

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

Oregon Home Care Commission

418

Agency and Division

Administrative Rules Chapter Number

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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

Homecare Choice Program

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:

418-040-0000; 418-040-0010; 418-040-0020; 418-040-0030; 418-040-0040; 418-040-0050; 418-040-0060; 418-040-0070; 418-040-0080; 418-040-0090

AMEND:

SUSPEND:

Stat. Auth.: ORS 410.602

Other Auth.: S.B. 1542 (2014)

Stats. Implemented: ORS 410.595-625

RULE SUMMARY

The Oregon Home Care Commission (Commission) must immediately adopt rules in OAR 418-040 to comply with a legislative mandate to establish and administer a program to enable individuals using private funds to purchase homecare services through the Commission's Registry by January 1, 2016. These rules establish a consumer-directed program that enables individuals with disabilities to access the

Commission's Registry to locate and hire a provider as an employee and purchase services through the Commission. The Commission may also contract with a fiscal intermediary that would be able to pay the individual's employee on the individual's behalf, withhold and report payroll taxes, and assist consumers with meeting the legal requirements of being a household employer.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities 12/23/2015

Signature

Date

Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

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

Oregon Home Care Commission

418

Agency and Division

Administrative Rules Chapter Number

In the Matter of: The temporary adoption of OAR 418-040-0000; 418-040-0010; 418-040-0020; 418-040-0030; 418-040-0040; 418-040-0050; 418-040-0060; 418-040-0070; 418-040-0080; 418-040-0090 relating to the Homecare choice program.

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

Homecare Choice Program

Statutory Authority: **ORS 410.602**

Other Authority: **S.B. 1542 (2014)**

Stats. Implemented: **ORS 410.595-625**

Need for the Temporary Rule(s):

The Homecare Choice Program needs to be established by January 1, 2016 as mandated by Senate Bill 1542. Senate bill 1542 requires the Commission to create a program to provide an opportunity for individuals with disabilities who do not qualify for Medicaid in-home services to obtain high quality and affordable homecare services from qualified, committed, experienced and trained homecare workers; build and strengthen the homecare workforce that provides homecare services to those receiving Medicaid funded services by offering homecare workers the opportunity to obtain additional work from private payers; attract additional homecare workers to the Registry; and protect access to and receipt of homecare services for those receiving Medicaid funded in-home services. The Commission will do this by writing rules to establish the types and scope of homecare services offered through the program.

Documents Relied Upon, and where they are available:

Enrolled Senate Bill 1542 passed during the 2014 legislative session:

<https://olis.leg.state.or.us/liz/2014R1/Downloads/MeasureDocument/SB1542/Enrolled>

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2014R1orLaw0116ss.pdf

Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to the public interest, the Commission, the general public, homecare workers, and other individuals with disabilities who would benefit from the program. These rules need to be adopted promptly in order for the Commission to comply with S.B. 1542 (2014).

The Commission needs to immediately enact rules to comply with legislation that mandated the program be running by January 1, 2016. Failure to adopt these rules promptly would result in the program not starting on the date required by the legislation and could jeopardize the sustainability of the program.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities 12/23/2015

Signature

Date

**OREGON HOME CARE COMMISSION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 418
DIVISION 40**

HEMOCARE CHOICE PROGRAM

418-040-0000 Purpose

The rules in OAR chapter 418, division 40 establish the rules for the Homecare Choice Program administered by the Oregon Home Care Commission. The purpose of the Homecare Choice program is to enable private-pay individuals to purchase in-home services through the Commission for providers registered on the Commission's statewide Registry.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0010 Definitions

(1) "Abuse" means "abuse" as defined in OAR 411-020-0002, OAR 407-045-0260, OAR 943-045-0250, and OAR 413-015-0115.

(2) "Active" means a homecare or personal support worker has a current provider number and has worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker.

(3) "Activities of Daily Living (ADLs)" means self-care activities that are accomplished by an individual to meet his or her daily needs, as described in OAR 418-040-0030(3)(a)(A) - (G).

(4) "Background Check" means a criminal records and abuse check conducted in accordance with OAR chapter 407, division 007.

(5) "Chargeback" means a reversal of a credit card charge after an individual successfully disputes a program charge on his or her credit card.

(6) "Commission" means the Oregon Home Care Commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution and ORS 410.595 to 410.625.

(7) "Communication" means assistance that enables an individual to communicate with another person.

(8) "Consumer-Employer" means an individual enrolled as a participant in the Homecare Choice Program who employs a provider from the Registry.

