DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 31

HOMECARE WORKERS ENROLLED IN THE CONSUMER-EMPLOYED PROVIDER PROGRAM

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411-031-0020 Definitions
(Amended 08/28/2016)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 031:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Ability and Willingness to Maintain Consumer-Employer Confidentiality" means a homecare worker is able and willing to keep personal information about a consumer-employer private.

(3) "Abuse" means abuse as defined by OAR 411-020-0002, OAR 407-045-0260, and OAR 943-045-0260.

(4) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for the individual's health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition and behavior as defined in OAR 411-015-0006.

(5) "ADL" means "activities of daily living" as defined in this rule.

(6) "Administrative Review" means the internal process the Department uses to review a decision to terminate or not to terminate a homecare worker's provider enrollment.

(7) "Adult" means any person at least 18 years of age.

(8) "Adult Protective Services" mean the services provided in response to the need for protection from abuse described in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045.

(9) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(10) "APD" means "Aging and People with Disabilities".

(11) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The terms AAA and Area Agency on Aging are inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(12) "Base Pay Rate" means the hourly wage to be paid to homecare workers, without any differentials, established in the Collective Bargaining Agreement.

(13) "Burden of Proof" means the existence or nonexistence of a fact is established by a preponderance of evidence.

(14) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows the homecare worker to provide services to any eligible in-home services consumer.

(15) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 028.

(16) "Collective Bargaining Agreement" means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's website: (http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm). Printed

copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(17) "Community Transportation" means non-medical transportation a homecare worker provides to a consumer-employer:

(a) Using the homecare worker's personal vehicle; and

(b) Provided in accordance with the consumer-employer's authorized service plan.

(18) "Consumer" or "Consumer-Employer" means an individual eligible for in-home services.

(19) "Consumer-Employed Provider Program" refers to the program wherein a provider is directly employed by a consumer to provide either hourly or live-in in-home services. In some aspects of the employer and employee relationship, the Department acts as an agent for the consumer-employer. These functions are clearly described in OAR 411-031-0040.

(20) "Department" means the Department of Human Services.

(21) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(22) "Enhanced Homecare Worker" means a homecare worker who is certified by the Oregon Home Care Commission to provide services and supports for consumers who require assistance with certain medically-driven services and supports.

(23) "Established Work Schedule" means the work schedule established by the consumer-employer to best meet the consumer's assessed needs and agreed to by the homecare worker employed by the consumer. A homecare worker adheres to the established work schedule by arriving to work on time, requesting absence from work in a timely manner, and notifying the consumer-employer of unscheduled absences in a timely manner.

(24) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(25) "Exerts Undue Influence" means a homecare worker assumes or attempts to assume control of a consumer-employer's decision-making, finances, home, property, medication, social interaction or ability to communicate. Exertion of undue influence may exist whether or not a consumer-employer willfully allows the homecare worker to assume such control.

(26) "Fiscal Improprieties" means a homecare worker committed financial misconduct involving a consumer's money, property, or benefits.

(a) Fiscal improprieties include, but are not limited to:

(A) Financial exploitation, as defined in OAR 411-020-0002(1)(e);

(B) Borrowing money, property, or belongings from a consumer;

(C) Taking a consumer's property or money;

(D) Accepting or receiving items or services purchased for the homecare worker by a consumer-employer;

(E) Forging a consumer's signature;

(F) Falsifying payment records;

(G) Claiming payment for hours not worked;

(H) Claiming to deliver services to a consumer during a time also claimed for travel;

(I) Repeatedly working or claiming to work hours not prior authorized on a consumer-employer's service plan;

(J) Claiming hours worked for a consumer-employer while taking time off or when a relief care worker is paid for providing services;

(K) Requesting or demanding payment for services from either the Department or the consumer in excess of the amount paid following the submission and processing of a properly completed claim; or

(L) Intentional acts committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare worker and a consumer-employer with whom the homecare worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

(27) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider of Medicaid in-home services program described in OAR Chapter 411 Division 030;

(B) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(C) A consumer-employed provider that provides state plan personal care services; and

(D) A relative providing Medicaid in-home services to a consumer living in the relative's home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disabilities Services or the Addictions and Mental Health Division.

