

# House Bill 3838

Sponsored by Representative GRAYBER, Senator TAYLOR, Representatives NELSON, BOWMAN, FAHEY, MUNOZ, VALDERRAMA, Senators JAMA, PATTERSON, PHAM K, WAGNER

## 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 **as introduced**. 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 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.

Provides remedies for allegations of violations of the minimum standards established by the board.

Requires the board to conduct a biennial 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.

## A BILL FOR AN ACT

1  
2 Relating to the Home and Community-Based Services Workforce Standards Board.

3 **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:**

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7  
8 **(1)(a) "Direct care staff" means:**

9 **(A) Direct care staff, as defined in ORS 443.400.**

10 **(B) The employees of an adult foster home, as defined in ORS 443.705, whose primary**  
11 **responsibilities are to provide personal care services to residents, including but not limited**  
12 **to:**

13 **(i) Administering medications;**

14 **(ii) Coordinating resident-focused activities;**

15 **(iii) Supervising and supporting residents;**

16 **(iv) Supporting activities of daily living, including but not limited to bathing, dressing,**  
17 **eating and transferring; and**

18 **(v) Serving but not preparing meals.**

19 **(b) "Direct care staff" does not include management-level staff, including nurses, physi-**  
20 **cians and administrative staff.**

21 **(2) "Employer organization" means a nonprofit trade association whose membership is**

**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 primarily composed of a majority of not-for-profit, proprietary and individually owned home  
2 and community-based care providers that employ workers of the home and community-based  
3 services workforce in this state.

4 (3)(a) "Home and community-based services workforce" includes the following workers:

5 (A) A home care worker and a personal support worker, as those terms are defined in  
6 ORS 410.600;

7 (B) An individual providing in-home care services as an employee of or under an ar-  
8 rangement or contract with an in-home care agency, as defined in ORS 443.305;

9 (C) Direct care staff at a residential facility, as defined in ORS 443.400, or an adult foster  
10 home, as defined in ORS 443.705;

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

12 (E) A personal care attendant.

13 (b) "Home and community-based services workforce" does not include:

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

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

16 (4) "Labor organization" has the meaning given that term in ORS 663.005.

17 (5) "Personal care attendant" means an individual who:

18 (a) Provides in-home personal care services to a person with a behavioral health condi-  
19 tion or disability; and

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

22 (6) "Worker organization" means any of the following that assemble to collectively ad-  
23 vocate for the shared interests of improving wages, benefits and working conditions for the  
24 home and community-based services workforce:

25 (a) Labor organizations.

26 (b) Advocacy groups.

27 (c) Groups or associations of workers from the home and community-based services  
28 workforce.

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30 **HOME AND COMMUNITY-BASED SERVICES**  
31 **WORKFORCE STANDARDS BOARD**  
32

33 **SECTION 2. Establishment; members; term; vacancies.** (1) There is established the Home  
34 and Community-Based Services Workforce Standards Board the purposes of which are to:

35 (a) Strengthen the supply of a skilled home and community-based services workforce by  
36 examining factors that may present challenges to recruiting and retaining workers, including  
37 but not limited to compensation, work schedules and other working conditions; and

38 (b) Make recommendations to revise the minimum workforce standards established by  
39 the board under section 4 of this 2025 Act and adopt new standards, as needed, to protect the  
40 health and welfare of the home and community-based services workforce.

41 (2) The board shall consist of 13 members appointed by the Governor, as follows:

42 (a) Four members who represent the home and community-based services workforce or  
43 worker organizations;

44 (b) Four members who represent employers of individuals of the home and community-  
45 based services workforce or employer organizations;

1 (c) Two members who represent the interests of individuals who receive services provided  
 2 by the home and community-based services workforce;

3 (d) One member who represents the Bureau of Labor and Industries;

4 (e) One member who represents the Department of Human Services; and

5 (f) One member who represents the executive department of state government.

6 (3) The term of a member of the board is two years and the member may be reappointed.

7 (4) Each successor board member shall be appointed by the Governor, before the expira-  
 8 tion of the term of a member, but not later than January 1 of each even-numbered year. If  
 9 a vacancy occurs for any cause before the expiration of the term of a member, the Governor  
 10 shall make an appointment to fill the vacancy, in the same manner as an appointment to a  
 11 full term, to become immediately effective for the unexpired term.

12 (5) The Governor shall appoint one of the members as chairperson, to serve at the  
 13 pleasure of the Governor. The members of the board shall elect from among themselves a  
 14 vice chairperson who shall preside over meetings and exercise the functions of the chair-  
 15 person during any absence of the chairperson.