(9) "Continuing Education" means specific minimum education requirements defined by the Commission.

(10) "Credit Card Refund" means a refund of an unused account balance that is credited to the same credit card that originated the payment.

(11) "Department" means the Department of Human Services (DHS).

(12) "Enrollment Agreement" means the program-specific document an individual must complete to be approved to participate in the Homecare Choice Program.

(13) "FICA" is the acronym for the Social Security payroll taxes collected under authority of the Federal Insurance Contributions Act.

(14) "Fiscal Improprieties" means a provider committed financial misconduct involving a participant's money, property, or benefits. Fiscal improprieties include, but are not limited to:

(a) Financial exploitation, as defined in OAR 411-020-0002 and OAR 407-045-0260;

- (b) Borrowing money from the participant;
- (c) Taking a participant's property or money;
- (d) Having a participant purchase items for the provider;
- (e) Forging a participant's signature;
- (f) Falsifying payment records;
- (g) Claiming payment for hours not worked; or
- (h) Other similar acts intentionally committed for financial gain.

(15) "Fiscal Intermediary" means an entity that provides fiscal intermediary services that support all programmatic, policy, and financial aspects of the Homecare Choice Program. Fiscal Intermediary services include, but are not limited to, enrollment functions, processing payroll, and paying state and federal taxes on behalf of participants.

(16) "FUTA" is the acronym for Federal Unemployment Tax Assessment, which is a United States payroll (or employment) tax imposed by the federal government on both employees and employers.

(17) "Guardian" means the parent of an individual less than 18 years of age or a person who has been appointed by a court to make personal, health, or other decisions for a functionally incapacitated individual under ORS chapter 125.

(18) "Homecare Choice Provider" means a person who has met the enrollment standards described in OAR 418-040-0040(1)(a)(A) - (N) and is authorized to provide services to program participants.

(19) "Homecare Worker" means a provider described in OAR 411-031-0020(19)(a)(A) - (C).

(20) "Imminent Danger" means there is reasonable cause to believe an individual's life or physical, emotional, or financial well-being is in danger if an intervention is not immediately initiated.

(21) "Individual" means a person enrolled as a participant in the Homecare Choice Program. The term "individual" is synonymous with "consumer-employer" and "participant."

(22) "Instrumental Activities of Daily Living" means complex activities required to maintain a participant's immediate environment, as described in OAR 418-040-0030(3)(b)(A) - (H).

(23) "Licensed Independent Practitioner" means a health care professional authorized by the state of Oregon to independently diagnose and treat.

(24) "Non-Sufficient Fund Fee" means the charge an individual pays if a payment check is denied or is unable to be processed by the individual's banking institution due to lack of sufficient funds to pay the check.

(25) "OHA" means the Oregon Health Authority.

(26) "Orientation" means an introduction to the Homecare Choice Program and a review of basic expectations and requirements for Homecare Choice providers.

(27) "Participant" means an individual enrolled in the Homecare Choice Program.

(28) "Payment Method" means the financial instrument used to pay for services.

(29) "Personal Support Worker" means a provider described in OAR 411-375-0010(38)(a)(A) - (D) and OAR 410-172-0190(1) - (7).

(30) "Prepayment" means the advance payment of two weeks of service hours multiplied by the service rate.

(31) "Program" means the Homecare Choice Program governed by Oregon Administrative Rules and administered by the Oregon Home Care Commission.

(32) "Program service rate" means the hourly rate for homecare services established by the Home Care Commission and charged to Homecare Choice Program participants.

(33) "Provider" means Homecare Choice provider as defined in these rules.

(34) "Provider Number" means an identifying number issued to each homecare and personal support worker enrolled as a provider through DHS or OHA.

(35) "Readiness Assessment" means a tool used to evaluate whether a provider can demonstrate understanding of basic skills and processes determined to be foundational concepts needed to work successfully with participants.

(36) "Refund" means a return of the unused balance of a participant's prepayment.

(37) "Registry" means the Commission's online listing of Homecare Choice providers who are available to work.

(38) "Relief Care" means the temporary provision of services with the primary purpose of relieving the individual's caregiver.

(39) "Representative" means a person designated by a participant, or the participant's legal guardian, who is authorized to assist with the program enrollment process, fulfilling consumer-employer responsibilities, and directing homecare services.

