



# Oregon

Theodore R. Kulongoski, Governor

Department of Human Services

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November 3, 2009

The Honorable Peter Courtney  
The Honorable Dave Hunt  
State Emergency Board  
900 Court Street NE  
H-178 State Capitol  
Salem, OR 97301-4048



Dear Co-Chairpersons:

## NATURE OF THE REPORT

A budget note attached to SB 5529 and passed by the 2009 Legislature, directed the Department of Human Services to evaluate the status of home care workers who serve seniors and people with disabilities. Specifically, the Department was to determine which workers fall under the purview of the Home Care Commission pursuant to Section 11 of the Oregon constitution, and two Oregon statutes, ORS 410.600 and ORS 656.039(5)(a).

## AGENCY ACTION

The Department conducted an extensive review of the Oregon Constitution (Section 11) and the applicable statutes, including their legislative histories. This review included consultation with the Oregon Department of Justice.

The review was not easy. The language in both the constitution and the applicable statutes is often confusing or contradictory. One of the key questions which prompted the budget note is whether collective bargaining, authorized under current law for home care workers serving seniors and people with physical disabilities, should be extended to workers supporting other populations.

Based on our review, we do not believe current law authorizes such an extension to workers supporting other populations. However, this view is not without doubt or dispute. Therefore, the Department proposes to work with key legislators, the

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The Honorable Peter Courtney  
The Honorable Dave Hunt  
November 3, 2009  
Page 2 of 2

union and stakeholder groups to bring forward legislation that resolves confusing language and clearly identifies the workers, the services, and the populations that should be included under the umbrella of the Home Care Commission and associated collective bargaining rights.

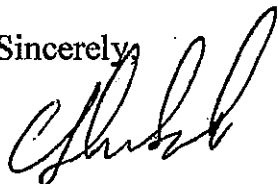
### **ACTION REQUESTED**

Enclosed is a copy of the full report. The Department was further directed to share its findings with the appropriate interim legislative committee. A presentation of this report has been scheduled before the House Interim Committee on Human Services on November 18. If you have any questions, please call James Toews, Assistant Director of the Division of Seniors and People with Disabilities at 503-945-5858

### **LEGISLATION AFFECTED**

None at this time.

Sincerely,



Clyde Saiki  
Deputy Director of Operations

Enclosure

CC: John Britton, Legislative Fiscal Office  
Sheila Baker, Legislative Fiscal Office  
Blake Johnson, Department of Administrative Services  
The Honorable Carolyn Tomei  
The Honorable Peter Buckley  
The Honorable Tina Kotek  
The Honorable Alan C. Bates  
The Honorable Michael Dembrow

10/27/09

**An Analysis of Home Care Workers  
Covered Under the Home Care Commission  
Pursuant to Oregon Constitution Article XV, Section 11**

**and**

**Oregon Revised Statutes 410.600 & 656.039(5) (a)**

**Oregon Department of Human Services  
Seniors and People with Disabilities Division**

**October, 2009**

## A. Introduction

During the 2009 Legislative Session, SB702 was introduced. It would have expanded the number of client-employed workers covered under Oregon's Home Care Commission and subject to collective bargaining statutes. These workers currently support seniors and people with disabilities living in their own homes who need personal care services.

Although SB 702 did not pass, the Ways and Means Committee included the following budget note in SB 5529.

*The Department of Human Services shall evaluate the total population of workers providing in-home care and make an explicit determination of who should be under the purview of the Home Care Commission pursuant to Oregon Constitution Article XV, section 11, ORS 410.600 and ORS 656.039(5)(a). The Department of Human Services shall share that determination with the appropriate interim legislative committees by October 2009.*

The Department of Human Services ("DHS") has reviewed this issue extensively, including consultations with the Oregon Department of Justice. Based on this review, DHS determines, acknowledges, and recommends as follows:

- Current law does not support an expansion of the bargaining unit covered by the current Commission-SEIU collective bargaining agreement.<sup>1</sup>
- We fully acknowledge that this determination is not free of doubt or dispute.
- We recommend that DHS work with key legislators and stakeholders to develop legislation for the 2011 session to clarify and resolve this issue.

## B. Three sets of laws

Article XV, section of 11, of the Oregon Constitution ("Section 11"), ORS 410.600 to 410.625 (the "Commission statutes"), and ORS 656.039(5) impose duties on the Home Care Commission ("Commission") and DHS as to workers who provide in-home care services under qualifying government programs. Copies of those provisions are attached as Appendices A, B, and C. As noted above, the budget note

<sup>1</sup> Article 2 of the 2007-2009 agreement states in pertinent part:

**Section 2.** The Employer and the Union have established a single bargaining unit that consists of: All full-time, part-time, hourly, and live-in publicly funded Homecare Workers employed through the Employer, who are Client-Employed Providers (CEPs), Spousal Pay Providers, State Plan Personal Care for seniors and people with disabilities, and providers in the Oregon Project Independence (OPI) Program, and for whom compensation is paid by Department of Human Services (DHS) or other public agency that receives money from DHS. All other Homecare Workers, including those employed by other employers, and supervisors are excluded.

from last session directs DHS to determine which workers are covered by each provision.