(28) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided by homecare workers to consumer-employers at regularly scheduled times.

(29) "IADL" means "instrumental activities of daily living" as defined in this rule.

(30) "Imminent Danger" means there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

(31) "Inactivated" means the process through which a homecare worker is made temporarily ineligible to work for any consumer-employer. Inactivating a homecare worker's provider enrollment does not terminate the homecare worker's provider enrollment.

(32) "Individual" means an older adult or an adult with a disability applying or eligible for services.

(33) "In-Home Services" mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(34) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(35) "Live-In Services" mean services provided when an individual requires and receives assistance with activities of daily living and instrumental activities of daily living throughout a 24-hour work period by one homecare worker and the homecare worker may not leave the individual.

(36) "Mandatory Reporter" means an individual who is required under ORS 124.050-124.060 to report the abuse or suspected abuse of a child, an older adult, or the resident of a nursing facility, to the Department or to a law enforcement agency.

(37) "Medically-Driven Services and Supports" means medical or behavioral treatments, assessed by a case manager and included in a consumer's service plan, which a consumer requires in addition to assessed ADL, IADL and live-in services.

(38) "Non-Motorized Transportation" means traveling on foot, riding a bicycle, traveling in a wheelchair or scooter, or other similar means of transportation.

(39) "Office of Administrative Hearings" means the Office described in ORS 183.605-183.690 established within the Employment Department to conduct contested case proceedings, and other such duties, on behalf of designated state agencies.

(40) "Older Adult" means any person at least 65 years of age.

(41) "Oregon Homecare Commission" means the commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595-410.625.

(42) "Oregon Project Independence" means the program of in-home services described in OAR chapter 411, division 032.

(43) "Personal Support Worker" has the meaning given in OAR 411-375-0010.

(44) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(45) "Provide Services as Required" means a homecare worker provides services to a consumer as described in the consumer's service plan.

(46) "Provider" means the person who renders the services.

(47) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by a consumer for the purpose of receiving payment for authorized services provided to consumers of the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(48) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

(49) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(50) "Relief Homecare Worker" means a homecare worker who works for a consumer-employer when the consumer-employer's regularly scheduled homecare worker is absent.

(51) "Representative" or "Consumer-Employer's Representative" means any of the following:

> (a) A person appointed by a consumer-employer to participate in service planning on the consumer-employer's behalf.
>
> (b) A consumer-employer's natural support with longstanding involvement in assuring the consumer-employer's health, safety, and welfare.
>
> (c) A person, other than the consumer, who, on the consumer's behalf, assumes or is given any of the employer responsibilities listed in OAR 411-030-0040(8).

(52) "Restricted Homecare Worker" means the Department or Area Agency on Aging has placed restrictions on a homecare worker's provider enrollment as described in OAR 411-031-0040.

(53) "Self-Management Tasks" means "Instrumental Activities of Daily Living" as defined in this rule.

(54) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker possesses and demonstrates the physical, mental, organizational, and emotional skills or abilities necessary to perform services which safely and adequately meet the needs of consumers.

(55) "State Minimum Wage" or "Minimum Wage" means the rate of pay set forth in ORS 653.025.

(56) "These Rules" mean the rules in OAR chapter 411, division 031.

(57) "Time Off" means time where a homecare worker is not providing services to a consumer during a normally scheduled work time.

(58) "Unacceptable Background Check" means a check that produces information related to a person's background that precludes the person from being a homecare worker for the following reasons:

> (a) The person applying to be a homecare worker has been disqualified under OAR 407-007-0275;
>
> (b) A homecare worker enrolled in the Consumer-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or
>
> (c) A background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(59) "Unwelcome Nuisance to the Workplace" means unwelcome guests or pets invited by a homecare worker into a consumer's home, resulting in the consumer's dissatisfaction or a homecare worker's inattention to the consumer's required service needs.

(60) "Violated the Requirement to Maintain a Drug-Free Workplace" means there was a substantiated complaint against a homecare worker for --

> (a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a consumer, while in the consumer's home or care setting, or while transporting the consumer; or
>
> (b) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to a consumer or while in the consumer's home or care setting.

(61) "Violates the Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a homecare worker was found to have violated the protective service and abuse rules described in OAR chapter

411, division 020, OAR chapter 407, division 045, or OAR chapter 943, division 045.

Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070

411-031-0030 Purpose
(Amended 08/28/2016)

The rules in OAR chapter 411, division 031 establish the standards and procedures governing homecare workers and the fiscal services provided on behalf of the Department or AAA consumers to homecare workers enrolled in the Consumer-Employed Provider Program. Homecare workers provide home and community-based waiver, state plan, and Oregon Project Independence in-home services to the Department or AAA consumers. In-home services supplement the ability of the Department or AAA consumers to continue to live in their own homes.

Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070

411-031-0040 Consumer-Employed Provider Program
(Amended 08/28/2016)

The Consumer-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes a provider is required to provide the consumer-employer with assistance performing activities of daily living (ADLs) and instrumental activities of daily living (IADLs) throughout the course of a 24-hour period. The hourly structure assumes a provider is required for ADLs and IADLs during specific substantial periods. Except as indicated, all of the criteria in this rule apply to both hourly and live-in providers:

(1) EMPLOYMENT RELATIONSHIP. The relationship between a provider and a consumer is that of employee and employer. A homecare worker shall never be a representative, (see OAR 411-031-0020(51)), for a consumer-employer for whom the homecare worker currently provides paid services.

(2) CONSUMER-EMPLOYER JOB DESCRIPTIONS. A consumer-employer or consumer-employer’s representative is responsible for creating and maintaining a job description for a potential provider in coordination with the services authorized by the consumer's case manager.

(3) HOMECARE WORKER LIABILITIES. The only benefits available to homecare workers are those negotiated in the Collective Bargaining Agreement and as provided in Oregon Revised Statute. This Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare workers are not state employees.

(4) CONSUMER-EMPLOYER ABSENCES. When a consumer-employer is absent from his or her home due to an illness or medical treatment and is expected to return to the home within a 30 day period, the consumer's live-in provider may be retained to ensure the live-in provider's presence upon the consumer's return or to maintain the consumer's home for up to 30 days at the rate of pay immediately preceding the consumer's absence.

(5) SELECTION OF HOMECARE WORKER. A consumer-employer or consumer-employer's representative carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer or consumer-employer's representative has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department or AAA office determines whether a potential homecare worker meets the enrollment standards needed to provide services authorized and paid for by the Department.

(6) EMPLOYMENT AGREEMENT. A consumer-employer or consumer-employer's representative retains the full right to establish an employer-employee relationship with a person at any time after the person's Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. Payment for services is not guaranteed until the Department has verified that a person meets the provider enrollment standards described in section (8) of this rule and notified both the employer and homecare worker in writing that payment by the Department is authorized.

(7) TERMS OF EMPLOYMENT. A consumer-employer or consumer-employer's representative must establish terms of an employment relationship with an employee at the time of hire. The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and any sleeping arrangements or meals provided for live-in or hourly employees. Termination and the grounds for termination of employment are determined by a consumer-employer or consumer-employer's representative. A consumer-employer or consumer-employer's representative has the right to terminate an employment relationship with a homecare worker at any time and for any reason.

(8) PROVIDER ENROLLMENT.

(a) ENROLLMENT STANDARDS. A homecare worker must meet all of the following standards to be enrolled with the Department's Consumer-Employed Provider Program and may not work, or claim payment for service unless they meet the following criteria:

(A) Maintain a drug-free work place.

(B) Complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department or AAA may allow a homecare worker to work on a preliminary basis in accordance with OAR 407-007-0315 if the homecare worker meets the other provider enrollment standards described in this section of the rule.

(C) Demonstrate the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(D) Possess current U.S. employment authorization that has been verified by the Department or AAA.

(E) Be 18 years of age or older. The Department may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least 16 years of age.

(F) Complete an orientation as described in section (8)(e) of this rule.