(40) "Self-Assessment" means an assessment tool completed by a Homecare Choice Program participant, or the representative of a participant, to evaluate the capacity and willingness of the participant or the participant's representative, to effectively manage and direct homecare services provided to the participant and to fulfill consumer-employer responsibilities. The self-assessment identifies the participant's need for the specific services that are included in the participant's service plan.

(41) "Service Period" means the 14 consecutive days of each provider pay period.

(42) "Service Plan" means a written document that details a participant's self-identified service needs.

(43) "SUTA" is the acronym for State Unemployment Tax Assessment. State unemployment taxes are paid by employers to finance the unemployment benefit system that exists in each state.

(44) "These Rules" mean the rules in OAR chapter 418, division 040.

(45) "Unacceptable Background Check" means a check that produces information related to the person's background that precludes the person from being a provider in the Homecare Choice Program for the following reasons:

(a) The person applying to be a provider has been disqualified under OAR 407-007-0275;

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

(c) A background check and fitness determination has been conducted resulting in an "approved with restrictions" status as defined in OAR 407-007-0210.

(46) "Work week" means the period of time that begins on 12:00 a.m. on Sunday and ends on 11:59 p.m. Saturday.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0020 Participant Eligibility

(1) In order to enroll as a participant in the Homecare Choice Program, an individual, or the individual's representative, must:

(a) Complete a self-assessment developed by the Oregon Home Care Commission.

(b) Enter into a written service plan with a Homecare Choice provider before the commencement of services.

(c) Pay the Commission in advance for services.

(d) Be able to comply with state and federal wage and tax laws and recordkeeping requirements by completing, submitting, and retaining necessary documents provided by the fiscal intermediary contracted by the Commission.

(e) Complete a Homecare Choice Program enrollment agreement.

(f) Provide information, when requested, for workers' compensation claims related to the individual's provider.

(g) Be able and willing to effectively manage and direct homecare services by performing the functions of an employer, including:

- (A) Locating, screening, and hiring a qualified provider.
- (B) Evaluating whether the provider has the skills and abilities to meet the individual's specific service needs.
- (C) Assigning and directing the provider's work.
- (D) Supervising and training the provider.
- (E) Scheduling the providers' work, leave, and coverage.
- (F) Tracking the hours worked and validating the authorized hours were completed by the provider.
- (G) Recognizing, discussing, and attempting to correct any performance deficiencies with the provider.
- (H) Discharging an unsatisfactory provider.

(2) An individual becomes ineligible to participate in the Homecare Choice Program when:

- (a) The individual, or individual's representative, fails to pay for services in advance.
- (b) The individual, or the individual's representative, fails to maintain an account balance equal to one service period.
- (c) The individual, or the individual's representative, is unable or unwilling to effectively manage and direct homecare services by failing to meet the requirements outlined in OAR 418-040-0020(g)(A) - (H).

(d) The individual, or the individual's representative, is unable or unwilling to comply with state and federal wage and tax laws or recordkeeping requirements by failing to complete, submit, and retain necessary documents provided by a fiscal intermediary contracted with the Oregon Home Care Commission.

(e) Dangerous conditions in the individual's service setting jeopardize the health or safety of the individual or provider, and the individual, or the individual's representative, is unable or unwilling to implement necessary safeguards to minimize the dangers.

(f) Services cannot be provided safely or adequately by the provider based on:

(A) The extent of the participant's service needs; or

(B) The choices or preferences of the participant or the participant's representative.

(3) Participants determined to be ineligible for continued participation in the Homecare Choice Program will be sent written notice 10 days in advance of the proposed action.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0030 Services

(1) Services available through the Homecare Choice Program are intended to support a participant in the participant's home and in the community. Services are identified by the participant through a self-assessment developed by the Oregon Home Care Commission.

(2) The service plan is determined by the participant based on the participant's self-assessment and the participant or the participant's

representative determines the number of purchased service hours per service period.

(3) Services are performed by providers enrolled in the Homecare Choice Program based on the service plan. Providers are selected by the participant from the Oregon Home Care Commission's Registry.

(4) Services available through the Homecare Choice Program include assistance with:

(a) Activities of Daily Living (ADLs):

(A) Bathing, grooming, and personal hygiene, including, but not limited to nail care, hair care, skin care, shaving, and oral hygiene.

(B) Cognitive, emotional and behavioral support through the provision of positive interventions and strategies to promote an individual's safety and to aid in healthy coping. This includes, but is not limited to:

(i) Providing reassurance, encouragement, and verbal and physical redirection when needed for personal safety.

(ii) Reminding, cueing, or supervision to complete personal care or household tasks.

