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Authorized Signature

Number: APD-PT-16-008

Issue date: 3/29/2016

UPDATED

Topic: Long Term Care

Transmitting (check the box that best applies):

- New policy
 Policy change
 Policy clarification
 Executive letter
 Administrative Rule
 Manual update
 Other: _____

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input checked="" type="checkbox"/> Aging and People with Disabilities | <input type="checkbox"/> Office of Developmental Disabilities Services(ODDS) |
| <input type="checkbox"/> Self Sufficiency Programs | <input type="checkbox"/> ODDS Children’s Intensive In Home Services |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Stabilization and Crisis Unit (SACU) |
| <input type="checkbox"/> ODDS Children’s Residential Services | <input type="checkbox"/> Other (please specify): |
| <input type="checkbox"/> Child Welfare Programs | |

Policy/rule title:	Homecare workers enrolled in the Consumer-Employed Provider Program (CEP)		
Policy/rule number(s):	OAR Chapter 411 Division 031	Release no:	
Effective date:	03/01/16	Expiration:	
References:			
Web address:	http://www.dhs.state.or.us/policy/spd/rules/411_031.pdf		

Discussion/interpretation:

Beginning 03/01/2016, there will be many new changes to [OAR Chapter 411 Division 031](#). These changes fall into two categories: Travel time reimbursement, and homecare worker provider enrollment termination.

Travel time reimbursement:

Beginning 01/01/2016, homecare workers who travel directly from one consumer’s home or care setting to another consumer’s home or care setting became eligible to claim pay for the time they spend in transit. This is set forth in OAR 411-031-0040(11).

“Travel directly” means that a homecare worker’s travel from one consumer’s home or care setting to another consumer’s home or care setting is not interrupted for reasons other than to eat a meal, purchase fuel for the vehicle being used for the travel, to use a restroom, or to change buses, trains or other modes of public transit.

- The amount of time a homecare worker may take to Travel Directly from one consumer-employer’s home or care setting to another consumer-employer’s home or care setting may not exceed one hour.
- When a homecare worker travels directly between the homes or care settings of two consumer-employers, whether via automobile, on foot, or some other means such as a bicycle, wheelchair or scooter, a common, publicly-available web-based mapping program such as MapQuest or Google Maps will be used to determine the most direct route and the amount time to allow for the travel.
- When a homecare worker uses public transportation to travel directly between the homes or care settings of two consumer-employers, payment for travel time shall be based on the public transportation providers’ scheduled pick-up and drop-off times for the stops nearest the consumers’ homes or care settings.
- Pay for travel time is capped at 10 percent of the homecare worker’s gross wages during each pay period unless the HCW clearly shows that traffic, inclement weather or distance between the homes of consumers caused the excess travel time.
- Claims for travel time exceeding the Department’s time estimates require a written explanation from the homecare worker, and may only be paid if the homecare worker clearly shows that traffic or inclement weather caused the excess travel time.
- Under no circumstances may a homecare worker be paid for time spent in transit to or from the homecare worker’s own residence.
- Homecare workers will not receive any mileage reimbursement for traveling between the homes or care settings of consumer-employers.

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

Homecare worker provider enrollment termination:

Beginning 03/01/2016, the rules surrounding the termination of homecare workers by APD will change. These changes will include changes in many definitions, changes in the administrative review, appeal, and administrative hearing process, and changes in the role that APD/AAA offices will play in the homecare worker termination process.

Definitions:

Homecare workers can be terminated if they violate any of the offenses now listed in OAR 411-031-0050(3). Many of these offenses were previously found in OAR 411-031-0050(2). Some of the previous definitions have been changed, and some new definitions have been added.

In addition to those offenses previously found in OAR 411-031-0050(2), homecare workers are now subject to termination if they are found to have violated any of the following:

“Failure to Act as a Mandatory Reporter” means that a homecare worker has reasonable cause to believe that the abuse of a child, an older adult, a disabled adult, a developmentally disabled person or a resident of a nursing facility has occurred, but fails to report the suspected abuse to the Department or to a law enforcement agency.

“Failure To Adhere To An Established Work Schedule” means a delay in arrival to work or absence from work not prior scheduled with a consumer that is either unsatisfactory to a consumer or neglects the consumer's service needs.

