DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 375

PERSONAL SUPPORT WORKERS PROVIDING DEVELOPMENTAL DISABILITY IN-HOME SERVICES

411-375-0000 Purpose
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The rules in OAR chapter 411, division 375 establish the standards and procedures governing personal support workers and the fiscal services provided on behalf of individuals who employ or contract with a personal support worker.

(2) Personal support workers provide home and community-based waiver, state plan, and general fund in-home services to individuals eligible for developmental disability services and receiving supports authorized by the Department, Children's Intensive In-Home Services (CIIS), Community Developmental Disability Programs (CDDP), or Support Services Brokerages.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0010 Definitions
(Temporary Effective 07/01/2014 to 12/28/2014)

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 375.

(1) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home licensed to provide 24-hour residential services as described in OAR chapter 411, division 325.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(2) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.

(3) "Administrator Review" means the review of a decision as described in OAR 411-375-0080.

(4) "Background Check" means a criminal records and abuse check as defined in OAR 407-007-0210.

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

(6) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(7) "CIIS" means "children's intensive in-home services". CIIS include the services described in:

(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(b) OAR chapter 411, division 350 for medically fragile children's services; and

(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(8) "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.oregon.gov/dhs/spd/Pages/adv/hcc/tools_hcw.aspx). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

(9) "Community Transportation" is transportation provided to enable an individual to gain access to community-based state plan and waiver services, activities, and resources. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services. The area is not determined by the social or recreational groups or activities of an individual.

(10) "Comprehensive Services" means "comprehensive services" as defined in OAR 411-320-0020.

(11) "Confidentiality" means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070 (Privacy of Protected Information.

(12) "Contracted Personal Support Worker" means a personal support worker who is contracted by an individual with an intellectual or developmental disability or the representative of the individual. A contracted personal support worker is an independent contractor except for purposes of collective bargaining.

(13) "CPMS" means the "Client Process Monitoring System" as defined in OAR 411-317-0000.

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

(15) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.

(16) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(17) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.

(18) "Employed Personal Support Worker" means a personal support worker who is hired by an individual with an intellectual or developmental disability or the representative of the individual. An employed personal support worker is not an independent contractor.

(19) "Employer" means the person who provides the employer responsibilities described in these rules and applicable in-home services rules. The employer may be the individual or a person selected by the individual or the legal representative of the individual.

(20) "Employer Representative" means the person selected by the individual or the legal representative of the individual to act on the behalf of the individual to provide the responsibilities of an employer.

(21) "Enrolled Provider" means a personal support worker who has completed the provider enrollment process, has been issued a provider number, and is authorized by the Department to receive payment for providing in-home services to an individual.

(22) "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.

(23) "FICA" means "Federal Insurance Contributions Act".

(24) "Fiscal Improprieties" means financial misconduct involving the money, property, or benefits of an individual.

> (a) Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking property or money from an individual, having an individual purchase items for the personal support worker, forging the signature of an individual, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a personal support worker and an individual with whom the personal support 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.

(25) "Fiscal Intermediary" means a person or entity that receives and distributes service funds on behalf of an individual who employs or contracts with a personal support worker to provide in-home services.

(26) "General Business Provider" means an organization or entity selected by an individual or the representative of an individual and paid with service funds that:

(a) Is primarily in business to provide the service chosen by the individual or the representative of the individual to the general public;

(b) Provides services for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(27) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(28) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:

(a) Meal planning and preparation;

(b) Budgeting;

(c) Shopping for food, clothing, and other essential items;

(d) Performing essential household chores;

(e) Communicating by phone or other media; and

(f) Participating in the community.

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

(30) "Independent Contractor" means "independent contractor" as defined in ORS 670.600.

(31) "Individual" means an adult or a child with an intellectual or developmental disability who receives Department-funded services in accordance with an ISP.

(32) "In-Home Services" mean the services provided in accordance with:

(a) OAR chapter 411, division 034 for state plan personal care services;

(b) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;

(c) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;

(d) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;

(e) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;

(f) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;

(g) OAR chapter 411, division 345 for employment services and day support activities for adults with intellectual or developmental disabilities;

(h) OAR chapter 411, division 350 for medically fragile children's services; or

(i) OAR chapter 411, division 355 for the Medically Involved Children's Program.