The assigned task is not easy. Section 11 originated as an initiative petition<sup>2</sup> and is confusing. For example, between its preamble and substantive provisions, it describes the workers to which it applies in at least seven different ways.<sup>3</sup> The Commission statutes were intended to implement Section 11 but vary from it in several particulars,<sup>4</sup> and redundantly create a "Home Care Commission."<sup>5</sup> And, ORS 656.039(5), a workers' compensation coverage statute, refers only to the statutorily-created commission<sup>6</sup> and appears to cover fewer home care workers than either the Commission statutes or Section 11.<sup>7</sup>

### C. Summary of DHS' determinations

We understand that the Assembly is principally interested in whether any worker authorized by the state to provide in-home care services to adults and children with developmental disabilities or mental illness<sup>8</sup> is eligible for collective bargaining or mandatory workers' compensation coverage.

As explained below, we determine as follows:

- To be covered by Section 11, a "home care worker" must provide "personal care services" to his or her employer.

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<sup>2</sup> It was Measure 99 and was approved by the voters in November 2000.

<sup>3</sup> The variations include: (1) "home care workers" ((1)(b)(C)), ((3)(3)); (2) "qualified home care providers" ((1)(b)(B)); (3) "qualified home care workers" ((1)(b)(E)); (4) "home care workers, (also known as client employed providers), paid by the State of Oregon [who] provide in-home support services" (Preamble); (5) "home care workers hired directly by the client and financed by payments from the State or by payments from a county or other public agency which receives money for that purpose from the State" ((1)(b)(A)); (6) "home care workers hired directly by the client and financed in whole or in part by the State, or by payment from a county or other public agency which receives money for that purpose from the State" ((1)(b)(B)); and (7) "home care workers hired directly by the client and paid by the State, or by a county or other public agency which receives money for that purpose from the State" ((3)(f)).

<sup>4</sup> For example, the Commission statutes include a means test for eligible disabled clients (they must be "eligible for Supplemental Security Income or for general assistance", ORS 410.040(7)(a)); Section 11 has no such requirement. Home care services under the Commission statutes include assistance with activities of daily living and self-management. By contrast, Section 11 only mentions "personal care services."

<sup>5</sup> Section 11 provides: "The Home Care Commission is created as an independent public commission\*\*\*." ORS 410.602(1) provides: "The Home Care Commission is created \*\*\*."

<sup>6</sup> ORS 656.039(5)(a) mandates that "[t]he Home Care Commission created by ORS 410.602 shall elect coverage \*\*\*"

<sup>7</sup> For purposes of ORS 656.039(5), "home care worker" has the meaning given in ORS 410.600; a home care worker with the mandated workers' compensation coverage is one who "is paid by the state on behalf of the client." ORS 656.039(5)(a).

<sup>8</sup> For these purposes, we stress that mental illness does not include an injury "to the brain caused by extrinsic forces," ORS 410.715, or Alzheimer's disease or a related disorder; ORS 410.430(1)(a) (Oregon Project Independence).

- To be covered by the Commission statutes or ORS 656.039(5), a home care worker must provide services to an employer who is eligible for Supplemental Security Income or general assistance.
- To be eligible for collective bargaining under Section 11, a home care worker must be directly “paid by the State, or by a county or other public agency which receives money for that purpose from the State.”
- To be eligible for collective bargaining under the Commission statutes, a home care worker must be directly “paid in whole or in part by the department, an area agency or other public agency that receives moneys from the department for that purpose.”
- To be eligible for mandatory workers’ compensation coverage under ORS 656.039(5), a home care worker must be directly paid “by the state on behalf of the client.”
- Providers of in-home care services to children and adults with developmental disabilities or mental illness are not eligible for collective bargaining under Section 11 or the Commission statutes, or for mandatory workers’ compensation coverage under ORS 656.039(5).

Below, we discuss issues of client eligibility, services, and payment arrangements under each of the three sets of law addressing home care workers.

#### **D. Section 11**

##### **1. Eligible clients**

For several reasons, we conclude that children and adults with developmental disabilities and mental illness are not eligible clients for purposes of Section 11. We reach this conclusion even though, standing alone, the phrases “people with disabilities” and “persons with disabilities” (both used in Section 11) appear to encompass these persons. In other words, we acknowledge that a “plain meaning” reading of these phrases points toward a different conclusion and, for that reason, recognize that our conclusion is not free from doubt or dispute.

But we also understand that phrases like these must not be interpreted in isolation but rather within their context. The context that causes us to conclude that children and adults with developmental disabilities or mental illness are not eligible clients for purposes of Section 11 includes the following:

- The Preamble to Section 11 uses the term “client employed providers” as a synonym for “home care workers.” In 2000, the term “client employed providers” was used only in connection with in-home services to the elderly and physically disabled. *See* OAR chapter 411, divisions 30 and 32

(2000) (former SDSD rules describing in part the client employed provider program for elderly and physically disabled and those elderly served by Oregon Project Independence). The term simply was not used in 2000 in connection with in-home services to children or adults with developmental disabilities or mental illness.

