

Mike McCormick
Authorized Signature

Number: APD-PT-14-032
Issue Date: 9/16/2014

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 |
| <input type="checkbox"/> Children, Adults and Families | Disabilities Services (ODDS) |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Other (<i>please specify</i>): |

Policy/rule title:	Termination, Administrative Review, and Hearing Rights		
Policy/rule number(s):	OAR 411-031-0050, 411-031-0020, 461-025-0305	Release no:	
Effective date:	Immediately	Expiration:	
References:	OAR Chapter 411 Division 031 OAR Chapter 461 Division 025		
Web Address:	OAR Chapter 411 Division 031 OAR Chapter 461 Division 025		

Discussion/interpretation:

Terminations:

When a Homecare Worker (HCW) commits one or more violations listed in OAR 411-031-0050(2), APD/AAA offices may terminate the HCW's provider enrollment.

When an HCW's provider enrollment is terminated, APD/AAA staff terminating the HCW must decide whether the HCW's violation presents an imminent danger to current or future consumers. Imminent danger is defined in OAR 411-031-0020(22), and means that there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if no intervention is immediately initiated.

Only when APD/AAA staff determines that the violation committed by the HCW presents imminent danger to a present consumer or potential future consumers may the HCW's enrollment be **immediately terminated** in accordance with OAR 411-031-0050(3).

HCWs whose enrollment is immediately terminated may not continue to work for DHS consumers while they appeal the APD/AAA office's decision. In addition, HCWs whose enrollment is immediately terminated are not entitled to an informal conference with the local office Program Manager or Program Manager's designee.

Some examples of violations that could warrant immediate termination are:

- Abuse or financial exploitation of a consumer that violates Adult Protective Service rules;
- Violation of a drug-free workplace where a HCW arrives intoxicated at to consumer's home;
- Lack of skills, knowledge and ability to safely or adequately perform work where the HCW's shortcomings place the consumer in danger;
- Failing to provide services as required where a consumer suffers harm as a result of the failure, and;
- Engaging in unacceptable conduct at work where the HCW brings a criminal or dangerous animal to a consumer's home or where the HCW being absent from work places the consumer significant at risk.

Immediate termination is not warranted to protect the Department's financial or compliance-related interests.

When APD/AAA staff does not determine that the violation committed by the HCW presents imminent danger to present or future consumers, the HCW's enrollment should be **terminated pending appeal** in accordance with OAR 411-031-0050(4).

HCWs whose enrollment is terminated pending appeal may be allowed to continue working for their consumer/employer(s) while the appeal process takes place until an administrative review is completed by APD Central Office.

Some examples of violations that would warrant termination pending appeal are:

- Fiscal improprieties involving the HCW claiming hours not worked or forging the consumer's signature on a voucher;
- Lack of skills, knowledge and ability to safely or adequately perform work where the HCW's shortcomings cause dissatisfaction, inconvenience, or complaint from a consumer;
- Engaging in unacceptable conduct at work where the HCW's actions cause

- dissatisfaction, inconvenience, or complaint from a consumer;
- Failing to provide services as required where a consumer does not suffer harm as a result of the failure, and
- Failure to maintain consumer/employer confidentiality where danger to the consumer/employer cannot be clearly shown.

Informal conference:

If an HCW appeals the termination pending appeal of his/her enrollment within 10 days of the date of termination, the HCW is entitled to an informal conference with the local office Program Manager or Program Manager's designee. The HCW is entitled to have an SEIU representative present at an informal conference. Informal conferences may take place in person or via telephone.

Informal conferences can serve several purposes:

- Ensure the HCW understands the reason for the termination;
- Give the HCW an opportunity to review the information that is the basis for the termination;
- Inform the HCW of the rules that serve as the basis for the termination;
- Give the HCW and the APD/AAA office the chance to correct any misunderstanding of the facts, and
- Give the APD/AAA office an opportunity to review its termination.

When a termination pending appeal is based on a substantiated Adult Protective Service investigation, the local office Program Manager or Program Manager's designee may discuss the allegations with the HCW, but may not disclose any confidential consumer information. In addition, the names of the complainant and witnesses may not be shared with the HCW.

Following an informal conference, the local office Program Manager or Program Manager's designee may decide either to uphold the termination or to restore the HCW's enrollment.

When the local office Program Manager or Program Manager's designee decides to uphold the termination of the HCW's enrollment, a form [SDS 0613](#) must be completed, signed by the Program Manager or Program Manager's designee, and sent to the HCW.

When a Program Manager or Program Manager's designee determines that the decision to immediately terminate a HCW's enrollment was unjustified, the HCW's enrollment must be restored. In such cases, the Program Manager or Program Manager's designee must notify the HCW in writing of the restoration.

Implementation/transition instructions: Apply the criteria set forth in this transmittal. Seek technical assistance as needed.

Training/communication plan: No training is needed. Technical assistance will be provided as needed.

Local/branch action required: Review and implement these policies.

Central office action required: Provide technical assistance as needed

Field/stakeholder review: Yes No

If yes, reviewed by: Operations Committee

Filing Instructions:

If you have any questions about this policy, contact:

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