(33) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(34) "Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide In-Home Services" means a personal support worker does not possess the skills to perform in-home services as defined in this rule. The personal support worker may not be physically, mentally, or emotionally capable of providing in-home services. The lack of skills may put an individual at risk because the personal support worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individual.

(35) "Legal Representative":

(a) For a child, means the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and

(b) For an adult, means an attorney at law who has been retained by or for an adult individual, a power of attorney for an adult individual, or a person or agency authorized by a court to make decisions about services for an adult individual.

(36) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official; and

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

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

(38) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.

(39) "Personal Support Worker":

(a) Means a person:

(A) Who is either hired by an individual with an intellectual or developmental disability or the representative of the individual, or an independent contractor contracted by an individual with an intellectual or developmental disability or the representative of the individual;

(B) Who receives money from the Department for the purpose of providing in-home services to an individual in the home or community of the individual; and

(C) Whose compensation for providing in-home services is provided in whole or in part through the Department, CDDP, CIIS, or Support Service Brokerage.

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

(40) "Preponderance of the Evidence" means the greater weight of evidence, such as 51 percent vs. 49 percent , that when weighed with the evidence opposed to it has more convincing force and probable truth and accuracy than not.

(41) "Protective Service and Abuse Rules" mean the rules described in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045.

(42) "Provider" means a person, organization, or business selected by an individual or the representative of an individual and paid with service funds to provide in-home services according to the ISP for the individual.

(43) "Provider Enrollment" means the process for enrolling a personal support worker employed or contracted by an individual for the purpose of receiving payment for authorized in-home services provided to the individual. Provider enrollment includes the completion and submission of a Provider Enrollment Agreement before receiving a provider number.

(44) "Provider Number" means the identifying number issued to an enrolled provider.

(45) "Registry" means the Provider Registry and Referral System maintained by the Oregon Home Care Commission.

(46) "Restricted Personal Support Worker" means the Department or the designee of the Department has placed restrictions on the provider enrollment of a personal support worker as described in OAR 411-375-0020.

(47) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services for individuals enrolled in in-home services as defined in this rule.

(48) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services.

(49) "Support Services Brokerage" means "brokerage" as defined in OAR 411-340-0020.

(50) "These Rules" mean the rules in OAR chapter 411, division 375.

(51) "Unacceptable Background Check" means a check that produces information related to the background of a person that precludes the person from being a personal support worker for one or more of the following reasons:

> (a) The person applying to be a personal support worker has been disqualified under OAR 407-007-0275;
>
> (b) The person was enrolled as a personal support worker for the first time, or after any break in enrollment, after July 28, 2009 and 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.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0020 Provider Enrollment and Personal Support Worker Qualifications and Orientation
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) A personal support worker must complete the provider enrollment process and possess a current provider number issued by the Department

to receive service funds from the Department for providing in-home services.

(2) Provider enrollment with the Department is not a guarantee that an enrolled provider shall receive any minimum amount of work or payment from the Department, CDDP, CIIS, or Support Service Brokerage.

(3) The Department may deny an application for provider enrollment in the following circumstances:

(a) The applicant has been suspended or terminated as a provider by another division within the Department or the Oregon Health Authority;

(b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated abuse;

(c) The applicant has committed fiscal improprieties;

(d) The applicant demonstrates a lack of skills, knowledge, or ability to adequately or safely provide in-home services;

(e) The applicant has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;

(f) The applicant is less than 18 years of age;

(g) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (http://exclusions.oig.hhs.gov/);

(h) The Department, CDDP, CIIS, or Support Services Brokerage has information that enrolling the applicant as a personal support worker may put vulnerable individuals at risk; or

(i) The tax identification number or social security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

(4) RESTRICTED PROVIDER ENROLLMENT.

(a) The Department may enroll an applicant as a restricted personal support worker. A restricted personal support worker may only provide services to a specific individual who is a family member, neighbor, or friend.

(A) After conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370, the Department may approve a restricted enrollment for an applicant with a prior criminal record, unless the applicant is disqualified under OAR 407-007-0275.

(B) The Department may approve a restricted enrollment for an applicant based on the lack of skills, knowledge, or ability of the applicant to adequately or safely provide in-home services.

(b) To remove restricted personal support worker status, the applicant must complete a new application and background check and be approved by the Department.

