

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Oregon Home Care Commission

418

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FILING CAPTION

Updating the Commission rules to implement SB1534 and make other necessary changes the rules

Last Date and Time for Public Comment: [May 31, 2019, 5:00 pm]

Hearing Date	Time	Address	Staff Hearings Officer
May 20, 2019	8:30 am	Human Services Building, 500 Summer St NE, Salem, OR 97301, Room 160	Staff

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

ADOPT:

418-020-0035

AMEND:

418-020-0010; 418-020-0020; 418-020-0030; 418-020-0040; 418-020-0050; 418-020-0060

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Department of Human Services (Department) and Oregon Home Care Commission (Commission) are adopting and amending rules in OAR chapter 418, division 20 to implement minimum training and testing standards for homecare workers and personal support workers, as mandated in Senate Bill 1534 (2018). These rules were also amended to expand eligibility for the Employee Training Connection training program to include consumers' common law employers; clarify eligibility standards for certifications offered by the Commission to homecare and personal support workers; improve overall readability; remove obsolete terminology; and update the rules to be consistent with current Department and Commission practice. The adoptions and amendments include the following:

418-020-0010 – Adds terminology specific to the mandatory training and testing requirements for homecare and personal support workers, such as competency evaluation, continuing education, core training, incumbent worker, and mastery. Other terms amended to clarify current Commission practices and to be consistent with other program rules and terminology. Terms such as professional development recognition and live-in services were removed because they are now obsolete due to program changes.

418-020-0020 – Expands homecare and personal support worker minimum qualifications to include the requirements for workers to attend orientation, complete mandatory core training, and complete continuing education courses within specified timeframes. Rules were amended to match the Commission's current

practice of providing interpreter services and translated materials during orientation, as well as to add flexibility in the delivery of orientation since personal support orientation is now available on an online platform. Rules were amended to remove the provision that allows workers up to 90-days after enrollment to attend orientation when it becomes mandatory to attend orientation prior to enrollment, effective January 1, 2021. The workplace substance abuse policy was removed because it is in program rules and not necessary to repeat in these rules.

418-020-0030 – Amendments were made to clarify the eligibility requirements for certifications awarded through the Oregon Home Care Commission. Professional development certification and Community Health Worker certification requirements were added to rule. References to professional development recognition were removed from rule because it became obsolete with the implementation of professional development certification.

418-020-0035 – This is a new rule section that details the mandatory training and testing requirements mandated by Senate Bill 1534 and includes the respective implementation dates. The new rules specify core training topics; the number of training hours required for core training, incumbent worker seminar, and continuing education; the requirements related to core training competency evaluations; and workers who participate in a training pilot between January 1, 2020 and June 30, 2021 will be granted equivalency credit when training becomes mandatory on January 1, 2021. The new rules require trainings to be geographically accessible and culturally appropriate.

418-020-0040 - Clarifies eligibility for consumer-employer training services, changes the name of training services from STEPS to Employer Resource Connection, and removes content that is described in other program rules or contracts.

418-020-0050 – Simplifies rule language by removing DHS and OHA responsibilities related to the Registry that are covered under interagency agreements. Removes reference to Commission annual continuing education requirements as a condition of referral on the Registry since continuing education will be mandatory for all homecare and personal support workers effective January 1, 2021.

418-020-0060 - Amends the workers compensation rules to include that the consumer's common law employer must be notified by the homecare or personal support worker with whom they employ if the individual is injured while working.

STATEMENT OF NEED AND FISCAL IMPACT.

Need for Rule(s):

The Commission needs to adopt and amend the rules in OAR chapter 418, division 20 to implement minimum training and testing standards for homecare and personal support workers, as mandated by Senate Bill 1534 (2018). The new requirements set standards for all homecare and personal support workers to ensure they have the skills, knowledge, and abilities to provide quality services and supports to individuals receiving Medicaid or Oregon Project Independence funded in-home services. The Commission also needs to adopt and amend rules to expand eligibility for the Employee Training Connection training program to include consumers' common law employers; clarify eligibility standards for certifications offered by the Commission to homecare and personal support workers; improve overall readability; and remove obsolete terminology. The Commission did this by updating the rules to implement SB 1534 and updating the old terminology to be consistent with current practice.

Fiscal and Economic Impact:

The Commission estimates the total cost of complying with these rules will be \$8 million per year. This cost includes the cost of contracts, the cost of training, the cost of administration and the cost of stipends paid to Homecare or Personal Support Workers.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Commission anticipates an increase in workload for DHS in implementing the provisions of this bill. The total cost is stated in the fiscal and economic impact statement.

Units of Local Government: The Commission anticipates a reduction in workload for units of local government. They will no longer be required to provide orientation sessions once the new training and testing standards are implemented.

Consumers: The Commission estimates there will be no fiscal impacts to consumers.

Providers: The Commission anticipates a positive fiscal impact to providers because they will receive payments associated with attending mandated training at the rate of pay contained in the collective bargaining agreement between SEIU, Local 503 and the Oregon Home Care Commission.

Public: The Commission estimates there will be no fiscal or economic impact to the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

These rules impact homecare and personal support workers who do not meet the definition of a small business, as defined by ORS 183.310.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Small businesses, as defined by ORS 183.310, are not subject to these rules. Therefore, there is not a cost associated with reporting, recordkeeping, administrative activities, or compliance. The fiscal impact on all providers is noted above in the Commission's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Small businesses, as defined by ORS 183.310, are not subject to these rules. Therefore, there is not a cost associated with professional services, equipment supplies, labor, or increased administration related to compliance with the rules. The fiscal impact on all providers is noted

above in the Commission's statement of cost of compliance.

Describe how small businesses were involved in the development of these rule(s)?

Although these rules do not impact small businesses, three small businesses (owners and operators of in-home agencies) and the organization that represents in-home agencies participated on the Administrative Rule Advisory Committee. Small businesses will be included in the public review and comment period.

