

D R A F T

SUMMARY

Requires Department of Human Services to establish minimum training standards for home care workers and personal support workers and to provide training. Directs department and Home Care Commission to maximize federal funding available to pay for training.

A BILL FOR AN ACT

1
2 Relating to training for care providers; creating new provisions; and amend-
3 ing ORS 124.050, 183.459, 192.365, 410.596, 410.600, 410.603, 410.604, 410.606,
4 410.607, 410.608, 410.612, 410.614, 410.619, 410.625, 410.631, 410.632, 419B.005,
5 430.735, 441.630, 443.004, 443.006, 653.601, 653.646, 656.039, 656.268 and
6 657.730 and section 4, chapter 796, Oregon Laws 2015.

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

8 **SECTION 1. Section 2 of this 2018 Act is added to and made a part**
9 **of ORS 410.595 to 410.625.**

10 **SECTION 2. (1) The Department of Human Services, acting on be-**
11 **half of and subject to the approval of the Home Care Commission,**
12 **shall adopt by rule minimum training standards for home care work-**
13 **ers and personal support workers and shall establish procedures for**
14 **testing home care workers and personal support workers on their**
15 **mastery of the skills and knowledge to be acquired through the**
16 **training.**

17 **(2) The department shall provide training on the mandatory train-**
18 **ing topics established under this subsection and on any other training**
19 **that the department or the commission deems appropriate for the**
20 **professionalization of home care workers and personal support work-**

1 **ers. The training provided pursuant to this section must include, but**
2 **is not limited to, training on each of the following topics:**

3 (a) **Safety and emergency measures.**

4 (b) **Understanding the requirements for providers paid with**
5 **Medicaid funds.**

6 (c) **Providing person-centered care.**

7 (d) **Understanding and addressing the physical and emotional needs**
8 **of the individual who is receiving care.**

9 (e) **Managing medications.**

10 (f) **Providing personal care and assistance with activities of daily**
11 **living.**

12 (3) **The training provided in accordance with this section must be**
13 **geographically accessible in all areas of this state and culturally ap-**
14 **propriate for workers of all language abilities.**

15 (4) **The department shall tailor the training provided under this**
16 **section to each worker type, including workers who are relatives of the**
17 **individuals receiving care, workers who provide respite care, experi-**
18 **enced workers and new workers.**

19 (5) **The department shall consult with the Developmental Disabili-**
20 **ties and Mental Health Committee, unions representing home care**
21 **workers and personal support workers and other stakeholders in the**
22 **adoption of rules to carry out the provisions of this section.**

23 **SECTION 3. The Home Care Commission, in cooperation with the**
24 **Department of Human Services, shall maximize all sources of federal**
25 **funding that is available to pay for the training described in section 2**
26 **of this 2018 Act.**

27 **SECTION 4. ORS 410.600 is amended to read:**

28 **410.600. As used in ORS 410.595 to 410.625:**

29 (1) **“Activities of community inclusion” includes but is not limited to**
30 **volunteer activities, employment, development of community life skills and**
31 **participation in social and recreational community events.**

1 (2) “Activities of daily living” includes but is not limited to the following:

- 2 (a) Bathing and personal hygiene;
- 3 (b) Dressing and grooming;
- 4 (c) Eating;
- 5 (d) Mobility;
- 6 (e) Bowel and bladder management; and
- 7 (f) Cognition.

8 (3) “Adult support services” means individually determined services, ac-
9 tivities and purchases, whether those services, activities and purchases are
10 necessary for an individual to live in the individual’s own home or the
11 individual’s family’s home or to fully participate in community life or work,
12 that:

13 (a) Complement existing services, activities or purchases available to the
14 individual;

15 (b) Are designed, selected and managed by the individual or the
16 individual’s legal representative;

17 (c) Are provided in accordance with an individualized plan; and

18 (d) Allow individuals to choose and have control over services and life
19 goals.

20 (4) “Area agency” has the meaning given that term in ORS 410.040.

21 (5) “Commission” means the Home Care Commission established and op-
22 erated pursuant to section 11, Article XV of the Oregon Constitution, and
23 ORS 410.595 to 410.625.

24 (6) “Elderly person” has the meaning given that term in ORS 410.040.

25 (7) “Home care registry” means the registry described in ORS 410.604
26 [(1)(d)] (1)(e).

27 (8) “Home care services” means assistance with activities of daily living,
28 activities of community inclusion and self-management provided by a home
29 care worker **or personal support worker** for an elderly person or a person
30 with a disability.

31 (9) “Home care worker” means **a person:**

1 [(a) *A person:*]

2 [(A)] (a)(A) Who is hired or selected by an elderly person or a person
3 with a physical disability or by a parent or guardian of an elderly person
4 or a person with a physical disability;

5 (B) Who receives moneys from the Department of Human Services for the
6 purpose of providing care to the elderly person or the person with a physical
7 disability;

8 (C) Whose compensation is funded in whole or in part by the department,
9 an area agency or other public agency; and

10 (D) Who provides either hourly or live-in home care services; **or**

11 [(b) *A personal support worker; or*]

12 [(c)] (b) [*A person*] Who provides home care services to private payers
13 through the program described in ORS 410.605.

14 (10) “Payment rates” means the cost to a private payer to purchase home
15 care services through the program described in ORS 410.605.

16 (11) “Person with a disability” means a person with a physical disability,
17 developmental disability or mental illness.

18 (12) “Personal support worker” means a person:

19 (a) Who is hired or selected by a person with a developmental disability
20 or mental illness or a parent or guardian of a person with a developmental
21 disability or mental illness;

22 (b) Who receives moneys from the department for the purpose of providing
23 care to the person with a developmental disability or mental illness;

24 (c) Whose compensation is provided in whole or in part through the de-
25 partment, a support services brokerage or other public agency; and

26 (d) Who provides home care services in the home or community.

27 (13) “Private pay home care worker” means a home care worker who
28 provides home care services purchased from the commission by a private
29 payer through the program described in ORS 410.605.

30 (14)(a) “Private payer” means an individual who purchases from the
31 commission home care services that are not otherwise covered by the medical

1 assistance program.

2 (b) "Private payer" does not include the Home Care Commission, the De-
3 partment of Human Services, the Oregon Health Authority, an area agency
4 or a support services brokerage.

5 (15) "Self-management" includes but is not limited to the following ac-
6 tivities, other than activities of daily living, required by an individual to
7 continue living independently in the individual's own home:

8 (a) Medication and oxygen management;

9 (b) Transportation;

10 (c) Meal preparation;

11 (d) Shopping; and

12 (e) Client-focused general household work.

13 (16) "Support services brokerage" means an entity that performs the
14 functions associated with the planning and implementation of adult support
15 services, including the provision of services and the arrangement of activities
16 and purchases, for the purpose of maximizing individual choice and self-
17 determination for persons with developmental disabilities or mental illnesses.

18 **SECTION 5.** ORS 410.603 is amended to read:

19 410.603. (1) The Home Care Commission shall create a Developmental
20 Disabilities and Mental Health Committee.

21 (2) The committee shall provide information and make recommendations
22 to the commission **and to the Department of Human Services** on:

23 (a) Methods of improving the quality of services available to persons with
24 developmental disabilities or mental illnesses and the family members of
25 persons with developmental disabilities or mental illnesses;

26 (b) Means of ensuring that an adequate amount of services are available
27 to persons with developmental disabilities or mental illnesses and the family
28 members of persons with developmental disabilities or mental illnesses; and

29 (c) All the duties and functions under ORS 410.595 to 410.625 as those
30 duties and functions pertain to persons with developmental disabilities or
31 mental illnesses and the family members of persons with developmental dis-

1 abilities or mental illnesses, including but not limited to:

2 (A) Qualifications for personal support workers;

3 (B) Registration of personal support workers;

4 (C) Referrals for routine, emergency and respite care;

5 (D) Training opportunities for personal support workers **including, but**
6 **not limited to, the training described in section 2 of this 2018 Act;** and

7 (E) Collective bargaining.

8 (3) The commission **and the department** shall consider the recommen-
9 dations of the committee. When the commission **or the department** does not
10 follow the recommendations of the committee, the commission **or the de-**
11 **partment** shall inform the committee of the reasons for not following the
12 recommendations.

13 (4) The commission shall appoint members to the committee. In appointing
14 members to the committee, the commission shall include at least one:

15 (a) Consumer of services, activities or purchases available to persons with
16 developmental disabilities;

17 (b) Consumer of services, activities or purchases available to persons with
18 mental illnesses;

19 (c) Family member of a person with a developmental disability;

20 (d) Family member of a person with a mental illness;

21 (e) Advocate for persons with developmental disabilities or mental ill-
22 nesses;

23 (f) Personal support worker;

24 (g) Representative from an agency that assists persons with developmental
25 disabilities or mental illnesses in finding and arranging resources for home
26 care services; and

27 (h) Representative from a support services brokerage that assists persons
28 with developmental disabilities or mental illnesses in finding and arranging
29 resources for home care services.

30 **SECTION 6.** ORS 410.604 is amended to read:

31 410.604. (1) The Home Care Commission shall ensure the quality of home

1 care services by:

2 (a) Establishing qualifications for home care workers **and personal**
3 **support workers**, with the advice and consent of the Department of Human
4 Services, to ensure the effective delivery of home care services by a qualified,
5 committed, experienced and well-trained [*home care*] workforce;

6 (b) Conducting orientation sessions for home care workers **and personal**
7 **support workers**;

8 (c) [*Establishing training requirements for home care workers, including*
9 *personal support workers, as the commission deems appropriate, and*
10 *providing*] **Ensuring** training opportunities for home care workers and **per-**
11 **sonal support workers in accordance with section 2 of this 2018 Act**;

12 (d) **Providing training opportunities to** elderly persons and persons
13 with disabilities who employ home care workers or personal support workers;

14 [(d)] (e) Establishing the home care registry and maintaining the registry
15 with qualified home care workers **and personal support workers**;

16 [(e)] (f) Providing routine, emergency and respite referrals of home care
17 workers **and personal support workers**;

18 [(f)] (g) Entering into contracts with public and private organizations and
19 individuals for the purpose of obtaining or developing training materials and
20 curriculum or other services as may be needed by the commission;

21 [(g)] (h) Establishing occupational health and safety standards for home
22 care workers **and personal support workers**, in accordance with ORS
23 654.003 (3), and informing home care workers **and personal support work-**
24 **ers** of the standards; and

25 [(h)] (i) Working on its own, if resources are available, or cooperatively
26 with area agencies and state and local agencies to accomplish the duties
27 listed in paragraphs (a) to [(g)] (h) of this subsection.

