

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form.

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the  
Date prior to or same as filing date

Department of Human Services, Developmental Disabilities

411

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Agency and Division		Administrative Rules Chapter Number
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Rules Coordinator	Address	Telephone
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to become effective [January 1, 2016] through [June 28, 2016].  
Date upon filing or later      A maximum of 180 days including the effective date.

**RULE CAPTION**

**ODDS: Personal Support Workers Providing Developmental Disability Home Care Services**

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**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.  
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

**ADOPT:**  
411-375-0055

**AMEND:**  
411-375-0010; 411-375-0050; 411-375-0070; 411-375-0080

**SUSPEND:**

Stat. Auth.: **ORS 409.050**

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Other Auth.:

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Stats. Implemented: **ORS 410.600, 410.606-619, 427.007**

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**RULE SUMMARY**

The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily updating the rules for personal support workers in OAR chapter 411 division 375 to --

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Implement changes associated with the Fair Labor Standards Act and Collective Bargaining Agreement regarding hours, pay, and benefits for personal support workers; and
- Implement changes to the termination and inactivation procedures.

Signed Lilia Teninty, Director, Developmental Disabilities

12/21/2015

Signature

Date

Secretary of State

**STATEMENT OF NEED AND JUSTIFICATION**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Developmental Disabilities

411

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Agency and Division

Administrative Rules Chapter Number

In the Matter of: The temporary adoption of OAR 411-375-0055; and the amendment of OARs 411-375-0010; 411-375-0050; 411-375-0070; and 411-375-0080 relating to independent providers providing developmental disability home care services.

Rule Caption: (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

**ODDS: Personal Support Workers Providing Developmental Disability Home Care Services**

Statutory Authority:

**ORS 409.050**

Other Authority:

Stats. Implemented:

**ORS 410.600, 410.606-619, 427.007**

Need for the Temporary Rule(s):

**Definitions**

The Department needs to amend OAR 411-375-0010 (Definitions) to provide consistency and streamline definitions across services. OAR 411-375-0010 is being amended to remove terms included in the general definitions rule, OAR 411-317-0000.

**Transportation**

To implement changes associated with the Fair Labor Standards Act and the Collective Bargaining Agreement, the Department needs to amend OAR 411-375-0050 (Personal Support Worker Benefits and Secondary Expenses) to pay for direct travel time between individuals. OAR 411-375-0050 is being amended to comply with the Fair Labor Standards Act and Collective Bargaining Agreement to pay for direct travel time between individuals.

**Limitation on Hours Worked**

To implement changes associated with the Fair Labor Standards Act and the Collective Bargaining Agreement, the Department needs to amend OAR 411-375-0010

(Definitions) and adopt OAR 411-375-0055 (Limitations on Hours Worked) to limit payment to a single personal support worker per individual to no more than 50 hours in a work week unless the personal support worker is delivering relief care or an exception has been granted by the Department. These rules changes comply with the Fair Labor Standards Act and Collective Bargaining Agreement by limiting payment to a single personal support worker per individual to no more than 50 hours in a work week unless the personal support worker is delivering relief care or an exception has been granted by the Department.

#### Provider Enrollment Inactivation, Termination, and Hearing Rights

The Department needs to amend the following rules to implement changes to the termination, inactivation, appeals, and hearings process:

- OAR 411-375-0010 (Definitions);
- OAR 411-375-0070 (Provider Enrollment Inactivation and Termination); and
- OAR 411-375-0080 (Hearing Rights).

These rules are being amended to clarify the Department's responsibilities in terminating and inactivating personal support worker provider enrollment including notification requirements to ensure personal support workers are given due process for actions taken by the Department. These rules are being amended to make clear the situations when a personal support worker can be immediately suspended from providing services to an individual when there is imminent danger to the individual.

Documents Relied Upon, and where they are available:

Justification of Temporary Rule(s):

Failure to act promptly and immediately update the rules in OAR chapter 411, division 375 will result in serious prejudice to --

- Individuals receiving developmental disability home care services;
- The parents, guardians, family members, and representatives of individuals receiving services;
- Case management entities;
- Personal Support Workers; and
- The Department.

These rules need to be updated promptly to --

- Remove terms included in the general definitions rule, OAR 411-317-0000;

- Implement changes associated with the Fair Labor Standards Act and Collective Bargaining Agreement regarding hours, pay, and benefits for personal support workers; and
- Implement changes to the termination and inactivation procedures.

