



House Bill 3838: Bill Summary

Home and Community-Based Services Workforce Standards Board

IMPACTED WORKERS

The following categories of workers are subject to the board's powers:

- Direct care staff employed by assisted living, residential care and memory care facilities and adult foster homes. This means individuals whose “primary responsibilities are to provide personal care services to residents, including but not limited to: Administering medications; coordinating resident-focused activities; supervising and supporting residents; supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and serving but not preparing meals” (ORS 443.400)
- Home care workers
- Personal support workers
- All individuals providing in-home care as an employee with an in-home care agency
- All direct support professionals (intellectual or developmental disabilities)
- All personal care attendants (behavioral health)

Management-level staff, including nurses, physicians, and administrative staff in these sectors are excluded.

PURPOSE OF THE BOARD

The expressed, written purpose Home and Community-Based Services (HCBS) Workforce Standards Board (the board) is intended to strengthen the supply of a skilled HCBS workforce by examining factors that may present challenges to recruiting and retaining workers, including compensation, work schedules, and other working conditions.

BOARD MEMBERSHIP AND TERMS

The board consists of 13 members appointed by the Governor who serve two-year terms. In addition to board members, the Governor appoints the executive director for the board who may employ staff.

- Four members who represent the HCBS workforce or “worker organizations,” which are defined to include labor organizations, advocacy groups, or groups of workers
- Four members who represent employers or “employer organizations,” like OHCA
- Two members who represent consumers of services
- One member who represents the Bureau of Labor and Industries (BOLI)
- One member who represents the Oregon Department of Human Services (ODHS)
- One member who represents the Governor's office



House Bill 3838: Bill Summary Cont.

DUTIES OF THE BOARD

Minimum Standards: The board must adopt rules establishing standards for the HCBS workforce. Standards must meet or exceed other workplace standards under any other applicable statute or rule. At a minimum, the standards must:

- Set compensation/wage rates for workers
- Establish working conditions such as work schedules, working hours, and staffing
- Establish curriculum and criteria for providing education and professional development opportunities for workers
- Establish health and safety requirements that meet or exceed Oregon OSHA standards
- Provide for health care benefits and other paid benefits, including paid family leave, sick leave, and retirement
- Require employers to provide employee wage statements to a “worker organization”
- Require employers to produce workers’ information to the board or a labor organization, including full names, phone numbers, addresses, and e-mail addresses

Rules adopted by the board must be informed by testimony from stakeholders and labor market data, including:

- Wage and benefit data from comparable occupations and industries within different geographic regions of Oregon
- Workplace policies including staffing levels, working hours and health and safety
- Collective bargaining agreements
- State and local minimum standards for the HCBS workforce
- Any other information the board deems relevant

Conditions Put on Minimums Standards Set by the Board: Whenever the board adopts a minimum wage or working standard that is anticipated to create a fiscal impact to the state’s General Fund or otherwise result in an increase in the fiscal obligations of the state, the board must have the Legislature ratify the standard before it can take effect.



House Bill 3838: Bill Summary Cont.

Required Review of Board's Standards: At least once every two years the board must conduct a comprehensive review of the standards it previously adopted to determine if revisions are necessary.

As part of the review, a labor market analysis must be conducted that examines at least the following factors and will inform the board on whether worker compensation rates should be changed relative to Medicaid reimbursement rates.

- Workforce supply and demand estimates
- Education, training and skill requirements
- Terms and conditions of employment
- Unionization rates
- Compensation rates
- Industry profits

Required Reporting: The board must submit to the Governor and Legislature each biennium a report on its activities and recommendations, including:

- Findings of its biennial review including recommendations for changes to laws, changes to appropriations to the board, changes to Medicaid reimbursement rates to ensure rates correspond with the compensation rates paid to workers.
- Additional budget information regarding Medicaid reimbursement rates, industry wages, the board's meetings, and complaints or civil actions filed alleging violations of the board's standards.

AUTHORITIES OF THE BOARD

Uniform Worker Training Standards & Certification: The board must establish uniform training standards for the HCBS workforce that must include curriculum covering:

- The duties and obligations of the board.
- Minimum standards set by the board.
- The rights and remedies afforded the workers, including anti-retaliation provisions and private rights of action for violating the board's standards.
- Any other information the board deems appropriate to facilitate compliance.

The board may adopt rules for uniform requirements, standards, and criteria for certifying a worker organization to provide this training.



House Bill 3838: Bill Summary Cont.

INVESTIGATIVE AUTHORITY

The board may:

- Issue subpoenas
- Administer oaths
- Take or cause depositions

EMPLOYER NOTICE REQUIREMENTS

Every affected employer must provide notice to workers of the following information, and the bill specifies how the notice must be provided to workers:

- Worker's rights with respect to the HCBS board
- The duties of the board
- Contact information for each state agency responsible with enforcement authority (ODHS, OHA)

WORKER PROTECTION AND REMEDIES/CIVIL ACTION

An employer is prohibited from terminating, disciplining, penalizing, or retaliating against any worker for the following reasons:

- That worker has inquired about or exercised a right afforded to them by the board
- That worker has participated in any processes or proceedings related to the board
- That worker has participated in any training provided by a worker organization

To recover damages and reasonable attorney fees and costs, a worker or worker organization (labor union or advocacy group) may seek relief for an alleged violation of any standard set by the board through civil action, filing a complaint with BOLI within one year.

BOARD MEETINGS AND ACTIONS

- All board meetings are subject to Oregon's public meetings laws (ORS 192.610 to 192.705).
- The board may take action through simple majority votes.
- The board must hold at least one public hearing to receive input on any matter relating to the minimum standards considered by the board.