(G) Have a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) DENIAL OF PROVIDER ENROLLMENT. The Department or AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when the applicant --

(A) Has violated the requirement to maintain a drug-free workplace;

(B) Has an unacceptable background check;

(C) Demonstrates a lack of the skills, knowledge and ability to adequately or safely perform the required work;

(D) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(E) Commits fiscal improprieties;

(F) Fails to provide services as required;

(G)Lacks the ability or willingness to maintain consumer-employer confidentiality;

(H) Introduces an unwelcome nuisance to the workplace;

(I) Fails to adhere to an established work schedule;

(J) Has been sanctioned or convicted of a criminal offense related to a public assistance program;

(K) Fails to perform the duties of a mandatory reporter;

(L) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other Federal Health Care Programs;

(M) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration; or

(N) Exerts undue influence over a consumer-employer.

(c) BACKGROUND CHECKS.

(A) When a homecare worker is approved without restrictions following a background check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Department office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Background check approval is effective for two years unless --

(i) Based on possible criminal activity or other allegations against a homecare worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) Approval has ended because the Department has inactivated or terminated a homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare worker enrollment.

(D) Background rechecks are conducted at least every other year from the date a homecare worker is enrolled. The Department or AAA may conduct a recheck more frequently based on additional information discovered about a homecare worker, such as possible criminal activity or other allegations.

(E) Homecare workers must inform the Department and their consumer-employer within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under 407-007-0290.

(d) RESTRICTED PROVIDER ENROLLMENT.

(A) The Department or AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to one specific consumer.

(i) Unless disqualified under OAR 407-007-0275, the Department or AAA may approve a homecare worker with a prior criminal record under a restricted enrollment to provide services to a specific consumer who is a family member, neighbor, or friend after conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370.

(ii) Based on an applicant's lack of skills, knowledge, or abilities, the Department or AAA may approve the applicant as a restricted homecare worker to provide services to a specific consumer who is a family member, neighbor, or friend.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Department as described in subsection (a)(E) of this section, a homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the restricted homecare worker must complete a new application and background check and be approved by the Department or AAA.

(e) HOMECARE WORKER ORIENTATION. Homecare workers must participate in an orientation arranged through a Department or AAA office. The orientation must occur within the first 30 days after the homecare worker becomes enrolled in the Consumer-Employed

Provider Program and prior to beginning work for any specific Department or AAA consumers. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number is inactivated and any authorization for payment of services is discontinued.

(f) INACTIVATED PROVIDER ENROLLMENT. A homecare worker's provider enrollment may be inactivated when --

(A) The homecare worker has not provided any paid services to any consumer in the last 12 months;

(B) The homecare worker's background check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Department or AAA the homecare worker is no longer providing services in Oregon;

(D) The homecare worker fails to participate in an orientation arranged through a Department or AAA office within 90 days of provider enrollment;

(E) The homecare worker, who at the time is not providing any paid services to consumers, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future consumers; or

(F) The homecare worker's provider payments, all or in part, have been suspended based on a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(g) ENHANCED HOMECARE WORKER ENROLLMENT. A homecare worker who is certified by the Oregon Home Care Commission to meet the enhanced homecare worker criteria in OAR 411-031-0020(22) may receive payment at the enhanced hourly rate for providing ADL and IADL services as set forth in the Collective Bargaining Agreement when --

(A) The homecare worker is employed by a consumer whose service plan indicates the need for medically-driven services and supports;

(B) The consumer's service plan specifically authorizes the homecare worker to provide the medically driven services and supports; and

(C) The homecare worker provides the medically driven services and supports as set forth in the service plan.

(h) EFFECTIVE DATE OF ENHANCED HOMECARE WORKER RATE PAYMENT. A homecare worker may receive the enhanced rate effective the first day of the month following the month in which the homecare worker:

(A) Meets the enhanced homecare worker certification criteria identified in section (g)(A) through (C) of this rule, and

(B) Works for a consumer-employer who requires medically-driven services and supports.

(9) TIME OFF.

(a) A homecare worker requesting time off must make a request to the consumer-employer or consumer-employer's representative.

(b) The decision to approve or deny a homecare worker's request to schedule time off is made by the homecare worker's consumer-employer or the consumer-employer's representative.

(c) A homecare worker who has been approved to take time off by the consumer-employer or consumer-employer's representative must notify the consumer-employer's APD or AAA case manager before taking time off.

(d) When a homecare worker schedules time off, the APD or AAA office will make reductions to the homecare worker's authorized

hours commensurate with the number of hours the homecare worker plans to take as scheduled time off.