Documents Relied Upon, and where they are available:

Enrolled Senate Bill 1534 (2018) - available on the Oregon State Legislature's website at <https://olis.leg.state.or.us/liz/2018R1/Downloads/MeasureDocument/SB1534/Enrolled>

SB 1534 Training Workgroup Recommendations – available on the Oregon Home Care Commission's website at <https://www.oregon.gov/DHS/SENIORS-DISABILITIES/HCC/SB1534Docs/Senate-Bill-1534-Training-Workgroup-Recommendations.pdf>

**Was an Administrative Rule Advisory Committee consulted? Yes or No? Yes
If not, why not?**

Yes.

**OREGON HOME CARE COMMISSION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 418
DIVISION 20**

OREGON HOME CARE COMMISSION FUNCTIONS

418-020-0010 Definitions

(1) "Active" means an active homecare or personal support worker who has:

(a) A current provider number; ~~has~~

(b) Worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker; ~~has~~

(c) ~~a~~ current credential; and ~~has~~

(d) ~~met~~ Met the orientation and core training requirements of the program for which the worker is enrolled.

(2) "Area Agency on Aging (AAA)" means the Department designated entity agency charged with which DHS contractsthe responsibility to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providingprovide a comprehensive and coordinated system of services to seniorsolder adults and individualsadults with a disability for a designateddisabilities in a planning and service area. The term is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(3) "Assessment" means a tool used to evaluate a homecare or personal support worker's knowledge of information learned during trainings required for Oregon Home Care Commission certifications as described in OAR 418-020-0030(3)(b) through (f).

(34) "Background Check" means a criminal records check and ~~appropriate~~ abuse check ~~conducted in accordance with~~under OAR chapter 407, division 7.

(5) "Case Management Entity" has the meaning as defined in OAR 411-317-0000.

(46) "Case Manager" means an employee of a service delivery office who is responsible for determining service eligibility, offering services choices to eligible individuals, developing a plan of authorized services, and monitoring the effectiveness of services and supports. This term includes services coordinators and personal agents, as described in OAR chapter 411, division 317.

(7) "CMS' Core Competencies" means the set of 12 core competencies developed by the Center for Medicare and Medicaid Services (CMS) for the direct care workforce. The 12 competencies are found in Appendix E of the "The Roadmap of Core Competencies for the Direct Services Workforce" published at:
<https://www.medicaid.gov/medicaid/ltss/downloads/workforce/dsw-core-competencies-final-set-2014.pdf>.

(58) "Collective Bargaining Agreement" or "CBA" means the ratified Collective Bargaining Agreement between the Oregon Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's website at: <http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm>.

(69) "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.

(710) "Commissioner" means one of the nine members of the Home Care Commission appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members are either seniors or individuals with disabilities who are receiving or who have received

homecare services. One member is appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor's Commission on Senior Services~~;~~

(b) Department of Human Services~~;~~

(c) Oregon Disabilities Commission~~;~~and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(11) "Common Law Employer" means the employer of record responsible for the duties described in OAR 411-375-0055.

~~(812)~~ "Community Health Worker" means an individual, as defined in ORS 414.025, who assists members of the community to improve their health and increases the capacity of the community to achieve wellness and meet the health care needs of its residents ~~and achieve wellness.~~

(13) "Competency Evaluation" means a tool to measure an individual's mastery of the information learned during mandatory trainings.

~~(914)~~ "Consumer" or "Consumer-Employer" means an individual eligible for in-home and community-based services.

~~(4015)~~ "Consumer-Employer Training Services" means activities ~~to~~described in OAR 411-035-0090 that empower and inform consumer-employers ~~or~~ authorized representatives of consumer-employers, or a consumer's common law employer regarding their rights, roles, and responsibilities as employers of homecare or personal support workers, ~~as described in OAR Chapter 411, Division 35.~~ The consumer-employer training services programs ~~are~~ is known as Employer Resource Connection ~~STEPS to Success with Homecare Workers and STEPS to Success with Personal Support Workers.~~

(~~4116~~) "Consumer Authorized Representative" means an individual assigned by a consumer, or designated by a consumer's legal representative, to act as the consumer's decision-maker in matters pertaining to planning and implementing an in-home service plan or individual support plan.

(~~4217~~) "Continuing Education" means Commission approved training mandated on an ongoing basis. Continuing education is separate from orientation or core training.~~specific minimum education requirements, defined by the Commission, which workers must complete to be referred on the Registry.~~

(18) "Core Training" means the mandated training, or series of trainings, required for homecare and personal support workers.

(~~4319~~) "Credential" means time-limited approval by DHS or OHA for an individual to provide services as a homecare or personal support worker, which includes a ~~begin~~start date, designated by a service delivery office, no earlier than the individual's most recent background check and signed provider enrollment agreement, and an end date no later than 24 months from the homecare or personal support worker's most recent background check. This is also referred to as an approved to work credential.

(~~4420~~) "Cultural Competence" is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals to enable effective work in cross-cultural situations.

(~~4521~~) "Department" or "DHS" means the Oregon Department of Human Services.

(22) "Enrolled" means an individual has met the initial enrollment requirements to become a Medicaid approved homecare or personal support worker and has been issued a provider number. The requirements

are listed in OAR 418-020-0020(1)(a) through (f) for homecare workers and OAR 418-020-0020(2)(a) through (e) for personal support workers.

~~(1623)~~ "Enrollment ~~and Application Packet~~Agreement" means the program-specific documents an individual must complete to be approved to provide services as a homecare ~~worker~~ or personal support worker.

