

**CHAPTER 411
DIVISION 31**

**HEMOCARE WORKERS ENROLLED IN THE CLIENT-EMPLOYED
PROVIDER PROGRAM**

411-031-0020 Definitions

(Amended 4/17/2007)

(1) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as defined in OAR chapter 411, division 015.

(2) "Adult Protective Services" means a service to be provided in response to the need for protection from harm or neglect to an aged, disabled, or blind person 18 years of age or older regardless of income, as described in OAR chapter 411, division 020.

(3) "Area Agency on Aging (AAA)" means the Department of Human Services (DHS) designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For purposes of these rules, the term Area Agency on Aging (AAA) 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 through 410.300.

(4) "Burden of Proof" means that the existence or nonexistence of a fact must be established by a preponderance of the evidence.

(5) "Business Days" means Monday through Friday and excludes Saturdays, Sundays and state-sanctioned holidays.

(6) "Career Homecare Worker" means a Homecare Worker with an unrestricted provider enrollment. A Career Homecare Worker has a provider enrollment that allows him or her to provide services to any eligible

in-home support services client. At any given time, a Career Homecare Worker may choose not to be referred for work.

(7) "Case Manager" means a SPD/AAA employee that assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan, and monitors the services delivered.

(8) "Client" or "Client-Employer" means the individual eligible for in-home services.

(9) "Client-Employed Provider Program (CEP)" refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in services. In some aspects of the employer and employee relationship, the Department of Human Services acts as an agent for the Client-Employer. These functions are clearly described in OAR 411-031-0040.

(10) "Companionship Services" means those services designated by the Department of Labor as meeting the personal needs of a client. Companionship services are exempt from federal and state minimum wage laws.

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

(12) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(13) "Fiscal Improprieties" means the Homecare Worker committed financial misconduct involving the client's money, property or benefits. Improprieties include, but are not limited to, financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the Homecare Worker, forging the client's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(14) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that is directly employed by the client and provides either

hourly or live-in services to eligible clients. The term Homecare Worker includes client-employed providers in the Spousal Pay and Oregon Project Independence Programs. It also includes client-employed providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include Independent Choices Program providers nor Personal Care Attendants enrolled through developmental disability services or the Addictions and Mental Health Division.

(15) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(16) "Imminent Danger" means there is reasonable cause to believe a person's life or physical, emotional or financial well-being is in danger if no intervention is immediately initiated.

(17) "In-Home Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(18) "Lack of Skills, Knowledge and Ability to Adequately or Safely Perform the Required Work" means the Homecare Worker does not possess the skills to perform services needed by SPD clients. The Homecare Worker may not be physically, mentally, or emotionally capable of providing services to seniors and persons with disabilities. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(19) "Lack of Ability or Willingness to Maintain Client-Employer Confidentiality" means the Homecare Worker is unable or unwilling to keep personal information about their Client-Employer private. Unless given specific permission by the Client-Employer or his or her legal representative, the Homecare Worker must not share any personal information about the eligible individual including medical, social service, financial, public assistance, legal, or interpersonal details.

(20) "Limited Enrollment" means SPD or AAA has placed restrictions on an individual Homecare Workers' provider enrollment. Homecare Workers approved under a limited enrollment are designated as either Restricted

Homecare Workers or Exclusive Homecare Workers, as described in OAR 411-031-0040(8)(d).

(21) "Live-In Services" means those Client-Employed Provider Program services provided when a client requires ADL, self-management tasks, and twenty-four hour availability. Time spent by any live-in Homecare Worker doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under companionship services. To ensure continuity of care for the client, live-in service plans must include at least one Homecare Worker providing twenty-four hour availability for a minimum of five days in a calendar week.

(22) "Office of Administrative Hearings" means the panel established within the Employment Department described in ORS 183.600 through 183.690, that conducts contested case proceedings and other such duties on behalf of designated state agencies.

(23) "Oregon Project Independence (OPI)" means the program of in-home services described in OAR chapter 411, division 032.

(24) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.

(25) "Provider" means the individual that actually renders the service.

(26) "Provider Enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to SPD clients. Provider enrollment includes the issuance of a provider number.

(27) "Provider Number" means an identifying number, issued to each Homecare Worker who is enrolled as a provider through SPD.

(28) "Self-Management Tasks" or "Instrumental Activities of Daily Living (IADL)" means those activities, other than activities of daily living, required by an individual to continue independent living (i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping).