28 (2)(a) The commission shall enter into an interagency agreement with the
29 department to contract for a department employee to serve as executive di-
30 rector of the commission. The executive director shall be appointed by the
31 Director of Human Services in consultation with the Governor and subject

1 to approval by the commission, and shall serve at the pleasure of the Direc-
2 tor of Human Services. The commission may delegate to the executive di-
3 rector the authority to act on behalf of the commission to carry out its
4 duties and responsibilities, including but not limited to:

5 (A) Entering into contracts or agreements; and

6 (B) Taking reasonable or necessary actions related to the commission's
7 role as employer of record for home care workers **and personal support**
8 **workers** under ORS 410.612.

9 (b) The commission shall enter into an interagency agreement with the
10 department for carrying out any of the duties or functions of the commission,
11 for department expenditures and for the provision of staff support by the
12 department.

13 (3) When conducting its activities, and in making decisions relating to
14 those activities, the commission shall first consider the effect of its activities
15 and decisions on:

16 (a) Improving the quality of service delivered by home care workers **and**
17 **personal support workers;**

18 (b) Ensuring adequate hours of service are provided to elderly persons and
19 persons with disabilities by home care workers **and personal support**
20 **workers;** and

21 (c) Ensuring that services, activities and purchases that are purchased
22 by elderly persons and persons with disabilities other than home care ser-
23 vices, including adult support services, are not compromised or diminished.

24 (4) The commission shall work with culturally diverse community-based
25 organizations to train and certify community health workers and personal
26 health navigators. The workers and navigators shall work as part of a
27 multidisciplinary team under the direction of a licensed or certified health
28 care professional. The commission shall recruit qualified home care workers
29 **and personal support workers** who desire to be trained and certified as
30 community health workers or personal health navigators.

31 (5) The commission shall ensure that each coordinated care organization

1 honors all of the terms and conditions of employment established by the
2 commission with respect to the community health workers and personal
3 health navigators referred by the commission. This subsection does not re-
4 quire a coordinated care organization to employ or contract with community
5 health workers and personal health navigators certified by the commission
6 so long as the community health workers and personal health navigators
7 employed or otherwise retained by the organization meet competency stan-
8 dards established by the authority under ORS 414.665.

9 (6) The commission has the authority to contract for services, lease, ac-
10 quire, hold, own, encumber, insure, sell, replace, deal in and with and dispose
11 of real and personal property in its own name.

12 (7) As used in this section, “community health worker,” “coordinated care
13 organization” and “personal health navigator” have the meanings given
14 those terms in ORS 414.025.

15 **SECTION 7.** ORS 124.050, as operative until July 1, 2018, is amended to
16 read:

17 124.050. As used in ORS 124.050 to 124.095:

18 (1) “Abuse” means one or more of the following:

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

22 (b) Neglect.

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

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

27 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
28 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

29 (f) Verbal abuse.

30 (g) Financial exploitation.

31 (h) Sexual abuse.

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

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

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

9 (3) "Facility" means:

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

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

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

14 (4) "Financial exploitation" means:

15 (a) Wrongfully taking the assets, funds or property belonging to or in-
16 tended for the use of an elderly person or a person with a disability.

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

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

24 (d) Failing to use the income or assets of an elderly person or a person
25 with a disability effectively 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.

1 (e) A police department established by a university under ORS 352.121 or
2 353.125.

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

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

6 (a) ORS 410.040 (7); or

7 (b) ORS 410.715.

8 (9) "Public or private official" means:

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

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

13 (c) Employee of the Department of Human Services or community devel-
14 opmental disabilities program.

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

17 (e) Peace officer.

18 (f) Member of the clergy.

19 (g) Regulated social worker.

20 (h) Physical, speech or occupational therapist.

21 (i) Senior center employee.

22 (j) Information and referral or outreach worker.

23 (k) Licensed professional counselor or licensed marriage and family ther-
24 apist.

25 (L) Member of the Legislative Assembly.

26 (m) Firefighter or emergency medical services provider.

27 (n) Psychologist.

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

29 (p) Audiologist.

30 (q) Speech-language pathologist.

31 (r) Attorney.

1 (s) Dentist.

2 (t) Optometrist.

3 (u) Chiropractor.

4 (v) Personal support worker, as defined [*by rule adopted by the Home Care*
5 *Commission*] **in ORS 410.600.**

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

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

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

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

14 (B) Verbal or physical harassment of a sexual nature, including but not
15 limited to severe or pervasive exposure to sexually explicit material or lan-
16 guage;

17 (C) Sexual exploitation;

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

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

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

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

26 (B) A paid caregiver.

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

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

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

1 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
2 elty or inappropriate sexual comments.

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

4 124.050. As used in ORS 124.050 to 124.095:

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

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

9 (b) Neglect.

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

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

14 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
15 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

16 (f) Verbal abuse.

17 (g) Financial exploitation.

18 (h) Sexual abuse.

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

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

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

27 (3) "Facility" means:

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

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

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

1 (4) “Financial exploitation” means:

2 (a) Wrongfully taking the assets, funds or property belonging to or in-
3 tended for the use of an elderly person or a person with a disability.

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

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

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

13 (5) “Intimidation” means compelling or deterring conduct by threat.

14 (6) “Law enforcement agency” means:

15 (a) Any city or municipal police department.

16 (b) Any county sheriff’s office.

17 (c) The Oregon State Police.

18 (d) Any district attorney.

19 (e) A police department established by a university under ORS 352.121 or
20 353.125.

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

23 (8) “Person with a disability” means a person described in:

24 (a) ORS 410.040 (7); or

25 (b) ORS 410.715.

26 (9) “Public or private official” means:

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

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

31 (c) Employee of the Department of Human Services or community devel-

1 opmental disabilities program.

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

4 (e) Peace officer.

5 (f) Member of the clergy.

6 (g) Regulated social worker.

7 (h) Physical, speech or occupational therapist.

8 (i) Senior center employee.

9 (j) Information and referral or outreach worker.

10 (k) Licensed professional counselor or licensed marriage and family ther-
11 apist.

12 (L) Member of the Legislative Assembly.

13 (m) Firefighter or emergency medical services provider.

14 (n) Psychologist.

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

16 (p) Audiologist.

17 (q) Speech-language pathologist.

18 (r) Attorney.

19 (s) Dentist.

20 (t) Optometrist.

21 (u) Chiropractor.

22 (v) Personal support worker, as defined [*by rule adopted by the Home Care*
23 *Commission*] **in ORS 410.600.**

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

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

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

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

31 (A) Sexual contact with an elderly person who does not consent or is

1 considered incapable of consenting to a sexual act under ORS 163.315;

2 (B) Verbal or physical harassment of a sexual nature, including but not
3 limited to severe or pervasive exposure to sexually explicit material or lan-
4 guage;

5 (C) Sexual exploitation;

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

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

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

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

14 (B) A paid caregiver.

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

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

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

20 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
21 elty or inappropriate sexual comments.

22 **SECTION 9.** ORS 183.459 is amended to read:

23 183.459. (1) Notwithstanding ORS 8.690, 9.160 and 9.320, a home care
24 worker **or personal support worker**, as defined in ORS 410.600, who is a
25 party in a contested case hearing conducted by the Department of Human
26 Services may be represented in the hearing by a labor union representative.

27 (2) The hearing officer at a contested case hearing in which a labor union
28 representative appears under the provisions of this section shall allow the
29 representative to present evidence, examine and cross-examine witnesses and
30 make arguments relating to the:

31 (a) Application of statutes and rules to the facts in the contested case;

- 1 (b) Actions taken by the agency in the past in similar situations;
- 2 (c) Literal meaning of the statutes or rules at issue in the contested case;
- 3 (d) Admissibility of evidence; and
- 4 (e) Proper procedures to be used in the contested case hearing.

5 **SECTION 10.** ORS 192.365 is amended to read:

6 192.365. (1) Upon compliance with ORS 192.363, a public body that is the
7 custodian of or is otherwise in possession of the following information per-
8 taining to a home care worker **or personal support worker** as defined in
9 ORS 410.600, an operator of a child care facility as defined in ORS 329A.250,
10 an exempt family child care provider as defined in ORS 329A.430 or an op-
11 erator of an adult foster home as defined in ORS 443.705 shall disclose that
12 information in response to a request to inspect public records under ORS
13 192.311 to 192.478:

- 14 (a) Residential address and telephone numbers;
- 15 (b) Personal electronic mail addresses and personal cellular telephone
16 numbers;
- 17 (c) Social Security numbers and employer-issued identification card num-
18 bers; and
- 19 (d) Emergency contact information.

20 (2) Subsection (1) of this section does not apply to the Judicial Depart-
21 ment or the Department of Transportation or to any records in the custody
22 of the Judicial Department or the Department of Transportation.

23 **SECTION 11.** ORS 410.596 is amended to read:

24 410.596. (1) The Home Care Commission shall adopt a statewide plan to:

- 25 (a) Increase participation in the home care registry maintained by the
26 commission under ORS 410.604;
- 27 (b) Increase the number of home care workers **and personal support**
28 **workers** in this state in order to meet the need that will arise with the im-
29 plementation of the Fair Labor Standards Act;
- 30 (c) Continue the commission's work to create a career ladder for home
31 care workers **and personal support workers** so that they may become

1 greater skilled and gain certifications from the commission to provide ad-
2 vanced or extensive medical or behavioral health services and support; and

3 (d) Continue in-person home care worker **and personal support worker**
4 orientation sessions in each geographic region of this state.

5 (2) The plan must include an outreach and marketing strategy to recruit
6 home care workers **and personal support workers** to provide home care
7 services and support to individuals who require higher levels of services and
8 support.