(5) To be eligible to become an enrolled provider, a personal support worker must:

(a) Maintain a drug-free work place;

(b) Be at least 18 years of age;

(c) Have approval to work based on a background check completed by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (7) of this rule, and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to, the Department, CDDP, CIIS, or Support Services Brokerage;

(d) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 unless hired or contracted with prior to July 28, 2009 and remaining in the original position for which the personal support worker was hired or contracted for;

(e) Be legally eligible to work in the United States;

(f) Demonstrate by background, education, references, skills, and abilities that the personal support worker is capable of safely and adequately performing the tasks specified in an ISP, with such demonstration confirmed in writing by an individual or the representative of the individual, including:

> (A) Ability and sufficient education to follow oral and written instructions and keep any required records;
>
> (B) Responsibility, maturity, and reputable character exercising sound judgment;
>
> (C) Ability to communicate with the individual; and
>
> (D) Training of a nature and type sufficient to ensure that the personal support worker has knowledge of emergency procedures specific to the individual;

(g) Maintain confidentiality and safeguard individual information. Unless given specific permission by an individual or the representative of an individual, the personal support worker may not share any personal information about the individual including medical, social service, financial, public assistance, legal, or other personal details;

(h) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General (http://exclusions.oig.hhs.gov/);

(i) Complete and submit a Provider Enrollment Agreement to the Department and possess a current provider number issued by the Department;

(j) Have a tax identification number or social security number that matches the legal name of the personal support worker as verified by the Internal Revenue Service or Social Security Administration; and

(k) If providing in-home services requiring professional licensure, possess a current and unencumbered license. The individual, representative of the individual, Department, CDDP, CIIS, or Support Service Brokerage must check the license status to verify the license is current and unencumbered.

(6) BACKGROUND CHECKS.

(a) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work statewide when the subject individual is working in the same employment role with the same population. The Background Check Request Form must be completed by the subject individual to show intent to work statewide.

(b) When a personal support worker is approved without restrictions following a background check fitness determination, the approval must meet the personal support worker provider enrollment requirement whether the qualified entity is the Department, CDDP, CIIS, or Support Services Brokerage.

(c) If a personal support worker has been approved under OAR 407-007-0200 to 407-007-0370 on a background check submitted to the Department between July 1, 2012 and July 1, 2014, the personal support worker may use that approval notice to work statewide. Statewide clearance does not apply to a restricted personal support worker.

(d) Prior background check approval for another Department provider type is inadequate to meet background check requirements for personal support worker enrollment.

(e) Background check approval is effective for two years from the date a personal support worker is hired or contracted with to provide in-home services except in the following circumstances:

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

(B) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the personal support worker.

(f) The Department, CDDP, CIIS, or Support Services Brokerage may conduct a background recheck more frequently based on additional information discovered about the personal support worker, such as possible criminal activity or other allegations.

(g) A personal support worker must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290 to the Department, CDDP, CIIS, or Support Services Brokerage within 24 hours.

(7) ORIENTATION. A personal support worker who wants to be active for referral on the Registry must attend a New Member Orientation provided by the Oregon Home Care Commission. As indicated in the Collective Bargaining Agreement, a personal support worker who wants to be active on the Registry must attend a New Member Orientation within 90 days from the issuance of a provider number or the provider number for the personal support worker is inactivated.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0030 Personal Support Worker-Individual Relationship
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) A personal support worker may not be the parent of the individual if the individual is less than 18 years of age or the spouse of the individual.

(2) The relationship between a personal support worker and an individual or the representative of the individual is:

(a) For an employed personal support worker, an employee and employer relationship; and

(b) For a contracted personal support worker, a contractor relationship.

(3) It is the responsibility of an individual or the representative of the individual to create and maintain:

(a) A written job description for each potential employed personal support worker. The job description must contain:

(A) The elements from an authorized ISP that are relevant to the position;

(B) The specific duties and available hours to provide in-home services as identified in the ISP; and

(C) Authorized hours of in-home services provided by the employed personal support worker to the individual. Authorized hours may not exceed the maximum amounts of units of service as assessed for the individual by a functional needs assessment.

(b) A written service agreement for each contracted personal support worker that describes the services and responsibilities of the contracted personal support worker. The service agreement must contain all the elements from an authorized ISP to assure the contracted personal support worker may execute the service agreement.

