

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

For internal agency use only.

Oregon Home Care Commission

418

Agency and Division Name	Administrative Rules	Chapter Number
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FILING CAPTION

Amends HCW/PSW minimum training and testing standards and extends training timelines

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E02, Salem, OR 97301 until **11/30/2020 @ 5 p.m.**

TELECONFERENCE ONLY

11/16/2020	1:30-2:00 p.m.	+1 (971) 673-8888, Conference ID: 8120494#	Staff
Hearing Date	Time	Address	Hearings Officer

Note for attendees: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Jenny Cokeley at (503) 378-8190, Jenny.e.cokeley@dhsoha.state.or.us or 711 TTY at least 5 business days before the hearing.

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:

AMEND:

418-020-0010; 418-020-0020; 418-020-0035

REPEAL:

RULE SUMMARY:

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), Senate Bill 669 (2019), and House Bill 2011 (2019); and to extend the timelines for implementation of mandatory training and testing due the impact of the COVID-19 pandemic on curriculum development, piloting, and available resources.

418-020-0010 – The definition of incumbent worker was amended to reflect the updated implementation timeline for the current workforce of homecare and personal support workers. The definition of incumbent seminar was replaced with the term refresher training to better describe mandatory training for the current workforce. The term competency evaluation was amended to clarify the tool is used to measure an individual’s mastery of information learned during orientation in addition to training.

418-020-0020 – The rules were amended to include the requirement for individuals to take and pass a competency evaluation after orientation as a condition of homecare and personal support worker provider enrollment, and to fulfil requirements described in SB 669, including adding the minimum number of training hours required for orientation. The rules were amended to keep the current orientation process in place until mandatory training requirements begin September 1, 2021.

418-020-0035 – The implementation date for mandatory training and testing was changed from January 1, 2021 to September 1, 2021 due to the impact of the COVID-19 pandemic and physical-distancing requirements on piloting, curriculum development, and available resources. The requirement for cultural competency training was added to rule, as directed by HB 2011 passed during the 2019 legislative session. The requirement for the Oregon Home Care Commission to review and approved the methodology and standards used to evaluate competency was added to rule. Rule was amended to change the timeline to complete refresher training for the current workforce from June 20, 2021 to March 30, 2022.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

The Department of Human Services (Department) and Oregon Home Care Commission (Commission) are 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), Senate Bill 669 (2019), and House Bill 2011 (2019); and to extend the timelines for implementation of mandatory training and testing due the impact of the COVID-19 pandemic on curriculum development, piloting, and available resources.

Fiscal and Economic Impact:

The Oregon Home Care Commission does not anticipate a fiscal or economic impact based on the amended rules.

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 estimates there will be no fiscal impact on state agencies.

Units of Local Government: The Commission estimates there will be no fiscal impact on units of local government.

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

Providers: The Commission estimates there will be no fiscal impact to providers.

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

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to 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.

(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 professional services, equipment supplies, labor, or increased administration related to compliance with the rules.

(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.

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

Although these rules do not impact small businesses, an organization representing small businesses participated in the development of these rules.

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>

Enrolled Senate Bill 669 (2019) – available on the Oregon State Legislature's website at

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/SB669/Enrolled>

Enrolled House Bill 2011 (2019) – available on the Oregon State Legislature's website at

<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/HB2011/Enrolled>

Was an Administrative Rule Advisory Committee consulted? Yes or No? Yes

If not, why not?

/s/ Cheryl Miller, Executive Director, Oregon Home Care Commission

Signature

10-5-2020

Date

**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;

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

(c) A current credential; and

(d) 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 agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities 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).

(4) "Background Check" means a criminal records check and abuse check under OAR chapter 407, division 7.

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

(6) "Case Manager" means an employee of a service delivery office who is responsible for determining service eligibility, offering service choices to eligible individuals, developing a plan of authorized services, and monitoring the effectiveness of services and supports. This term includes service 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>.

(8) "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>.

(9) "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.

(10) "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.

(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.

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

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

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

(15) "Consumer-Employer Training Services" means activities described in OAR 411-035-0090 that empower and inform consumer-employers, 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. The consumer-employer training services program is known as Employer Resource Connection.

(16) "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.

(17) "Continuing Education" means Commission approved training mandated on an ongoing basis. Continuing education is separate from orientation or core training.