9 (3) The commission shall contract with a public or private entity with
10 appropriate expertise to recommend the design for the statewide plan de-
11 scribed in this section.

12 **SECTION 12.** ORS 410.606 is amended to read:

13 410.606. (1)(a) The Department of Human Services, an area agency, other
14 public agency or support services brokerage shall provide to an individual
15 seeking a home care worker **or a personal support worker** names of qual-
16 ified individuals, in the appropriate geographic area, who have been placed
17 on the home care registry.

18 (b) The Home Care Commission may adopt criteria for referrals in order
19 to ensure the effective delivery of home care services from qualified, com-
20 mitted, experienced and well-trained home care workers **and personal sup-**
21 **port workers** and to ensure that, for private pay home care workers, the
22 requirements of ORS 410.605 are met.

23 (2) To facilitate the development and maintenance of the home care reg-
24 istry and any training opportunity offered by the commission, and to meet
25 the requirements of providing workers' compensation, the department, the
26 Oregon Health Authority, area agencies, other public agencies and support
27 services brokerages shall report to the commission:

28 (a) The name and address of any home care worker **or personal support**
29 **worker**:

30 (A) Who provides home care services;

31 (B) Whose compensation is funded in whole or in part with state funds;

1 and

2 (C) Who is not listed on the registry;

3 (b) The name of the program under which the home care worker **or per-**
4 **sonal support worker** provides the home care services;

5 (c) Any other data required by the commission for training and registry
6 purposes; and

7 (d) Any other data required for workers' compensation purposes.

8 (3) If necessary to collect the information required by subsection (2) of
9 this section:

10 (a) The commission shall request the required information from the de-
11 partment, the authority or any agency or support services brokerage that
12 provides or arranges payroll services for home care workers **or personal**
13 **support workers**; and

14 (b) The department, authority, agency or support services brokerage shall
15 provide the commission with the requested information.

16 (4) If the commission, with the assistance of the department, determines
17 that the supply of home care workers is inadequate to meet the needs of
18 medical assistance recipients who qualify for home care services, the com-
19 mission may suspend or reduce the number of referrals of home care workers
20 under the program described in ORS 410.605.

21 **SECTION 13.** ORS 410.607 is amended to read:

22 410.607. (1) The Home Care Commission shall convene a subcommittee of
23 the commission to define and establish classifications of home care workers
24 **and personal support workers**. The classifications shall be based on the
25 [*home care*] worker's **training**, level of skill and the scope of the services
26 provided by the worker.

27 (2) The commission shall establish payment rates for each classification
28 of home care worker participating in the program described in ORS 410.605.

29 **SECTION 14.** ORS 410.608 is amended to read:

30 410.608. (1) An elderly person or a person with a disability who hires a
31 home care worker **or personal support worker** has the right to select the

1 home care worker **or personal support worker**, including a family member.

2 (2) An elderly person or a person with a disability who hires a home care
3 worker **or personal support worker** has the right to terminate the em-
4 ployment of the home care worker **or personal support worker** at any time
5 and for any reason.

6 (3) The Department of Human Services shall determine the eligibility of
7 an elderly person or a person with a disability to receive home care services
8 under the Medicaid program and state-funded long term care services.

9 **SECTION 15.** ORS 410.612 is amended to read:

10 410.612. (1) For purposes of collective bargaining under ORS 243.650 to
11 243.782, the Home Care Commission is the employer of record for home care
12 workers **and personal support workers**.

13 (2) Except as provided in ORS 410.614 and 410.619, home care workers **and**
14 **personal support workers** may not be considered to be employees of the
15 State of Oregon, an area agency or other public agency.

16 (3) The Oregon Department of Administrative Services shall represent the
17 commission in collective bargaining negotiations with the certified or re-
18 cognized exclusive representatives of all appropriate bargaining units of
19 home care workers **and personal support workers**. The department is au-
20 thorized to agree to terms and conditions of collective bargaining agreements
21 on behalf of the commission and the Department of Human Services.

22 **SECTION 16.** ORS 410.614 is amended to read:

23 410.614. (1) Notwithstanding ORS 243.650 (19) and (20), the Home Care
24 Commission shall be considered a public employer and home care workers
25 **and personal support workers** shall be considered public employees gov-
26 erned by ORS 243.650 to 243.782.

27 (2) Home care workers **and personal support workers** have the right to
28 form, join and participate in the activities of labor organizations of their
29 own choosing for the purpose of representation and collective bargaining
30 with the commission on matters concerning employment relations. These
31 rights shall be exercised in accordance with the rights granted to public

1 employees with mediation and interest arbitration under ORS 243.742 as the
2 method of concluding the collective bargaining process.

3 (3) Home care workers **and personal support workers** are not public
4 employees with respect to the Public Employees Retirement System, the
5 Oregon Public Service Retirement Plan or the Public Employees' Benefit
6 Board.

7 (4) Home care workers **and personal support workers** do not have the
8 right to strike.

9 **SECTION 17.** ORS 410.619 is amended to read:

10 410.619. (1) A home care worker **or personal support worker** who is not
11 otherwise employed by the Home Care Commission, the Department of Hu-
12 man Services, the Oregon Health Authority, an area agency or a support
13 services brokerage shall not be deemed to be an employee of the state,
14 whether or not the state selects the home care worker **or personal support**
15 **worker** for employment or exercises any direction or control over the home
16 care worker **or personal support worker**, for the purpose of the state's li-
17 ability for the [*home care worker's*] actions **of the home care worker or**
18 **personal support worker**.

19 (2) The state shall be deemed an employer of home care workers **or per-**
20 **sonal support workers** for the purposes of:

21 (a) ORS 410.605, 410.606, 410.612 and 410.614; and

22 (b) ORS chapter 657, except as provided in ORS 657.730 (4).

23 **SECTION 18.** ORS 410.625 is amended to read:

24 410.625. (1) In carrying out its duties under ORS 410.595 to 410.625, the
25 Home Care Commission may:

26 (a) Enter into an interagency agreement or a contract with any state
27 agency for the performance of the commission's duties or the leasing of office
28 space;

29 (b) Provide nonemployee compensation to home care workers **and per-**
30 **sonal support workers** or prospective home care workers **and personal**
31 **support workers** who attend training sessions approved or sponsored by the

1 commission;

2 (c) On behalf of an elderly person or a person with a disability who hires
3 a home care worker **or personal support worker** through the home care
4 registry, elect workers' compensation coverage or arrange for health insur-
5 ance coverage, including group coverage, for the person's home care workers
6 **or personal support workers**; and

7 (d) As prescribed by rule, charge fees to and collect fees from persons who
8 attend training sessions sponsored by the commission and who currently are
9 not home care workers **or personal support workers**.

10 (2) The commission and the Department of Human Services shall confer
11 as to the amount of funds necessary to carry out the duties and activities
12 of the commission, and the department shall include the agreed upon amount
13 in the Governor's budget.

14 (3) The commission may apply for and receive gifts and grants from any
15 public or private source.

16 (4) The commission may award grants from funds appropriated by the
17 Legislative Assembly to the department for allocation to the commission or
18 from funds otherwise available from any other source for the purpose of
19 carrying out the duties of the commission under ORS 410.595 to 410.625.

20 **SECTION 19.** ORS 410.631 is amended to read:

21 410.631. Notwithstanding ORS 653.295, a noncompetition agreement as
22 defined in ORS 653.295 made in the context of an employment relationship
23 or contract with a home care worker **or personal support worker**, as de-
24 fined in ORS 410.600, is voidable by the home care worker **or personal**
25 **support worker** and may not be enforced by a court of this state.

26 **SECTION 20.** ORS 410.632 is amended to read:

27 410.632. A covenant between an employee and an employer not to solicit
28 employees of the employer or solicit or transact business with customers of
29 the employer made in the context of an employment relationship or contract
30 with a home care worker **or personal support worker**, as defined in ORS
31 410.600, is voidable by the home care worker **or personal support worker**

1 and may not be enforced by a court of this state.

2 **SECTION 21.** ORS 419B.005 is amended to read:

3 419B.005. As used in ORS 419B.005 to 419B.050, unless the context re-
4 quires otherwise:

5 (1)(a) "Abuse" means:

6 (A) Any assault, as defined in ORS chapter 163, of a child and any phys-
7 ical injury to a child which has been caused by other than accidental means,
8 including any injury which appears to be at variance with the explanation
9 given of the injury.

10 (B) Any mental injury to a child, which shall include only observable and
11 substantial impairment of the child's mental or psychological ability to
12 function caused by cruelty to the child, with due regard to the culture of the
13 child.

14 (C) Rape of a child, which includes but is not limited to rape, sodomy,
15 unlawful sexual penetration and incest, as those acts are described in ORS
16 chapter 163.

17 (D) Sexual abuse, as described in ORS chapter 163.

18 (E) Sexual exploitation, including but not limited to:

19 (i) Contributing to the sexual delinquency of a minor, as defined in ORS
20 chapter 163, and any other conduct which allows, employs, authorizes, per-
21 mits, induces or encourages a child to engage in the performing for people
22 to observe or the photographing, filming, tape recording or other exhibition
23 which, in whole or in part, depicts sexual conduct or contact, as defined in
24 ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving
25 a child or rape of a child, but not including any conduct which is part of
26 any investigation conducted pursuant to ORS 419B.020 or which is designed
27 to serve educational or other legitimate purposes; and

28 (ii) Allowing, permitting, encouraging or hiring a child to engage in
29 prostitution as described in ORS 167.007 or a commercial sex act as defined
30 in ORS 163.266, to purchase sex with a minor as described in ORS 163.413
31 or to engage in commercial sexual solicitation as described in ORS 167.008.

1 (F) Negligent treatment or maltreatment of a child, including but not
2 limited to the failure to provide adequate food, clothing, shelter or medical
3 care that is likely to endanger the health or welfare of the child.

4 (G) Threatened harm to a child, which means subjecting a child to a
5 substantial risk of harm to the child's health or welfare.

6 (H) Buying or selling a person under 18 years of age as described in ORS
7 163.537.