(29) "Seniors and People with Disabilities Division (SPD)" or "Division" means the part of the Department of Human Services responsible for the administration of programs to seniors and people with disabilities, including the state local offices that administer benefits and services to eligible individuals in regional areas throughout the state.

(30) "Services are Not Provided as Required" means the Homecare Worker does not provide the services to the client as described in the service plan authorized by SPD.

(31) "Twenty-Four Hour Availability" means the availability and responsibility of a Homecare Worker to meet activities of daily living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in Homecare Worker and are exempt from federal and state minimum wage and overtime requirements.

(32) "Unacceptable Conduct at Work" means the Homecare Worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in their arrival to work or absences from work not prior-scheduled with the client, that are either unsatisfactory to the client or that neglect the client's service needs; or

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

(33) "Unacceptable Criminal History" means that a criminal history check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210. A "denied" criminal history check results in the denial or termination of the Homecare Workers' provider enrollment.

(34) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the Homecare Worker for:

(a) Being intoxicated by alcohol or drugs while responsible for the care of the client, while in the client's home, or while transporting the client; or

(b) Manufacturing or distributing drugs while providing authorized services to the client or while in the client's home.

(35) "Violations of Protective Service and Abuse Rules" means the Homecare Worker violated protective service and abuse rules as defined in OAR 411-020-0002(1). Abuse includes physical abuse, emotional or verbal abuse, financial exploitation, sexual abuse (including inappropriate sexual advances), neglect of care, abandonment, and denying medical care or treatment. Abuse also includes the use of medications or physical restraints when used to discipline the client or for the convenience of the provider.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

411-031-0030 Scope

(Adopted 6/1/2004)

These Administrative Rules establish the standards and procedures governing Homecare Workers and the fiscal services provided on behalf of Department clients to Homecare Workers enrolled in the Client-Employed Provider Program. Homecare Workers provide home and community-based waiver, state plan and Oregon Project Independence in-home support services to clients of the Department of Human Services and Area Agencies on Aging. In-home support services supplement the ability of Department/AAA clients to continue to live in their own homes.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

411-031-0040 Client-Employed Provider Program

(Amended 4/29/2008)

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily

living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

(1) EMPLOYMENT RELATIONSHIP. The relationship between the provider and the client is that of employee and employer.

(2) CLIENT-EMPLOYER JOB DESCRIPTIONS. Each Client-Employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the Case Manager.

(3) HOMECARE WORKERS LIABILITIES. The only benefits available to Homecare Workers are those negotiated in the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union and as provided in Oregon Revised Statute. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare Workers are not state employees.

(4) CLIENT-EMPLOYER ABSENCES. When a Client-Employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure his or her presence upon the Client-Employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.

(5) SELECTION OF HOMECARE WORKER. The Client-Employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The Client-Employer has the right to employ any individual who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office determines whether the employee meets minimum qualifications to provide the authorized services paid by SPD.

(6) EMPLOYMENT AGREEMENT. The Client-Employer retains the full right to establish the Employer-Employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been

completed and identification photocopied. SPD will not guarantee payment for those services until all acceptable enrollment standards have been verified and both the employer and Homecare Worker have been formally notified in writing that payment by SPD is authorized.

(7) TERMS OF EMPLOYMENT. The terms of the employment relationship are the responsibility of the Client-Employer to establish at the time of hire. These terms of employment include dismissal or resignation notice, work scheduling, and absence reporting as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) PROVIDER ENROLLMENT.

(a) Enrollment Standards. A Homecare Worker must meet all of the following standards to be enrolled with the SPD's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must be "approved" following a criminal history check as defined in OAR 407-007-0210.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in section (8)(e) of this rule.

(b) SPD/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

- (A) The applicant has a history of violating protective service and abuse rules;
- (B) The applicant has committed fiscal improprieties;
- (C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;
- (D) The applicant lacks the ability or willingness to maintain Client-Employer confidentiality;
- (E) The applicant has an unacceptable criminal history;
- (F) The applicant is not 18 years of age;
- (G) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal Health Care Programs; or
- (H) SPD/AAA has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Rechecks. Criminal history rechecks will be conducted at least every other year from the date the Homecare Worker is enrolled. SPD/AAA may conduct a recheck more frequently based on additional information discovered about the Homecare Worker, such as possible criminal activity or other allegations.

(A) When a Homecare Worker is approved without restrictions following a criminal history check fitness determination, the approval will meet the Homecare Worker enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a county, Council of Governments or a non-profit organization.