(4) An individual or the representative of the individual carries primary responsibility for locating, interviewing, screening, and hiring or contracting with a personal support worker. The individual or the representative of the individual has the right to employ or contract with any personal support worker enrolled as a provider as described in OAR 411-375-0020.

(a) The CDDP, CIIS, or Support Services Brokerage shall assist the Department in determining whether a personal support worker meets the minimum qualifications to provide the authorized in-home services paid by the Department. This assistance may include, but is not limited to:

(A) Facilitating a background check;

(B) Verifying the legal eligibility of a personal support worker to work; and

(C) Reviewing and verifying the valid certifications or licenses for the personal support worker if required to perform needed in-home services.

(b) The Department makes the final determination as to whether the personal support worker meets the minimum qualifications to provide the authorized in-home services paid by the Department.

(5) The terms of the employer-employee or contractor relationship are the responsibility of the individual or the representative of the individual to establish at the time of hire or written service agreement. The terms of employment may include dismissal or notice of resignation, work scheduling, and absence reporting.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0040 Fiscal and Accountability Responsibility
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) DIRECT SERVICE PAYMENTS. The Department, CDDP, CIIS, CDDP, Support Services Brokerage, or contracted fiscal intermediary makes payment to a personal support worker on behalf of an individual for all in-home services. Payment is considered full payment for the in-home services rendered. The personal support worker may not, under any circumstances, demand or receive additional payment for in-home services from the individual or any other source. The Department only makes payment for in-home services that are identified in a functional needs assessment, authorized in an ISP, and included in a written job description or contract.

(2) TIMELY SUBMISSION OF CLAIMS. In accordance with 42 CFR 447.45, all claims for in-home services must be submitted within 12 months from the date of in-home services in order to be considered for payment. A claim submitted after 12 months from the date of in-home services may not be considered for payment.

(3) CLAIM OR ENCOUNTER SUBMISSION. Submission of a claim, encounter, or other payment request document constitutes the agreement of a personal support worker that:

(a) The in-home services were provided in compliance with all applicable rules and requirements in effect on the date of service;

(b) The information on the claim, encounter, or other payment request document, regardless of the format, is true, accurate, and complete; and

(c) The personal support worker understands that payment of the claim, encounter, or other payment request document is from service funds and that any falsification or concealment of a material fact may result in prosecution under federal and state laws.

(4) ANCILLARY CONTRIBUTIONS.

(a) FICA. Acting on behalf of the individual, the Department, CDDP, CIIS, CDDP, Support Services Brokerage, or contracted fiscal intermediary shall apply any applicable FICA regulations including:

(A) Withholding the FICA contribution of the personal support worker from the payment to the personal support worker; and

(B) Submitting the FICA contribution of the individual and the amounts withheld from the payment to the personal support worker to the Social Security Administration.

(b) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to an injured worker and the beneficiary of the injured worker and also assists an employer in helping an injured worker return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary 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 individual, the Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary:

(A) Deducts the share of the Benefit Fund assessment rate for the personal support worker for each hour or partial hour worked;

(B) Collects the share of the Benefit Fund assessment rate for the individual for each hour or partial hour of paid in-home services received; and

(C) Submits the contributions of the personal support worker and the individual to the Workers' Benefit Fund.

(c) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary pays the unemployment tax.

(5) ANCILLARY WITHHOLDINGS. For the purposes of this subsection of the rule, "Union" means any labor organization that represents personal support workers in employment or contractor relations.

(a) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary deducts a specified amount of fair share or dues from the monthly salary or wages of a personal support worker for payment to the Union.

(b) In order for the Union to receive payment for the fair share and dues of the personal support worker, the Union must enter into a written agreement with the Department, CDDP, Support Services Brokerage, or designated fiscal intermediary to pay the actual administrative costs of the deductions. A CDDP or Support Services Brokerage who has a written agreement with the Department must have a written agreement with a contracted fiscal intermediary.

(c) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary pays the deducted amount of fair share and dues to the designated Union monthly.

(6) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(a) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary withholds state and federal income

taxes on all payments to personal support workers as indicated in the Collective Bargaining Agreement.

