

Senate Bill 1548

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Human Services, Mental Health and Recovery for Senator Sara Gelser Blouin)

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**.

Requires Department of Human Services to allow specified individuals receiving home- and community-based care to receive agency with choice services to perform employment-related functions with respect to workers employed by individuals to provide in-home care and services. Specifies criteria for agencies to be certified by department to provide agency with choice services. Includes workers providing agency with choice services as mandatory reporters of abuse.

Requires department to adopt rules to ensure fiscal transparency in, and high quality of, services provided to individuals with intellectual or developmental disabilities and specifies minimum requirements for rules.

Prohibits department and Oregon Health Authority from requiring certain applicants for initial license or certification to have sprinkler systems if applicant meets specified criteria. Sunsets January 2, 2026.

Prohibits department and authority from requiring certain applicants for renewal of license or certification to have sprinkler systems if applicant meets specified criteria. Sunsets January 2, 2036.

Requires department to submit various reports to certain committees of Legislative Assembly regarding options for community-based services, licensing fees and civil penalties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to community-based services; creating new provisions; amending ORS 124.050; and declaring
3 an emergency.

4 Whereas the Legislative Assembly finds that it is essential to support Oregonians with intel-
5 lectual or developmental disabilities to live and participate in their communities as independently
6 as possible and to ensure an array of services that empower and respect the individuals' choices and
7 dignity; and

8 Whereas workers who provide home- and community-based services often lack access to high
9 quality training or adequate compensation in the form of wages, health care benefits and retirement
10 benefits; and

11 Whereas meeting the growing demand for high quality home- and community-based services will
12 require workforce investments, including worker recruitment, retention and support and the devel-
13 opment of career opportunities; and

14 Whereas Oregon has an interest in preventing or mitigating any disruptions to home- and
15 community-based services; now, therefore,

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

SECTION 1. (1) As used in this section:

17
18 (a) **"Agency with choice services" means performing, on behalf of an individual, the fol-**
19 **lowing functions as the employer of record for direct support professionals who are providing**
20 **in-home services and supports to the individual:**

21 (A) **Coordinating the in-home services and supports with the individual or the individual's**
22 **representative;**

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 (B) For each direct support professional providing in-home services and supports to the
 2 individual, withholding, filing and paying income and employment-related taxes, including
 3 workers' compensation premiums and unemployment taxes;

4 (C) Verifying the qualifications of each direct support professional; and

5 (D) Providing other administrative and employment-related supports.

6 (b) "Individual" means a child or adult with an intellectual or developmental disability
 7 who receives in-home services and supports through the Department of Human Services.

8 (c) "Personal support worker" has the meaning given that term in ORS 410.600.

9 (d) "Worker" means a person employed by or under contract or other arrangement with
 10 an agency to provide agency with choice services.

11 (2) The department shall certify agencies to deliver agency with choice services as a
 12 community-based services option under ORS 427.007 (1)(d).

13 (3) The department shall adopt by rule:

14 (a) Minimum qualifications for agencies to be certified by the department to deliver
 15 agency with choice services; and

16 (b) Reimbursement rates for the services.

17 (4) Minimum qualifications for agencies certified to deliver agency with choice services
 18 include, but are not limited to:

19 (a) The ability to provide maximum support to individuals in exercising the individuals'
 20 rights and responsibilities under the agency with choice services model;

21 (b) A commitment to recruit and retain a high quality and diverse workforce to provide
 22 agency with choice services;

23 (c) A commitment to work with a broad coalition of stakeholders in an effort to under-
 24 stand the changing needs of the workforce and of individuals' needs, rights and preferences;

25 (d) The ability to meet the state's interest in preventing or mitigating disruptions to
 26 individuals' in-home services and supports; and

27 (e) The ability to implement an electronic visit verification system that complies with
 28 federal requirements or, in the absence of an electronic visit verification system, to monitor
 29 a statistically valid sample of each claim for reimbursement for the cost of services to the
 30 receipt of the services by the individual.