- The Preamble stresses “seniors and persons with disabilities living independently in their own homes.” Children are not viewed colloquially as living independently.
- Section 11 refers to home care workers hired “directly by the client,” a capacity not generally attributed to un-emancipated children who cannot contract.
- Section 11 prescribes constituency-oriented appointments to the Commission for seniors and persons with physical disabilities but no similar appointments for individuals with developmental disabilities or mental illness. This suggests that these individuals were not intended to be served by Section 11 home care workers. For example:
  - A representative from the Senior and Disabled Services Division (“SDSD” (or its successor) must be appointed to the Home Care Commission. With limited exceptions not relevant to the current inquiry, in 2000 the statutory mandate for SDSD did not include children or adults with either developmental disabilities or mental illness. Indeed, in 2000 the Mental Health and Developmental Disabilities Division (“MHDDD”) – not SDSD – was “responsible for the administration of services for persons with developmental disabilities and mental illness.” ORS 430.021(1) (1999). But Section 11 does not require the appointment of a representative of MHDDD (or its successor).
  - Section 11 requires a representative from the Oregon Association of Area Agencies on Aging and Disabilities (which addresses services to the elderly and those with physical disabilities) and a representative from the Governor’s Commission on Senior Services. None of these representatives would have program connection or knowledge about adults or children with developmental disabilities or mental illness that County Mental Health and Developmental Disabilities staff or advocacy groups such as Oregon Council on Developmental Disabilities (*see* Governor’s Executive Order No. 99-08, updating EO 88-07) or NAMI would possess.
  - Section 11 directs cooperation with “area agencies on aging and disability” but does not direct cooperation with any similar organization or agencies that support children and adults with developmental disabilities or mental illness.

- In 2000, there were highly active advocates and advocacy groups for individuals with developmental disabilities and mental illness. Tellingly, not one of them commented on Measure 99 in the Voters' Pamphlet.

Significantly, if Section 11 is interpreted to include home care workers who serve the children and adults with developmental disabilities or mental illness, the Governor would be unable to make constituency-oriented appointments under the Constitution to the Commission that would correspond to the Section 11 appointments prescribed for seniors and the physically disabled.

## 2. Services

Section 11 only refers to "personal care services." The Preamble distinguishes such services from other services, such as housekeeping, shopping, meal preparation, money management, and medical care and treatment. This suggests that a "home care worker" must provide "personal care" (i.e., private, bodily) services. Even if the person with a developmental disability or mental illness qualifies under Section 11, each of their providers would have to be reviewed to ascertain whether they provide "personal care services."

## 3. "Paid by"

To qualify for collective bargaining under Section 11, a home care worker must be "paid by the state, or by a county or other public agency which receives money for that purpose from the State." This wording suggests that direct payment by the state or other public agency is a necessary pre-requisite. Providers of many in-home services or other community services to individuals with developmental disabilities generally are not paid directly by the state or a public agency, but rather by a fiscal intermediary. This is pursuant to an agreement (the "Staley settlement") that settled litigation brought by the Oregon Advocacy Center.

## E. ORS 410.600 to 410.625 (the Commission statutes)

### 1. Eligible clients

The definition of a "person with a disability" for purposes of ORS 410.600 to 410.625 is the same as that of ORS 410.040(7). ORS 410.600(7). Under ORS 410.600(7), a person with a developmental disability or mental illness is not a "person with a disability" unless he or she "resides in or needs placement in a residential program administered by [DHS]." Home care services covered by the Commission statutes are delivered "in the home of an elderly person or a person with a disability." ORS 410.600(5). Obviously, persons who live in their own homes do not reside in or need placement in a DHS-administered residential program. Accordingly, persons with

developmental disabilities or mental illness do not appear to be eligible for home care services under the Commission statutes.

In addition, an individual is not a "person with a disability" under ORS 410.040(7) unless he or she is "eligible for Supplemental Security Income or for general assistance." In other words, the Commission statutes impose a "means" test on clients that is not correspondingly imposed by Section 11.<sup>9</sup>

Also under the Commission statutes, a person with a disability must "hire" the home care worker "directly." ORS 410.600(6)(a). Unless emancipated under ORS 419B.550 to 419B.558, a child does not have "control of the person's own actions and business" under ORS 109.510 until the child reaches the age of 18. A disabled child, therefore, does not appear to be able to qualify as an employer of a home care worker under the Commission statutes.

## 2. Services

Both activities of daily living and self-management are supported types of services under the Commission statutes. ORS 410.600(5) ("home care services" means assistance with activities of daily living and self-management \*\*\*); ORS 410.600(1) (defining "activities of daily living"); ORS 410.600(8) (defining "self-management"). As noted above, Section 11 appears to require home care workers under that law to deliver personal care services." "Personal care services" under Section 11 are akin to activities of daily living services but dissimilar from self-management services under the Commission statutes. Accordingly, the supported services under the Commission statutes are broader than those covered under Section 11.

This difference becomes significant when the classes of eligible clients vary under the two sets of laws. For example, while Section 11 has no means test, home care workers under that law must provide personal care services. By contrast, the Commission statutes have a means test (i.e., a narrower eligible population), but cover assistance with activities of daily living as well as self-management (i.e., a broader range of services).

## 3. Paid by

Similar to Section 11, under ORS 410.600(6)(b), one qualification for a home care worker is that the worker be a person whose "compensation *is paid* in whole or in part *by the department, an area agency or other public agency that receives moneys from the department for that purpose[.]*" (Emphasis added). Again, providers of in-home services

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<sup>9</sup> While the term "general assistance" no longer describes a DHS program, a statute, ORS 411.010(2), does define it, in part, as referring to assistance "provided to needy persons."

to children and adults with developmental disabilities are often not paid directly by the state or a public agency, but rather a fiscal intermediary.

