

**DEPARTMENT OF HUMAN SERVICES
SENIORS AND PEOPLE WITH DISABILITIES DIVISION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 31**

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

411-031-0020 Definitions

(Amended 12/1/2010)

(1) "Activities of Daily Living (ADL)" mean 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 411-015-0006.

(2) "Adult Protective Services" mean the services 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 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 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.

(4) "Bargaining Agreement" means the 2009-2011 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union.

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

(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 services client. At any given time, a career homecare worker may choose not to be referred for work.

(7) "Case Manager" means an employee of the Department or Area Agency on Aging who 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. "Individual" is synonymous with client.

(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 acts as an agent for the client-employer. These functions are clearly described in OAR 411-031-0040.

(10) "Companionship Services" mean 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" means the Department of Human Services (DHS).

(12) "Division" means the Department of Human Services, Seniors and People with Disabilities Division (SPD).

(13) "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.

(14) "Fiscal Improprieties" means the homecare worker committed financial misconduct involving the client's money, property, or benefits. Fiscal 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.

(15) "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. Homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

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

(17) "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.

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

(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.

(20) "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 clients of the Division. 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.

(21) "Live-In Services" mean those Client-Employed Provider Program services provided when a client requires activities of daily living, 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.

(22) "Office of Administrative Hearings" means the panel established within the Employment Department described in ORS 183.605 to 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 person who 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 clients of the Division. 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 the Division.

(28) "Restricted Homecare Worker" means the Division or Area Agency on Aging has placed restrictions on an individual homecare workers' provider enrollment as described in OAR 411-031-0040.

(29) "Self-Management Tasks" or "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in self-management tasks are identified in OAR 411-015-0007.

(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 the Division.

(31) "These Rules" mean the rules in OAR chapter 411, division 031.

(32) "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. Twenty-four hour services are provided by a live-in homecare worker and are exempt from federal and state minimum wage and overtime requirements.

(33) "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.

(34) "Unacceptable Criminal Records Check" means a check that produces information related to an individual's criminal records check which precludes the individual from being a homecare worker for the following reasons:

(a) The individual applying to be a homecare worker has been disqualified under OAR 407-007-0275;

(b) A homecare worker enrolled in the Client-Employed Provider Program for the first time, or after any break in enrollment, after July 28, 2009 has been disqualified under OAR 407-007-0275; or

(c) A criminal records check and fitness determination have been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(35) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against the homecare worker for:

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

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

(36) "Violations of Protective Service and Abuse Rules" means the homecare worker violated the protective service and abuse rules in OAR chapter 411, division 020.

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

Stats. Implemented: ORS 410.010, 410.020, & 410.070

411-031-0030 Purpose

(Amended 5/30/2010)

The rules in OAR chapter 411, division 031 establish the standards and procedures governing homecare workers and the fiscal services provided on behalf of SPD/AAA 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 services to SPD/AAA clients. In-home services supplement the ability of SPD/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 12/1/2010)

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

shall 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 hourly and live-in providers.

(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 client's case manager.

(3) HOMECARE WORKER LIABILITIES. The only benefits available to homecare workers are those negotiated in the bargaining agreement 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 the live-in provider's 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 the absence of the client-employer.

(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 person who successfully meets the provider enrollment standards described in section (8) of this rule. The Division/AAA office shall determine whether the employee meets minimum qualifications to provide the authorized services paid by the Division.

(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. The Division may 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 the Division 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 may 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 Division's Client-Employed Provider Program:

(A) The homecare worker must maintain a drug-free work place.

(B) The homecare worker must complete the criminal records check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Division/AAA may allow a homecare worker to work on a preliminary basis in accordance with OAR 407-007-0315 if the homecare worker meets the other provider enrollment standards described in this section of the rule.

(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. The Division's 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) The Division/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 has an unacceptable criminal records check;

(E) The applicant is not 18 years of age;

(F) 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

(G) The Division/AAA has information that enrolling the applicant as a homecare worker may put vulnerable clients at risk.

(c) **CRIMINAL RECORDS RECHECKS.** Criminal records rechecks shall be conducted at least every other year from the date the homecare worker is enrolled. The Division/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 records check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Division office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Criminal records 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) The approval has ended because the Department 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 records check approval for another Department provider type is inadequate to meet criminal records check requirements for homecare worker enrollment.

(d) RESTRICTED PROVIDER ENROLLMENT.

(A) The Division/AAA may enroll an applicant as a restricted homecare worker. A restricted homecare worker may only provide services to specific individuals.

(i) Unless disqualified under OAR 407-007-0275, the Division/AAA may approve a homecare worker with prior criminal records under a restricted enrollment to provide services only to specific individuals who are family members, neighbors, or friends after conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370.

(ii) Based on the applicant's lack of skills, knowledge, or abilities, the Division/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 the Division's Central Office as described in subsection (a)(E) of this section, a

homecare worker who is at least 16 years of age may be approved as a restricted homecare worker.

(B) To remove restricted homecare worker status and be designated as a career homecare worker, the applicant must complete a new application and criminal records check and be approved by the Division/AAA.

(e) **HOMECARE WORKER ORIENTATION.** Homecare workers must participate in an orientation arranged through a Division/AAA office. The orientation shall occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific Division/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 shall be inactivated and any authorization for payment of services shall 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's criminal records check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Division/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 a Division/AAA office within 90 days of provider enrollment; or

(E) The homecare worker, who at the time is not providing any paid services to clients, is being investigated by Adult Protective Services for suspected abuse that poses imminent danger to current or future clients.

(9) PAID LEAVE.