(b) Employed personal support workers must complete and return a current Internal Revenue Service (IRS) W-4 form. Contracted personal support workers must complete and return a current IRS W-9 form.

(A) Personal support workers for a CDDP or Support Services Brokerage must return the IRS forms to the local office of the CDDP or Support Services Brokerage.

(B) Personal support workers for CIIS must return the IRS forms to the Central Office of the Department.

(C) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary must apply standard income tax withholding practices in accordance with 26 CFR 31.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0050 Personal Support Worker Benefits and Secondary Expenses
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The only benefits available to personal support workers are negotiated in the Collective Bargaining Agreement and provided in Oregon Revised Statute. The Collective Bargaining Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Personal support workers are not employees of the Department, CDDP, CIIS, or Support Services Brokerage.

(2) Workers' compensation, as defined in Oregon Revised Statute, is available to eligible personal support workers as described in the Collective Bargaining Agreement. In order to receive in-home services provided by a personal support worker, an individual or the representative of the individual must provide written authorization and consent to the Department

for the provision of workers' compensation insurance for the personal support worker.

(3) TRANSPORTATION. A personal support worker may be reimbursed for providing community transportation related to in-home services if the community transportation is prior authorized by a services coordinator or personal agent and reflected in the ISP for an individual. A personal support worker providing community transportation must have a valid license to drive, a good driving record, and proof of insurance for the vehicle used to transport the individual, as well as any other license or certificate that may be required under state and local law depending on the nature and scope of the transportation.

(a) Community transportation services exclude medical transportation. Medical transportation is provided through the Division of Medical Assistance Programs (DMAP).

(b) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or ISP-related transportation except as may be covered by workers' compensation.

(c) Reimbursement for transporting an individual to accomplish an ADL, IADL, or health related task within the community in which the individual lives or an employment goal identified on an ISP is on a per-mile basis as outlined in the Collective Bargaining Agreement.

(4) GLOVES AND MASKS. Once all public and private resources have been exhausted, an emergency supply of protective gloves and masks must be made available to a personal support worker for the safety of the personal support worker in response to documented changing individual need as outlined in the Collective Bargaining Agreement.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0060 Overpayments
(Temporary Effective 07/01/2014 to 12/28/2014)

An overpayment is any payment made by the Department, CDDP, CIIS, or Support Services Brokerage to a personal support worker that is more than the personal support worker is authorized to receive.

(1) Overpayments are categorized as follows:

(a) ADMINISTRATIVE ERROR. The Department, CDDP, CIIS, or Support Services Brokerage failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(b) PERSONAL SUPPORT WORKER ERROR. The Department overpays the personal support worker due to a misunderstanding or unintentional error.

(c) FRAUD. "Fraud" means taking actions that may result in the personal support worker 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 personal support worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department of Justice, Medicaid Fraud Unit determines when a Medicaid fraud allegation is pursued for prosecution.

(2) Overpayments for employed personal support workers 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 error or personal support worker error overpayments are recouped at no more than five percent of the total for the hours paid until repaid in full.

(c) When a fraud overpayment has occurred, the Department shall determine the manner and the amount to be recovered.

(d) When a provider is no longer employed as a personal support worker, any remaining overpayment is deducted from the final check to the provider. The provider is responsible for repaying the amount in

full when the final check is insufficient to cover the remaining overpayment.

(3) Overpayments for contracted personal support workers are recovered as follows:

(a) For overpayments discovered within 10 calendar days after the overpayment, the full amount is deducted from the next payment to the contracted personal support worker.

(b) For overpayments discovered more than 10 calendar days after the overpayment, the overpayment must be repaid within 30 calendar days of the discovery of the overpayment on a schedule to be negotiated between the contracted personal support worker, services coordinator or personal agent, and the individual or the representative of the individual. The repayment period may not exceed two pay cycles. If possible, the overpayment must be repaid within the current ISP year for the individual.