16 (6) The Governor may appoint an executive director for the board who is responsible for  
 17 the performance of duties assigned by the board. The executive director may employ appro-  
 18 priate staff to carry out the duties assigned by the board.

19 **SECTION 3. Compensation; meetings.** (1) Members of the Home and Community-Based  
 20 Services Workforce Standards Board shall receive such compensation as authorized under  
 21 ORS 292.495.

22 (2) The board shall adopt rules for conducting meetings and any other rules as necessary  
 23 for carrying out the duties of the board.

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

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

28 (5) All meetings of the board shall be held as public meetings in accordance with ORS  
 29 192.610 to 192.705.

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 31 **DUTIES OF THE BOARD**

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 33 **SECTION 4. Minimum workforce standards.** (1) Subject to subsection (4) of this section,  
 34 the Home and Community-Based Services Workforce Standards Board shall adopt rules es-  
 35 tablishing minimum standards for the home and community-based services workforce that  
 36 are designed to ensure the health and welfare of such workers. The board may not adopt any  
 37 standards that are less protective of or beneficial to the home and community-based services  
 38 workforce than the standards provided under any other applicable statute or rule or any  
 39 standard previously established by the board.

40 (2) At a minimum, the standards must:

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

44 (b) Establish requirements for working conditions such as work schedules and working  
 45 hours and staffing.

1 (c) Establish curriculum and criteria for providing education and professional develop-  
 2 ment opportunities for the home and community-based services workforce.

3 (d) Establish workplace health and safety requirements specific to the home and  
 4 community-based services workforce that meet or exceed any applicable health and safety  
 5 requirements prescribed by the Oregon Safe Employment Act.

6 (e) Provide for the provision of health care benefits and other paid benefits for the home  
 7 and community-based services workforce, including but not limited to paid family leave, sick  
 8 leave and retirement benefits.

9 (f) Establish requirements for itemized statements regarding deductions from wages that  
 10 meet or exceed the requirements under ORS 652.610, including a requirement that such  
 11 statements are timely provided to a worker organization.

12 (g) Establish requirements for the production of workers' information maintained in an  
 13 employer's records to the board or to a worker organization that is the labor organization  
 14 that represents the workers to whom the information pertains. For purposes of this para-  
 15 graph, "workers' information" includes full names, telephone numbers, home addresses,  
 16 personal mailing addresses and electronic mail addresses.

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

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

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

23 (i) Wage levels and benefit data from comparable occupations and industries within dif-  
 24 ferent geographic regions in this state;

25 (ii) Workplace policies concerning working conditions such as staffing levels, hours of  
 26 work and workplace health and safety;

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

29 (iv) Existing state and local minimum standards for the home and community-based  
 30 services workforce;

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

33 (C) Data submitted by or obtained from state and local government entities; and

34 (D) Any other information the board deems relevant and reflective of trends concerning  
 35 the working conditions of the home and community-based services workforce.

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

39 (4) Whenever the board adopts a minimum wage or working standard under this section  
 40 that is anticipated to create a fiscal impact, require any adjustment to state funding levels  
 41 or otherwise result in an increase in the fiscal obligations of the state, the board shall issue  
 42 a written report to the Legislative Assembly. The report shall include a description of any  
 43 such adopted standard and the corresponding anticipated fiscal impacts, and may include  
 44 recommendations for legislation, including recommendations for potential sources of funding  
 45 to address the anticipated fiscal impacts. The board shall provide the report to the Legisla-

1 tive Assembly at the beginning of the legislative session next following the date of the  
 2 adoption of the standard. The board shall obtain ratification of the standard by the Legis-  
 3 lative Assembly before the standard may take effect.

4 **SECTION 5. Comprehensive review.** (1) At least once every two years, the Home and  
 5 Community-Based Services Workforce Standards Board shall conduct a comprehensive re-  
 6 view of the minimum standards previously adopted by the board to determine whether the  
 7 standards have continuing applicability or whether the board should adopt new standards or  
 8 revise the existing standards.

9 (2)(a) As part of the review, the board shall conduct a labor market analysis of the  
 10 working conditions for the home and community-based services workforce that examines  
 11 factors that may include, but need not be limited to:

- 12 (A) Supply and demand estimates and projections for such workers;
- 13 (B) Education, training and skill requirements;
- 14 (C) Terms and conditions of employment;
- 15 (D) Unionization rates;
- 16 (E) Compensation rates;
- 17 (F) Industry profits; and
- 18 (G) Professional development and training opportunities.