8 (I) Permitting a person under 18 years of age to enter or remain in or
9 upon premises where methamphetamines are being manufactured.

10 (J) Unlawful exposure to a controlled substance, as defined in ORS
11 475.005, or to the unlawful manufacturing of a cannabinoid extract, as de-
12 fined in ORS 475B.015, that subjects a child to a substantial risk of harm to
13 the child's health or safety.

14 (b) "Abuse" does not include reasonable discipline unless the discipline
15 results in one of the conditions described in paragraph (a) of this subsection.

16 (2) "Child" means an unmarried person who:

17 (a) Is under 18 years of age; or

18 (b) Is under 21 years of age and residing in or receiving care or services
19 at a child-caring agency as that term is defined in ORS 418.205.

20 (3) "Higher education institution" means:

21 (a) A community college as defined in ORS 341.005;

22 (b) A public university listed in ORS 352.002;

23 (c) The Oregon Health and Science University; and

24 (d) A private institution of higher education located in Oregon.

25 (4) "Law enforcement agency" means:

26 (a) A city or municipal police department.

27 (b) A county sheriff's office.

28 (c) The Oregon State Police.

29 (d) A police department established by a university under ORS 352.121 or
30 353.125.

31 (e) A county juvenile department.

1 (5) "Public or private official" means:

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

4 (b) Dentist.

5 (c) School employee, including an employee of a higher education insti-
6 tution.

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

9 (e) Employee of the Department of Human Services, Oregon Health Au-
10 thority, Early Learning Division, Youth Development Division, Office of
11 Child Care, the Oregon Youth Authority, a local health department, a com-
12 munity mental health program, a community developmental disabilities pro-
13 gram, a county juvenile department, a child-caring agency as that term is
14 defined in ORS 418.205 or an alcohol and drug treatment program.

15 (f) Peace officer.

16 (g) Psychologist.

17 (h) Member of the clergy.

18 (i) Regulated social worker.

19 (j) Optometrist.

20 (k) Chiropractor.

21 (L) Certified provider of foster care, or an employee thereof.

22 (m) Attorney.

23 (n) Licensed professional counselor.

24 (o) Licensed marriage and family therapist.

25 (p) Firefighter or emergency medical services provider.

26 (q) A court appointed special advocate, as defined in ORS 419A.004.

27 (r) A child care provider registered or certified under ORS 329A.030 and
28 329A.250 to 329A.450.

29 (s) Member of the Legislative Assembly.

30 (t) Physical, speech or occupational therapist.

31 (u) Audiologist.

1 (v) Speech-language pathologist.

2 (w) Employee of the Teacher Standards and Practices Commission directly
3 involved in investigations or discipline by the commission.

4 (x) Pharmacist.

5 (y) An operator of a preschool recorded program under ORS 329A.255.

6 (z) An operator of a school-age recorded program under ORS 329A.257.

7 (aa) Employee of a private agency or organization facilitating the pro-
8 vision of respite services, as defined in ORS 418.205, for parents pursuant to
9 a properly executed power of attorney under ORS 109.056.

10 (bb) Employee of a public or private organization providing child-related
11 services or activities:

12 (A) Including but not limited to youth groups or centers, scout groups or
13 camps, summer or day camps, survival camps or groups, centers or camps
14 that are operated under the guidance, supervision or auspices of religious,
15 public or private educational systems or community service organizations;
16 and

17 (B) Excluding community-based, nonprofit organizations whose primary
18 purpose is to provide confidential, direct services to victims of domestic vi-
19 olence, sexual assault, stalking or human trafficking.

20 (cc) A coach, assistant coach or trainer of an amateur, semiprofessional
21 or professional athlete, if compensated and if the athlete is a child.

22 (dd) Personal support worker, as defined [*by rule adopted by the Home*
23 *Care Commission*] **in ORS 410.600.**

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

25 **SECTION 22.** ORS 430.735 is amended to read:

26 430.735. As used in ORS 430.735 to 430.765:

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

28 (a) Abandonment, including desertion or willful forsaking of a person
29 with a developmental disability or the withdrawal or neglect of duties and
30 obligations owed a person with a developmental disability by a caregiver or
31 other person.

1 (b) Any physical injury to an adult caused by other than accidental
2 means, or that appears to be at variance with the explanation given of the
3 injury.

4 (c) Willful infliction of physical pain or injury upon an adult.

5 (d) Sexual abuse of an adult.

6 (e) Neglect.

7 (f) Verbal abuse of a person with a developmental disability.

8 (g) Financial exploitation of a person with a developmental disability.

9 (h) Involuntary seclusion of a person with a developmental disability for
10 the convenience of the caregiver or to discipline the person.

11 (i) A wrongful use of a physical or chemical restraint upon a person with
12 a developmental disability, excluding an act of restraint prescribed by a
13 physician licensed under ORS chapter 677, physician assistant licensed under
14 ORS 677.505 to 677.525, naturopathic physician licensed under ORS chapter
15 685 or nurse practitioner licensed under ORS 678.375 to 678.390 and any
16 treatment activities that are consistent with an approved treatment plan or
17 in connection with a court order.

18 (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,
19 163.415, 163.425, 163.427, 163.465 or 163.467.

20 (k) Any death of an adult caused by other than accidental or natural
21 means.

22 (2) "Adult" means a person 18 years of age or older with:

23 (a) A developmental disability who is currently receiving services from a
24 community program or facility or was previously determined eligible for
25 services as an adult by a community program or facility; or

26 (b) A mental illness who is receiving services from a community program
27 or facility.

28 (3) "Adult protective services" means the necessary actions taken to pre-
29 vent abuse or exploitation of an adult, to prevent self-destructive acts and
30 to safeguard an adult's person, property and funds, including petitioning for
31 a protective order as defined in ORS 125.005. Any actions taken to protect

1 an adult shall be undertaken in a manner that is least intrusive to the adult
2 and provides for the greatest degree of independence.

3 (4) "Caregiver" means an individual, whether paid or unpaid, or a facility
4 that has assumed responsibility for all or a portion of the care of an adult
5 as a result of a contract or agreement.

6 (5) "Community program" means a community mental health program or
7 a community developmental disabilities program as established in ORS
8 430.610 to 430.695.

9 (6) "Facility" means a residential treatment home or facility, residential
10 care facility, adult foster home, residential training home or facility or crisis
11 respite facility.

12 (7) "Financial exploitation" means:

13 (a) Wrongfully taking the assets, funds or property belonging to or in-
14 tended for the use of a person with a developmental disability.

15 (b) Alarming a person with a developmental disability by conveying a
16 threat to wrongfully take or appropriate money or property of the person if
17 the person would reasonably believe that the threat conveyed would be car-
18 ried out.

19 (c) Misappropriating, misusing or transferring without authorization any
20 money from any account held jointly or singly by a person with a develop-
21 mental disability.

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

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

25 (9) "Law enforcement agency" means:

26 (a) Any city or municipal police department;

27 (b) A police department established by a university under ORS 352.121 or
28 353.125;

29 (c) Any county sheriff's office;

30 (d) The Oregon State Police; or

31 (e) Any district attorney.

1 (10) "Neglect" means:

2 (a) Failure to provide the care, supervision or services necessary to
3 maintain the physical and mental health of a person with a developmental
4 disability that may result in physical harm or significant emotional harm to
5 the person;

6 (b) The failure of a caregiver to make a reasonable effort to protect a
7 person with a developmental disability from abuse; or

8 (c) Withholding of services necessary to maintain the health and well-
9 being of an adult that leads to physical harm of an adult.

10 (11) "Person with a developmental disability" means a person described
11 in subsection (2)(a) of this section.

12 (12) "Public or private official" means:

13 (a) Physician licensed under ORS chapter 677, physician assistant licensed
14 under ORS 677.505 to 677.525, naturopathic physician, psychologist or
15 chiropractor, including any intern or resident;

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

18 (c) Employee of the Department of Human Services or Oregon Health
19 Authority, local health department, community mental health program or
20 community developmental disabilities program or private agency contracting
21 with a public body to provide any community mental health service;

22 (d) Peace officer;

23 (e) Member of the clergy;

24 (f) Regulated social worker;

25 (g) Physical, speech or occupational therapist;

26 (h) Information and referral, outreach or crisis worker;

27 (i) Attorney;

28 (j) Licensed professional counselor or licensed marriage and family ther-
29 apist;

30 (k) Any public official;

31 (L) Firefighter or emergency medical services provider;

1 (m) Member of the Legislative Assembly;

2 (n) Personal support worker, as defined [*by rule adopted by the Home Care*
3 *Commission*] **in ORS 410.600**; or

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

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

8 (14)(a) "Sexual abuse" means:

9 (A) Sexual contact with a nonconsenting adult or with an adult consid-
10 ered incapable of consenting to a sexual act under ORS 163.315;

11 (B) Sexual harassment, sexual exploitation or inappropriate exposure to
12 sexually explicit material or language;

13 (C) Any sexual contact between an employee of a facility or paid
14 caregiver and an adult served by the facility or caregiver;

15 (D) Any sexual contact between a person with a developmental disability
16 and a relative of the person with a developmental disability other than a
17 spouse; or

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

20 (b) "Sexual abuse" does not mean consensual sexual contact between an
21 adult and a paid caregiver who is the spouse of the adult.

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

23 (16) "Verbal abuse" means to threaten significant physical or emotional
24 harm to a person with a developmental disability through the use of:

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

27 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-
28 elty or inappropriate sexual comments.

29 **SECTION 23.** ORS 441.630 is amended to read:

30 441.630. As used in ORS 441.630 to 441.680:

31 (1) "Abuse" means:

1 (a) Any physical injury to a resident of a long term care facility which
2 has been caused by other than accidental means.

3 (b) Failure to provide basic care or services, which failure results in
4 physical harm or unreasonable discomfort or serious loss of human dignity.

5 (c) Sexual contact with a resident caused by an employee, agent or other
6 resident of a long term care facility by force, threat, duress or coercion.

7 (d) Illegal or improper use of a resident's resources for the personal profit
8 or gain of another person.

9 (e) Verbal or mental abuse as prohibited by federal law.