31 (5) The department may not certify an agency to provide agency with choice services if
 32 the owner of the agency or an executive officer of the agency has been convicted of Medicaid
 33 fraud in any state within the 25 year period prior to the certification.

34 (6) The department shall adopt rules requiring agencies certified to provide agency with
 35 choice services to ensure workers are offered wages and benefits that are at least
 36 commensurate with the standards in contracts with personal support workers.

37 **SECTION 2.** The Department of Human Services shall adopt rules to ensure fiscal
 38 transparency in the provision of community-based services to individuals with intellectual
 39 or developmental disabilities and to ensure individuals with intellectual or developmental
 40 disabilities receive high quality services from providers that are newly licensed or certified.
 41 At a minimum, the rules must establish, for providers of community-based services to indi-
 42 viduals with intellectual or developmental disabilities:

43 (1) Requirements to annually submit staffing data to a nationally standardized reporting
 44 survey organization specified by the department;

45 (2) Requirements to submit an annual report to the department that includes:

- 1 (a) A disclosure of executive compensation and benefits;
- 2 (b) A disclosure of starting, average and highest wages for direct support professional;
- 3 (c) A disclosure of the provider’s overhead expenses and expenditures; and
- 4 (d) Any other fiscal matters prescribed by the department;

5 (3) Requirements for providers to demonstrate wages and health benefits paid to direct
 6 support professionals delivering community-based supports comparably reflect any increases
 7 in rates approved by the Legislative Assembly or the department for the services;

8 (4) Criteria for conditions under which a provider may be prohibited from applying for a
 9 license or certificate;

10 (5) Criteria for the inclusion of information about the organizational history of an appli-
 11 cant for a new license or certification, not to exceed the 10 previous years; and

12 (6) A process for the consideration of the regulatory and safety compliance and opera-
 13 tional experience of all providers in this state or in any other jurisdiction when issuing an
 14 initial license or certification or renewing a license or certification.

15 **SECTION 3.** Notwithstanding ORS 443.760 or any Low-Rise Residential Dwelling Code re-
 16 quirements established pursuant to ORS 455.610, an applicant for an initial license or certi-
 17 fication to provide foster care or residential treatment for children under ORS chapter 418,
 18 to operate a foster family home under ORS chapter 419A or 419B or to operate an adult
 19 foster home, as defined in ORS 443.705, may not be required by the Department of Human
 20 Services or the Oregon Health Authority to have installed a commercial or residential
 21 sprinkler system if the applicant:

- 22 (1) Will be serving five or fewer individuals; and
- 23 (2) Meets all other fire, life and safety requirements established by the department or the
 24 authority by rule.

25 **SECTION 4.** Notwithstanding ORS 443.760 or any Low-Rise Residential Dwelling Code re-
 26 quirements established pursuant to ORS 455.610, an applicant for a renewal of a license or
 27 certification to provide foster care or residential treatment for children under ORS chapter
 28 418, to operate a foster family home under ORS chapter 419A or 419B or to operate an adult
 29 foster home, as defined in ORS 443.705, may not be required by the Department of Human
 30 Services or the Oregon Health Authority to have installed a commercial or residential
 31 sprinkler system if the applicant:

- 32 (1) Will be serving five or fewer individuals; and
- 33 (2) Meets all other fire, life and safety requirements established by the department or the
 34 authority by rule.

35 **SECTION 5.** No later than October 1, 2022, the Department of Human Services and the
 36 Oregon Health Authority shall provide to the interim committees of the Legislative Assembly
 37 related to human services and to health a report, in the manner provided in ORS 192.245,
 38 regarding the impact of residential sprinkler system requirements on programs and facilities
 39 regulated by the department and the authority. The report shall include, but not be limited
 40 to:

- 41 (1) The potential impact on capacity to serve individuals discharged from the Oregon
 42 State Hospital into community-based settings;
- 43 (2) The potential impact on capacity to serve individuals with physical, intellectual or
 44 developmental disabilities in community-based settings;
- 45 (3) The potential impact on capacity to serve seniors and aging Oregonians in

