for members of the public to find home care workers.

(3) The department shall create a process for a home or community-based services caregiver **or worker** to request to be excluded from the registry.

(4) The department shall prominently display a notice on the registry that states that:

(a) Home or community-based services caregivers **and workers** may choose not to be listed on the registry; and

(b) The registry is not an exclusive list of all home and community-based services caregivers

and workers that are qualified and trained in this state.

(5) The department may include on the registry disclaimers, user guidance and other resources that the department deems appropriate to help users of the registry.

(6) This section does not prohibit the department from requesting and collecting from home or community-based services caregivers **and workers** information in addition to the information that must be displayed on the registry under subsection (1) of this section.

(7) As used in this section, “worker” means an individual from the home and community-based services workforce, as defined in section 1 of this 2025 Act.

SECTION 14. ORS 192.670 is amended to read:

192.670. (1) Any meeting, including an executive session, of a governing body of a public body which is held through the use of telephone or other electronic communication shall be conducted in accordance with ORS 192.610 to 192.705.

(2) When telephone or other electronic means of communication is used and the meeting is not an executive session, the governing body of the public body shall make available to the public at least one place where, or at least one electronic means by which, the public can listen to the communication at the time it occurs. A place provided may be a place where no member of the governing body of the public body is present.

(3) All meetings held by a governing body of a public body, excluding executive sessions, must provide to members of the general public, to the extent reasonably possible, an opportunity to:

(a) Access and attend the meeting by telephone, video or other electronic or virtual means;

(b) If in-person oral testimony is allowed, submit during the meeting oral testimony by telephone, video or other electronic or virtual means; and

(c) If in-person written testimony is allowed, submit written testimony, including by electronic mail or other electronic means, so that the governing body is able to consider the submitted testimony in a timely manner.

(4) The provisions of subsection (3) of this section:

(a) Apply to:

(A) Hearings under ORS 197.797, 215.402 to 215.438 and 215.700 to 215.780 regardless of whether a governing body or governing body’s designee, including a hearings officer, conducts the hearing; and

(B) Public hearings under section 5 of this 2025 Act; and

(b) Do not apply to contested case hearings under ORS chapter 183.

SECTION 15. (1)(a) **The Home and Community-Based Services Workforce Standards Board shall consider the information related to prevailing labor market conditions described under section 5 (3) of this 2025 Act no later than September 30, 2027.**

(b) The board shall adopt rules establishing the initial minimum standards under section 5 of this 2025 Act following completion of the initial market study described in paragraph (a) of this subsection, but not sooner than March 1, 2028.

(2) If, as a result of a fiscal impact analysis conducted under section 5 (4) of this 2025 Act, the Bureau of Labor and Industries, the Department of Consumer and Business Services, the Department of Human Services or the Oregon Health Authority determines that a proposed minimum standard will require any increase to state funding levels or otherwise result in an increase in the fiscal obligations of the state, the board shall report to the Legislative Assembly and to the Governor the increase in funding needed to implement the standard. The rule establishing the standard may not take effect until the regular legislative

1 session next following provided that an appropriation has been made for purposes of imple-
2 menting and enforcing the standard, in the regular legislative session next following.

3 SECTION 16. The unit and section captions used in this 2025 Act are provided only for
4 the convenience of the reader and do not become part of the statutory law of this state or
5 express any legislative intent in the enactment of this 2025 Act.
6