10 (f) Corporal punishment.

11 (g) Involuntary seclusion for convenience or discipline.

12 (2) "Abuse complaint" means any oral or written communication to the
13 department, one of its agents or a law enforcement agency alleging abuse.

14 (3) "Department" means the Department of Human Services or a designee
15 of the department.

16 (4) "Facility" means a long term care facility, as defined in ORS 442.015.

17 (5) "Law enforcement agency" means:

18 (a) Any city or municipal police department.

19 (b) A police department established by a university under ORS 352.121 or
20 353.125.

21 (c) Any county sheriff's office.

22 (d) The Oregon State Police.

23 (e) Any district attorney.

24 (6) "Public or private official" means:

25 (a) Physician, including any intern or resident.

26 (b) Licensed practical nurse or registered nurse.

27 (c) Employee of the Department of Human Services, a community devel-
28 opmental disabilities program or a long term care facility or person who
29 contracts to provide services to a long term care facility.

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

- 1 (e) Peace officer.
- 2 (f) Member of the clergy.
- 3 (g) Regulated social worker.
- 4 (h) Physical, speech and occupational therapists.
- 5 (i) Legal counsel for a resident or guardian or family member of the res-
- 6 ident.
- 7 (j) Member of the Legislative Assembly.
- 8 (k) Personal support worker, as defined [*by rule adopted by the Home Care*
- 9 *Commission*] **in ORS 410.600.**
- 10 (L) Home care worker, as defined in ORS 410.600.

11 **SECTION 24.** ORS 443.004 is amended to read:

12 443.004. (1) The Department of Human Services or the Oregon Health
13 Authority shall complete a criminal records check under ORS 181A.195 on:

- 14 (a) An employee of a residential facility or an adult foster home;
- 15 (b) Any individual who is paid directly or indirectly with public funds
16 who has or will have contact with a recipient of support services or a resi-
- 17 dent of an adult foster home or a residential facility; and

18 (c) A home care worker **or personal support worker** registering with the
19 Home Care Commission or renewing a registration with the Home Care
20 Commission.

21 (2)(a) A home health agency shall conduct a criminal background check
22 before hiring or contracting with an individual and before allowing an indi-
23 vidual to volunteer to provide services on behalf of the home health agency,
24 if the individual will have direct contact with a patient of the home health
25 agency.

26 (b) An in-home care agency shall conduct a criminal background check
27 before hiring or contracting with an individual and before allowing an indi-
28 vidual to volunteer to provide services on behalf of the in-home care agency,
29 if the individual will have direct contact with a client of the in-home care
30 agency.

31 (c) The authority shall prescribe by rule the process for conducting a

1 criminal background check.

2 (3) Public funds may not be used to support, in whole or in part, the
3 employment in any capacity having contact with a recipient of support ser-
4 vices or a resident of a residential facility or an adult foster home, of an
5 individual, other than a mental health or substance abuse treatment pro-
6 vider, who has been convicted:

7 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,
8 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,
9 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547,
10 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,
11 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032,
12 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

13 (b) Notwithstanding paragraph (a) of this subsection, of a crime described
14 in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date
15 of conviction for which was within the five years immediately preceding
16 employment in any capacity of an individual, other than a mental health or
17 substance abuse treatment provider, having contact with a recipient of sup-
18 port services, a resident of a residential facility or a resident of an adult
19 foster home, when the recipient or resident is 65 years of age or older;

20 (c) Of a crime listed in ORS 163A.005;

21 (d) In the last 10 years, of a crime involving the delivery or manufacture
22 of a controlled substance;

23 (e) Of an attempt, conspiracy or solicitation to commit a crime described
24 in paragraphs (a) to (d) of this subsection; or

25 (f) Of a crime in another jurisdiction that is substantially equivalent, as
26 defined by rule, to a crime described in paragraphs (a) to (e) of this sub-
27 section.

28 (4) If the criminal background check conducted by a home health agency
29 or in-home care agency under subsection (2) of this section reveals that the
30 individual who is subject to the criminal background check has been con-
31 victed of any of the crimes described in subsection (3) of this section, the

1 home health agency or in-home care agency may not employ the individual.

2 (5) Public funds may not be used to support, in whole or in part, the
3 employment, in any capacity having contact with a recipient of support ser-
4 vices or a resident of a residential facility or an adult foster home, of a
5 mental health or substance abuse treatment provider who has been convicted
6 of committing, or convicted of an attempt, conspiracy or solicitation to
7 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411
8 or 163.427.

9 (6) Upon the request of a mental health or substance abuse treatment
10 provider, the department or authority shall maintain a record of the results
11 of any fitness determination made under ORS 181A.195 (10). The department
12 or authority may disclose the record only to a person the provider specif-
13 ically authorizes, by a written release, to receive the information.

14 (7) If the department or authority has a record of substantiated abuse
15 committed by an employee or potential employee of a home health agency,
16 in-home care agency, adult foster home or residential facility, regardless of
17 whether criminal charges were filed, the department or authority shall no-
18 tify, in writing, the employer and the employee or potential employee.

19 (8) As used in this section:

20 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

21 (b) "Home care worker" has the meaning given that term in ORS 410.600.

22 (c) "Home health agency" has the meaning given that term in ORS
23 443.014.

24 (d) "In-home care agency" has the meaning given that term in ORS
25 443.305.

26 (e) "Mental health or substance abuse treatment provider" means:

27 (A) A peer support specialist;

28 (B) An employee of a residential treatment facility or a residential treat-
29 ment home that is licensed under ORS 443.415 to provide treatment for in-
30 dividuals with alcohol or drug dependence;

31 (C) An individual who provides treatment or services for persons with

1 substance use disorders; or

2 (D) An individual who provides mental health treatment or services.

3 (f) “Peer support specialist” has the meaning given that term in ORS
4 414.025.

5 **(g) “Personal support worker” has the meaning given that term in**
6 **ORS 410.600.**

7 [(g)] **(h) “Residential facility” has the meaning given that term in ORS**
8 **443.400.**

9 **SECTION 25.** ORS 443.006 is amended to read:

10 443.006. (1) As used in this section:

11 (a) “Care” has the meaning given that term in ORS 181A.200.

12 (b) “Facility” means:

13 (A) A long term care facility as defined in ORS 442.015;

14 (B) A residential care facility as defined in ORS 443.400, including but
15 not limited to an assisted living facility; and

16 (C) An adult foster home as defined in ORS 443.705.

17 (c) “Home care worker” has the meaning given that term in ORS 410.600.

18 **(d) “Personal support worker” has the meaning given that term in**
19 **ORS 410.600.**

20 (2) The Department of Human Services shall augment the department’s
21 existing criminal background check system with a regularly updated registry
22 of all persons who work or are seeking to work to provide care.

23 (3) The department shall adopt rules designating the persons who may be
24 listed on the registry. The registry must list persons who work or are seeking
25 to work to provide care:

26 (a) In a facility; or

27 (b) As a home care worker **or personal support worker.**

28 (4) The department shall adopt rules establishing:

29 (a) The information that must be reported by facilities;

30 (b) The form and frequency of reporting by facilities;

31 (c) Procedures and standards for the administration of the registry; and

1 (d) Guidelines and procedures for requests for and release of information
2 from the registry.

3 **SECTION 26.** ORS 653.601 is amended to read:

4 653.601. As used in ORS 653.601 to 653.661:

5 (1)(a) "Employee" means an individual who renders personal services at
6 a fixed rate to an employer if the employer either pays or agrees to pay for
7 personal services or permits the individual to perform personal services.

8 (b) "Employee" includes, but is not limited to:

9 (A) An individual who is paid on a piece-rate basis or the basis of the
10 number of operations accomplished or quantity produced or handled;

11 (B) Individuals paid on an hourly, salary or commission basis;

12 (C) Individuals for whom withholding is required under ORS 316.162 to
13 316.221; [*and*]

14 (D) Home care workers as defined in ORS 410.600; **and**

15 **(E) Personal support workers as defined in ORS 410.600.**

16 (c) "Employee" does not include:

17 (A) An employee who receives paid sick time under federal law;

18 (B) An independent contractor;

19 (C) A participant in a work training program administered under a state
20 or federal assistance program;

21 (D) A participant in a work-study program that provides students in sec-
22 ondary or post-secondary educational institutions with employment opportu-
23 nities for financial assistance or vocational training;

24 (E) A railroad worker exempted under the federal Railroad Unemployment
25 Insurance Act; and

26 (F) An individual employed by that individual's parent, spouse or child.

27 (2)(a) "Employer" means any person that employs one or more employees
28 working anywhere in this state, a political subdivision of the state and any
29 county, city, district, authority, public corporation or entity, and any
30 instrumentality of a county, city, district, authority, public corporation or
31 entity, organized and existing under law or charter.

1 (b) "Employer" includes an employer located in a city with a population
2 exceeding 500,000.

3 (c) "Employer" does not include the federal government.

4 (3)(a) "Employer located in a city with a population exceeding 500,000"
5 includes, but is not limited to, an employer that maintains any office, store,
6 restaurant or establishment in that city.

7 (b) "Employer located in a city with a population exceeding 500,000" does
8 not include an employer that maintains only a seasonal farm stand or a
9 trailer that is used temporarily on a construction site for office purposes
10 only.

11 (4) "Family member" has the meaning given that term in ORS 659A.150.

12 (5)(a) "Front-load," except as provided in paragraph (b) of this subsection,
13 means to assign and make available a certain number of hours of sick time
14 to an employee as soon as the employee becomes eligible to use sick time
15 and on the first day of the immediately subsequent year without regard to
16 an accrual rate.

17 (b) For employees employed by an employer for less than a full year,
18 "front-load" means to assign and make available to an employee as soon as
19 the employee becomes eligible to use sick time a number of hours of sick
20 time that is the pro rata percentage of the hours the employee would be en-
21 titled to for an entire year based on the number of hours the employee was
22 actually employed by the employer for the year.

23 (6) "Paid sick time" means time off:

24 (a) That is provided to an employee by an employer that employs 10 or
25 more employees;

26 (b) That may be used for the purposes specified in ORS 653.616; and

27 (c) That is compensated at the regular rate of pay and without reductions
28 in benefits, including but not limited to health care benefits, that the em-
29 ployee earns from the employer at the time the employee uses the paid sick
30 time.