1 **community-based settings;**

2 **(4) The potential impact on capacity to serve children and youth in the child welfare and**
 3 **juvenile justice systems in family homes;**

4 **(5) The estimated cost of retrofitting existing residential facilities to comply with sprin-**
 5 **kler system mandates; and**

6 **(6) Proposals for how to implement modern standards for fire suppression efforts in a**
 7 **way that minimizes disruption of services for Oregonians in need of residential care, sup-**
 8 **ports or services.**

9 **SECTION 6. No later than October 1, 2022, the Department of Human Services shall re-**
 10 **port to the interim committees of the Legislative Assembly related to human services and**
 11 **to health, in the manner provided in ORS 192.245, options for community-based services of-**
 12 **fered by agencies with consumer-directed hiring of personal care workers and direct support**
 13 **workers. The report should include options for offering such programs to seniors and people**
 14 **with disabilities in this state and a description of models currently implemented by other**
 15 **states.**

16 **SECTION 7. No later than October 1, 2022, the Department of Human Services shall re-**
 17 **port to the interim committees of the Legislative Assembly related to human services and**
 18 **to health, in the manner provided in ORS 192.245, recommendations for modernizing the li-**
 19 **censing fee schedule and the administration of civil penalties related to services provided to**
 20 **individuals with intellectual or developmental disabilities including, at a minimum:**

21 **(1) How fees and penalties may be adjusted for inflation;**

22 **(2) Whether the department should have the authority to decrease or waive fees in cer-**
 23 **tain circumstances;**

24 **(3) Whether licensing fees should be required for agencies providing supported living,**
 25 **community living supports or other certifications and endorsements offered by the division**
 26 **of the department that is responsible for developmental disability services;**

27 **(4) Whether licensing fees should reflect the size of the agency or number of individuals**
 28 **served by the agency;**

29 **(5) The extent to which licensing fees cover the cost of licensing activities;**

30 **(6) Any legislative changes to simplify civil penalties or structure civil penalties to ensure**
 31 **fairness, equity and effectiveness in improving the quality of services to individuals with in-**
 32 **tellectual or developmental disabilities; and**

33 **(7) Any legislative changes necessary to implement modern, sustainable and equitable li-**
 34 **censing fee and civil penalty schedules.**

35 **SECTION 8. ORS 124.050 is amended to read:**

36 **124.050. As used in ORS 124.050 to 124.095:**

37 **(1) "Abuse" means one or more of the following:**

38 **(a) Any physical injury to an elderly person caused by other than accidental means, or which**
 39 **appears to be at variance with the explanation given of the injury.**

40 **(b) Neglect.**

41 **(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal**
 42 **or neglect of duties and obligations owed an elderly person by a caretaker or other person.**

43 **(d) Willful infliction of physical pain or injury upon an elderly person.**

44 **(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,**
 45 **163.465, 163.467 or 163.525.**

- 1 (f) Verbal abuse.
- 2 (g) Financial exploitation.
- 3 (h) Sexual abuse.
- 4 (i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
- 5 the person.
- 6 (j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of
- 7 restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities
- 8 that are consistent with an approved treatment plan or in connection with a court order.
- 9 (2) "Elderly person" means any person 65 years of age or older who is not subject to the pro-
- 10 visions of ORS 441.640 to 441.665.
- 11 (3) "Facility" means:
- 12 (a) A long term care facility as that term is defined in ORS 442.015.
- 13 (b) A residential facility as that term is defined in ORS 443.400, including but not limited to an
- 14 assisted living facility.
- 15 (c) An adult foster home as that term is defined in ORS 443.705.
- 16 (4) "Financial exploitation" means:
- 17 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
- 18 elderly person or a person with a disability.
- 19 (b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully
- 20 take or appropriate money or property of the person if the person would reasonably believe that the
- 21 threat conveyed would be carried out.
- 22 (c) Misappropriating, misusing or transferring without authorization any money from any ac-
- 23 count held jointly or singly by an elderly person or a person with a disability.
- 24 (d) Failing to use the income or assets of an elderly person or a person with a disability effec-
- 25 tively for the support and maintenance of the person.
- 26 (5) "Intimidation" means compelling or deterring conduct by threat.
- 27 (6) "Law enforcement agency" means:
- 28 (a) Any city or municipal police department.
- 29 (b) Any county sheriff's office.
- 30 (c) The Oregon State Police.
- 31 (d) Any district attorney.
- 32 (e) A police department established by a university under ORS 352.121 or 353.125.
- 33 (7) "Neglect" means failure to provide basic care or services that are necessary to maintain the
- 34 health or safety of an elderly person.
- 35 (8) "Person with a disability" means a person described in:
- 36 (a) ORS 410.040 (7); or
- 37 (b) ORS 410.715.
- 38 (9) "Public or private official" means:
- 39 (a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or
- 40 chiropractor, including any intern or resident.
- 41 (b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide
- 42 or employee of an in-home health service.
- 43 (c) Employee of the Department of Human Services or community developmental disabilities
- 44 program.
- 45 (d) Employee of the Oregon Health Authority, local health department or community mental