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

(19) "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 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.

(20) "Cultural Competency^e" 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.

(21) "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.

(23) "Enrollment Agreement" means the program-specific document an individual must complete to be approved to provide services as a homecare or personal support worker.

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

(25) "Enhanced Personal Support Worker" means a personal support worker, as defined in these rules, who is certified by the Commission to provide services 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 identified through a functional needs assessment.

(26) "Exceptional Personal Support Worker" means a personal support worker, as defined in 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.

(27) "Functional Needs Assessment" means the comprehensive assessment tool defined in OAR 411-317-0000.

(28) "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.

(29) "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 hourly services to the consumer.

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

(~~312~~) "Independent Choices Program" means the program described in OAR Chapter 411, Division 30, which is a self-directed in-home services program where a participant is given a cash benefit to purchase goods and services that are identified in the participant's service plan and prior approved by Aging and People with Disabilities (APD) or an AAA.

(~~323~~) "Individual" means an older adult, 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".

(~~334~~) "Individual Support Plan" or "ISP" means the plan defined in OAR 411-317-0000.

(~~345~~) "Mastery" means a homecare or personal support worker has achieved the specific learning objectives of a training.

(~~356~~) "OHA" means the Oregon Health Authority.

(~~367~~) "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.

(~~378~~) "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.-

(~~389~~) "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.

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

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

(~~3940~~) "Program" means a program governed by Oregon Administrative Rules and administered by DHS or OHA that authorizes services provided through public funding in an individual's home or in the community.

(~~404~~) "Provider" means a homecare or personal support worker who is eligible to be hired by a consumer-employer, a consumer's authorized representative, or the consumer's common law employer, to provide services authorized in the consumer's service plan in the individual's home or in the community.

(~~412~~) "Provider Number" means an identifying number issued to each homecare and personal support worker who is enrolled as a provider through DHS or OHA.

(~~4231~~) "~~Incumbent Worker Seminar~~Refresher training" means a 12-hour course for incumbent workers that educates workers on the ~~new~~ core competencies.

(43) "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.

(44) "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.

(45) "Restricted Provider Number" means a number assigned by DHS to a homecare or personal support worker who has restrictions placed on the worker's provider enrollment.

(46) "Service Delivery Office" means an APD or AAA office, 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.

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

(48) "State Plan Personal Care Services" means the assistance with personal care and supportive services provided for an individual by a homecare or personal support worker.

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

(50) "Substitute Worker" means 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.

(52) "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 complete application and provider enrollment 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.

(f) Attend orientation.

(g) Complete mandated core training within specified timelines.

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

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

(2) Personal Support Worker Minimum Qualifications.

- (a) Submit a complete provider application and enrollment 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.
- (e) Meet program specific guidelines, including attending applicable orientations.
- (f) Complete mandated core training within specified timelines.
- (g) Complete and pass mandated orientation and core training competency evaluations.
- (h) Complete mandated continuing education within specified timelines.

(3) Homecare and Personal Support Worker Orientation. 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.
- (b) Include a presentation and materials created 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.

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

(f) 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~~August 31, 2021.

(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~~August 31, 2021.

(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-September~~ 1, 2021, an applicant is required to complete a minimum of a four-hour orientation, or online equivalency, and pass a competency evaluation prior to the issuance of a provider number and shall not be authorized to work until ~~orientation has been completed~~complete.

(A) An applicant may be granted an exception to begin working prior to attending orientation and passing a competency evaluation 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.

Stat. Auth.: ORS 410.602

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

418-020-0035 Mandatory Training and Competency Evaluations – Effective 9/1/2021

(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~~ September 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~~ September 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.

(c) Homecare and personal support workers are required to complete cultural competency training as part of their continuing education requirements.

(6) Orientation and cCore 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~~ September 1, 2021 shall complete competency evaluations after the completion of orientation and core training.

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

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

(f) The methodology and standards used for competency evaluations must be reviewed and approved by the Oregon Home Care Commission.

(7) ~~Incumbent Worker Seminar~~Refresher Training. Incumbent workers are required to complete ~~an incumbent worker seminar~~a refresher training by ~~June 30, 2021~~March 31, 2022.

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

Stat. Auth.: ORS 410.602

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