31 (7) "Sick time" means time during which an employee is permitted to be

1 absent from work for a reason authorized under ORS 653.616 without a re-
2 duction in benefits, including but not limited to health care benefits, that the
3 employee earns from the employer.

4 (8) “Year” includes any consecutive 12-month period, such as a calendar
5 year, a tax year, a fiscal year, a contract year or the 12-month period be-
6 ginning on the anniversary of the date of employment of the employee.

7 **SECTION 27.** ORS 653.646 is amended to read:

8 653.646. (1) The requirements of ORS 653.601 to 653.661 do not apply to
9 an employee:

10 (a) Whose terms and conditions of employment are covered by a collective
11 bargaining agreement;

12 (b) Who is employed through a hiring hall or similar referral system op-
13 erated by the labor organization or a third party; and

14 (c) Whose employment-related benefits are provided by a joint
15 multiemployer-employee trust or benefit plan.

16 (2)(a) The Home Care Commission created under ORS 410.602 shall es-
17 tablish a paid sick time policy for consumer employed home care workers
18 **and consumer employed personal support workers.**

19 (b) A policy for paid sick time for consumer employed home care workers
20 **and consumer employed personal support workers** implemented by the
21 Home Care Commission that allows an eligible home care worker **or per-**
22 **sonal support worker** to accrue and use up to 40 hours of paid time off a
23 year, including but not limited to sick time, is deemed to meet the require-
24 ments of ORS 653.601 to 653.661 and is exempt from the provisions of ORS
25 653.601 (6), 653.606 (5), 653.611, 653.621, 653.626 and 653.631.

26 (3) As used in this section[,]:

27 (a) “Consumer employed home care worker” has the meaning given the
28 term “home care worker” in ORS 410.600.

29 (b) “**Consumer employed personal support worker**” has the meaning
30 **given the term “personal support worker” in ORS 410.600.**

31 **SECTION 28.** ORS 656.039 is amended to read:

1 656.039. (1) An employer of one or more persons defined as nonsubject
 2 workers or not defined as subject workers may elect to make them subject
 3 workers. If the employer is or becomes a carrier-insured employer, the
 4 election shall be made by filing written notice thereof with the insurer with
 5 a copy to the Director of the Department of Consumer and Business Services.
 6 The effective date of coverage is governed by ORS 656.419 (3). If the employer
 7 is or becomes a self-insured employer, the election shall be made by filing
 8 written notice thereof with the director, the effective date of coverage to be
 9 the date specified in the notice.

10 (2) Any election under subsection (1) of this section may be canceled by
 11 written notice thereof to the insurer or, in the case of a self-insured em-
 12 ployer, by notice thereof to the director. The cancellation is effective at 12
 13 midnight ending the day the notice is received by the insurer or the director,
 14 unless a later date is specified in the notice. The insurer shall, within 10
 15 days after receipt of a notice of cancellation under this section, send a copy
 16 of the notice to the director.

17 (3) When necessary the insurer or the director shall fix assumed minimum
 18 or maximum wages for persons made subject workers under this section.

19 (4) Notwithstanding any other provision of this section, a person or em-
 20 ployer not subject to this chapter who elects to become covered may apply
 21 to an insurer for coverage. An insurer other than the State Accident Insur-
 22 ance Fund Corporation may provide such coverage. However, the State Ac-
 23 cident Insurance Fund Corporation shall accept any written notice filed and
 24 provide coverage as provided in this section if all subject workers of the
 25 employers will be insured with the State Accident Insurance Fund Corpo-
 26 ration and the coverage of those subject workers is not considered by the
 27 State Accident Insurance Fund Corporation to be a risk properly assignable
 28 to the assigned risk pool.

29 (5)(a) The Home Care Commission created by ORS 410.602 shall elect
 30 coverage on behalf of persons who employ home care workers **or personal**
 31 **support workers** to make home care workers **and personal support**

1 **workers** subject workers.

2 (b) As used in this subsection[,]:

3 (A) “Home care worker” has the meaning given that term in ORS 410.600.

4 (B) **“Personal support worker” has the meaning given that term in**
5 **ORS 410.600.**

6 **SECTION 29.** ORS 656.268 is amended to read:

7 656.268. (1) One purpose of this chapter is to restore the injured worker
8 as soon as possible and as near as possible to a condition of self support and
9 maintenance as an able-bodied worker. The insurer or self-insured employer
10 shall close the worker’s claim, as prescribed by the Director of the Depart-
11 ment of Consumer and Business Services, and determine the extent of the
12 worker’s permanent disability, provided the worker is not enrolled and ac-
13 tively engaged in training according to rules adopted by the director pursu-
14 ant to ORS 656.340 and 656.726, when:

15 (a) The worker has become medically stationary and there is sufficient
16 information to determine permanent disability;

17 (b) The accepted injury is no longer the major contributing cause of the
18 worker’s combined or consequential condition or conditions pursuant to ORS
19 656.005 (7). When the claim is closed because the accepted injury is no longer
20 the major contributing cause of the worker’s combined or consequential
21 condition or conditions, and there is sufficient information to determine
22 permanent disability, the likely permanent disability that would have been
23 due to the current accepted condition shall be estimated;

24 (c) Without the approval of the attending physician or nurse practitioner
25 authorized to provide compensable medical services under ORS 656.245, the
26 worker fails to seek medical treatment for a period of 30 days or the worker
27 fails to attend a closing examination, unless the worker affirmatively estab-
28 lishes that such failure is attributable to reasons beyond the worker’s con-
29 trol; or

30 (d) An insurer or self-insured employer finds that a worker who has been
31 receiving permanent total disability benefits has materially improved and is

1 capable of regularly performing work at a gainful and suitable occupation.

2 (2) If the worker is enrolled and actively engaged in training according
3 to rules adopted pursuant to ORS 656.340 and 656.726, the temporary disa-
4 bility compensation shall be proportionately reduced by any sums earned
5 during the training.

6 (3) A copy of all medical reports and reports of vocational rehabilitation
7 agencies or counselors shall be furnished to the worker, if requested by the
8 worker.

9 (4) Temporary total disability benefits shall continue until whichever of
10 the following events first occurs:

11 (a) The worker returns to regular or modified employment;

12 (b) The attending physician or nurse practitioner who has authorized
13 temporary disability benefits for the worker under ORS 656.245 advises the
14 worker and documents in writing that the worker is released to return to
15 regular employment;

16 (c) The attending physician or nurse practitioner who has authorized
17 temporary disability benefits for the worker under ORS 656.245 advises the
18 worker and documents in writing that the worker is released to return to
19 modified employment, such employment is offered in writing to the worker
20 and the worker fails to begin such employment. However, an offer of modi-
21 fied employment may be refused by the worker without the termination of
22 temporary total disability benefits if the offer:

23 (A) Requires a commute that is beyond the physical capacity of the
24 worker according to the worker's attending physician or the nurse practi-
25 tioner who may authorize temporary disability under ORS 656.245;

26 (B) Is at a work site more than 50 miles one way from where the worker
27 was injured unless the site is less than 50 miles from the worker's residence
28 or the intent of the parties at the time of hire or as established by the pat-
29 tern of employment prior to the injury was that the employer had multiple
30 or mobile work sites and the worker could be assigned to any such site;

31 (C) Is not with the employer at injury;

1 (D) Is not at a work site of the employer at injury;

2 (E) Is not consistent with the existing written shift change policy or is
3 not consistent with common practice of the employer at injury or aggra-
4 vation; or

5 (F) Is not consistent with an existing shift change provision of an appli-
6 cable collective bargaining agreement;

7 (d) Any other event that causes temporary disability benefits to be law-
8 fully suspended, withheld or terminated under ORS 656.262 (4) or other pro-
9 visions of this chapter; or

10 (e) Notwithstanding paragraph (c)(C), (D), (E) and (F) of this subsection,
11 the attending physician or nurse practitioner who has authorized temporary
12 disability benefits under ORS 656.245 for a home care worker **or a personal**
13 **support worker** who has been made a subject worker pursuant to ORS
14 656.039 advises the home care worker **or personal support worker** and
15 documents in writing that the home care worker **or personal support**
16 **worker** is released to return to modified employment, appropriate modified
17 employment is offered in writing by the Home Care Commission or a
18 designee of the commission to the home care worker **or personal support**
19 **worker** for any client of the Department of Human Services who employs a
20 home care worker **or personal support worker** and the [*home care*] worker
21 fails to begin the employment.

22 (5)(a) Findings by the insurer or self-insured employer regarding the ex-
23 tent of the worker's disability in closure of the claim shall be pursuant to
24 the standards prescribed by the director.

25 (b) The insurer or self-insured employer shall issue a notice of closure of
26 the claim to the worker, to the worker's attorney if the worker is repres-
27 ented, and to the director. If the worker is deceased at the time the notice
28 of closure is issued, the insurer or self-insured employer shall mail the
29 worker's copy of the notice of closure, addressed to the estate of the worker,
30 to the worker's last known address and may mail copies of the notice of
31 closure to any known or potential beneficiaries to the estate of the deceased

1 worker.

2 (c) The notice of closure must inform:

3 (A) The parties, in boldfaced type, of the proper manner in which to pro-
4 ceed if they are dissatisfied with the terms of the notice of closure;

5 (B) The worker of:

6 (i) The amount of any further compensation, including permanent disa-
7 bility compensation to be awarded;

8 (ii) The duration of temporary total or temporary partial disability com-
9 pensation;

10 (iii) The right of the worker or beneficiaries of the worker who were
11 mailed a copy of the notice of closure under paragraph (b) of this subsection
12 to request reconsideration by the director under this section within 60 days
13 of the date of the notice of closure;

14 (iv) The right of beneficiaries who were not mailed a copy of the notice
15 of closure under paragraph (b) of this subsection to request reconsideration
16 by the director under this section within one year of the date the notice of
17 closure was mailed to the estate of the worker under paragraph (b) of this
18 subsection;

19 (v) The right of the insurer or self-insured employer to request reconsid-
20 eration by the director under this section within seven days of the date of
21 the notice of closure;

22 (vi) The aggravation rights; and

23 (vii) Any other information as the director may require; and

24 (C) Any beneficiaries of death benefits to which they may be entitled
25 pursuant to ORS 656.204 and 656.208.