(e) Under no circumstances will a homecare worker be required to secure a relief homecare worker or ensure that services are provided to a consumer-employer during the homecare worker's scheduled time off.

(f) When a homecare worker plans to provide services as a relief homecare worker, the relief homecare worker must contact the consumer-employer's APD or AAA case manager for authorization prior to providing relief services for the scheduled relief care hours.

(10) DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) DIRECT SERVICE PAYMENTS. The Department makes payment to a homecare worker on behalf of a consumer for all in-home services. The payment is considered full payment for the home and community-based services rendered. A homecare worker must not demand or receive additional payment for home and community-based services from a consumer or any other source. Additional payment to homecare workers for the same home and community-based services covered by the Department is prohibited.

(b) TIMELY SUBMISSION OF CLAIMS. In accordance with the Collective Bargaining Agreement, all claims for services must be submitted within 365 days from the first date of service listed on the claim.

(c) ANCILLARY CONTRIBUTIONS.

(A) FEDERAL INSURANCE CONTRIBUTIONS ACT (FICA). Acting on behalf of a consumer-employer, the Department applies applicable FICA regulations and --

(i) Withholds a homecare worker-employee contribution from payments; and

(ii) Submits the consumer-employer contribution and the amounts withheld from the homecare worker-employee to the Social Security Administration.

(B) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to injured workers and the workers' beneficiaries and assist employers in helping injured workers return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the consumer-employer, the Department --

(i) Deducts a homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collects the consumer-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submits the consumer-employer's and homecare worker-employee's contributions to the Workers' Benefit Fund.

(C) The Department pays the consumer-employer's share of the unemployment tax.

(d) ANCILLARY WITHHOLDINGS. For the purpose of this subsection of the rule, "labor organization" means any organization that represents employees in employment relations.

(A) The Department deducts a specified amount from the homecare worker-employee's monthly salary or wages for payment to a labor organization.

(B) In order to receive payment, a labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department pays the deducted amount to the designated labor organization monthly.

(e) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(A) The Department withholds state and federal income taxes on all payments to homecare workers, as indicated in the Collective Bargaining Agreement.

(B) A homecare worker must complete and return a current Internal Revenue Service W-4 form to the Department or AAA's local office. The Department applies standard income tax withholding practices in accordance with 26 CFR 31.

(11) REIMBURSEMENT FOR COMMUNITY TRANSPORTATION.

(a) A homecare worker is reimbursed at the mileage reimbursement rate established in the Collective Bargaining Agreement when the homecare worker uses his or her own personal motor vehicle for transportation that is prior-authorized in a consumer-employer's service plan. If unscheduled transportation needs arise during non-office hours, the homecare worker must explain the need for the transportation to the consumer-employer's case manager, and the transportation must be approved by the consumer-employer's case manager before reimbursement.

(b) Medical transportation through the Oregon Health Authority (OHA), volunteer transportation, and other transportation services included in a consumer's service plan is considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle for OHA or community transportation, except as may be covered by workers' compensation.

(d) Except as set forth in (a) of this section, homecare workers shall not receive any mileage reimbursement.

(12) PAYMENT FOR TRAVEL TIME.

(a) A homecare worker who travels directly between the home or care setting of one consumer-employer and the home or care setting of another consumer-employer will be paid at the base pay rate for the time spent traveling directly between the homes or care settings. For the purposes of this rule, "Travel Directly" means a homecare worker's travel from one consumer-employer's home or care setting to another consumer-employer's home or care setting is not interrupted other than to:

(A) Eat a meal;

(B) Purchase fuel for the vehicle being used for the travel;

(C) Use a restroom; or

(D) Change buses, trains or other modes of public transit.

(b) The total time spent traveling directly between all of a homecare worker’s consumer-employers may not exceed 10 percent of the total work time the homecare worker claims during a pay period. Unless otherwise specified in statute or rule, the amount of time a homecare worker may take to travel directly from one consumer-employer’s home or care setting to another consumer-employer’s home or care setting may not exceed one hour unless an exception has been granted by the Department.

(c) When a homecare worker uses the homecare worker’s own vehicle to travel directly between two consumer-employers the Department shall determine the time needed for a homecare worker to travel directly based on a time estimate published in a common, publicly-available, web-based mapping program.