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

24 **SECTION 6. Reporting.** (1) The Home and Community-Based Services Workforce Stan-  
 25 dards Board shall prepare and submit a biennial report to the Governor and to the Legisla-  
 26 tive Assembly by April 1 of each even-numbered year on the board's activities and  
 27 recommendations.

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

29 (a) A statement of findings and conclusions of the comprehensive review required under  
 30 section 5 of this 2025 Act, including recommendations:

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

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

37 (A) The Medicaid reimbursement rates for the home and community-based services  
 38 workforce; and

39 (B) Statements showing aggregate data regarding compensation paid and benefits pro-  
 40 vided to the home and community-based services workforce.

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

43 (d) A description of the current minimum standards established by the board and re-  
 44 commended changes to the standards, along with any supporting documentation for the  
 45 proposed changes.

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

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

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7 **BOARD AUTHORITY**

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9 **SECTION 7. Uniform training standards; training certification.** (1) The Home and  
10 Community-Based Services Workforce Standards Board shall establish by rule uniform  
11 training standards for the home and community-based services workforce. At a minimum,  
12 the standards must include a training curriculum that provides the following information to  
13 workers in the home and community-based services workforce:

14 (a) The applicable minimum standards established by the board under section 4 of this  
15 2025 Act.

16 (b) The rights and remedies afforded to the home and community-based services  
17 workforce, including the right to be protected against retaliation and the private right of  
18 action for violation of the board's standards.

19 (c) The duties and obligations of the board under sections 1 to 12 of this 2025 Act.

20 (d) Any other information that the board deems appropriate and necessary to facilitate  
21 compliance with the minimum standards established by the board under section 4 of this  
22 section.

23 (2) The board may adopt by rule uniform requirements, standards and criteria for certi-  
24 fying a worker organization to provide the training described under this section to the home  
25 and community-based services workforce.

26 (3) The board shall hold at least one public hearing for public input and deliberation be-  
27 fore the board adopts any rules establishing minimum training standards under this section.

28 **SECTION 8. Investigative authority.** (1) In order to determine any facts relevant to  
29 matters concerning implementation of and compliance with the minimum standards estab-  
30 lished by the Home and Community-Based Services Workforce Standards Board under sec-  
31 tion 4 of this 2025 Act, the board may:

32 (a) Issue subpoenas in the name of the board for the attendance of witnesses and the  
33 production of books, records and documents relating to matters before the board;

34 (b) Administer oaths; and

35 (c) Take or cause to be taken depositions within or without this state, as provided by law.

36 (2) The board's subpoenas shall be served by the chairperson of the board.

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38 **WORKER PROTECTIONS**

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40 **SECTION 9. Retaliation prohibited.** An employer may not terminate, discipline, penalize,  
41 retaliate or take any other adverse action against any worker from the home and  
42 community-based services workforce because the worker has:

43 (1) Inquired about or exercised any right afforded to a worker under sections 1 to 12 of  
44 this 2025 Act or under any minimum standards established by the board under section 4 of  
45 this 2025 Act.

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

3 (3) Participated in any training provided by a worker organization pursuant to section 7  
4 of this 2025 Act.

5 **SECTION 10. Remedies.** (1) A worker from the home and community-based services  
6 workforce or a worker organization may seek relief for an alleged violation of a minimum  
7 standard established by the Home and Community-Based Services Workforce Standards  
8 Board under section 4 of this 2025 Act by:

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

12 (b) Filing a complaint with the Commissioner of the Bureau of Labor and Industries in  
13 the manner provided by ORS 659A.820, not later than one year after the date of the alleged  
14 violation.

15 (2) Upon prevailing in an action under this section, the plaintiff may recover actual  
16 damages and the court shall award reasonable attorney fees and costs to the prevailing  
17 plaintiff.

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

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

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

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

26 (a) The rights of the workers with respect to the minimum standards established by the  
27 Home and Community-Based Services Workforce Standards Board under section 4 of this  
28 2025 Act.

29 (b) The duties and functions of the board.

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

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

33 (a) In the same language that the employer typically communicates with the worker; and

34 (b)(A) By posting the notice in a conspicuous location in the workplace; and

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

36  
37 MISCELLANEOUS

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39 **SECTION 13.** The unit and section captions used in this 2025 Act are provided only for  
40 the convenience of the reader and do not become part of the statutory law of this state or  
41 express any legislative intent in the enactment of this 2025 Act.  
42