Failure to immediately update these rules --

- Prevents the Department from streamlining operations to provide consistency across services;
- Risks non-compliance with the Fair Labor Standards Act and the Collective Bargaining Agreement;
- Risks providing the incorrect pay and benefits to personal support workers;
- Risks not providing timely due process to personal support workers terminated or inactivated; and
- Presents a risk to vulnerable individuals when there is imminent danger from a personal support worker to a current or future individual.

Signed Lilia Teninty, Director, Developmental Disabilities

12/21/2015

Signature

Date

DEPARTMENT OF HUMAN SERVICES  
DEVELOPMENTAL DISABILITIES  
OREGON ADMINISTRATIVE RULES

CHAPTER 411  
DIVISION 375

PERSONAL SUPPORT WORKERS PROVIDING  
DEVELOPMENTAL DISABILITY HOME CARE SERVICES

**411-375-0010 Definitions**

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 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.~~

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

(21) "Active Provider Number" means an identifying number that is issued by the Department to a personal support worker after the personal support worker completes the qualification and enrollment conditions as described in OAR 411-375-0020. An Active Provider Number is a provider number that is not currently in inactivated or terminated status.

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

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

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

~~(64) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.~~

(75) "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.

(86) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.

~~(9) "Community Transportation" is transportation provided to enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. 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.~~

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

(117) "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) "Department" means the Department of Human Services.~~

~~(13) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.~~

~~(14) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(15) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.~~

(168) "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.

(179) "Employer" means the common law employer. The common law employer is the person who conducts the employer responsibilities described in these rules and applicable rules for home care services. The employer may be the individual or a person selected by the individual or the legal representative of the individual.

(1810) "Enhanced Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require advanced medical or behavioral driven services and supports as defined and assessed through a functional needs assessment tool.

(1911) "Exceptional Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require extensive medical or behavioral driven services and supports, beyond the enhanced services provided by an enhanced personal support worker, as assessed by a functional needs assessment

tool and whose service needs also require staff to be awake more than twenty hours in a twenty-four hour period.

(~~2012~~) "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.

(~~2113~~) "FICA" means "Federal Insurance Contributions Act".

(~~2214~~) "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, repeatedly claiming payment for hours not prior authorized, 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.

(~~2315~~) "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 home care services.

~~(24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.~~

(~~2516~~) "Home Care 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 for individuals 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.

(2617) "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) Traveling around and participating in the community.~~

(2718) "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.

(2819) "Inactive Provider Number" means a personal support worker has a Department issued provider number that has been terminated or inactivated by the failure to act in accordance with the qualifying actions as described in OAR 411-375-0020. A personal support worker may not be paid for work performed while their provider number is inactive.

~~(29) "Independent Contractor" means "independent contractor" as defined in ORS 670.600.~~

~~(30) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.~~

~~(31) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(3220) "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 that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for 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, the Community First Choice state plan, natural supports, or alternative resources.~~

(3321) "Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide Home Care Services" means a personal support worker does not possess the skills to perform home care services as defined in this rule. The personal support worker may not be physically, mentally, or

emotionally capable of providing home care 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.

~~(34) "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 individual, a person acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.~~

~~(35) "Mandatory Reporter":~~

~~(a) Means any public or private official as defined 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 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.~~

(3622) "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.

~~(37) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.~~

(~~38~~23) "Personal Support Worker":

(a) Means a person:

(A) Who has an active or inactive provider number;

(B) 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;~~

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

(D) Whose compensation for providing home care services is provided in whole or in part through the Department, CDDP, CIIS, or Support Services Brokerage.

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

(~~39~~24) "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.

(~~40~~25) "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.

(4126) "Provider" means a person, organization, or business selected by an individual or the representative of an individual and paid with service funds to provide home care services according to the ISP for the individual.

(4227) "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 home care services provided to the individual. Provider enrollment includes the completion and submission of a Provider Enrollment Agreement before receiving a provider number.

(4328) "Provider Number" means the identifying number issued to a personal support worker.

(4429) "PSW" means "Personal Support Worker" as defined in this rule.

~~(45) "PSW-IC" means "Personal Support Worker-Independent Contractor". A PSW-IC is a personal support worker who is contracted by an individual with an intellectual or developmental disability or the representative of the individual. A PSW-IC is an independent contractor except for purposes of collective bargaining.~~

(4630) "Registry" means the Provider Registry maintained by the Oregon Home Care Commission.

(4731) "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.