(iii) Supervision to monitor safety and well-being.

(C) Communication includes, but is not limited to, assisting an individual with:

(i) Correspondence.

(ii) Using telephones, aids, and assistive technology.

(D) Dressing and undressing.

(E) Eating and feeding.

(i) Assisting an individual with oral fluid intake and nutrition.

(ii) Eating and oral feeding includes, but is not limited to:

(I) Assisting with direct feeding.

(II) Monitoring to prevent choking or aspiration.

(III) Assisting with adaptive utensils.

(IV) Cutting food.

(V) Placing food, dishes or utensils within reach for eating.

(F) Mobility and movement, including:

(i) Ambulation.

(ii) Transfers.

(iii) Bed mobility.

(iv) Repositioning.

(v) Adjusting padding for physical comfort or pressure relief.

(vi) Range-of-motion exercises.

(G) Toileting and elimination.

(i) Toileting assistance includes:

(I) The activity of getting to and from, on and off the toilet (including bedpan, commode, or urinal).

(II) Cleansing after elimination.

(III) Adjusting clothing.

(IV) Cleaning and maintaining assistive devices.

(V) Following a toileting schedule.

(ii) Elimination assistance includes:

(I) Bladder and bowel care.

(II) Managing Menses.

(III) Catheter care.

(IV) Ostomy care.

(V) Changing incontinence supplies.

(VI) Digital stimulation only as taught by an RN or a licensed independent practitioner with the scope of authority to teach digital stimulation.

(b) Instrumental Activities of Daily Living (IADLs):

(A) Arranging for medical appointments, including, but not limited to, scheduling appointments, arranging medical transportation, accompanying a participant to appointments, and assisting with ADLs to, from, and during an appointment.

(B) Housekeeping tasks including, but not limited to, cleaning surfaces and floors, vacuuming and mopping, cleaning dishes, taking out the garbage, dusting, and making an individual's bed.

(C) Laundry.

(D) Meal preparation.

(E) Medication management including:

(i) Assisting the participant to obtain medications that have been prescribed by a licensed independent practitioner.

(ii) Ensuring the proper storage of medications.

(iii) Administering non-injectable medications to the participant. This would include giving medication to the participant as:

(I) Directed by the participant; and

(II) Ordered by a licensed independent practitioner.

(iv) Administration of a chronically needed, and regularly scheduled, subcutaneous injectable medication to a participant only:

(I) Under the delegated authority of a Registered Nurse practicing pursuant to the Nurse Practice Act;
or

(II) As taught by the participant's licensed independent practitioner.

(v) Reminding, cueing, or overseeing the participant's self-administration of medications.

(vi) Transferring medications from the original containers into medication dispensers or organizers if directed by the participant or participant's representative.

(vii) Assisting the individual with the use of oxygen as prescribed by a licensed independent practitioner. This includes assuring the oxygen supply system is in good working order and promoting the participant's safe use of oxygen.

(F) Pet care.

(G) Shopping and errands.

(H) Transportation.

(c) Companionship. Companionship may include:

(A) The provision of fellowship by engaging a participant in social, physical, and mental activities. Fellowship includes, but is not limited to, engaging the participant in:

(i) Conversation;

(ii) Reading;

(iii) Games;

(iv) Hobbies;

(v) Crafts; and

(vi) Accompanying the participant during social activities and outings.

(B) The protection of a participant who requires assistance in caring for him or herself. This includes being present to monitor a participant's safety and well-being.

(d) Health related tasks performed by a Homecare Choice provider who has been trained by the participant, by the participant's representative, or by a licensed independent practitioner whose scope of authority permits the teaching or delegation of the health related task.

(e) Relief Care.

(5) Assistance with tasks related to the following activities are not available through the Homecare Choice Program:

(a) Case management. Case management means an ongoing process that includes:

(A) Assessing a participant's service needs.

(B) Evaluating the options and services required to meet the participant's needs.

(C) Developing and implementing a service plan.

(D) Coordinating services and referrals.

(E) Conducting risk assessments.

(F) Monitoring.

(b) Chore services and yard work.

(A) Chore services are services intended to ensure the individual's home is safe and allows for independent living.

(B) Chore services include:

(i) Heavy housecleaning;

(ii) Removal of hazardous debris or dirt from the home or yard; and

(iii) Moving heavy furniture.

(c) Home adaptations or modifications.

(d) Money management.

(e) Moving.