(B) Criminal history check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the Homecare Worker, a new fitness determination is conducted resulting in a change in approval status; or

(ii) Approval under probationary status has ended following a final fitness determination, as defined in OAR 407-007-0210 and described in OAR 407-007-0310 and OAR 407-007-0320; or

(iii) The approval has ended because DHS has inactivated or terminated the Homecare Worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior criminal history check approval for another DHS provider type is inadequate to meet criminal history check requirements for Homecare Worker enrollment.

(d) Limited Enrollment.

(A) SPD/AAA may approve a limited enrollment for a provider as an Exclusive Homecare Worker based on the applicant's personal choice to provide services only to specific family members, friends or neighbors. To remove Exclusive Homecare Worker status and be designated as a Career Homecare Worker, a Homecare Worker must complete a new application and criminal history check and be approved by SPD/AAA.

(B) SPD/AAA may approve a limited enrollment for a provider as a Restricted Homecare Worker to provide services to specific individuals. To remove Restricted Homecare Worker status and be designated as a Career Homecare Worker, the applicant must complete a new application and criminal history check and be approved by SPD/AAA.

(i) Criminal History. After conducting a weighing test as described in OAR chapter 407, division 007, SPD/AAA may approve a Homecare Worker with prior criminal

history under a restricted enrollment to provide services to only specific individuals who are family members, neighbors or friends.

(ii) Based on the applicant's lack of skills, knowledge or abilities, SPD/AAA may approve an applicant as a Restricted Homecare Worker to provide services only to specific individuals who are family members, neighbors or friends.

(iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in section (8)(a)(E) of this rule, a Homecare Worker who is at least 16 years of age may be approved as a Restricted Homecare Worker.

(C) Applicants who choose to provide services only to family, friends or neighbors, will only be approved for limited enrollment as a Restricted Homecare Worker when:

(i) The applicant has a potentially disqualifying criminal history that following a weighing test he or she would be denied as a Career Homecare Worker;

(ii) The applicant lacks the skills, knowledge or abilities to be approved as a Career Homecare Worker; or

(iii) The applicant is at least 16 years of age and has been approved by SPD Central Office for an exception to the age requirements for provider enrollment as described in section (8)(a)(E) of this rule.

(e) Homecare Worker Orientation. Homecare Workers must participate in an orientation arranged through a SPD/AAA office. The orientation should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment,

their provider number will be inactivated and any authorization for payment of services will be discontinued.

(f) A Homecare Worker's provider enrollment may be inactivated when:

(A) The Homecare Worker has not provided any paid services to any client in the last 12 months;

(B) The Homecare Worker fails to complete a criminal history check authorization or provide fingerprints in accordance with the criminal history check, when requested by SPD/AAA;

(C) The Homecare Worker informs SPD/AAA they will no longer be providing Homecare Worker services in Oregon;

(D) The provider fails to participate in a Homecare Worker orientation arranged through an SPD/AAA office within 90 days of provider enrollment; or

(E) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) PAID LEAVE.

(a) Live-In Homecare Workers. Irrespective of the number of clients served, SPD will authorize one 24 hour period of leave each month, when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that 24 hour period of leave authorization. A prorated share of the 24 hours will be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) Accumulation and Usage for Live-In Providers. A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and Case Manager will coordinate the timely use of these hours. Live-in Homecare

Workers must take vacation leave in 24 hour increments. Accrued leave must be taken while employed as a live-in.

(B) The Right to Retain Live-In Paid Leave. The Homecare Worker retains the right to access earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination.

(C) Transferability of Live-In Paid Leave. Live-in Homecare Workers who convert to hourly or separate from live-in service and return as an hourly Homecare Worker within one year from the last date of live-in services will be credited with their unused hours of leave up to a maximum of 32 hours.

(D) Cash Out of Paid Leave.

(i) DHS will pay live-in Homecare Workers 50 percent of all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) Effective July 1, 2008, a live-in Homecare Worker may submit a request for payment of 50 percent of unused paid leave if:

(I) The live-in Homecare Worker's client-employer is no longer eligible for In-Home Services described in OAR chapter 411, division 030; and

(II) The live-in Homecare Worker does not have alternative residential housing.

(iv) If a request for payment of 50 percent of unused paid leave based on sections (9)(a)(D)(iii)(I) and

(9)(a)(D)(iii)(II) of this rule is granted, the Homecare's paid leave balance is reduced to zero.

(b) Hourly Homecare Workers. On July 1st of each year, active Homecare Workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) will be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) will be credited with 16 hours of paid time off. One 16 hour block of paid leave will be credited to each eligible Homecare Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from biennium to biennium.