**F. ORS 656.039(5)**

**1. Clients and services**

This workers' compensation coverage statute refers only to the statutorily-created commission ("The Home Care Commission created by ORS 410.602 shall elect coverage \*\*\*"). Hence, the home care worker client base and types of services covered are the same under ORS 656.039(5) as those under the Commission statutes.

This statutory provision was added in 2007. Or Laws 2007, ch 835, § 1 (HB 3362). Until it was added, absent a voluntary election of coverage by the Commission, home care workers were "nonsubject workers" for purposes of the workers' compensation laws. HB 3362 was introduced at the request of SEIU Local 503. According to testimony at the legislative hearings on HB 3362, the union desired to avoid having to bargain over workers' compensation coverage every two years. The bill was presented as having no fiscal impact because the collective bargaining agreement then in effect provided for workers' compensation coverage. In other words, the Assembly essentially was told that the persons covered by the legislation would be coextensive with the bargaining unit then (and now) in existence (which excludes providers of services to children and adults with developmental disabilities or mental illness)

**2. Paid by**

ORS 656.039(5)(a) also specifies that the statutory Commission must elect to make "home care workers subject workers if the home care worker *is paid by the state* on behalf of the client." (Emphasis added). ORS 656.039(5)(b) makes the Commission statutes' definition of "home care worker" applicable to that subsection. This definition, ORS 410.600(6)(b), already includes a payment provision: "Whose *compensation is paid* in whole or in part *by the department, an area agency or other public agency that receives moneys from the department* for that purpose." (Emphasis added). This suggests that the inclusion of the phrase "paid by the state" in subsection (5)(1) is intended to further narrow the scope of persons eligible for mandatory workers' compensation coverage to those directly paid by the state.

**G. Conclusion**

In summary, DHS does not believe that Section 11, the Home Care Commission statutes or ORS 656.039(5) generally encompass home care workers beyond those in the current home care bargaining unit. However, the preparation of this report has revealed to us that the various statutes are not as clear or consistent as they need to be. As stated early in this report, we fully acknowledge that, for example, a "plain meaning" reading of the phrases "people with disabilities" and "persons with disabilities," as used in Section 11, standing alone, appears to encompass persons with developmental disabilities or mental illness. Accordingly, we recognize that many of our findings are not free from doubt or dispute. Therefore, we propose to work with key legislators and stakeholders on potential legislation for the 2011 session..

Legislation to clarify this issue will present several key challenges, including:

- 1) How to pay for any added program costs, resulting from collective bargaining, without reducing the purchasing power of consumers for goods or services.
- 2) Whether it is possible to expand membership of the Home Care Commission to include representatives of developmental disability and mental health constituencies; and, if so, how to do it; and if not possible, how to accommodate input from these constituencies.
- 3) Whether to change or expand the definition of home care services since some services provided to persons with developmental disabilities or mental illness may fall outside the scope of assistance with activities of daily living or self-management provided to the elderly or physically disabled.

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# Appendixes

10. The Oregon Property Protection Act of 2000
11. Home Care Commission

**Section 11. Home Care Commission.** (1) Ensuring High Quality Home Care Services: Creation and Duties of the Quality Home Care Commission. (a) The Home Care Commission is created as an independent public commission consisting of nine members appointed by the Governor.

(b) The duties and functions of the Home Care Commission include, but are not limited to:

(A) Ensuring that high quality, comprehensive home care services are provided to the elderly and people with disabilities who receive personal care services in their homes by home care workers hired directly by the client and financed by payments from the State or by payments from a county or other public agency which receives money for that purpose from the State;

(B) Providing routine, emergency and respite referrals of qualified home care providers to the elderly and people with disabilities who receive personal care services by home care workers hired directly by the client and financed in whole or in part by the State, or by payment from a county or other public agency which receives money for that purpose from the State;

(C) Provide training opportunities for home care workers, seniors and people with disabilities as consumers of personal care services;

(D) Establish qualifications for home care workers;

(E) Establish and maintain a registry of qualified home care workers;

(F) Cooperate with area agencies on aging and disability services and other local agencies to provide the services described and set forth in this section.

(2) Home Care Commission Operation/Selection. (a) The Home Care Commission shall be comprised of nine members. Five members of the Commission shall be current or former consumers of home care services for the

elderly or people with disabilities. One member shall be a representative of the Oregon Disabilities Commission, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Governor's Commission on Senior Services, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Oregon Association of Area Agencies on Aging and Disabilities, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Senior and Disabled Services Division, (or a successor entity, for as long as a comparable entity exists).

(b) The term of office of each member is three years, subject to confirmation by the Senate. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. A member is eligible for reappointment and may serve no more than three consecutive terms. In making appointments to the Commission, the Governor may take into consideration any nominations or recommendations made by the representative groups or agencies.

**(3) Other Provisions – Legal Duties and Responsibilities of the Commission.**

(a) The Home Care Commission shall, in its own name, for the purpose of carrying into effect and promoting its functions, have authority to contract, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

(b) When conducting any activities in this Section or in subsection (1) of this section, and in making decisions relating to those activities, the Home Care Commission shall first consider the effect of its activities and its decisions on improving the quality of service delivery and ensuring adequate hours of service are provided to clients who are served by home care workers.