26 (d) If the insurer or self-insured employer has not issued a notice of clo-
27 sure, the worker may request closure. Within 10 days of receipt of a written
28 request from the worker, the insurer or self-insured employer shall issue a
29 notice of closure if the requirements of this section have been met or a no-
30 tice of refusal to close if the requirements of this section have not been met.

31 A notice of refusal to close shall advise the worker of:

1 (A) The decision not to close;

2 (B) The right of the worker to request a hearing pursuant to ORS 656.283
3 within 60 days of the date of the notice of refusal to close;

4 (C) The right to be represented by an attorney; and

5 (D) Any other information as the director may require.

6 (e) If a worker, a worker's beneficiary, an insurer or a self-insured em-
7 ployer objects to the notice of closure, the objecting party first must request
8 reconsideration by the director under this section. A worker's request for
9 reconsideration must be made within 60 days of the date of the notice of
10 closure. If the worker is deceased at the time the notice of closure is issued,
11 a request for reconsideration by a beneficiary of the worker who was mailed
12 a copy of the notice of closure under paragraph (b) of this subsection must
13 be made within 60 days of the date of the notice of closure. A request for
14 reconsideration by a beneficiary to the estate of a deceased worker who was
15 not mailed a copy of the notice of closure under paragraph (b) of this sub-
16 section must be made within one year of the date the notice of closure was
17 mailed to the estate of the worker under paragraph (b) of this subsection.
18 A request for reconsideration by an insurer or self-insured employer may be
19 based only on disagreement with the findings used to rate impairment and
20 must be made within seven days of the date of the notice of closure.

21 (f) If an insurer or self-insured employer has closed a claim or refused to
22 close a claim pursuant to this section, if the correctness of that notice of
23 closure or refusal to close is at issue in a hearing on the claim and if a
24 finding is made at the hearing that the notice of closure or refusal to close
25 was not reasonable, a penalty shall be assessed against the insurer or self-
26 insured employer and paid to the worker in an amount equal to 25 percent
27 of all compensation determined to be then due the claimant.

28 (g) If, upon reconsideration of a claim closed by an insurer or self-insured
29 employer, the director orders an increase by 25 percent or more of the
30 amount of compensation to be paid to the worker for permanent disability
31 and the worker is found upon reconsideration to be at least 20 percent per-

1 manently disabled, a penalty shall be assessed against the insurer or self-
2 insured employer and paid to the worker in an amount equal to 25 percent
3 of all compensation determined to be then due the claimant. If the increase
4 in compensation results from information that the insurer or self-insured
5 employer demonstrates the insurer or self-insured employer could not rea-
6 sonably have known at the time of claim closure, from new information ob-
7 tained through a medical arbiter examination or from a determination order
8 issued by the director that addresses the extent of the worker's permanent
9 disability that is not based on the standards adopted pursuant to ORS 656.726
10 (4)(f), the penalty shall not be assessed.

11 (6)(a) Notwithstanding any other provision of law, only one reconsider-
12 ation proceeding may be held on each notice of closure. At the reconsider-
13 ation proceeding:

14 (A) A deposition arranged by the worker, limited to the testimony and
15 cross-examination of the worker about the worker's condition at the time of
16 claim closure, shall become part of the reconsideration record. The deposi-
17 tion must be conducted subject to the opportunity for cross-examination by
18 the insurer or self-insured employer and in accordance with rules adopted
19 by the director. The cost of the court reporter, interpreter services, if nec-
20 essary, and one original of the transcript of the deposition for the Depart-
21 ment of Consumer and Business Services and one copy of the transcript of
22 the deposition for each party shall be paid by the insurer or self-insured
23 employer. The reconsideration proceeding may not be postponed to receive
24 a deposition taken under this subparagraph. A deposition taken in accord-
25 ance with this subparagraph may be received as evidence at a hearing even
26 if the deposition is not prepared in time for use in the reconsideration pro-
27 ceeding.

28 (B) Pursuant to rules adopted by the director, the worker or the insurer
29 or self-insured employer may correct information in the record that is erro-
30 neous and may submit any medical evidence that should have been but was
31 not submitted by the attending physician or nurse practitioner authorized to

1 provide compensable medical services under ORS 656.245 at the time of claim
2 closure.

3 (C) If the director determines that a claim was not closed in accordance
4 with subsection (1) of this section, the director may rescind the closure.

5 (b) If necessary, the director may require additional medical or other in-
6 formation with respect to the claims and may postpone the reconsideration
7 for not more than 60 additional calendar days.

8 (c) In any reconsideration proceeding under this section in which the
9 worker was represented by an attorney, the director shall order the insurer
10 or self-insured employer to pay to the attorney, out of the additional com-
11 pensation awarded, an amount equal to 10 percent of any additional com-
12 pensation awarded to the worker.

13 (d) Except as provided in subsection (7) of this section, the reconsider-
14 ation proceeding shall be completed within 18 working days from the date
15 the reconsideration proceeding begins, and shall be performed by a special
16 evaluation appellate unit within the department. The deadline of 18 working
17 days may be postponed by an additional 60 calendar days if within the 18
18 working days the department mails notice of review by a medical arbiter. If
19 an order on reconsideration has not been mailed on or before 18 working
20 days from the date the reconsideration proceeding begins, or within 18
21 working days plus the additional 60 calendar days where a notice for medical
22 arbiter review was timely mailed or the director postponed the reconsider-
23 ation pursuant to paragraph (b) of this subsection, or within such additional
24 time as provided in subsection (8) of this section when reconsideration is
25 postponed further because the worker has failed to cooperate in the medical
26 arbiter examination, reconsideration shall be deemed denied and any further
27 proceedings shall occur as though an order on reconsideration affirming the
28 notice of closure was mailed on the date the order was due to issue.

29 (e) The period for completing the reconsideration proceeding described in
30 paragraph (d) of this subsection begins upon receipt by the director of a
31 worker's or a beneficiary's request for reconsideration pursuant to subsection

1 (5)(e) of this section. If the insurer or self-insured employer requests recon-
2 sideration, the period for reconsideration begins upon the earlier of the date
3 of the request for reconsideration by the worker or beneficiary, the date of
4 receipt of a waiver from the worker or beneficiary of the right to request
5 reconsideration or the date of expiration of the right of the worker or ben-
6 eficiary to request reconsideration. If a party elects not to file a separate
7 request for reconsideration, the party does not waive the right to fully par-
8 ticipate in the reconsideration proceeding, including the right to proceed
9 with the reconsideration if the initiating party withdraws the request for
10 reconsideration.

11 (f) Any medical arbiter report may be received as evidence at a hearing
12 even if the report is not prepared in time for use in the reconsideration
13 proceeding.

14 (g) If any party objects to the reconsideration order, the party may re-
15 quest a hearing under ORS 656.283 within 30 days from the date of the re-
16 consideration order.

17 (7)(a) The director may delay the reconsideration proceeding and toll the
18 reconsideration timeline established under subsection (6) of this section for
19 up to 45 calendar days if:

20 (A) A request for reconsideration of a notice of closure has been made to
21 the director within 60 days of the date of the notice of closure;

22 (B) The parties are actively engaged in settlement negotiations that in-
23 clude issues in dispute at reconsideration;

24 (C) The parties agree to the delay; and

25 (D) Both parties notify the director before the 18th working day after the
26 reconsideration proceeding has begun that they request a delay under this
27 subsection.

28 (b) A delay of the reconsideration proceeding granted by the director un-
29 der this subsection expires:

30 (A) If a party requests the director to resume the reconsideration pro-
31 ceeding before the expiration of the delay period;

1 (B) If the parties reach a settlement and the director receives a copy of
2 the approved settlement documents before the expiration of the delay period;
3 or

4 (C) On the next calendar day following the expiration of the delay period
5 authorized by the director.

6 (c) Upon expiration of a delay granted under this subsection, the timeline
7 for the completion of the reconsideration proceeding shall resume as if the
8 delay had never been granted.

9 (d) Compensation due the worker shall continue to be paid during the
10 period of delay authorized under this subsection.

11 (e) The director may authorize only one delay period for each reconsid-
12 eration proceeding.

13 (8)(a) If the basis for objection to a notice of closure issued under this
14 section is disagreement with the impairment used in rating of the worker's
15 disability, the director shall refer the claim to a medical arbiter appointed
16 by the director.

17 (b) If the director determines that insufficient medical information is
18 available to determine disability, the director may appoint, and refer the
19 claim to, a medical arbiter.

20 (c) At the request of either of the parties, the director shall appoint a
21 panel of as many as three medical arbiters in accordance with criteria that
22 the director sets by rule.

23 (d) The arbiter, or panel of medical arbiters, must be chosen from among
24 a list of physicians qualified to be attending physicians referred to in ORS
25 656.005 (12)(b)(A) whom the director selected in consultation with the Oregon
26 Medical Board and the committee referred to in ORS 656.790.

27 (e)(A) The medical arbiter or panel of medical arbiters may examine the
28 worker and perform such tests as may be reasonable and necessary to es-
29 tablish the worker's impairment.

30 (B) If the director determines that the worker failed to attend the exam-
31 ination without good cause or failed to cooperate with the medical arbiter,

1 or panel of medical arbiters, the director shall postpone the reconsideration
2 proceedings for up to 60 days from the date of the determination that the
3 worker failed to attend or cooperate, and shall suspend all disability benefits
4 resulting from this or any prior opening of the claim until such time as the
5 worker attends and cooperates with the examination or the request for re-
6 consideration is withdrawn. Any additional evidence regarding good cause
7 must be submitted prior to the conclusion of the 60-day postponement period.

8 (C) At the conclusion of the 60-day postponement period, if the worker
9 has not attended and cooperated with a medical arbiter examination or es-
10 tablished good cause, the worker may not attend a medical arbiter examina-
11 tion for this claim closure. The reconsideration record must be closed, and
12 the director shall issue an order on reconsideration based upon the existing
13 record.