~~(17) "Employment Agreement" means an agreement between a consumer-employer or consumer representative and a homecare or personal support worker, which defines workplace rules and expectations.~~

~~(1824)~~ "Enhanced Homecare Worker" means a homecare worker, as defined in ~~thesethis~~ these rules, who is certified by the Commission to provide ~~services for consumers who require~~ medically-driven services and supports, as defined ~~and in OAR 411-031-0020 to consumers who have been~~ assessed by DHS a case manager as needing the services and supports.

~~(1925)~~ "Enhanced Personal Support Worker" means a personal support worker, as defined in ~~this~~ these rules, who is certified by the Commission to provide services ~~for~~ to consumers who require advanced medically-driven services and supports as defined in OAR 411-375-0010 or behaviorally-driven services and supports as defined in OAR 411-375-0010 and ~~assessed by DHS by~~ identified through a functional needs assessment ~~tool~~.

~~(2026)~~ "Exceptional Personal Support Worker" means a personal support worker, as defined in ~~this~~ these rules, who is certified by the Commission to provide services for consumers who require staff to be awake more than 20 hours in a 24-hour period and who require extensive medically-driven services and supports as defined in OAR 411-375-0010 or behaviorally-driven services and supports as defined in OAR 411-375-0010, 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.~~

~~(2127)~~ "Functional Needs Assessment" means athe comprehensive assessment tool defined in OAR 411-317-0000~~that documents physical, mental and social functioning and risk factors; choices and preferences; service and support needs; and strengths and goals.~~

~~(2228)~~ "Grievance" means a formal allegation of acts, omissions, applications, or interpretations that are believed to be violations of the terms or conditions of the Collective Bargaining Agreement.

~~(2329)~~ "Homecare Worker" means a provider, as defined and described in OAR chapter 411, division 31, who is directly employed by a consumer or a consumer's authorized representative, to provide ~~either hourly or live-in~~ services forto the consumer. ~~The term homecare worker includes:~~

~~(a) Providers in the:~~

~~(A) Consumer-Employed Provider Program;~~

~~(B) Spousal Pay Program;~~

~~(C) State Plan Personal Care Program for seniors and individuals with physical disabilities; and~~

~~(D) The Oregon Project Independence Program.~~

~~(b) The term "homecare worker" does not include workers employed by an in-home agency.~~

(30) "Incumbent Worker" means a person who enrolled as a homecare or personal support worker prior to January 1, 2021.

(31) "Incumbent Worker Seminar" means a 12-hour course for incumbent workers that educates workers on the new core competencies.

(~~24~~32) "Independent Choices Program" means the program described in OAR Chapter 411, Division 30, which is a self-directed in-home services program ~~in which~~where a participant is given a cash benefit to purchase goods and services, ~~which that~~ are identified in the participant's service plan and prior approved by DHS Aging and People with Disabilities (APD) or an Area Agency on Aging AAA.

(~~25~~33) "Individual" means an older adult ~~or,~~ an adult with a disability, or a child with a disability applying for or eligible for services. The term "individual" is synonymous with "client" and "consumer".

(~~26~~34) "Individual Support Plan" or "ISP" means the plan defined in OAR 411-317-0000 Chapter 411, Division 375, ~~which includes written details of the supports, activities, and resources required for an individual with intellectual or developmental disabilities to achieve and maintain personal goals and health and safety.~~

(~~35~~) "Mastery" means a homecare or personal support worker has achieved the specific learning objectives of a training.

(~~27~~) "Live-In Services" means those services, as defined in OAR Chapter 411, Division 030, which are provided for a senior or an individual with a physical disability who requires 24-hour availability for activities of daily living and self-management tasks.

(~~28~~36) "OHA" means the Oregon Health Authority.

(~~29~~37) "Oregon Intervention System Certification" or "OIS" certification means a system of training to people who work with designated individuals to provide elements of positive behavioral support and non-aversive behavioral intervention.

(~~30~~38) "Orientation" means a mandatory Commission approved presentation for homecare and personal support workers that provides essential information required to provide safe and person-centered services

~~and supports and comply with applicable program rules an introduction to in-home programs and basic expectations for homecare or personal support workers, which is arranged through a service delivery office, in accordance with these rules.~~

~~(31) "Personal Health Navigator" means an individual, as defined in ORS 414.025, who provides information, assistance, tools and support to enable a consumer to make the best health care decisions in the consumer's particular circumstances and in light of the consumer's needs, lifestyle, combination of conditions, and desired outcomes.~~

(3239) "Personal Support Worker" means a person, as defined in ORS 410.600:

(a) Who is hired by an individual with a developmental disability or mental illness or a parent or guardian of an individual with a developmental disability or mental illness;~~;~~;

(b) Who receives monies from DHS or OHA for the purpose of providing services for the individual with a developmental disability or mental illness;~~;~~;~~or.~~

(c) Who provides services through the Independent Choices Program for ~~a senior~~an older adult or an individual with a physical disability;~~;~~;~~and.~~

(d) Whose compensation is provided in whole or in part through DHS or OHA, a ~~support services brokerage~~case management entity or other public agency;~~;~~; and who provides services in the home or community.