(c) Clients of home care services retain their right to select the providers of their choice, including family members.

(d) Employees of the Commission are not employees of the State of Oregon for any purpose.

(e) Notwithstanding the provisions in paragraph (d) of this subsection, the State of Oregon shall be held responsible for unemployment insurance payments for home care workers.

(f) For purposes of collective bargaining, the Commission shall be the employer of record of home care workers hired directly by the client and paid by the State, or by a county or other public agency which receives money for that purpose from the State. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the Commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration as the method of concluding the collective bargaining process. Home care workers shall not have the right to strike.

(g) The Commission may adopt rules to carry out its functions. [Created through initiative petition filed Nov. 10, 1999, and adopted by the people Nov. 7, 2000]

**Note:** The leadlines to subsections (1), (2) and (3) of section 11, except the periods in subsections (2) and (3), were a part of the measure submitted to the people by initiative petition (Measure No. 99, 2000) and adopted by the people Nov. 7, 2000.

**Note:** Section 11 was submitted to the voters as sections 1, 2 and 3 and added to the Constitution but not to any Article therein by Measure No. 99, 2000.

**Note:** In Measure No. 99, 2000, subsection (1)(a) and (b)(A) to (F) were designated as section 1 (A) and (B)(1) to (6); subsection (2)(a) and (b) as section 2 (A) and (B); and subsection (3)(a) to (g) as section 3 (A) to (G). The reference to subsection (1) of this section was a reference to Section 1 above, and the reference to paragraph (d) of this subsection was a reference to subsection (D) of this section.

**Note:** In Measure No. 99, 2000, the period in subsection (1)(b)(F) appeared as a semicolon, and there was no period in subsection (3)(e).

**410.600 Definitions for ORS 410.600 to 410.625.** As used in ORS 410.600 to 410.625:

- (1) "Activities of daily living" includes but is not limited to the following:
  - (a) Bathing and personal hygiene;
  - (b) Dressing and grooming;
  - (c) Eating;
  - (d) Mobility;
  - (e) Bowel and bladder management; and
  - (f) Cognition.
- (2) "Area agency" has the meaning given that term in ORS 410.040.
- (3) "Commission" means the Home Care Commission established and operated pursuant to section 11, Article XV of the Oregon Constitution, and ORS 410.600 to 410.625.
- (4) "Elderly person" has the meaning given that term in ORS 410.040.
- (5) "Home care services" means assistance with activities of daily living and self-management provided by a home care worker in the home of an elderly person or person with a disability.
- (6) "Home care worker" means a person:
  - (a) Who is hired directly by an elderly person or person with a disability who receives moneys from the Department of Human Services for that purpose;
  - (b) Whose compensation is paid in whole or in part by the department, an area agency or other public agency that receives moneys from the department for that purpose; and
  - (c) Who provides either hourly or live-in home care services.

Appendix B:  
**410.600 Definitions for ORS 410.600 to 410.625.**

(7) "Person with a disability" has the meaning given that term in ORS 410.040.

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

(a) Medication and oxygen management;

(b) Transportation;

(c) Meal preparation;

(d) Shopping; and

(e) Client focused general household work. [2001 c.901 §1; 2003 c.14 §177; 2007 c.70 §178]

**410.602 Home Care Commission; membership; rules.** (1) The Home Care Commission is created, consisting of nine members appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members shall be elderly persons or persons with disabilities who are receiving or who have received home care services. One member shall be appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor's Commission on Senior Services;

(b) Department of Human Services;

(c) Oregon Disabilities Commission; and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(2) The members shall be appointed for terms of three years. A member is eligible for reappointment and may serve no more than three consecutive terms. When making appointments to the commission, the Governor may consider recommendations from the entities listed in subsection (1) of this section and other organizations representing the interests of elderly persons and persons with

disabilities.

(3) If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(4) The commission shall exercise all powers necessary to effectuate the purposes of ORS 410.600 to 410.625.

(5) The Governor shall select annually from the membership of the commission a chairperson who serves at the pleasure of the Governor. The chairperson or majority of the members of the commission then in office shall have the power to call regular or special meetings of the commission. The commission shall meet at a place, date and hour determined by the commission.

(6) Members of the commission shall be paid compensation and expenses as provided in ORS 292.495 from such funds as may be available to the commission.

(7) Meetings of the commission shall be open and public in accordance with ORS 192.610 to 192.690. Records of the commission shall be open and available to the public in accordance with ORS 192.410 to 192.505. The commission shall meet regularly with the executive director of the Home Care Commission to make recommendations and set policy, to approve or reject reports of the executive director, to adopt rules and to transact other business.

(8) A quorum of the commission shall consist of a majority of the members of the commission then in office. All decisions of the commission shall be made by a majority of all the members then in office.

(9) The commission shall, in accordance with ORS chapter 183, adopt and enforce rules to carry out the provisions of ORS 410.600 to 410.625.

(10) The commission is not subject to ORS 291.050 to 291.060.

(11) Members of the commission are officers of the state and the commission is a state commission for purposes of ORS 30.260 to 30.300 and 278.120 and ORS chapter 180.