(A) Utilization of Hourly Paid Leave.

(i) Such time off must be utilized in one eight hour block subject to authorization. If the Homecare Worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly Homecare Workers may take unused paid leave when their employer is temporarily unavailable for the Homecare Worker to provide services.

(B) Limitations of Hourly Paid Leave. Homecare Workers will not be compensated for paid leave unless the time off work is actually taken except as noted in section (9)(b)(D) of this rule.

(C) Transferability of Hourly Paid Leave. An hourly Homecare Worker who transfers to work as a live-in Homecare Worker (within the biennium that their hourly leave is earned) will maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) Cash Out of Paid Leave.

(i) DHS will pay hourly providers for all unused paid leave accrued as of January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 will not be paid if paid leave has already been cashed out.

(10) SPD FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) Direct Service Payments. SPD will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) Timely Submission of Claims. In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions.

(A) Federal Insurance Contributions Act (FICA). Acting on behalf of the Client-Employer, SPD will apply any applicable FICA regulations and will:

(i) Withhold the Homecare Worker-employee contribution from payments; and

(ii) Submit the Client-Employer contribution and the amounts withheld from the Homecare Worker-employee to the Social Security Administration.

(B) Benefit Fund Assessment. The Workers' Benefit Fund Assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist

employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund Assessment Rate for each calendar year. SPD calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf of the Client-Employer, SPD will:

(i) Deduct the Homecare Worker-employees' share of the Benefit Fund Assessment Rate for each hour or partial hour worked by each paid Homecare Worker;

(ii) Collect the Client-Employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and Homecare Worker's contributions to the Workers' Benefit Fund.

(C) SPD will pay the employer's share of the Unemployment Tax.

(d) Ancillary Withholdings. For purposes of section (10)(d) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) SPD will deduct from the Homecare Worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with SPD to pay the actual administrative costs of the deductions.

(C) SPD will pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding.

(A) SPD will withhold state and federal income taxes on all payments to Homecare Workers, as indicated in the Home

Care Commission's Collective Bargaining Agreement with the Service Employee's International Union.

(B) Homecare Workers must complete and return a current Internal Revenue Service W-4 form to the local office. SPD will apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) HOMECARE WORKER EXPENSES SECONDARY TO PERFORMANCE OF DUTIES.

(a) Providers may be reimbursed at \$0.485 cents per mile effective October 1, 2007 when they use their own car for service plan related transportation, if prior authorized by the Case Manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the DHS, Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) BENEFITS. Workers' Compensation as defined in Oregon Revised Statute and health insurance are available to eligible Homecare Workers as defined in the 2007-2009 Home Care Commission's Bargaining Agreement with the Service Employee's International Union. In order to receive Homecare Worker services, the Client-Employer must provide written authorization and consent to SPD for the provision of workers' compensation insurance for their employee.

(13) OVERPAYMENTS.

(a) An overpayment is any payment made to a Homecare Worker by SPD that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment. Occurs when SPD failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment. Occurs when SPD overpays the Homecare Worker due to a misunderstanding or unintentional error.

(C) Fraud Overpayment. "Fraud" means taking actions that could result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). SPD will determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit will determine when a Medicaid Fraud allegation will be pursued for prosecution.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments will be collected at no more than 5 percent of the Homecare Worker's gross wages.

(C) Fraud Overpayments. SPD will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

411-031-0050 Administrative Review and Hearing Rights

(Amended 5/1/2006)

This rule establishes the appeal and hearing rights for Homecare Workers when the Department suspends or terminates the HCW's provider enrollment.

(1) Exclusions to Appeal and Hearings Rights:

(a) The following are excluded from this administrative review and hearing rights process:

(A) Terminations based on criminal history. The Homecare Worker has the right to a hearing in accordance with OAR 407-007-0200 through 407-007-0380.

(B) Homecare Workers that have not worked in the last twelve months. The provider enrollment may become inactivated but will not be terminated. To activate the provider enrollment number, the HCW must complete an application and criminal history clearance.

(C) Homecare Workers that fail to complete a criminal history recheck.

(D) Homecare Workers that are denied a provider enrollment number at the time of initial application.

(E) Homecare Workers not currently providing services to any clients whose provider enrollment is inactivated while an investigation is being completed.

(F) Homecare Workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal programs.

(b) These rules only apply to Homecare Workers as defined in OAR chapter 411, division 031. These rules do not include any other providers enrolled, licensed or otherwise registered by the Department of Human Services.