(4832) "Service Agreement":

(a) Is the written agreement consistent with an ISP that describes at a minimum:

(A) ~~Type of service~~ Supports to be provided;

(B) Hours, rates, location of services, and expected outcomes of services; and

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community ~~under the service of a contractor or provider organization.~~

(b) For employed personal support workers, the service agreement serves as the written job description.

~~(4933) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services for individuals enrolled in home care services as defined in this rule.~~

~~(50) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.~~

~~(51) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.~~

~~(5234) "These Rules" mean the rules in OAR chapter 411, division 375.~~

~~(5335) "Unacceptable Background Check" means an administrative process 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) Under OAR 407-007-0275, the person applying to be a personal support worker has been found ineligible due to ORS 443.004;~~

~~(b) Under OAR 407-007-0275, 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 found ineligible due to ORS 443.004; or~~

~~(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.~~

(36) "Violation of Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a personal support 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.

(37) "Workday" means 12:00 AM through 11:59 PM.

(38) "Work Week" means 12:00 AM Sunday through 11:59 PM Saturday.

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**

(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 home care 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 home care 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 Medical Assistance Programs (MAP).

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

(c) Reimbursement for transporting an individual to accomplish ADL, IADL, or a 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.

(d) A personal support worker who travels between the home or service setting of one individual and the home or service setting of another individual, on the same date, is paid at the base pay rate as defined in the Collective Bargaining Agreement for the time spent in transit between the homes or service settings.

(A) The total time spent in transit between the homes or service settings of all individuals may not total more than 10 percent of the total wages that the personal support worker claims during a pay period.

(B) When the vehicle of a personal support worker is used for transportation between the homes or service settings of two individuals, travel time is the time needed for a personal support worker to travel directly between the homes or service settings of the two individuals based on a time estimate published in a common, publicly-available, web-based, mapping program.

(C) When a personal support worker uses public transportation to travel between the homes or service settings of two individuals, payment for travel time is based on the pick-up and drop-off times of the public transportation provider for the stops nearest the homes or service settings for the individuals.

(D) When a personal support worker uses non-motorized transportation to travel between the homes or service settings

of two individuals, payment for travel time is based on a time estimate published in a common, publicly-available, web-based, mapping program.

(E) Claims for travel time exceeding 20 percent may require a written explanation from the personal support worker. Time claimed in excess of the estimate may not be paid.

(F) Under no circumstances may a personal support worker be paid for time spent in transit to or from the residence of the personal support worker.

(G) Except as set forth in subsection (a) of this section, personal support workers do not receive any mileage reimbursement.

(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 or newly identified individual need as outlined in the Collective Bargaining Agreement.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

### **411-375-0055 Limitations on Hours Worked**

(1) A personal support worker may not work more than 50 hours in a work week per individual unless:

(a) The personal support worker is delivering 24 daily relief care; or

(b) An exception has been granted by the CDDP, Brokerage, or Department.

(2) All determinations by the Department regarding exceptions to the 50 hour limitation are final.

(3) No later than August 31, 2016, all authorized ISPs may not authorize more than 50 hours per week per personal support worker unless an exception has been granted by the CDDP, Brokerage, or Department.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

### **411-375-0070 Provider Enrollment Inactivation and Termination**

(1) The provider enrollment for a personal support worker may be inactivated in the following circumstances. A provider number for a personal support worker may be inactivated by the Department until the personal support worker takes action to reinstate provider enrollment when:

(a) The personal support worker has not provided any paid home care 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 home care services in Oregon;

(c) The personal support worker fails to participate in a New Member Orientation for personal support workers 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) More than two years have passed since the date on the most recent background check final fitness determination for a personal support worker;

(f) More than two years have passed since the signature date on the most recent Provider Enrollment Application and Agreement for a personal support worker; or

(g) The personal support worker fails to participate in training required by the Department.

(2) A provider number for a personal support worker may be inactivated during an investigation when:

(~~a~~) The personal support worker, even if not providing any paid home care 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;

(b) The personal support worker, even if not providing any paid home care services to an individual, is being investigated by law enforcement for any of the crimes listed in OAR 407-007-0275; or

(~~c~~) The personal support worker has a credible allegation of fraud or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(23) ~~A provider~~ A provider number for a personal support worker may be terminated by the Department when:

(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 home care services;

(d) The personal support worker has a violation of 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 home care 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 home care services as described in the ISP and service agreement;

(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.

