

October 26, 2023

### In-Home Agency Providers:

The Oregon Home Care Commission, Oregon Department of Human Services, and Oregon Health Authority are sharing important information to educate in-home agencies and provide guidance about non-competition agreements. Although it is appropriate to require some staff to sign non-competition agreements, it is not a legal practice to require in-home agency caregivers to sign these agreements. Because these non-competition agreements for caregivers are not enforceable, the threat of legal action when an employee chooses to serve consumers receiving Medicaid services as a homecare worker, personal support worker, or personal care attendant is irresponsible and without merit.

Individuals who receive Medicaid in-home services have a choice of who provides their services and supports. This may include an in-home agency but may also include an individual enrolled as a homecare worker, personal support worker, or personal care attendant. Preventing current, past and future in-home agency caregivers to enroll as Medicaid providers not only undermines consumer choice but is an illegal practice. These are not enforceable agreements.

It is a violation under Oregon Revised Statute (ORS) 653.295 to require caregivers to sign non-competition agreements.

Per ORS 653.295, a non-competition agreement entered between an employer and employee is void and unenforceable unless certain criteria are met. These criteria would not be met for caregivers because it is highly unlikely the employee's annual gross salary and commissions, calculated on an annual basis, at the time of the employee's termination exceeds \$108,581. In addition, caregivers do not have access to trade secrets, as defined in ORS 646.461.

Please review the information below about non-competition agreements on the Oregon Bureau of Labor and Industries (BOLI) website found here:

<https://www.oregon.gov/boli/employers/pages/noncompetition-agreements.aspx>

*Prior to 2022, a noncompetition agreement was 'voidable' under several conditions. Under SB 169 (2021) the Legislature narrowed the application of noncompetition agreements and clarified that agreements entered into on or after January 1, 2022 which did not meet revised criteria are simply void. This*

*means an employee would not have to take any affirmative steps to invalidate an agreement that didn't meet the requirements.*

Non-competition agreements have also been addressed at a federal level. Please refer to General Counsel Memo GC 23-08 issued on 5/30/23 entitled Non-Compete Agreements that Violate the National Labor Relations Act found here the highlights the specific ways such agreements violate labor law:

<https://www.nlr.gov/guidance/memos-research/general-counsel-memos>

Please be aware, violations under ORS 653.295 are punishable as a misdemeanor under the penalties provided in ORS 653.991.

For questions about non-competition agreements, please contact the Oregon Bureau of Labor and Industries at 971-361-8400 or email [employer.assistance@boli.oregon.gov](mailto:employer.assistance@boli.oregon.gov).