(d) When a homecare worker uses public transportation to travel directly, payment for travel time shall be based on the public transportation providers’ scheduled pick-up and drop-off times for the stops nearest the consumer-employers’ homes or care settings.

(e) When a homecare worker uses non-motorized transportation to travel directly, payment for travel time shall be based on a time

estimate published in a common, publicly-available, web-based mapping program.

(f) Claims for travel time exceeding the Department's time estimates may require a written explanation from the homecare worker before the Department pays the claim. Time claimed in excess of the Department's time estimate may not be paid.

(g) A homecare worker shall not be paid for time spent in transit to or from the homecare worker’s own residence.

(h) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle to travel between the homes or care settings of consumer-employers, except as may be covered by workers' compensation.

(i) Homecare workers shall not receive any mileage reimbursement for traveling between the homes or care settings of consumer-employers.

(13) BENEFITS. Workers' compensation and unemployment are available to eligible homecare workers as described in the Collective Bargaining Agreement. In order to receive homecare worker workers' compensation, a consumer-employer must consent and provide written authorization to the Department for the provision of workers' compensation insurance for the consumer-employer's employee.

(14) OVERPAYMENTS. An overpayment is any payment made to a homecare worker by the Department that is more than the homecare worker is authorized to receive.

(a) Overpayments are categorized as follows:

(A) ADMINISTRATIVE ERROR OVERPAYMENT. The Department failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) PROVIDER ERROR OVERPAYMENT. The Department overpays the homecare worker due to a misunderstanding or unintentional error.

(C) FRAUD OVERPAYMENT. "Fraud" means taking actions that may result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the homecare worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department determines, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Control Unit determines when to pursue a Medicaid fraud allegation for prosecution.

(b) Overpayments are recovered as follows:

(A) Overpayments are collected prior to garnishments, such as child support, Internal Revenue Service back taxes, or educational loans.

(B) Administrative or provider error overpayments are collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Department determines when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) When a person is no longer employed as a homecare worker, any remaining overpayment is deducted from the person's final check. The person is responsible for repaying an overpayment in full when the person's final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612, 410.614

411-031-0050 Termination, Administrative Review, and Hearing Rights
(Amended 08/28/2016)

(1) EXCLUSIONS TO APPEAL AND HEARING RIGHTS. The following are excluded from the administrative review and administrative hearing rights process described in this rule:

(a) Terminations based on a background check. The homecare worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Homecare workers who have not worked in the last 12 months. The provider enrollment may become inactivated, but may not be terminated. To reactivate the provider enrollment number, the homecare worker must complete the application and enrollment process set forth in OAR 411-031-0040(8)(a).

(c) Homecare workers who fail to complete a background recheck.

(d) Homecare workers who are denied a provider enrollment number at the time of initial application.

(e) Homecare workers who are not currently providing services to any consumers and whose provider enrollment is inactivated while an Adult Protective Services investigation is being completed.

(f) Homecare workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal programs.

(2) REFERRAL OF POTENTIAL VIOLATIONS TO APD CENTRAL OFFICE. When an APD or AAA office has reason to believe a homecare worker has committed one or more of the violations listed in section (3) of this rule, the APD or AAA office shall refer the alleged violation to APD central office using the Department-approved referral form. The homecare worker who allegedly committed the violation shall be provided a copy of the completed referral form.

(3) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. APD central office may terminate a homecare worker's provider enrollment when a homecare worker --

(a) Has violated the requirement to maintain a drug-free work place;

(b) Has an unacceptable background check;

(c) Demonstrates a lack of the skills, knowledge, and ability to adequately or safely perform the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Demonstrates a lack of the ability or willingness to maintain consumer-employer confidentiality;

(h) Introduces an unwelcome nuisance to the workplace;

(i) Fails to adhere to an established work schedule;

(j) Has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under any public assistance program;

(k) Fails to perform the duties of a mandatory reporter;

(l) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal health care programs;

(m) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration;

(n) Works for a consumer-employer or claims payment for working while the homecare worker does not have a valid, current, unexpired provider number;

(o) Fails to inform the Department and their consumer-employer within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crime listed in OAR 407-007-0040; or

(p) Exerts undue influence over a consumer-employer.