(12) The chairperson may sign, on behalf of the commission, contracts or agreements that the commission authorizes or is required to execute. [2001 c.901

§2; 2007 c.70 §179; 2007 c.797 §3]

**410.604 Duties of commission; executive director.** (1) The Home Care Commission shall ensure the quality of home care services by:

(a) Establishing qualifications for home care workers with the advice and consent of the Department of Human Services as the single state Medicaid agency;

(b) Providing training opportunities for home care workers and elderly persons and persons with disabilities who employ home care workers;

(c) Establishing and maintaining a registry of qualified home care workers;

(d) Providing routine, emergency and respite referrals of home care workers;

(e) Entering into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the commission; and

(f) Working cooperatively with area agencies and state and local agencies to accomplish the duties listed in paragraphs (a) to (e) of this subsection.

(2)(a) The commission shall enter into an interagency agreement with the department to contract for a department employee to serve as executive director of the commission. The executive director shall be appointed by the Director of Human Services in consultation with the Governor and subject to approval by the commission, and shall serve at the pleasure of the Director of Human Services. The commission may delegate to the executive director the authority to act on behalf of the commission to carry out its duties and responsibilities, including but not limited to:

(A) Entering into contracts or agreements; and

(B) Taking reasonable or necessary actions related to the commission's role as employer of record for home care workers under ORS 410.612.

(b) The commission shall enter into an interagency agreement with the department for carrying out any of the duties or functions of the commission, for

department expenditures and for the provision of staff support by the department.

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

(a) Improving the quality of service delivered by home care workers; and

(b) Ensuring adequate hours of service are provided to elderly persons and persons with disabilities by home care workers.

(4) The commission has the authority to contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property in its own name. [2001 c.901 §3; 2007 c.70 §180; 2007 c.797 §4]

**410.606 Referral of qualified individuals on commission registry.** The Department of Human Services, an area agency or other public agency shall provide to an individual seeking a home care worker the names of qualified individuals, in the appropriate geographic area, who have been placed on the registry maintained by the Home Care Commission. [2001 c.901 §4]

**410.608 Selection of home care worker; right to terminate employment; eligibility determination made by Department of Human Services.** (1) An elderly person or a person with a disability who hires a home care worker has the right to select the home care worker, including a family member.

(2) An elderly person or a person with a disability who hires a home care worker has the right to terminate the employment of the home care worker at any time and for any reason.

(3) The Department of Human Services shall determine the eligibility of an elderly person or a person with a disability to receive home care services under the Medicaid program and state-funded long term care services. [2001 c.901 §5; 2007 c.70 §181]

**410.610** [1981 c.183 §1; 1987 c.428 §27; 1989 c.721 §50; renumbered 124.050 in 1995]

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

(2) Notwithstanding subsection (1) of this section, home care workers may not be considered for any purposes to be an employee of the State of Oregon, an area agency or other public agency.

(3) The Oregon Department of Administrative Services shall represent the commission in collective bargaining negotiations with the certified or recognized exclusive representatives of all appropriate bargaining units of home care workers. The department is authorized to agree to terms and conditions of collective bargaining agreements on behalf of the commission and the Department of Human Services. [2001 c.901 §6]

**410.614 Rights of home care workers.** Notwithstanding ORS 243.650 (19) and (20), the Home Care Commission shall be considered a public employer and home care workers shall be considered public employees governed by ORS 243.650 to 243.782. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration under ORS 243.742 as the method of concluding the collective bargaining process. Home care workers do not have the right to strike. [2001 c.901 §7]

**410.620** [1981 c.183 §2; renumbered 124.055 in 1995]

**410.625 Authority of commission; budget.** (1) In carrying out its duties under ORS 410.600 to 410.625, the Home Care Commission may:

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

(b) Provide nonemployee compensation to home care workers or prospective home care workers who attend training sessions approved or sponsored by the commission;

(c) On behalf of an elderly person or a disabled person who hires a home care worker through the Home Care Commission registry, elect workers' compensation coverage or arrange for health insurance coverage, including group coverage, for the person's home care workers; and

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

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

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

(4) The commission may award grants from funds appropriated by the Legislative Assembly to the department for allocation to the commission or from funds otherwise available from any other source for the purpose of carrying out the duties of the commission under ORS 410.600 to 410.625. [2007 c.797 §2]

**656.039 Election of coverage for workers not subject to law; procedure; cancellation; election of coverage for home health care workers employed by clients of Department of Human Services.** (1) An employer of one or more persons defined as nonsubject workers or not defined as subject workers may elect to make them subject workers. If the employer is or becomes a carrier-insured employer, the election shall be made by filing written notice thereof with the insurer with a copy to the Director of the Department of Consumer and Business Services. The effective date of coverage is governed by ORS 656.419 (3). If the employer is or becomes a self-insured employer, the election shall be made by filing written notice thereof with the director, the effective date of coverage to be the date specified in the notice.

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

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

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to a guaranty contract insurer for coverage. An insurer other than the State Accident Insurance Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool.

(5)(a) The Home Care Commission created by ORS 410.602 shall elect coverage on behalf of clients of the Department of Human Services who employ home care workers to make home care workers subject workers if the home care worker is paid by the state on behalf of the client.