(f) Medical and Nursing services.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0040 Provider Qualifications

(1) Provider Enrollment:

(a) ENROLLMENT STANDARDS. To be enrolled as a provider in the Homecare Choice Program a provider must meet the following standards:

(A) Submit a completed application and provider enrollment agreement to the Oregon Home Care Commission.

(B) Possess an active, unrestricted homecare or personal support worker provider number issued by DHS or OHA.

(C) Have completed the background check process described in OAR 407-007-0200 to 407-007-0370 as a homecare or personal support worker with an outcome of approved. A background recheck must occur at least every two years or sooner, if requested.

(D) Complete Homecare Choice Program orientation.

(E) Be 18 years of age or older without exception.

(F) Possess a Social Security Number that matches the individual's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(G) Be legally eligible to work in the United States.

(H) Have sufficient communication and language skills to enable him or her to perform duties and interact effectively with participants and Commission staff.

(I) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services, as determined by the individual or his or her representative.

(J) Immediately report abuse or suspected abuse to DHS.

(K) Maintain confidentiality and safeguard the participant and the participant's family's information.

(L) Not be listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(M) Complete and pass an on-line readiness assessment. The readiness assessment includes, but is not limited to, concepts on:

(i) Effective communication skills;

(ii) Professional boundaries;

(iii) Preventing fraud and abuse;

(iv) Problem solving;

(v) Universal precautions and disease prevention;

(vi) Proper body mechanics; and

(vii) Medication safety.

(b) DENIAL OF PROVIDER ENROLLMENT. The Oregon Home Care Commission may deny an application for provider enrollment in the Homecare Choice Program when:

(A) The applicant has a history of violating protective service and abuse rules in OAR chapter 411 Division 020, OAR chapter 407, division 045, OAR Chapter 943, division 045, or OAR chapter 413, division 015.

(B) The applicant has an unacceptable background check.

(C) The applicant is under 18 years of age.

(D) The applicant is listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(E) The applicant has committed fiscal improprieties.

(F) The Oregon Home Care Commission has information that enrolling the applicant as a provider may put vulnerable individuals at risk.

(G) The applicant's Social Security Number does not match the applicant's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(H) The applicant is not capable of performing essential functions to safely provide necessary services or is not capable of learning essential functions to safely provide necessary services.

(I) The applicant does not have sufficient communication and language skill to enable him or her to perform duties and interact effectively with participants and Commission staff.

(J) The applicant does not complete and pass a readiness assessment.

(c) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. The Oregon Home Care Commission may terminate a provider enrolled in the Homecare Choice Program in the following circumstances:

(A) The provider's enrollment as a homecare worker has been terminated based on violations described in OAR 411-031-0050.

(B) The provider's enrollment as a personal support worker has been terminated based on violations described in OAR 411-375-0070 or OAR 411-172-0200.

(C) There is a substantiated complaint against a provider for:

(i) Being impaired by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a participant, in the participant's home, or transporting the participant; or

(ii) Manufacturing, possessing, selling, offering to sell, trading, or personally using illegal drugs while providing authorized services to a participant or while in the participant's home.

(D) The provider has a founded or substantiated allegation of abuse as described in OAR chapter 411, division 020, OAR chapter 407, division 045, OAR chapter 943, division 045, or OAR chapter 413, division 015.

(E) The provider fails to provide services as required.

(F) The provider lacks the ability or willingness to maintain confidentiality and safeguard the participant and the participant's family's information.

(G) The provider has an unacceptable background check.

(H) The provider has repeatedly demonstrated he or she is unable or unwilling to safely provide necessary services.

(I) The provider has repeatedly engaged in any of the following behaviors:

(i) Late arrival to work or absences from work that are not prior-scheduled with the participant and are either unsatisfactory to the participant or neglect the participant's service needs; or

(ii) Inviting unwelcome guests or pets into a participant's home, resulting in dissatisfaction or inattention to the participant's required service needs.

(J) The provider commits fiscal improprieties.

(K) The provider is listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(L) The provider fails to provide a Social Security Number that matches the provider's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(d) **INACTIVATION OF PROVIDER ENROLLMENT.** A Homecare Choice provider's enrollment may be inactivated when his or her homecare or personal support worker enrollment has been inactivated for reasons described in OAR chapter 411, division 031 or OAR chapter 411, division 375.

(A) Homecare Choice providers will be notified in writing of the reason for inactivation and the actions required to maintain eligibility as a provider in the Homecare Choice Program.