~~(e) All other personal support workers, including provider organizations and supervisors, and those who perform solely volunteer personal services-related tasks are excluded from this definition.~~

~~(33) "Professional Development Recognition" means the recognition by the Commission of homecare and personal support workers who are continuing their education and have met Commission training requirements for recognition.~~

~~(3440) "Program" means a program governed by Oregon Administrative Rules and administered by DHS or OHA, which that authorizes home and community services ~~to be~~ provided through public funding in an individual's home or in the community.~~

~~(3541) "Provider" means a homecare or personal support worker who is eligible to be hired by a consumer-employer ~~or,~~ a consumer's authorized representative, or the consumer's common law employer, to provide ~~in-home or community~~ services authorized in the consumer's service plan in the individual's home or in the community.~~

~~(3642) "Provider Number" means an identifying number issued to each homecare and personal support worker who is enrolled as a provider through DHS or OHA.~~

~~(3743) "Registry" means the Commission's online tool used to match qualified homecare or personal support workers available for work with individuals seeking to hire workers~~listing of homecare and personal support workers who are available for work. The primary function of the Registry is to provide consumer choice by generating a list of homecare or personal support workers whose qualifications most closely match requirements entered in an individual consumer-employer profile.~~~~

~~(38) "Relief Worker" means a homecare or personal support worker who provides services in place of a homecare or personal support worker who is unavailable. This term is synonymous with "substitute worker".~~

~~(3944) "Respite Worker" means a paid homecare or personal support worker who provides services in place of a family caregiver or other~~

member of a consumer's natural support system who typically provides unpaid services. ~~The term respite may also refer to a substitute for a live-in homecare worker.~~

(4045) "Restricted Provider Number" means a number assigned by DHS to a homecare or personal support worker who ~~is only approved to provide services for a specific consumer~~ has restrictions placed on the worker's provider enrollment.

(4146) "Service Delivery Office" means ~~a DHS an APD or OHAAAA office, Area Agency on Aging, Community Developmental Disability Program, Support Services Brokerage~~ case management entity, or Community Mental Health Program office that is responsible for case management and authorization of publicly funded services provided by homecare or personal support workers.

(4247) "Service Plan" means a written plan of authorized in-services provided in an individual's home and/or in the community ~~services~~, developed in accordance with DHS or OHA rules and policies, or an Individual Support Plan.

(4348) "State Plan Personal Care Services" means the assistance with personal care and supportive services ~~described in OAR Chapter 411, Division 34~~, provided for an individual by a homecare or personal support worker.

(4449) "Stipend" means ~~a predetermined~~ an amount of money granted to a homecare or personal support worker ~~to attend Commission training~~, in accordance with Commission requirements described in OAR 418-020-0030(1)(b).

(4550) "Substitute Worker" means ~~Relief Worker~~ a homecare or personal support worker who provides services in place of a homecare or personal support worker who is unavailable.

(51) "These Rules" mean the rules in OAR chapter 418, division 20.

(~~4652~~) "Worker" means a "Homecare Worker" or "Personal Support Worker".

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.600, 410.603, 410.605, 410.606, 410.608, 410.612

418-020-0020 Qualifications for Homecare and Personal Support Workers

(1) Homecare Worker Minimum Qualifications~~;~~

(a) Submit a ~~completed~~ application and provider enrollment ~~packet~~agreement to a service delivery office~~;~~

(b) Pass a DHS background check and cooperate with a recheck every two years or when requested~~;~~

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services~~;~~

(d) Meet the in-home program specific guidelines~~;~~

(e) Be 18 years of age or older. ~~Age exceptions may be made by DHS on a case-by-case basis for family members at least 16 years of age; and~~

(f) Attend orientation~~Within 30 days of receiving a provider number, attend an orientation that utilizes materials provided or approved by the Commission.~~

~~(A) When completion of an orientation is not available at a local service delivery office within 30 days, orientation must be completed within 90 days of enrollment.~~

~~(B) If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number will be inactivated and any authorization for service payment will be discontinued, in accordance with OAR Division 411, Chapter 031.~~

~~(C) Homecare workers must attend a live-in service orientation before being hired to provide live-in services.~~

(g) Complete mandated core training within specified timelines.

(h) Complete and pass mandated core training competency evaluations.

(i) Complete mandated continuing education within the specified timelines.

(2) Personal Support Worker Minimum Qualifications:

(a) Submit a completed provider application and enrollment packet; agreement.

(b) Pass a DHS or OHA background check and cooperate with a recheck when requested;

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;

(d) Be 18 years of age or older; ~~and.~~

(e) Meet program specific guidelines, including attending ~~an orientation within 90 days of receiving a provider number~~applicable orientations.

(f) Complete mandated core training within specified timelines.

(g) Complete and pass mandated core training competency evaluations.

(h) Complete mandated continuing education within specified timelines.

(3) Homecare and Personal Support Worker Orientation. ~~Service delivery offices providing homecare or personal support worker o~~Orientation must:

(a) Occur on a frequent basis to prevent delays in a worker's enrollment or continued employment as a homecare or personal support worker.~~Offer orientation frequently enough that new homecare or personal support workers meet program timelines for completing orientation; and~~

(b) ~~Use~~Include a presentation and materials created ~~by~~ or approved by the Commission and DHS or OHA.

(c) Include information on the following topics:

(A) Abuse and mandatory reporting.

(B) Confidentiality.

(C) Consumer rights.

(D) Medication safety.

(E) Preventing Medicaid fraud.

(F) Providing person-centered services.

(G) Universal precautions and infection control.

(H) Worker requirements, roles, and responsibilities.

(I) Other information DHS or the Commission deems appropriate for the professionalization of the homecare and personal support worker workforce.

(J) The Commission reserves the right to remove training topics listed in OAR 418-020-0020(3)(c)(A) through (I) if it is deemed necessary.

(d) Be culturally-appropriate for workers of all language abilities.

(A) If orientation is not available in the worker's preferred language, interpreter services shall be made available.

(B) Orientation presentation and materials shall be culturally appropriate and accessible to workers in their preferred language. Reasonable efforts shall be made to accommodate language requests when there is adequate demand for the presentation and materials in the preferred language

~~Make every attempt to provide orientation in a culturally-appropriate manner, including:~~

~~(A) Attempt to convey the availability of translation and interpreter services in the six languages, besides English, most commonly spoken by consumers in the office's service delivery area.~~

~~(B) Attempt to provide written materials and an interpreter fluent in the workers' primary language if three or more speakers of that language will be in attendance; and~~

~~(C) Attempt to provide an interpreter fluent in the workers' primary language if one or two speakers of that language will be in attendance.~~

~~(de) Provide reasonable accommodations for homecare or personal support workers who experience disability, in accordance with Title II of the Americans with Disabilities Act for homecare and personal support workers who experience a disability.~~

(ef) Allow the Union to make presentations to potential members at orientations, at a mutually agreeable time, in accordance with the current collective bargaining agreement.