14 (D) All disability benefits suspended under this subsection, including all
15 disability benefits awarded in the order on reconsideration, or by an Ad-
16 ministrative Law Judge, the Workers' Compensation Board or upon court
17 review, are not due and payable to the worker.

18 (f) The insurer or self-insured employer shall pay the costs of examination
19 and review by the medical arbiter or panel of medical arbiters.

20 (g) The findings of the medical arbiter or panel of medical arbiters must
21 be submitted to the director for reconsideration of the notice of closure.

22 (h) After reconsideration, no subsequent medical evidence of the worker's
23 impairment is admissible before the director, the Workers' Compensation
24 Board or the courts for purposes of making findings of impairment on the
25 claim closure.

26 (i)(A) If the basis for objection to a notice of closure issued under this
27 section is a disagreement with the impairment used in rating the worker's
28 disability, and the director determines that the worker is not medically sta-
29 tionary at the time of the reconsideration or that the closure was not made
30 pursuant to this section, the director is not required to appoint a medical
31 arbiter before completing the reconsideration proceeding.

1 (B) If the worker's condition has substantially changed since the notice
2 of closure, upon the consent of all the parties to the claim, the director shall
3 postpone the proceeding until the worker's condition is appropriate for claim
4 closure under subsection (1) of this section.

5 (9) No hearing shall be held on any issue that was not raised and pre-
6 served before the director at reconsideration. However, issues arising out of
7 the reconsideration order may be addressed and resolved at hearing.

8 (10) If, after the notice of closure issued pursuant to this section, the
9 worker becomes enrolled and actively engaged in training according to rules
10 adopted pursuant to ORS 656.340 and 656.726, any permanent disability pay-
11 ments due for work disability under the closure shall be suspended, and the
12 worker shall receive temporary disability compensation and any permanent
13 disability payments due for impairment while the worker is enrolled and
14 actively engaged in the training. When the worker ceases to be enrolled and
15 actively engaged in the training, the insurer or self-insured employer shall
16 again close the claim pursuant to this section if the worker is medically
17 stationary or if the worker's accepted injury is no longer the major contrib-
18 uting cause of the worker's combined or consequential condition or condi-
19 tions pursuant to ORS 656.005 (7). The closure shall include the duration of
20 temporary total or temporary partial disability compensation. Permanent
21 disability compensation shall be redetermined for work disability only. If the
22 worker has returned to work or the worker's attending physician has re-
23 leased the worker to return to regular or modified employment, the insurer
24 or self-insured employer shall again close the claim. This notice of closure
25 may be appealed only in the same manner as are other notices of closure
26 under this section.

27 (11) If the attending physician or nurse practitioner authorized to provide
28 compensable medical services under ORS 656.245 has approved the worker's
29 return to work and there is a labor dispute in progress at the place of em-
30 ployment, the worker may refuse to return to that employment without loss
31 of reemployment rights or any vocational assistance provided by this chap-

1 ter.

2 (12) Any notice of closure made under this section may include necessary
3 adjustments in compensation paid or payable prior to the notice of closure,
4 including disallowance of permanent disability payments prematurely made,
5 crediting temporary disability payments against current or future permanent
6 or temporary disability awards or payments and requiring the payment of
7 temporary disability payments which were payable but not paid.

8 (13) An insurer or self-insured employer may take a credit or offset of
9 previously paid workers' compensation benefits or payments against any
10 further workers' compensation benefits or payments due a worker from that
11 insurer or self-insured employer when the worker admits to having obtained
12 the previously paid benefits or payments through fraud, or a civil judgment
13 or criminal conviction is entered against the worker for having obtained the
14 previously paid benefits through fraud. Benefits or payments obtained
15 through fraud by a worker may not be included in any data used for
16 ratemaking or individual employer rating or dividend calculations by an
17 insurer, a rating organization licensed pursuant to ORS chapter 737, the
18 State Accident Insurance Fund Corporation or the director.

19 (14)(a) An insurer or self-insured employer may offset any compensation
20 payable to the worker to recover an overpayment from a claim with the same
21 insurer or self-insured employer. When overpayments are recovered from
22 temporary disability or permanent total disability benefits, the amount re-
23 covered from each payment shall not exceed 25 percent of the payment,
24 without prior authorization from the worker.

25 (b) An insurer or self-insured employer may suspend and offset any com-
26 pensation payable to the beneficiary of the worker, and recover an overpay-
27 ment of permanent total disability benefits caused by the failure of the
28 worker's beneficiaries to notify the insurer or self-insured employer about
29 the death of the worker.

30 (15) Conditions that are direct medical sequelae to the original accepted
31 condition shall be included in rating permanent disability of the claim unless

1 they have been specifically denied.

2 **SECTION 30.** ORS 657.730 is amended to read:

3 657.730. (1) As used in this section, unless the context requires otherwise:

4 (a) "Labor market area" means an economically integrated geographic
5 area within which individuals can reside and find employment within a rea-
6 sonable distance or can readily change employment without changing their
7 place of residence. Such areas shall be identified in accordance with criteria
8 used by the Bureau of Labor Statistics of the United States Department of
9 Labor in defining such areas or similar criteria established by the Director
10 of the Employment Department. The boundaries depend primarily on eco-
11 nomic and geographic factors. The State of Oregon is divided into labor
12 market areas, including local workforce areas, which usually include a
13 county or group of contiguous counties.

14 (b) "Workforce and labor market information" means the body of infor-
15 mation generated from measurement and evaluation of the socioeconomic
16 factors and variables influencing the employment process in the state and
17 specific labor market areas. These socioeconomic factors and variables in-
18 clude:

19 (A) Labor force information, which includes but is not limited to em-
20 ployment, unemployment, labor force participation and characteristics of the
21 population and labor force;

22 (B) Occupational information, which includes but is not limited to occu-
23 pational supply and demand estimates and projections, characteristics of oc-
24 cupations, skill requirements, wage levels, job duties, training and education
25 requirements, conditions of employment, unionization, retirement practices
26 and training opportunities;

27 (C) Economic information, which includes but is not limited to number
28 of business starts and stops by industry and labor market area, information
29 on employment growth and decline by industry and labor market area, em-
30 ployment projections by industry, employer establishment data and number
31 of union disputes and strikes by industry and labor market area; and

1 (D) Program information, which includes but is not limited to program
2 participant or student information gathered in cooperation with other state
3 and local agencies along with related labor market information to evaluate
4 the effectiveness, efficiency and impact of state and local employment,
5 training, education and job creation efforts in support of planning, manage-
6 ment, implementation and evaluation.

7 (2) The Director of the Employment Department shall have the following
8 duties:

9 (a) Overseeing, operating and managing a statewide comprehensive
10 workforce and labor market information system.

11 (b) Supporting Oregon's state and local workforce boards by providing
12 foundational workforce data and special studies in support of state and local
13 employment, training, education and job creation programs, especially ac-
14 tivities that prevent job loss, reduce unemployment and create jobs.

15 (c) Supporting other Oregon customers of workforce and labor market
16 information, including, but not limited to, businesses, job seekers, policy
17 makers, educational agencies and students, and providing foundational
18 workforce data and analysis of trends at the state and local levels.

19 (d) Coordinating with state workforce agencies and other federal, state
20 and local government partners to improve workforce and labor market in-
21 formation products and services.

22 (e) Producing workforce and labor market information and economic
23 analysis needed to facilitate the efficient and effective matching of the sup-
24 ply and demand of labor critical to an effective labor exchange in Oregon.

25 (f) Administering other appropriate workforce and labor market informa-
26 tion activities including support of efforts by local workforce development
27 boards, as defined in ORS 660.300, to align economic development, education
28 and training with workforce development investments and services for job
29 seekers and businesses to efficiently address local labor market needs and
30 statewide workforce development priorities.

31 (3) To implement this section, the director shall have authority to:

1 (a) Establish rules and procedures to recover reasonable costs incurred
2 in producing and providing:

3 (A) Workforce and labor market information products developed by the
4 Employment Department in the ordinary course of business when the request
5 results in costs over and above the ordinary costs of production including,
6 but not limited to, special publication runs, photocopying or supplying the
7 copy in some other medium; and

8 (B) Special workforce and labor market information products in response
9 to individual requests that incur costs beyond the ordinary costs of doing
10 business including, but not limited to, computer time, staff costs, preparation
11 and distribution of surveys, electronic scanning, and special data collection,
12 formatting and analysis. The director may enter into agreements with other
13 public agencies to provide special workforce and labor market information
14 products in a quid pro quo arrangement.

15 (b) Receive federal set aside funds from federal programs that are au-
16 thorized to fund state and local workforce and labor market information and
17 are required to use such information in support of their programs.

18 (c) Enter into agreements for statistical analysis, research or evaluation
19 studies of privately and publicly funded employment, training, education and
20 economic development programs.

21 (4) Home care workers **and personal support workers** described in ORS
22 410.619 (1) are not employees of state government for the purposes of
23 workforce and labor market information.

24 **SECTION 31.** Section 4, chapter 796, Oregon Laws 2015, is amended to
25 read:

26 **Sec. 4.** (1) The Legislative Assembly encourages the Department of Hu-
27 man Services to:

28 (a) Implement a single online application for all home care workers and
29 personal support workers, as defined in ORS 410.600, to apply to be included
30 on the registry maintained by the Home Care Commission under ORS
31 410.604.

1 (b) Assign a universal provider number to each home care worker **and**
2 **personal support worker** who is providing home care services in this state,
3 regardless of whether the recipient of the services:

4 (A) Has a physical disability, a mental illness or a developmental disa-
5 bility; or

6 (B) Is an elderly person, an adult or a child.

7 (2) The department shall report to the interim committees of the Legisla-
8 tive Assembly related to human services, as appropriate, no later than De-
9 cember 1 of each year beginning in 2015, on the status of implementing an
10 online application for, and assigning a universal provider number to, home
11 care workers and personal support workers.

12 **SECTION 32. Section 3 of this 2018 Act is repealed on December 31,**
13 **2019.**

14