(B) A Homecare Choice provider who fails to restore his or her homecare or personal support worker enrollment to active status within 30 days of inactivation will not be eligible to participate in the Homecare Choice Program until his or her homecare or personal support worker enrollment is restored to active status.

(2) Registry referrals.

(a) To be available for referral on the Registry, the provider must:

(A) Have an active, unrestricted provider number.

(B) Meet the Commission's annual continuing education requirements as a homecare worker or personal support worker.

(C) Be seeking employment.

(D) Maintain a complete and accurate profile.

(E) Update his or her profile information every 30 days.

(F) Have a valid telephone number.

(G) Have a valid email address, if available.

(H) Authorize the release of contact information to perspective participants.

(b) If a provider does not meet the requirements in subsection (2)(a), the provider will not be eligible for referral on the Registry until the requirements of (2)(a) are met.

(3) A provider is responsible to review qualification requirements and background check due dates and take appropriate action to prevent lapse.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0050 Participant and Provider Employment Relationship

(1) The relationship between a provider and a program participant is that of employee and employer. Participants are required to meet the employer responsibilities described in OAR 418-040-0020(1)(g)(A) - (H).

(2) Homecare Choice providers are not state employees and are not entitled to state funded benefits, including participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan.

(3) Participants must establish the terms of an employment relationship with a provider at the time of hire.

(a) The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and whether sleeping arrangements or meals are provided to employees.

(b) A participant has the right to terminate an employment relationship with a provider at any time and for any reason.

(4) Unless permission has been granted through the court, a participant's legal guardian may not be paid as the individual's Homecare Choice provider and serve as the employer.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0060 Homecare Choice Program Service Rate

(1) The Commission shall establish the service rate charged to program participants for homecare services at a level expected to generate total revenue sufficient to reimburse up to 107 percent of the costs associated with the program. The rate equals the actual costs incurred plus seven percent of the cost of administering the program and may include, but is not limited to:

(a) Homecare Choice Provider wages, taxes, and benefits:

- (A) Federal Unemployment Tax Act (FUTA);
- (B) State Unemployment Tax Authority (SUTA);
- (C) Workers' Compensation Assessment;
- (D) Health insurance; and
- (E) Paid time off.

(b) Homecare Choice Program staff wages, taxes, and benefits:

- (A) Federal Unemployment Tax Act (FUTA);
- (B) State Unemployment Tax Authority (SUTA);
- (C) Public Employee's Retirement contribution;
- (D) Pension bond contribution;
- (E) Social security tax;
- (F) Workers' compensation assessment;
- (G) Mass transit tax; and
- (H) Flexible benefits.

(c) Homecare Choice Program service and supply expenses:

- (A) Office expenses;
- (B) Publicity and publications;
- (C) Professional services;
- (D) Registry maintenance and expansion;
- (E) Legal fees;
- (F) Cost allocation fees;
- (G) Translation fees;
- (H) Americans with Disabilities Act (ADA) accommodation requests;
- (I) Credit card processing fees;
- (J) Fiscal intermediary administration fees; and
- (K) Workers' compensation premiums.

(d) Any other activities undertaken to ensure:

- (A) The quality of Homecare Choice providers;
- (B) The adequacy of homecare services being provided; and
- (C) Costs of other administrative expenses associated with the program are covered.

(2) The service payment rate is set forth in the participant enrollment agreement between the program and participant. Information about the rate shall be available from the Commission and posted online at <http://www.oregon.gov/dhs/spd/Pages/adv/hcc/news.aspx>.

(3) If additional revenue is needed to sufficiently cover program costs, the Commission reserves the right to modify the service rate at any time. To modify the service rate, the Commission will give 30-days advance written notice to program participants.

(4) If the Commission determines that adjusting the service rate will not generate sufficient revenue to pay the costs of the program, the Commission may suspend the program following 30-days advance written notice to participants and providers. If the program is suspended, the Commission shall report to the Legislative Assembly, no later than 30 days after the suspension begins. The report must include the following information:

(a) The reason for the suspension;

(b) Any costs incurred that exceed the revenue generated by program payments; and

(c) Any additional costs during the remainder of the biennium that the suspension occurs in that are anticipated to exceed the revenue generated by program payments.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0070 Suspension or Reduction of Homecare Choice Program Referrals

If the Commission, with the assistance of the DHS, determines the available provider workforce is inadequate to meet the needs of those who qualify for Medicaid funded in-home services, the Commission may suspend or reduce the number of provider referrals under the Homecare Choice Program.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0080 Fiscal Responsibilities

(1) Oregon Home Care Commission Fiscal Responsibilities.