~~(g) Within 30 days of receiving a provider number, a homecare or personal support worker must attend an orientation that utilizes materials provided or approved by the Commission. This provision is in effect until December 31, 2020.~~

~~(A) When completion of an orientation is not available at a local service delivery office or online within 30 days, orientation must be completed within 90 days of enrollment. This provision is in effect until December 31, 2020.~~

~~(B) If a homecare or personal support worker fails to complete an orientation within 90 days of provider enrollment, the provider number shall be inactivated and any authorization for service payments shall be discontinued, in accordance with OAR Chapter 411, Division 31 and OAR Chapter 411, Division 375.~~

(h) Effective January 1, 2021, an applicant is required to complete orientation prior to the issuance of a provider number and shall not be authorized to work until orientation has been completed.

(A) An applicant may be granted an exception to begin working prior to attending orientation under the following circumstances:

(i) The applicant is selected by a specific consumer-employer or common law employer and the applicant's delayed enrollment poses an immediate risk to the individual's health and safety;

(ii) Orientation is not readily accessible; and

(iii) The applicant has met the enrollment criteria described in OAR 418-020-0020(1)(a) through (e) or OAR 418-020-0020(2)(a) through (d).

(B) Requests for exceptions shall be submitted to the Oregon Home Care Commission by the local APD or AAA service delivery office or case management entity for approval.

(i) The Commission shall approve or deny the request within one business day.

(ii) If an exception is approved by the Oregon Home Care Commission, the homecare or personal support worker shall attend orientation within 120 days of enrollment. Workers who fail to attend orientation within the specified timeline shall not be authorized to work.

~~(4) Workplace Substance Abuse Policy:~~

~~The Commission encourages homecare and personal support workers and consumer-employers to voluntarily seek help with drug and alcohol dependence and provides information and referral on request.~~

~~(a) The Commission is committed to protecting the safety, health, and well-being of consumers of in-home services and homecare and personal support workers, through establishing a workplace substance abuse policy.~~

~~(b) This policy recognizes that substance abuse by homecare or personal support workers, consumers, family members or others in consumers' homes is disruptive, adversely affect the quality of in-home services, and pose serious health risks to users and others.~~

~~(c) This policy recognizes that workers' abuse of alcohol and other drugs during non-working hours may affect their ability to provide quality in-home services.~~

~~(d) Workers are expected to report to work unimpaired and fit for duty.~~

~~(A) If the use of a prescribed or over-the-counter medication may compromise the safety of a worker, a consumer-employer, or the public, it is the worker's responsibility to use appropriate personnel procedures such as calling in sick and notifying the consumer-employer and case manager to avoid unsafe workplace practices.~~

~~(B) It is a violation of the Commission's substance abuse policy for a worker to intentionally misuse or abuse prescription or over-the-counter medications. Appropriate action will be taken if job performance declines or if accidents occur, in accordance with DHS or OHA rules.~~

~~(e) It is a violation of the Commission's substance abuse policy for a worker to use, possess, sell, trade, manufacture, or offer for sale illegal drugs or intoxicants in the workplace.~~

~~(f) A worker who is convicted of any criminal drug or alcohol violation in the workplace or during non-working hours must notify the service delivery office in writing within five calendar days of the conviction. The service delivery office will take appropriate action in accordance with DHS or OHA rules.~~

~~(g) DHS case managers authorize services in settings that do not jeopardize the health and safety of providers, in accordance with OAR Chapter 411, Division 30.~~

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, Ch. 75 Oregon Laws 2018

418-020-0030 Homecare and Personal Support Worker Training

(1) Training is offered by the Commission to homecare and personal support workers statewide to enhance worker skills and cultural competence, as well as the quality of ~~in-home and community~~ services provided ~~for~~to consumer-employers in their home or in the community.

(a) Training is provided without charge to homecare and personal support workers, consumer-employers, consumer-representatives, ~~and~~ appropriate service delivery staff, and the staff of adult foster homes licensed under OAR chapter 411, division 50.

(b) Stipends for actual hours in attendance at Commission-sponsored classes may be available to homecare and personal support workers who have provided publicly funded services in any of the three months before training or during the month of the training. The Commission determines:

(A) The ~~Commission determines the~~ amount of a stipend and may provide a stipend for each eligible class ~~only once per year~~ in a 12-month period.

(B) ~~The Commission determines~~ Which classes are approved for stipends for homecare and personal support workers.

(2) Public Availability of Training. When classes are not filled, members of the public may attend, after registering and paying training fees determined by the Commission. Members of the public will~~are~~ not ~~be~~ eligible for stipends.

(3) Certifications for Homecare and Personal Support Workers.

(a) Cardio Pulmonary Resuscitation (CPR) and First Aid Certification:

(A) The Commission pays for CPR and First Aid training for active homecare and personal support workers, who meet the qualifications established by the Commission, ~~to take First Aid training and adult CPR; and, if providing services to children, child CPR.~~

(B) Homecare and personal support workers must submit a written request ~~payment in writing~~ to the Commission ~~before taking for authorization to attend~~ CPR and First Aid training paid for by the Commission.

(C) The Commission does not reimburse homecare or personal support workers who have paid for CPR and First Aid classes.

(b) Professional Development Certification~~Recognition~~. ~~The Commission awards~~ To be eligible for Professional Development Recognition to Certification, homecare ~~and/or~~ personal support workers ~~who have~~must:

(A) Have an active, unrestricted provider number.

(B) Complete core, safety, and elective training classes and pass training specific assessments.