(b) As used in this subsection, "home care worker" has the meaning given that term in ORS 410.600. [1965 c.285 §11; 1975 c.556 §22; 1979 c.839 §1; 1981

c.854 §6; 1983 c.816 §1; 1985 c.212 §2; 2007 c.835 §1]

**Note:** The amendments to 656.039 by section 8, chapter 241, Oregon Laws 2007, become operative July 1, 2009. See section 31, chapter 241, Oregon Laws 2007. The text that is operative on and after July 1, 2009, is set forth for the user's convenience.

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

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

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

(4) Notwithstanding any other provision of this section, a person or employer not subject to this chapter who elects to become covered may apply to an insurer for coverage. An insurer other than the State Accident Insurance Fund Corporation may provide such coverage. However, the State Accident Insurance Fund Corporation shall accept any written notice filed and provide coverage as provided in this section if all subject workers of the employers will be insured with the State Accident Insurance Fund Corporation and the coverage of those subject workers is not considered by the State Accident Insurance Fund Corporation to be a risk properly assignable to the assigned risk pool.

(5)(a) The Home Care Commission created by ORS 410.602 shall elect.

coverage on behalf of clients of the Department of Human Services who employ home care workers to make home care workers subject workers if the home care worker is paid by the state on behalf of the client.

(b) As used in this subsection, "home care worker" has the meaning given that term in ORS 410.600.

# Measure 99

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## EXPLANATORY STATEMENT

Ballot Measure 99 amends the Oregon Constitution to create the Home Care Commission. The commission, an independent public commission, would be responsible for ensuring high quality home care services for elderly and disabled persons who receive publicly funded personal care in their homes.

The State of Oregon funds in-home support services for eligible elderly and disabled persons. Home care workers provide in-home services, including but not limited to housecleaning, shopping, meal preparation, money management, transportation, personal care and medication management. Home care workers are hired directly by the client. Clients would retain the right to hire home care workers of their choice, including family members.

The Home Care Commission would consist of nine members appointed by the Governor for three-year terms, subject to confirmation by the Senate. Five members would be current or former clients who have received home care services. The Oregon Disabilities Commission, The Governors' Commission on Senior Services, The Oregon Association of Area Agencies on Aging and Disabilities, Senior and Disabled Services or their successor entities, would have one representative each on the Home Care Commission. In making appointments, the Governor may consider any nominations or recommendations made by the representative groups or agencies.

Ballot Measure 99 directs the commission, in its performance of its duties, to first consider the effect of its activities and decisions on improving the quality of service and ensuring that adequate hours of service are provided to clients. The duties of the commission would include but not be limited to providing routine, emergency and respite referrals of qualified home care workers; providing training opportunities for home care workers and their clients; establishing qualifications for home care workers; establishing and maintaining a registry of home care workers; and cooperating with area agencies on aging and disability services and other local agencies to provide these services.

The commission would have authority to contract, lease, acquire, hold, own, encumber, sell, insure, replace, deal in and with and dispose of real and personal property.

Employees of the commission would not be employees of the State of Oregon for any purpose. The state, however, would be responsible for paying the unemployment insurance payments for home care workers.

The commission would be the employer of record of home care workers for collective bargaining purposes. Home care workers would have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the commission on matters concerning employment relations. Home care workers would have public employees' collective bargaining rights, with mediation and interest arbitration as the method of concluding the collective bargaining process. Home care workers would be prohibited from striking.

The commission would have the authority to adopt rules to implement its duties and responsibilities.

<b>Committee Members:</b>	<b>Appointed by:</b>
Kase Kasemeyer	Chief Petitioners
Karla Spence	Chief Petitioners
Earlene Berry	Secretary of State
Connie Lough	Secretary of State
Rick Stucky	Members of the Committee

*(This committee was appointed to provide an impartial explanation of the ballot measure pursuant to ORS 251.215.)*



## OFFICE OF THE SECRETARY OF STATE

NEWS RELEASE

BILL BRADBURY

**For Immediate Release:**  
December 14, 1999

**Contact:** Colette Burghart  
Elections Division  
(503) 986-1518

The Office of the Secretary of State received a certified ballot title from the Attorney General on December 14, 1999, for initiative petition #104, proposing a constitutional amendment, for the General Election of November 7, 2000.

In addition, Secretary of State Bill Bradbury determined that the proposed initiative petition was in compliance with the procedural requirements established in the Oregon Constitution for initiative petitions.

The certified ballot title is as follows:

**AMENDS CONSTITUTION: CREATES COMMISSION ENSURING  
QUALITY HOME CARE SERVICES FOR ELDERLY, DISABLED**

**RESULT OF "YES" VOTE:** "Yes" vote creates commission ensuring quality home services for elderly, disabled receiving publicly-funded care.

**RESULT OF "NO" VOTE:** "No" vote rejects commission ensuring quality home services for elderly, disabled receiving publicly-funded care.

**SUMMARY:** Amends constitution. Creates nine-member commission ensuring high-quality home care services for elderly, disabled receiving publicly-funded personal care. Members appointed by Governor for three-year terms, confirmed by Senate. Commission would establish home care worker qualifications, registry; provide routine, emergency, respite referrals of qualified care providers; provide training opportunities. Clients would retain right to hire provider of their choosing. Commission would be home care workers' employer for collective bargaining purposes. Home care workers would have public employees' collective bargaining rights, could not strike.