(a) The Commission shall establish the Homecare Choice provider wage rate.

(b) The Commission may contract with a fiscal intermediary for the following responsibilities:

(A) Making payments to Homecare Choice providers on behalf of participants for services rendered. Payment is considered payment in full.

(B) Acting on behalf of participants, by applying applicable Federal Insurance Contributions Act (FICA) regulations, to:

(i) Withhold Homecare Choice provider contributions from payments; and

(ii) Submit participant contributions, and the amounts withheld from provider payments, to the Social Security Administration.

(C) Applying standard income tax withholding practices in accordance with 26 CFR 31 and withholding state and federal income taxes on all payments to Homecare Choice providers.

(c) The Commission will issue a refund of a participant's unused service payment after all expenses of the participant have been paid. The portion of the service payment intended to reimburse the Commission for its costs shall not be refunded.

(A) Refunds may only be issued to the individual who authorized the original payment.

(B) Refunds shall not be issued in cash.

(d) The Commission is not a trustee and has no fiduciary obligation to the participant or payer with respect to advance service payments.

(e) Advance payments may be comingled with other advance payments from participants in the Homecare Choice Program, but will be accounted for separately in the records of the Commission. The participant, or payer, is not entitled to any interest earnings on the funds and no interest will be credited to the participant or payer, or paid in the event of a refund.

(f) The state will honor a garnishment or attachment of the participant's or payer's advance payment in the event it is served with a writ.

(g) If funds are not available to pay a provider because the Commission is required to hold or transfer funds under a legal proceeding involving the participant, or payer, participant's participation in the Homecare Choice program will be terminated as provided for in OAR 418-040-0020.

(2) Homecare Choice Participant Fiscal Responsibilities.

(a) Participants shall pay the Commission in advance for homecare services. Services may not commence until payment is received and verified by the Commission.

(b) Upon enrollment in the program, participants must submit an initial prepayment to cover two service periods. The amount of the prepayment is calculated by multiplying the program service rate by the number of anticipated service hours for each service period. Thereafter, participants must submit a prepayment equal to the current service period, while enrolled in the program, and maintain an account balance equal to a two-week service period.

(A) If the account balance does not equal an amount necessary to pay the hours to be worked in the current service period, the participant must submit additional funds to restore the balance to the required level.

(B) If the participant increases the number of purchased hours per service period after the initial prepayment is established, the on-going prepayment must also be increased to equal the current service period.

(C) The funds are held for the convenience of the participant or payer.

(D) Advance payments may be considered part of the participant's or payer's estate in the event of a bankruptcy and subject to the automatic stay, or in the event of participant's death, will be refunded to the participant's estate, less any administrative fee due to the Commission.

(c) The participant is subject to the U.S. Department of Labor Fair Labor Standards Act and may elect to have a provider work more than 40 hours per week. The purchase of service hours that exceed 40 hours per week for an individual provider is considered overtime and shall be calculated in the pre-payment.

(A) The overtime rate equals one and one-half of the provider's hourly wage rate plus the increased cost of any payroll taxes as a result of overtime.

(B) In the event of unanticipated overtime, the additional cost will be deducted from the participant's account balance and the account balance must be replenished in the next service payment.

(d) Acceptable payment methods for services include, credit or debit card transactions, personal checks, certified checks, cashier's checks, and money orders.

(A) As allowed by law, the Commission may charge a Non-Sufficient Fund fee if the participant's personal check is not processed by his or her issuing bank due to insufficient funds.

(B) Participants shall be charged a credit card transaction fee when paying for services electronically. The fee is determined by the State of Oregon's banking institution.

(C) Participants must provide an alternate form of payment method if the credit card used to purchase services is invalid or if a personal check is returned due to insufficient funds.

(D) If a participant challenges program charges on the participant's credit card and the charges are found to be valid after a chargeback investigation, the participant must pay by personal check, cashier's check, or money order for the disputed charges.

(e) Participants must submit payment to the Commission for mileage reimbursement for providers that use his or her personal vehicle for authorized service related transportation.

(A) Providers are reimbursed at the mileage reimbursement rate determined by the participant.

(B) The Commission, participant, and DHS are not responsible for vehicle damage when a provider uses his or her personal motor vehicle.

(C) The Commission, participant, and DHS are not responsible for personal injury sustained when a provider uses his or her

personal vehicle, except as may be covered under workers' compensation.

(3) Homecare Choice Provider Fiscal Responsibilities.