(C) Have a current Adult CPR and First Aid certification prior to and throughout the certification period.

(D) Have an acceptable attendance record with a no-show rate of 20 percent or less at Commission-sponsored classes.

(E) Submit an application.

(F) Certification may be renewed by completing the requirements found in OAR 418-020-0030(3)(b)(A) through (D) between the 13th and 24th month of the certification period.

(G) Homecare or personal support workers who have an unexpired Oregon Certified Nursing Assistant (CNA) certification, and provide proof of certification, may substitute their CNA certification in place of the safety-type and elective courses and corresponding assessments required for the initial professional development certification process. Homecare and personal worker with CNA certification must meet the requirements in OAR 418-020-0030(3)(b)(F) to renew their professional development certification. Completed 20 hours of core, safety and skills training classes;

~~(B) Current CPR and First Aid certification; and~~

~~(C) An acceptable attendance record is one in which an individual homecare does not have a no-show rate greater than 30 percent at Commission classes. This is defined by the Commission and published in monthly training newsletters and on the Professional Development Recognition web page. The application is located at:~~

~~<http://www.oregon.gov/dhs/spd/adv/hcc/docs/pro-dev.pdf>.~~

(c) Enhanced Homecare Worker Certification.

(A) To be certified as an enhanced homecare worker, a homecare worker must:

(i) Have an active, unrestricted provider number;

(ii) Have and maintain a current CPR and First Aid Certification;

(iii) ~~Complete a written~~ Submit an application;

(iv) ~~Demonstrate knowledge of core concepts as measured by a readiness assessment; and~~ (v) If Once accepted, successfully complete enhanced homecare worker coursework and assessments.

(v) Have an acceptable attendance record with a no-show rate of 20 percent or less at Commission sponsored classes.

(B) Enhanced homecare workers are eligible for an enhanced hourly ~~or enhanced live-in~~ service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced homecare worker certification, a homecare worker must:

(i) Maintain an active homecare worker credential, and current Adult CPR and First Aid certification.

(ii) Complete ~~requirements for recertification~~ required enhanced certification courses before the end of ~~each two-year credential~~ the 24-month certification period.

(d) Enhanced Personal Support Worker Certification.

(A) To be certified as an enhanced personal support worker, a personal support worker must:

(i) Have an active, unrestricted provider number;

(ii) Have and maintain a current CPR and First Aid certification;

(iii) ~~Complete a written~~ Submit an application;

(iv) ~~Demonstrate knowledge of core concepts as measured by a readiness assessment; and~~ (v) ~~If~~ Once accepted, successfully complete enhanced personal support worker coursework and pass assessments.

(v) Have an acceptable attendance record with a no-show of 20 percent or less at Commission sponsored classes.

(B) Enhanced personal support workers are eligible for an enhanced hourly ~~or enhanced live-in~~ service payment rate only when providing services for a consumer-employer assessed by DHSa case management entity as having enhanced needs.

(C) For ongoing enhanced personal support worker certification, a personal support worker must:

(i) Maintain an active personal support worker credential, and current CPR and First Aid certification.

(ii) Complete ~~requirements for recertification~~ required enhanced certification courses before the end of ~~each two-year credential~~ the 24-month certification period.

(e) Exceptional Personal Support Worker Certification:

(A) To be certified as an exceptional personal support worker, a personal support worker must ~~complete~~:

(i) Have and maintain a valid Eenhanced personal support worker certification; as described in this rule.

(ii) ~~A written~~ Submit an application;

(iii) Have a current Oregon Intervention System general or parent level certification, as appropriate; ~~and.~~

(iv) If accepted, ~~10--12 hours of~~ complete required exceptional personal support worker coursework and pass course assessments.

(B) For ongoing exceptional personal support worker certification, a personal support worker must:

(i) Maintain an active personal support worker credential; CPR and First Aid; certification, and Oregon Intervention System ~~certifications~~ certification.

(ii) Complete requirements for recertification before the end of ~~each two-year credential~~ the 24-month certification period.

(C) Exceptional personal support workers are eligible for an exceptional service payment rate only when providing services for a consumer-employer assessed by DHSa case management entity as having exceptional needs.

(f) Community Health Worker Certification:

(A) To be certified as a community health worker, a homecare or personal support worker must:

(i) Have an active, unrestricted provider number.

(ii) Have a current professional development certification.

(iii) Have and maintain a current CPR and First Aid certification.

(iv) Submit an application.

(v) Complete required community health worker certification courses.

(B) For ongoing community health worker certification, a homecare or personal support worker must:

(i) Maintain an active homecare or personal support worker credential and have a current CPR and First Aid certification.

(ii) Complete 20 hours of required training approved by the Commission within the 24-month certification period.

(iii) Have and maintain professional development certification.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, 410.625, Ch. 75 Oregon Laws 2018

418-020-0035 Mandatory Training and Competency Evaluations – Effective 1/1/2021

(1) Training curricula shall be reviewed and approved by the Commission prior to use at mandatory training.

(2) Mandatory training shall be geographically accessible in all areas of the state.

(3) Mandatory training shall be culturally appropriate for workers of all language abilities.

(a) If a training is not available in the worker's preferred language, interpreter services shall be made available.

(b) Training materials shall be culturally appropriate and accessible to workers in their preferred language. Reasonable efforts shall be made to accommodate language requests when there is adequate demand for the materials in the preferred language.

(c) Reasonable accommodations shall be provided in accordance with Title II of the Americans with Disabilities Act for homecare and personal support workers who experience a disability.

(4) Mandatory core training.

(a) Effective January 1, 2021, homecare and personal support workers are required to complete eight hours of core training within 120 days of enrolling as a Medicaid provider.

(b) Homecare and personal support workers are exempt from 418-020-0035(4)(a) if they have a current certification awarded by the Commission as described in 418-020-0030(3) and continue to meet the on-going certification requirements.