HARDY MYERS  
Attorney General



DAVID SCHUMAN  
Deputy Attorney General

DEPARTMENT OF JUSTICE  
APPELLATE DIVISION

December 14, 1999

Colleen Sealock  
Director, Elections Division  
Office of the Secretary of State  
141 State Capitol  
Salem, OR 97310

Re: Proposed Initiative Petition — Amends Constitution: Creates Commission Ensuring  
Quality Home Care Services For Elderly, Disabled  
DOJ File #BT-130-99; Elections Division #104

Dear Ms. Sealock:

We have received one comment recommending that the draft ballot title be certified without any changes. This ballot title relates to the creation of a commission to ensure quality home care services for the elderly and disabled.

Sincerely,

A handwritten signature in cursive script that reads "Holly A. Vance".

Holly A. Vance  
Assistant Attorney General

PHIL KEISLING  
SECRETARY OF STATE

Dec 14 12 51 PM '99

RECEIVED

HAV:mzw/APP14028

Enclosure

c: David Schuman, Deputy Attorney General  
Don Arnold, General Counsel Division  
Lynn Rosik, General Counsel Division

Steven Novick  
1653 Nehalem, #4  
Portland, Oregon 97202

Ellie Sauers  
576 SE 4<sup>th</sup>  
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Eugene Organ  
2850 Pearl  
Eugene, Oregon 97405

WHEREAS, thousands of Oregon seniors and persons with disabilities live independently in their own homes, which they prefer and is less costly than institutional care (i.e. nursing homes), because over 10,000 home care workers, (also known as client employed providers), paid by the State of Oregon provide in-home support services;

WHEREAS, home care workers provide services that range from housekeeping, shopping, meal preparation, money management and personal care to medical care and treatment, but receive little, if any, training in those areas resulting in a detrimental impact on quality of care;

WHEREAS, the quality of care provided to seniors and people with disabilities is diminished when there is a lack of stability in the workforce which is the result of home care workers receiving low wages, minimal training and benefits;

WHEREAS, both home care workers and clients receiving home care services would benefit from creating an entity which has the authority to provide, and is held accountable for the quality of services provided in Oregon's in-home system of long-term care.

Be It Resolved that the people of the State of Oregon adopt a Home Care Quality and Accountability Act of 2000 as a new provision of the Constitution of the State of Oregon.

Section 1. Ensuring High Quality Home Care Services: Creation and Duties of the Quality Home Care Commission.

(A)The Home Care Commission is created as an independent public commission consisting of nine members appointed by the Governor.

(B)The duties and functions of the Home Care Commission include, but are not limited to:

(1)Ensuring that high quality, comprehensive home care services are provided to the elderly and people with disabilities who receive personal care services in their homes by home care workers hired directly by the client and financed by payments from the State or by payments from a county or other public agency which receives money for that purpose from the State;

(2)Providing routine, emergency and respite referrals of qualified home care providers to the elderly and people with disabilities who receive personal care services by home care workers hired directly by the client and financed in whole or in part by the State, or by payment from a county or other public agency which receives money for that purpose from the State;

- (3) Provide training opportunities for home care workers, seniors and people with disabilities as consumers of personal care services;
- (4) Establish qualifications for home care workers;
- (5) Establish and maintain a registry of qualified home care workers;
- (6) Cooperate with area agencies on aging and disability services and other local agencies to provide the services described and set forth in this section;

## Section 2. Home Care Commission Operation/Selection

(A)The Home Care Commission shall be comprised of nine members. Five members of the Commission shall be current or former consumers of home care services for the elderly or people with disabilities. One member shall be a representative of the Oregon Disabilities Commission, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Governor's Commission on Senior Services, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Oregon Association of Area Agencies on Aging and Disabilities, (or a successor entity, for as long as a comparable entity exists). One member shall be a representative of the Senior and Disabled Services Division, (or a successor entity, for as long as a comparable entity exists).

(B)The term of office of each member is three years, subject to confirmation by the Senate. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. A member is eligible for reappointment and may serve no more than three consecutive terms. In making appointments to the Commission, the Governor may take into consideration any nominations or recommendations made by the representative groups or agencies.

## Section 3. Other Provisions – Legal Duties and Responsibilities of the Commission

(A)The Home Care Commission shall, in its own name, for the purpose of carrying into effect and promoting its functions, have authority to contract, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with and dispose of real and personal property.

(B)When conducting any activities in this Section or in Section 1 above, and in making decisions relating to those activities, the Home Care Commission shall first consider the effect of its activities and its decisions on improving the quality of service delivery and ensuring adequate hours of service are provided to clients who are served by home care workers.

(C)Clients of home care services retain their right to select the providers of their choice, including family members.

(D) Employees of the Commission are not employees of the State of Oregon for any purpose.

(E)Notwithstanding the provisions in subsection (D) of this section, the State of Oregon shall be held responsible for unemployment insurance payments for home care workers

(F) For purposes of collective bargaining, the Commission shall be the employer of record of home care workers hired directly by the client and paid by the State, or by a county or other public agency which receives money for that purpose from the State. Home care workers have the right to form, join and participate in the activities of labor organizations of their own choosing for the purpose of representation and collective bargaining with the Commission on matters concerning employment relations. These rights shall be exercised in accordance with the rights granted to public employees with mediation and interest arbitration as the method of concluding the collective bargaining process. Home care workers shall not have the right to strike.

(G) The Commission may adopt rules to carry out its functions.