(4) ADMINISTRATIVE REVIEW. Except in instances where an alleged violation presents imminent danger to present or future consumers, upon receiving an APD or AAA office's referral of an alleged violation listed in section (3)(a) or (3)(c) through (3)(p) of this rule, APD central office shall complete an administrative review within 30 days.

(a) The administrative review provides an opportunity for APD central office to review the local office's referral and decide whether to terminate a homecare worker's provider enrollment.

(b) The administrative review may include the provision of new evidence, either by the homecare worker or by the APD or AAA office, which APD central office may consider in reaching its decision.

(c) As a part of the administrative review, the homecare worker and a representative may take part in an administrative review conference with APD central office.

(d) After an administrative review conference, APD central office will conclude the administrative review within 10-business days. The administrative review process is concluded when APD central office sends the homecare worker a written notice. If, based on the administrative review, APD central office determines a homecare worker did not violate one or more of the subsections of section (3) of this rule, APD central office shall send a written notice of this determination to the APD or AAA office and to the homecare worker.

(e) Upon agreement of both parties, an extension of the 10-business day deadline may occur.

(5) NOTICE OF PROPOSED TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When APD central office proposes to terminate a homecare worker's provider enrollment, the homecare worker

shall be provided with a written Notice of Proposed Termination of Homecare Worker Provider Enrollment. The notice must:

(a) Include a short and plain explanation of the reason for the proposed termination;

(b) Indicate the date the Notice of Proposed Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;

(c) Cite the rules supporting the decision to issue the Notice of Proposed Termination of Homecare Worker Provider Enrollment;

(d) List the effective date of the proposed termination; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to legal representation;

(B) How to request a contested case hearing; and

(C) The right to continue working until a final order resolves the contested case.

(f) For terminations based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.

(6) NOTICE OF EMERGENCY TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When an alleged violation presents imminent danger to current or future consumers, APD central office may issue a Notice of Emergency Termination of Homecare Worker Provider Enrollment prior to the completion of an administrative review. A Notice of Emergency Termination of Homecare Worker Provider Enrollment must:

(a) Include a short and plain explanation of the reason for the emergency termination;

(b) Indicate the date the Notice of Emergency Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;

(c) Cite the rules that support APD central office's decision to issue the Notice of Emergency Termination of Homecare Worker Provider Enrollment;

(d) List the effective date of the Notice of Emergency Termination of Homecare Worker Provider Enrollment; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to legal representation;

(B) How to request a contested case hearing; and

(C) The right to take part in an administrative review before requesting a contested case hearing.

(7) ADMINISTRATIVE HEARINGS. If APD central office sends a homecare worker a Notice of Proposed Termination of Homecare Worker Provider Enrollment or an Emergency Termination of Homecare Worker Provider Enrollment, the homecare worker may complete a request for an administrative hearing.

(a) The homecare worker's request for an administrative hearing must:

(A) Be in writing;

(B) Be postmarked no later than 14 days after the date of the Notice of Proposed Termination of Homecare Worker Provider Enrollment or Emergency Termination of Homecare Worker Provider Enrollment was sent; and

(C) Specify the issues or decisions being appealed and the reasons for the appeal.

(b) The Department shall refer the homecare worker's administrative hearing request to the Office of Administrative Hearings as described in OAR chapter 137, division 003.

(c) When the Department refers an administrative hearing request, under these rules, to the Office of Administrative Hearings, the Department shall indicate on the referral whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(d) A homecare worker who completes an administrative hearing request may take part in an informal conference with a Department hearing representative before the administrative hearing.

(e) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the issue of Department's decision to terminate the homecare worker's provider enrollment.

(8) TERMINATION IF NO ADMINISTRATIVE HEARING REQUEST FILED. If a homecare worker is sent a Notice of Proposed Termination of Provider Enrollment or a Notice of Emergency Termination of Provider Enrollment and does not request an administrative hearing within 14 days of the date the Notice of Proposed Termination of Provider Enrollment or a Notice of Emergency Termination of Provider Enrollment was sent, APD central office shall send the homecare worker a Final Order by Default in accordance with OAR 137-003-0670. Once the time period for appeal has expired, the provider enrollment is terminated by the Department.

Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.070