

CHAPTER 91

AN ACT

SB 1548

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

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

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

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

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

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

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

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

(A) Coordinating the schedules and responsibilities of direct support professionals who are providing in-home services and supports to the individual;

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

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

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

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

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

(3) The department shall adopt by rule:

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

(b) Reimbursement rates for the services.

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

(a) The ability to provide support for individuals in directing the individual's direct support professional and the day-to-day services of the direct support professional;

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

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

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

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

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

SECTION 2. (1) The Department of Human Services shall adopt rules to ensure fiscal transparency in the provision of community-based services to individuals with intellectual or developmental disabilities and to ensure individuals with intellectual or developmental disabilities receive high quality services from providers that are licensed, certified or endorsed by the department to provide community-based services. At a minimum, the rules must establish, for providers of community-based services to individuals with intellectual or developmental disabilities:

(a) Requirements to annually submit staffing data to a reporting survey organization specified by the department;

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

(A) A disclosure of executive compensation and benefits;

(B) A disclosure of starting, average and highest wages for direct support professionals that are employed by, under contract with or otherwise engaged with the provider to deliver community-based services to individuals with intellectual or developmental disabilities;

(C) A disclosure of the provider's overhead expenses and expenditures; and

(D) Any other fiscal matters prescribed by the department;

(c) Requirements to ensure that wages and health benefits paid to direct support profes-

sionals delivering community-based supports reflect any increase in rates approved by the Legislative Assembly for the purpose of improving wages and health benefits;

(d) Criteria for conditions under which a provider may be prohibited from applying for a license, certificate or endorsement;

(e) Criteria for the inclusion of information about the organizational history of an applicant for a new license, certification or endorsement, not to exceed the 10 previous years; and

(f) A process for the consideration of the regulatory and safety compliance and operational experience of all providers in this state or in any other jurisdiction when issuing an initial license, certification or endorsement or renewing a license, certification or endorsement.

(2) Rules adopted by the department must, to the greatest extent practicable, consolidate new reporting requirements with existing reporting requirements to avoid the need for providers to make duplicative reports of the same information.

SECTION 3. Notwithstanding any provision of the state building code, as defined in ORS 455.010, a single-family detached dwelling that is used to operate a residential training home, as defined in ORS 443.400, or an adult foster home, as defined in ORS 443.705, is not required to have installed an automatic sprinkler system if:

(1) The dwelling has been operated as a residential training home or an adult foster home pursuant to a license issued prior to July 1, 2024;

(2) The operator is licensed to serve five or fewer individuals in the dwelling; and

(3) The operator and the dwelling meet all other fire, life and safety requirements established by the Department of Human Services or the Oregon Health Authority by rule.

SECTION 4. No later than October 1, 2022, the Department of Human Services and the Oregon Health Authority shall provide to the interim committees of the Legislative Assembly related to human services and to health a report, in the manner provided in ORS 192.245, regarding the impact of residential sprinkler system requirements on programs and facilities regulated by the department and the authority. The report shall include, but not be limited to:

(1) The potential impact on capacity to serve individuals discharged from the Oregon State Hospital into community-based settings;

(2) The potential impact on capacity to serve individuals with physical, intellectual or developmental disabilities in community-based settings;

(3) The potential impact on capacity to serve seniors and aging Oregonians in community-based settings;

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

(5) The estimated cost of retrofitting existing residential facilities to comply with sprinkler system mandates; and

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

SECTION 5. No later than October 1, 2022, the Department of Human Services shall report to the interim committees of the Legislative Assembly related to human services and to health, in the manner provided in ORS 192.245, program options for community-based services for seniors and people with disabilities offered by agencies with consumer-directed hiring of personal care workers and direct support professionals. The report should include a description of models currently implemented by other states.

SECTION 6. No later than October 1, 2022, the Department of Human Services shall report to the interim committees of the Legislative Assembly related to human services and to health, in the manner provided in ORS 192.245, recommendations for modernizing the licensing, certification and endorsement fee schedules and the administration of civil penalties related to services provided to individuals with intellectual or developmental disabilities including, at a minimum:

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

(2) Whether the department should have the authority to decrease or waive fees in certain circumstances;

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

(4) Whether licensing, certification or endorsement fees should reflect the size of the agency or number of individuals served by the agency;

(5) The extent to which licensing, certification and endorsement fees cover the cost of licensing, certification and endorsement activities;

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

(7) Any legislative changes necessary to implement modern, sustainable and equitable li-

censing, certification and endorsement fee and civil penalty schedules.

SECTION 7. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

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

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

(b) Neglect.

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

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

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

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.121 or 353.125.

(7) "Neglect" means failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or chiropractor, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

(d) Employee of the Oregon Health Authority, local health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

(i) Senior center employee.

(j) Information and referral or outreach worker.

(k) Licensed professional counselor or licensed marriage and family therapist.

(L) Elected official of a branch of government of this state or a state agency, board, commission or department of a branch of government of this state or of a city, county or other political subdivision in this state.

(m) Firefighter or emergency medical services provider.

(n) Psychologist.

(o) Provider of adult foster care or an employee of the provider.

(p) Audiologist.

(q) Speech-language pathologist.

(r) Attorney.

(s) Dentist.

(t) Optometrist.

(u) Chiropractor.

(v) Personal support worker, as defined in ORS 410.600.

(w) Home care worker, as defined in ORS 410.600.

(x) Referral agent, as defined in ORS 443.370.

(y) A person providing agency with choice services under section 1 of this 2022 Act.

(10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe or pervasive exposure to sexually explicit material or language;

(C) Sexual exploitation;

(D) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and:

(A) An employee of a facility who is also the spouse of the elderly person; or

(B) A paid caregiver.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 8. The Department of Human Services shall adopt the rules described in section 2 of this 2022 Act no later than October 1, 2023.

SECTION 9. (1) Section 3 of this 2022 Act is repealed on January 2, 2026.

(2) Sections 4, 5 and 6 of this 2022 Act are repealed on January 2, 2023.

SECTION 10. Notwithstanding any other provision of law, the General Fund appropriation made to the Department of Human Services by section 1 (7), chapter 606, Oregon Laws 2021, for the biennium ending June 30, 2023, for intellectual/developmental disabilities programs, is increased by \$766,789 to implement the requirements of this 2022 Act.

SECTION 11. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (7), chapter 606, Oregon Laws 2021, for the biennium ending June 30, 2023, as the maximum limit for payment of expenses from federal funds collected or received by the Department of Human Services for intellectual/developmental disabilities programs, is increased by \$2,487,751 to implement the requirements of this 2022 Act.

SECTION 12. This 2022 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2022 Act takes effect on its passage.

Approved by the Governor March 23, 2022

Filed in the office of Secretary of State March 30, 2022

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