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

- Financial exploitation,
- Borrowing money from a consumer,
- Taking a consumer's property or money,
- Accepting or receiving items or services willingly or unwillingly purchased for the homecare worker by a consumer-employer having a consumer purchase items for the homecare worker
- Forging a consumer's signature,
- Falsifying payment records,
- Claiming payment for hours not worked,
- Claiming hours for ADL, IADL or 24-hour availability care during the same time that hours are claimed for travel,
- Repeatedly working or claiming to have worked hours not prior authorized on a consumer-employer's service plan,
- Claiming hours worked for any consumer-employer while receiving pay for Paid Time Off for any consumer-employer, or,
- Similar acts intentionally committed for financial gain.

“Introduction of Unwelcome Nuisance to the Workplace” means Inviting unwelcome guests or pets into a consumer's home, resulting in the consumer's dissatisfaction or a homecare worker's inattention to the consumer's required service needs.

"Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker does not possess the physical, mental or emotional skills or abilities necessary to perform services needed by consumers. The homecare worker's lack of skills may put consumers at risk because the homecare worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the consumers.

Administrative review, appeal, and administrative hearing process:

APD and AAA offices will no longer issue either immediate termination notices or notices of termination pending appeal to homecare workers.

When an APD/AAA office determines that a homecare worker has committed any of the offenses listed in OAR 411-031-0050(3), local offices will make referrals to the "HCW Terminations" inbox in Outlook. A copy of the referral must be sent by the APD/AAA office to the homecare worker.

Click [here](#) to be directed to the Case Management Tools website where you may access the editable Word version of the 'HCW Referral of Alleged Violation and Request for Termination' form included at the end of this transmittal. The form itself is located in the Forms section of the Homecare Worker page.

■ Forms

[HCW Referral of Alleged Violation and Request for Termination Form](#) (March 2016) **NEW!**



[MSC 0189 Request for Direct Deposit Homecare Worker Wages](#) (revised)

Upon receiving a referral, APD Central Office staff will conduct an administrative review as set forth in OAR 411-031-0050(4). At the conclusion of the administrative review, if the homecare worker has committed any of the offenses in OAR 411-031-0050(3) and termination of the homecare worker's provider number is warranted, then APD Central Office will issue either a Notice of Proposed Termination or a Notice of Emergency Termination.

If a homecare worker chooses to appeal APD Central Office's Notice of Proposed Termination or a Notice of Emergency Termination, then the Homecare Worker may complete an administrative hearing request. Administrative hearing requests received from homecare workers will be sent to the APD Hearings inbox for processing.

Implementation/transition instructions: N/A

Training/communication plan: N/A

Local/branch action required:

Local offices should process homecare workers' requests for travel time reimbursement as set forth in [APD IM 16-003](#). Homecare workers should be provided copies of the Travel Time Tracking Sheet (attached) upon request.

Use the attached referral document to refer homecare workers to APD Central Office for administrative review termination.

Central office action required: N/A

Field/stakeholder review: Yes No

If yes, reviewed by: APD Operations

Filing instructions:

If you have any questions about this policy, contact:

Contact(s):	Chris Ellis		
Phone:	503-945-7035	Fax:	503-947-4245
Email:	Christopher.m.ellis@state.or.us		

HEMOCARE WORKER REFERRAL OF ALLEGED VIOLATION AND REQUEST FOR
TERMINATION

Date: _____ Local Office / Branch number: _____

Person making referral: _____

Homecare Worker name, provider number and address:

Please mark all that apply:

- Violation of requirement to maintain a drug-free workplace
- Unacceptable background check
- Lack of skills, knowledge, and ability to adequately or safely perform the required work
- Violation of protective service and abuse rules
- Fiscal improprieties¹
- Failure to provide services as required²
- Unable or unwilling to maintain consumer-employer confidentiality
- Introduction of an unwelcome nuisance to the workplace
- Failure to adhere to an established work schedule
- The homecare worker has been sanctioned or convicted of a criminal offense related to that individual's involvement in any public assistance program
- Failure to perform the duties of a mandatory reporter
- The homecare worker has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, and all other federal health care programs
- The homecare worker has failed to provide a tax identification number or Social Security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration

¹ *For referrals based on protective service and abuse rules, please attach copies of any relevant investigation(s).

²**For referrals based on fiscal improprieties, please include any supporting documentation

Please explain why this homecare worker's provider enrollment should be terminated:

If this homecare worker is not terminated immediately, will a consumer's life or physical, emotional or financial well-being be in danger? If so, please explain why.