(c) Core training topics include, but are not limited to:

(A) Safety and emergency measures.

(B) Understanding requirements for providers paid with Medicaid funds.

(C) Providing person-centered services and supports.

(D) Understanding how to support the physical and emotional needs of the individual receiving services.

(E) Managing medications.

(F) Providing personal care and assistance with activities of daily living.

(d) In addition to the core training topics described in OAR 418-020-0035(4)(c)(A) through (F), DHS and the Commission may establish other training topics deemed appropriate for the professionalization of the homecare and personal support worker workforce.

(5) Continuing education.

(a) Homecare and personal support workers with an approved to work end date of July 1, 2023 or later, are required to complete 12 hours of continuing education by the end of the worker's 24-month approved to work credential on an ongoing basis.

(b) Homecare and personal support workers are exempt from 418-020-0035(5)(a) if they have a current certification awarded by the Commission as described in 418-020-0030(3) and continue to meet the on-going certification requirements.

(6) Core training competency evaluations.

(a) Competency evaluations shall be based on the CMS Direct Service Workforce Core Competencies.

(b) Competency evaluations shall measure a homecare or personal support worker's mastery of the skills and knowledge acquired through training.

(c) Homecare and personal support workers enrolled on or after January 1, 2021 shall complete competency evaluations after the completion of core training.

(d) Homecare and personal support workers enrolled on or after January 1, 2021 must pass competency evaluations to receive credit for completing core training.

(e) Competency evaluations shall be available in a manner that accommodates an individual's literacy skills and preferred language.

(7) Incumbent Worker Seminar. Incumbent workers are required to complete an incumbent worker seminar by June 30, 2021.

(8) Training Pilot. Homecare and personal support workers who participate in the DHS-approved training pilot between January 1, 2020 and December 31, 2020 shall be granted equivalent credit when training becomes mandatory on January 1, 2021.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, 410.625, Ch. 75 Oregon Laws 2018

418-020-0040 Consumer-Employer Training Services

The Commission offers voluntary training services to consumer-employers, consumers' authorized representatives, and consumers' common law employers on how to manage employer responsibilities. These services are referred to as Employer Resource Connection.

(1) To be eligible for the consumer-employer training program, an individual must be receiving Medicaid funded in-home services through DHS or OHA or services through the Oregon Project Independence program. An individual's authorized representative or common law employer is eligible to receive consumer-employer training services.

(2) Consumer-employer training services are provided by individuals or entities under contract with the Commission and meet the qualifications described in OAR 411-035-0095.

(3) Services are designed to meet consumer-employer needs and are provided in a culturally competent manner. Consumer-employer training is

based on the needs and preferences of the consumer-employer and topics are related to the employer responsibilities described in OAR 411-030-0040(4)(a) and OAR 411-375-0055(5)(b).

(4) Consumer-employer training services shall meet the requirements outlined in OAR 411-035-0090 and consumer representatives on how to select, manage, and dismiss homecare and personal support workers. These services may be referred to as STEPS to Success with Homecare Workers, STEPS to Success with Personal Support Workers, or generically as STEPS services.

~~(1) Providers of STEPS services are approved by or under contract with the Commission.~~

~~(2) Services are designed to meet consumer-employer needs and are provided in a culturally competent manner. Providers offer a continuum of services based on individual needs and preferences, on topics including but not limited to:~~

~~(a) Understanding the service plan and specific tasks authorized by the consumer's case manager;~~

~~(b) Creating job descriptions, locating workers, interviewing, completing reference checks, and hiring a homecare or personal support worker;~~

~~(c) Creating an employment agreement;~~

~~(d) Training, supervising and communicating effectively with workers;~~

~~(e) Ensuring work is performed satisfactorily;~~

~~(f) Correcting unsatisfactory work performance and discharging unsatisfactory workers;~~

~~(g) Scheduling and tracking hours worked and maintaining employment records;~~

~~(h) Developing a backup plan for coverage of services; and~~

~~(i) Preventing and reporting fraud and abuse.~~

~~(3) STEPS services must be provided in a timely manner.~~

~~(a) Consumers must be contacted within five working days of referral.~~

~~(b) A planning interview for STEPS services must be conducted with consumers or representatives within 10 business days of referral, unless a consumer requests a later date.~~

~~(c) Individualized consumer services must begin within 10 business days of the planning interview, unless a consumer or consumer representative requests a later date.~~

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604

418-020-0050 Registry

The Commission maintains an online Registry of qualified and active homecare and personal support workers to provide routine, emergency, and substitute referrals to consumer-employers.

~~(1) DHS and OHA responsibilities:~~

~~(a) DHS and OHA shall collect for each homecare worker or personal support worker:~~

~~(A) Name, address, and phone number or numbers and where available, email address;~~

~~(B) The program or programs under which the worker is approved to provide services;~~

~~(C) The provider number;~~

~~(D) Begin and end dates of credential period;~~

~~(E) Date of most recent background check;~~

~~(F) Restricted or unrestricted status; and~~

~~(G) Other information as requested.~~

~~(b) In accordance with interagency agreements, DHS and OHA will:~~

~~(A) Provide continuing technical support, including electronic system changes needed by the Commission to ensure:~~

~~(i) Receipt of information from state electronic provider data management systems and any fiscal intermediaries providing consumer and provider information necessary for Registry matching functions; and~~

~~(ii) Accuracy of data downloaded real-time or on a daily basis.~~

~~(B) Provide technical support, including system changes to ensure security rights information transferred to the Commission's Registry from current or future electronic systems are accurate and maintained.~~

~~(C) Continue to provide information needed by the Commission's Registry when any updates and changes to current electronic servers and systems are implemented.~~

~~(21) Service Delivery Office Responsibilities. Staff must enter information into the Registry within five business days ~~of the information becoming available~~:~~

(a) The date and location ~~of each~~ homecare worker or personal support worker completed ~~homecare worker or personal support worker~~ orientation.