(c) If a contracted personal support worker terminates his or her employment contract as a personal support worker before the overpayment has been fully recovered, any remaining amount is deducted from the final payment to the contracted personal support worker. The contracted personal support worker is responsible for repaying the amount in full when the final payment is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0070 Provider Enrollment Inactivation and Termination
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) The provider enrollment for a personal support worker may be inactivated in the following circumstances:

(a) The personal support worker has not provided any paid in-home services to an individual within the previous 12 months;

(b) The personal support worker informs the Department, CDDP, CIIS, or Support Services Brokerage that the personal support worker is no longer providing in-home services in Oregon;

(c) The personal support worker fails to participate in a New Member Orientation for personal support workers for inclusion on the Registry as described in OAR 411-375-0020;

(d) The background check for a personal support worker results in a closed case pursuant to OAR 407-007-0325;

(e) The personal support worker, even if not providing any paid in-home services to an individual, is being investigated by Adult or Child Protective Services for suspected abuse that poses imminent danger to current or future individuals; or

(f) Provider payments, all or in part, for the personal support worker have been suspended based on a credible allegation of fraud or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(2) The Department, CDDP, CIIS, or Support Services Brokerage may terminate the provider enrollment for a personal support worker in the following circumstances:

(a) The personal support worker violates the requirement to maintain a drug-free work place by:

(A) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of an individual, while in the home of the individual, or while transporting the individual; or

(B) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to an individual or while in the home of the individual.

(b) The personal support worker has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;

(c) The personal support worker demonstrates a lack of skills, knowledge, or ability to adequately or safely provide in-home services;

(d) The personal support worker violates the protective service and abuse rules;

(e) Notwithstanding abuse as defined in OAR 407-045-0260, the personal support worker fails to safely and adequately provide authorized in-home services;

(f) The personal support worker commits fiscal improprieties including, but not limited to, billing excessive or fraudulent charges or has a conviction for fraud pursuant to federal law under 42 CFR 455.23;

(g) The personal support worker fails to provide in-home services as described in the ISP and position description;

(h) The personal support worker lacks the ability or willingness to maintain individual confidentiality;

(i) The personal support worker engages in repeated unacceptable conduct at work such as;

> (A) Delay in arriving to work or absences from work not scheduled in advance with the individual or the representative of the individual that are either unsatisfactory to the individual or the representative of the individual or that neglect the service needs of the individual; or
>
> (B) Inviting unwelcome guests or pets into the home or community with the individual resulting in the dissatisfaction of the individual or the representative of the individual or inattention to the required service needs of the individual.

(j) The personal support worker has been excluded or debarred by the Office of the Inspector General; or

(k) The personal support worker fails to provide a tax identification number or social security number that matches the legal name of the personal support worker as verified by the Internal Revenue Service or Social Security Administration.

(3) NOTICE OF TERMINATION. When the Department, CDDP, CIIS, or Support Services Brokerage decides to terminate the provider enrollment of a personal support worker, the Department, CDDP, CIIS, or Support Services Brokerage must issue a written notice to the personal support worker.

(a) The written notice must include:

(A) An explanation of the reason for terminating the provider enrollment;

(B) The alleged violation as listed in section (2) of this rule;

(C) The appeal rights of the personal support worker as described in OAR 411-375-0080 including the right to Union representation and where to file an appeal; and

(D) The effective date of the termination.

(b) For terminations based on substantiated protective services allegations, the written notice of termination may only contain the information allowed by law. In accordance with ORS 430.753, 430.763, and OAR 411-020-0030, the name of a complainant, witness, or alleged victim, and protected health information may not be disclosed.

(4) IMMEDIATE TERMINATION. The Department, CDDP, CIIS, or Support Services Brokerage may immediately terminate the provider enrollment for a personal support worker on the date an alleged violation listed in section (2) of this rule is discovered, prior to the outcome of an administrator review, when the alleged violation presents imminent danger to current or future individuals. The personal support worker must file an appeal within 10 business days from the date of the notice of termination as described in OAR 411-375-0080.

(5) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future individuals, the provider enrollment of a personal support worker may not be terminated during the first 10 business days to provide the opportunity for the personal support worker to file an appeal. The personal support worker must file an appeal within 10 business days from the date of the notice of termination as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider enrollment of the personal support worker may not be terminated until the appeal is resolved unless subsequent conduct of the personal support worker presents an imminent danger to a current individual recipient of in-home services provided by the personal support worker.