(2) Violations Resulting in Termination of Provider Enrollment. The Department may terminate the Homecare Worker's provider enrollment when a Homecare Worker:

(a) Violates the requirement to maintain a drug-free work place;

(b) Has an unacceptable criminal history;

(c) Lacks the skills, knowledge, and ability to adequately or safely perform the required work;

(d) Violates protective service and abuse rules, as defined in OAR chapter 411, division 020;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Lacks the ability or willingness to maintain Client-Employer confidentiality;

(h) Engages in unacceptable conduct at work; or

(i) Has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other federal health care programs.

(3) Immediate Termination: The Department may immediately terminate a provider enrollment on the date the violation is discovered, prior to the outcome of the administrative review when an alleged violation presents imminent danger to current or future clients. The Homecare Worker may file an appeal of this decision directly to SPD Central Office. The Homecare Worker must file any appeal within ten (10) business days from the date of the notice.

(4) Termination Pending Appeal: When a violation does not present imminent danger to current or future clients, the provider enrollment will not be terminated during the first ten business days of the Administrative Review appeal period. The Homecare Worker must file any appeal within ten (10) business days from the date of the notice. If the Homecare Worker appeals in writing prior to the deadline for appeal, the enrollment will not be terminated until the conclusion of the Administrative Review.

(5) Termination if No Appeal Filed: The decision of the reviewer will become final if the Homecare Worker does not appeal within ten business days of the notice of the decision. Once the time period for appeal has expired, the reviewer or designee will terminate the provider enrollment.

(6) Burden of Proof: The Department of Human Services 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 137-003-0050.

(7) Administrative Review Process: The Administrative Review process allows an opportunity for the SPD/AAA program manager or SPD Central Office to review and reconsider the decision to terminate the Homecare Worker's provider enrollment. The appeal may include the provision of new information or other actions that may result in the Department changing its decision.

(a) When the Department decides to terminate the Homecare Worker's provider enrollment, the Department will issue a written notice that will include:

(A) An explanation of the reason(s) for termination of the provider enrollment;

(B) The alleged violation as listed in OAR 411-031-0050; and

(C) The Homecare Worker's appeal rights, including the right to union representation, and where to file the appeal.

(b) For terminations based on substantiated protective services complaint, the letter may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090 and OAR 411-020-0030, complainants, witnesses, the name(s) of the alleged victim(s) and protected health information must not be disclosed.

(c) Informal Conference: At the first level of appeal, an informal conference, (described in OAR 461-025-0325), if requested by the Homecare Worker, will be scheduled with the Homecare Worker and any union representative. The Program Manager, or designee, will meet with the Homecare Worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(d) The Homecare Worker must specify in the request for review the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice, must receive the request for review within ten (10) business days of the decision affecting the worker. If the Homecare Worker decides to file an appeal, they must file their appeal in the following order:

(A) The Administrative Review:

(i) Program Manager (or designee) at the local SPD/AAA office. This is the first level of review for terminations pending appeal described in section (4) of this rule.

(ii) SPD Central Office. This is the first level of review for immediate terminations described in section (3) of this rule.

(B) Office of Administrative Hearings:

(i) A Homecare Worker can file a request for a hearing with the Office of Administrative Hearings if all levels of

administrative review have been exhausted, and the Homecare Worker continues to dispute the Department's decision. The request can be filed through the local office with the Office of Administrative Hearings, as described in OAR chapter 137, division 003. The request for the hearing must be filed within 30 calendar days of the written notice from SPD Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings will determine whether the Departments' decision to terminate the provider enrollment number is affirmed or reversed. The ALJ will issue a Final Order with the decision to all appropriate parties.

(iii) No additional hearing rights have been granted to Homecare Workers by this rule, other than the right to a hearing on the Department's decision to terminate the Homecare Worker's provider enrollment number.

(e) In the first two steps of the administrative review process, a written response of the outcome of the review will be sent to the Homecare Worker within ten business days of the review date.

(f) If the Administrative Review determines that the decision to immediately terminate the provider enrollment was unjustified, the reviewer or designee will have the provider number restored to active status and any earned benefits such as paid leave reinstated. The written response will notify the Homecare Worker that the provider enrollment will be restored.

(8) Request for Extension to Deadline: The Department or the Homecare Worker may request an extension of the 10-day deadline for circumstances beyond their control, if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

Stat. Auth.: ORS 410.070, 409.050 & 410.090
Stats. Implemented: ORS 410.070