(b) The expiration dates of CPR and First Aid ~~certification~~ certifications for homecare or personal support workers who present original documents at the service delivery office.

(~~32~~) Service Delivery Staff Use of Registry. DHS and OHA Service Delivery office staff ~~will~~ shall use the Registry exclusively to refer homecare or personal support workers to consumer-employers:

(a) When a consumer-employer ~~or consumer,~~ consumer's authorized representative, or the consumer's common law employer requests names of homecare or personal support workers, an individual employer profile ~~must~~ shall be created and used for generating a Registry list of homecare or personal support workers who best match the consumer's profile. Service delivery staff may not:

(A) ~~Service delivery staff must not c~~ Create generic lists for distribution to multiple consumer-employers.

(B) ~~Service delivery staff must not r~~ Recommend specific homecare or personal support workers to consumer-employers or serve as employment references for such workers.

(b) Service delivery staff ~~must~~ may refer consumer-employers ~~or consumer,~~ consumers' authorized representative, or consumers' common law employers needing assistance with the Registry or ~~those otherwise needing assistance~~ locating homecare or personal support workers to the ~~Commission Registry support or to the~~ STEPSEmployer Resource Connection consumer training services program.

(43) Referral Requirements. For a homecare or personal support ~~worker's~~worker's name to appear on a Registry referral list, a homecare or personal support worker must:

(a) Have an active, unrestricted provider number;;

(b) Be seeking employment;;

(c) Authorize release of information by selecting this option on the Registry or in writing to the appropriate service delivery office;;

(d) Maintain a complete, accurate profile;;

(e) Have a valid~~working~~ telephone number and email address,~~if available~~. If a homecare or personal support worker does not have a working telephone number in the Registry, ~~he or she~~they will not be available for referral in the Registry and will be notified by the Commission via U.S. Mail or email;;

(f) Update profile information at least every 30 days;;

(g) Update changes including~~to~~ availability, telephone number, or other ~~profile~~ information when ~~such~~ changes occur; ~~and~~.

~~(h) Meet Commission annual continuing education requirements.~~

(54) Appropriate Use. The purpose of the Registry is for individual consumer-employers, persons authorized to act on behalf of consumers, or individuals hiring in-home workers privately, to find qualified homecare or personal support workers.

(65) Inappropriate Employer Use. Employer profiles or help wanted advertisements placed for purposes other than for individual searches as described in this rule are not authorized.

(76) Inappropriate Use by Homecare and Personal Support Workers. Homecare and personal support workers may not use the Registry for purposes other than its intended use. Homecare and personal support workers may not:

(a) Use the Registry to refer other homecare or personal support workers or contact other homecare or personal support workers;

(b) Use the Commission's name on business cards or other promotional materials;

(c) Represent themselves in print, electronic, or social media as employees of the Commission, DHS, OHA, or any service delivery office.

(87) Violations of OAR 418-020-0050(6) by homecare or personal support workers ~~will~~shall be investigated by the Commission.

(a) Sanctions may be imposed for non-compliance with these rules. Depending on severity and recurrence of violation, a sanction may include one or more of the following actions:

(A) Written warning;

(B) Suspension of availability for Registry referral for a prescribed period;

(C) Suspension of availability for Registry referral until conditions for suspension are corrected; ~~or~~

(D) The requirement to attend Commission-sponsored trainings~~Training requirements~~.

(b) Depending on the severity of allegations of misconduct or inappropriate use, the Commission may suspend availability for referral during investigation.

(c) Notice of Sanction. If the Commission imposes a sanction, the Commission shall attempt to serve a notice of sanction upon the homecare or personal support worker by regular mail based on the last contact information provided by the worker, or, if requested by the recipient of the notice, by electronic mail. The Notice of Sanction ~~will~~shall comply with OAR Chapter 137, Division 3 and OAR Chapter 411, Division 1, as applicable.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, 410.606

418-020-0060 Workers' Compensation

(1) The Commission elects workers' compensation coverage on behalf of consumer-employers who employ homecare and personal support workers.

(2) Consumer-employers and consumer representatives must:

(a) Sign required documents for a homecare or personal support worker to receive workers' compensation coverage~~;~~;

(b) Report homecare or personal support worker injuries to the Commission as soon as becoming aware of a worker's injury~~;~~; ~~and~~.

(c) Provide information to the Commission and workers' compensation carrier when workers report an injury.

(3) Service delivery office staff ~~will~~shall:

(a) Collect from each consumer-employer, at time of eligibility for services, appropriate signed workers' compensation documents~~;~~;

(b) Report injuries immediately to the Commission;~~and.~~

(c) Respond to requests for information from the Commission and workers' compensation carrier when workers report injuries and when claims are filed.

(4) The Commission ~~will~~shall:

(a) Assist homecare and personal support workers who are injured while performing service plan authorized tasks with filing claims;~~and.~~

(b) Work as the agent of consumer-employers while providing information to the insurance carrier's claims adjusters, attorneys, return-to-work specialists, and vocational rehabilitation administrators.

(5) Homecare or personal support workers injured while providing authorized services must:

(a) Report work injuries as soon as becoming aware of injuries to the:

(A) Consumer-employer,~~or~~ consumer's authorized-representative, or the consumer's common law employer;

(B) Case manager; and

(C) Commission;~~.~~

(b) Cooperate with the Commission and workers' compensation carrier by providing all required documents and returning phone calls timely;~~and.~~

(c) Keep the consumer-employer~~or,~~ consumer-representative, or consumer's common law employer informed regarding work

restrictions resulting from injuries at work, medical appointments, and return to work dates.

Stat. Auth.: ORS 410.602

Stats. Implemented ORS 410.606, 410.625, 656.039