~~(34) NOTICE OF TERMINATION/NOTIFICATION OF CHANGE IN PROVIDER NUMBER STATUS. When the Department terminates the provider enrollment of a personal support worker, the Department must issue a written notice to the personal support worker.~~

(a) The Department must issue a written notice of the inactivation of a provider number to the personal support worker when the inactivation is based on section (1)(g) or section (2) of this rule.

(b) The Department must issue a written notice of the termination of a provider number to the personal support worker.

(c) The Department issued written notice of change in provider number status to the personal support worker. The written notice must include the following:

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

(B) The alleged violation as listed in sections (1), (2), or (3) of this rule;

(C) The appeal rights, if any, 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 or inactivation.

~~(bd) For terminations based on substantiated abuse allegations violation of the abuse and protective services rules, 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 INACTIVATION. The Department, on the recommendation of the CDDP, CIIS, or Support Services Brokerage, may immediately inactivate the provider enrollment for a personal support worker on the date an alleged violation listed in section (2) of this rule is discovered when the alleged violation presents imminent danger to current or future individuals. The Department must make a determination to terminate or reactivate the provider number within 3 business days from the date of the notice of inactivation as described in OAR 411-375-0080. The personal support worker must file an appeal within 10 business days from the date of the notice of inactivation 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~~ The provider enrollment number 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 if they wish to continue to work during the hearing process as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider enrollment number 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 home care services provided by the personal support worker.~~

(a) EXCLUSIONS. A personal support worker may be terminated immediately by the Department and the personal support worker may not continue to work during the hearing process as described in OAR 411-375-0080 for terminations based on the following:

(A) 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) Being excluded or debarred by the Office of the Inspector General;

(C) A conviction for fraud pursuant to federal law under 42 CFR 455.23; or

(D) An alleged violation listed in section (3) of this rule is discovered and presents imminent danger to current or future individuals.

(b) The personal support worker must file an appeal within 30 days from the date of the notice of termination as described in OAR 411-375-0080.

(6) TERMINATION IF NO APPEAL HEARING REQUEST FILED. The decision of the Department becomes final if a personal support worker

does not request a hearing within ~~310 business~~ days from the date of the notice of termination. Once the time period for the personal support worker to request a hearing has expired --

(a) 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;~~ and

(b) A Final Order according to ORS 183 and OAR 461-025-0371 is issued by the Department to all appropriate parties with the decision.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

### **411-375-0080 Hearing Rights**

(1) EXCLUSIONS. The following are excluded from the appeal hearings 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) Termination based on being excluded or debarred by the Office of the Inspector General.

(c) Termination based on a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(d) 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~~ been inactivated under OAR 411-375-0070.

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

(~~de~~) 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 Department must conduct an informal conference, as described in OAR 461-025-0325, if requested by a personal support worker within 5 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 informal conference must involve the personal support worker and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone.~~

~~(42) OFFICE OF ADMINISTRATIVE HEARINGS~~HEARINGS REQUESTS.

(a) A personal support worker may file a request for a hearing with the Department if the personal support worker ~~continues to dispute~~s the decision to terminate the provider ~~enrollment number~~ of the personal support worker ~~except when excluded under section (1) of this rule. If a personal support workers decides to file a request for hearing, the personal support worker must specify in the request, the issues or decisions being appealed and the reason for the request.~~

(b) The request for a hearing must be filed in writing on the Department approved form with the Department within:

(A) 10 days of the effective date of the termination included on the written decision ~~termination notice~~ issued by the

Department if the personal support worker wishes to continue to work during the hearing process unless excluded by OAR 411-375-0070(45)(a); or

(B) ~~90~~ 30 days from the effective date of the termination included on the termination notice.

(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.

(3) INFORMAL CONFERENCE. The Department shall offer an informal conference, as described in OAR 461-025-0325, to a personal support worker within five business days from the receipt of a request for hearing.

(a) The personal support worker has 10 business days to respond to the offer for an informal conference with the Department.

(b) If the personal support worker accepts the offer of an informal conference, the informal conference must be scheduled with the personal support worker and, if requested, a representative of the Union. The informal conference must involve the personal support worker and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) Participation in an informal conference by the personal support worker is not required.

(4) OFFICE OF ADMINISTRATIVE HEARINGS.

(ad) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the Department to terminate the provider ~~enrollment number~~ is affirmed or reversed. A Final Order ~~will be~~ is issued according to ORS 183 and OAR 461-025-0371 with the decision to all appropriate parties.

| (be) No additional hearing rights have been granted to personal support workers by this rule.

(5) BURDEN OF PROOF. The Department 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.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007