(a) Homecare Choice providers must comply with state and federal wage and tax laws by completing, submitting, and retaining necessary documents provided by a fiscal intermediary contracted by the Commission.

(b) Homecare Choice providers must not accept any additional compensation for hours of work that were compensated by the Homecare Choice Program.

(c) Homecare Choice providers must only claim payment for authorized services provided that have been validated by participants with whom they are employed.

(d) Homecare Choice providers shall not claim payment for services delivered by another individual.

(e) Homecare Choice providers are responsible for the completion and accuracy of timekeeping records and all submitted claims.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

418-040-0090 Provider Termination Administrative Review and Hearing Rights

(1) The Commission delegates authority to the Executive Director of the Oregon Home Care Commission to act on behalf of the Commission for the purposes of making decisions related to a provider's eligibility to provide services under the Homecare Choice Program. This includes:

(a) Provider enrollment;

(b) Denial or revocation of provider enrollment; and

(c) Provider sanctions, which may include, suspension of Registry referrals.

(2) When a Homecare Choice provider is terminated based on violations described in OAR 418-040-0060(1)(c)(A) - (L), the Commission shall issue a written notice to the provider.

(a) The written notice must include:

(A) The effective date of the termination.

(B) An explanation of the reason for terminating the provider enrollment.

(C) The alleged violation as listed in OAR 418-040-0080(1)(c)(A) - (L).

(D) The provider's appeal rights and where to file the appeal.

(b) For terminations based on substantiated protective services allegations, the notice may only contain the information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, OAR 411-020-0030, OAR 407-045-0330, OAR 943-045-0330, and OAR 413-015-0485 complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(c) If an administrative review is requested by a Homecare Choice provider, the Commission shall notify the provider in writing of the outcome of the review. If the termination is upheld after review, the Commission shall provide written notice as described in OAR 418-040-0090(2)(a)(A) - (E).

(3) BURDEN OF PROOF. The Commission has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0610.

(4) IMMEDIATE TERMINATION. The Commission may immediately terminate a provider's enrollment on the date the violation is discovered, before the outcome of the administrative review, when an alleged violation presents imminent danger to current or future participants. In order for a provider's appeal to be timely, any appeal must be filed with the Commission within 10 business days from the date of the notice.

(5) TERMINATIONS PENDING APPEAL. When a violation does not present imminent danger to current or future participants, the provider's enrollment may not be terminated during the first 10 business days of the administrative review appeal period. In order for a provider's appeal to be timely, any appeal must be filed with the Commission within 10 business days from the date of the notice. If the provider appeals in writing prior to the deadline for the appeal, the enrollment may not be terminated until the conclusion of the administrative review.

(6) TERMINATION IF NO APPEAL FILED. The decision of the Commission's Executive Director becomes final if the Homecare Choice provider does not appeal within 10 business days from the date of the notice of the decision.

(7) ADMINISTRATIVE REVIEW PROCESS. The administrative review process allows an opportunity for the Commission's Executive Director to reconsider the decision to terminate the individual's Homecare Choice provider enrollment. The appeal may include the provision of new information or evidence that may result in the decision not to proceed with termination.

(a) A written response informing the provider of the outcome of the administrative review is sent to the provider within 10 business days of the review date.

(b) The Commission or provider may request an extension of the 10-day deadline described in section (7)(a) if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

(8) ADMINISTRATIVE HEARING PROCESS. A Homecare Choice provider may request an administrative hearing after the conclusion of the administrative review process if the provider continues to dispute the decision to terminate his or her enrollment in the Homecare Choice Program.

(a) The request for hearing must be filed with the Commission within 30 calendar days of the date of the written notice from the Commission. The Department or the Commission will file the request with the Office of Administrative Hearings (OAH), as described in OAR chapter 137, division 003.

(b) When the Commission or the Department refers a contested case under these rules to the Office of Administrative Hearings, the referral will indicate whether the Commission is authorizing a proposed order, a proposed and final order, or a final order.

(c) Subject to approval of the Attorney General, an officer or employee of the Department or the Commission, is authorized to appear on behalf of the Commission for hearings conducted by the Office of Administrative Hearings related to provider enrollment, denial, or revocation of provider enrollment, and provider sanctions. Contested case hearings and the use of lay representation in contested case hearings related to this rule shall be in accordance with OAR chapter 411, division 001.

(d) No additional hearing rights have been granted to Homecare Choice providers by this rule other than the right to a hearing on the Commission's decision to terminate the individual's provider enrollment.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625