- 1 health program.
- 2 (e) Peace officer.
- 3 (f) Member of the clergy.
- 4 (g) Regulated social worker.
- 5 (h) Physical, speech or occupational therapist.
- 6 (i) Senior center employee.
- 7 (j) Information and referral or outreach worker.
- 8 (k) Licensed professional counselor or licensed marriage and family therapist.
- 9 (L) Elected official of a branch of government of this state or a state agency, board, commission
10 or department of a branch of government of this state or of a city, county or other political subdi-
11 vision in this state.
- 12 (m) Firefighter or emergency medical services provider.
- 13 (n) Psychologist.
- 14 (o) Provider of adult foster care or an employee of the provider.
- 15 (p) Audiologist.
- 16 (q) Speech-language pathologist.
- 17 (r) Attorney.
- 18 (s) Dentist.
- 19 (t) Optometrist.
- 20 (u) Chiropractor.
- 21 (v) Personal support worker, as defined in ORS 410.600.
- 22 (w) Home care worker, as defined in ORS 410.600.
- 23 (x) Referral agent, as defined in ORS 443.370.
- 24 **(y) A worker providing agency with choice services under section 1 of this 2022 Act.**
- 25 (10) “Services” includes but is not limited to the provision of food, clothing, medicine, housing,
26 medical services, assistance with bathing or personal hygiene or any other service essential to the
27 well-being of an elderly person.
- 28 (11)(a) “Sexual abuse” means:
- 29 (A) Sexual contact with an elderly person who does not consent or is considered incapable of
30 consenting to a sexual act under ORS 163.315;
- 31 (B) Verbal or physical harassment of a sexual nature, including but not limited to severe or
32 pervasive exposure to sexually explicit material or language;
- 33 (C) Sexual exploitation;
- 34 (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly per-
35 son served by the facility or caregiver; or
- 36 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 37 (b) “Sexual abuse” does not mean consensual sexual contact between an elderly person and:
- 38 (A) An employee of a facility who is also the spouse of the elderly person; or
- 39 (B) A paid caregiver.
- 40 (12) “Sexual contact” has the meaning given that term in ORS 163.305.
- 41 (13) “Verbal abuse” means to threaten significant physical or emotional harm to an elderly
42 person or a person with a disability through the use of:
- 43 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
- 44 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
45 sexual comments.

1 **SECTION 9.** The Department of Human Services shall adopt the rules described in sec-
2 tion 2 of this 2022 Act no later than October 1, 2023.

3 **SECTION 10.** (1) Section 3 of this 2022 Act is repealed on January 2, 2026.

4 (2) Section 4 of this 2022 Act is repealed on January 2, 2036.

5 (3) Sections 5, 6 and 7 of this 2022 Act are repealed on January 2, 2023.

6 **SECTION 11.** This 2022 Act being necessary for the immediate preservation of the public
7 peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect
8 on its passage.

9