(6) TERMINATION IF NO APPEAL FILED. The decision of the Department, CDDP, CIIS, or Support Services Brokerage becomes final if a personal support worker does not request a hearing within 10 business days from the date of the notice of termination. The provider enrollment for a personal support worker is terminated once the time period for the personal support worker to request a hearing has expired.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0080 Administrator Review and Hearing Rights
(Temporary Effective 07/01/2014 to 12/28/2014)

(1) EXCLUSIONS. The following are excluded from the appeal process described in this rule:

> (a) Terminations based on a background check. The personal support worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.
>
> (b) Personal support workers that have not worked within the previous 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the personal support worker must complete an application and background check.

(c) Personal support workers that fail to complete a background recheck.

(d) Personal support workers that are denied a provider enrollment number at the time of initial application.

(e) Personal support workers not currently providing services to any individuals whose provider enrollment is inactivated while an Adult or Child Protective Services investigation is being completed.

(f) Personal support workers who have been excluded or debarred by the Office of the Inspector General.

(2) FILING AN APPEAL. If a personal support worker decides to file an appeal, the personal support worker must specify in the appeal, the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice of termination, must receive the appeal within 10 business days of the notice of termination.

(3) INFORMAL CONFERENCE. The program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage must conduct an informal conference, as described in OAR 461-025-0325, if requested by a personal support worker within five business days from the receipt of an appeal. The informal conference must be scheduled with the personal support worker and, if requested, a representative of the Union. The program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage must meet with the personal support worker, review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone.

(4) ADMINISTRATOR REVIEW. The administrator review process allows an opportunity for the Department, CDDP, CIIS, or Support Services Brokerage to review and reconsider the decision to terminate the provider enrollment of a personal support worker. The administrator review may include the provision of new information or other actions that may result in the Department, CDDP, CIIS, or Support Services Brokerage changing the decision to terminate the provider enrollment of the personal support worker.

(a) The first level of an administrator review for a termination pending an appeal as described in OAR 411-375-0070 is performed by a program manager or the designee of the program manager at the local office of the Department, CDDP, CIIS, or Support Services Brokerage. A provider termination may be overturned at the first level of an administrator review and provider enrollment may be reinstated. If the first level of an administrator review results in a provider termination being upheld, a new notice of termination with a new effective date shall be issued to the provider by the program manager or the designee of the program manager. A provider has 10 business days from the effective date of the notice of termination to appeal the notice with the Central Office of the Department.

(b) The second level of an administrator review for a termination pending an appeal as described in OAR 411-375-0070 is performed by the Central Office of the Department. An administrator review by the Central Office of the Department is the only level of review before a hearing with the Department for an immediate termination described in OAR 411-375-0070.

(c) A written response of the outcome of an administrator review shall be sent to the personal support worker within 10 business days from the receipt of the request for an administrator review.

(d) If the administrator review determines that the decision to terminate the provider enrollment was unjustified, the provider enrollment for the personal support worker must be restored to active status and any earned benefits must be reinstated. The written response of the outcome of the administrator review must notify the personal support worker that the provider enrollment is restored.

(5) OFFICE OF ADMINISTRATIVE HEARINGS.

(a) A personal support worker may file a request for a hearing with the Department if all levels of an administrator review have been exhausted and the personal support worker continues to dispute the decision to terminate the provider enrollment of the personal support worker.

(b) The request for a hearing must be filed with the Department within 30 calendar days of the written response of the administrator review by the Central Office of the Department as described in section (3) of this rule.

(c) The Department shall refer a request for a hearing to the Office of Administrative Hearings for scheduling a contested case hearing in accordance with OAR chapter 137, division 003.

(d) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the administrator review to terminate the provider enrollment is affirmed or reversed. The ALJ shall issue a final order with the decision to all appropriate parties.

(e) No additional hearing rights have been granted to personal support workers by this rule other than the right to a hearing on the decision from the administrator review to terminate the provider enrollment of a personal support worker.

(6) BURDEN OF PROOF. The Department, CDDP, CIIS, or Support Services Brokerage has the burden of proving the decision to terminate the provider enrollment of a personal support worker by a preponderance of the evidence. Evidence submitted for a hearing is governed by OAR 137-003-0050.

(7) REQUEST FOR EXTENSION TO DEADLINE. The Department, CDDP, CIIS, Support Services Brokerage, or the personal support worker may request an extension of the 10-day deadline for circumstances beyond their control if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 410.600, 410.606-619, 427.007