(a) LIVE-IN HOMECARE WORKERS. Irrespective of the number of clients served, the Division shall 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 shall receive a proportional share of that 24-hour period of leave authorization. A prorated share of the 24-hours shall 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 shall coordinate the timely use of these hours. Live-in homecare workers must take vacation leave in 24-hour increments or in hourly increments of at least 4 but not more than 12 hours. 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 separation.

(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 day of live-in services shall be credited with their unused hours of leave up to a maximum of 32 hours.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall 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 November 6, 2009, a live-in homecare worker providing live-in services seven days per week for one client-employer may submit a request for payment of 100 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 100 percent of unused paid leave based on subparagraph (D)(iii)(I) and (II) of this subsection 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) shall 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) shall be credited with 16 hours of paid time off. One 16 hour block of paid leave shall be credited to each eligible homecare worker, irrespective of the number of clients they serve. Such leave may not be cumulative from biennium to biennium.

(A) UTILIZATION OF HOURLY PAID LEAVE.

(i) 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 may not be compensated for paid leave unless the time off work is actually taken except as noted in subsection (b)(D) of this section.

(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) shall maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) CASH OUT OF PAID LEAVE.

(i) The Department shall 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 may not be paid if paid leave has already been cashed out.

(10) DIVISION FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) DIRECT SERVICE PAYMENTS. The Division shall make payment to the provider on behalf of the client for all in-home services. This payment shall 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, the Division shall apply any applicable FICA regulations and shall:

(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 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 and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Division 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, the Division shall:

(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) The Division shall pay the employer's share of the unemployment tax.

(d) ANCILLARY WITHHOLDINGS. For the purposes of this subsection of the rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) The Division shall 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 the Division to pay the actual administrative costs of the deductions.

(C) The Division shall pay the deducted amount monthly to the designated labor organization.

(e) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(A) The Division shall withhold state and federal income taxes on all payments to homecare workers, as indicated in the bargaining agreement.

(B) Homecare workers must complete and return a current Internal Revenue Service W-4 form to the local office. The Division shall 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 Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan shall be considered a prior resource.

(c) The Department 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 bargaining agreement. In order to receive homecare worker services, the client-employer must provide written authorization and consent to the Division for the provision of workers' compensation insurance for their employee.

(13) **OVERPAYMENTS.** An overpayment is any payment made to a homecare worker by the Division that is more than the person is authorized to receive.

(a) Overpayments are categorized as follows:

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

(B) Provider error overpayment. Occurs when the Division overpays the homecare worker due to a misunderstanding or unintentional error.

(C) Fraud overpayment. "Fraud" means taking actions that may 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). The Division shall determine, based on a preponderance of the evidence, when

fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit shall determine when a Medicaid fraud allegation shall be pursued for prosecution.

(b) Overpayments are recovered as follows:

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

(B) Administrative or provider error overpayments shall be collected at no more than 5 percent of the homecare worker's gross wages.

(C) The Division shall determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as homecare workers shall 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, 410.070, & 410.090

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

411-031-0050 Termination, Administrative Review, and Hearing Rights
(Amended 5/30/2010)

(1) EXCLUSIONS TO APPEAL AND HEARING RIGHTS. The following are excluded from this administrative review and hearing rights process:

(a) Terminations based on a criminal records check. The homecare worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Homecare workers that have not worked in the last 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the

homecare worker must complete an application and criminal records check.

(c) Homecare workers that fail to complete a criminal records 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 Adult Protective Services 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.

(2) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. SPD 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 record;

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

(d) Violates the protective service and abuse rules 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. Unless given specific permission by the client-employer or the client-employer's legal representative, the homecare worker may not share any personal information about the eligible

individual including medical, social service, financial, public assistance, legal, or interpersonal details;

(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. SPD 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 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 may not be terminated during the first 10 business days of the administrative review appeal period. The homecare worker must file any appeal within 10 business days from the date of the notice. If the homecare worker appeals in writing prior to the deadline for appeal, the enrollment may not be terminated until the conclusion of the administrative review.

(5) TERMINATION IF NO APPEAL FILED. The decision of the reviewer shall become final if the homecare worker does not appeal within 10 business days from the date of the notice of the decision. Once the time period for appeal has expired, the reviewer or designee shall terminate the provider enrollment.

(6) BURDEN OF PROOF. SPD 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 SPD changing its decision.

(a) When SPD decides to terminate the homecare worker's provider enrollment, SPD shall issue a written notice that shall include:

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

(B) The alleged violation as listed in section (2) of this rule; and

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

(D) For terminations based on substantiated protective services complaint, the notice 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 of the alleged victim, and protected health information may not be disclosed.

(b) **INFORMAL CONFERENCE.** At the first level of appeal, an informal conference (described in OAR 461-025-0325) if requested by the homecare worker, shall be scheduled with the homecare worker and any union representative. The SPD/AAA program manager, or designee, shall meet with the homecare worker, review the facts, and explain why the agency decision was made. The informal conference may be held by telephone.

(c) 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 10 business days of the date of the decision affecting the homecare worker. If the homecare worker decides to file an appeal, they must file their appeal in the following order:

(A) **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 second level of appeal for terminations pending appeal described in section (4) of this rule. This is the only level of review for immediate terminations described in section (3) of this rule.

(B) OFFICE OF ADMINISTRATIVE HEARINGS.

(i) A homecare worker may 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 SPD's decision. The request may 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 date of the written notice from SPD Central Office.

(ii) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether SPD's decision to terminate the provider enrollment number is affirmed or reversed. The ALJ shall 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 SPD's decision to terminate the homecare worker's provider enrollment.

(d) A written response of the outcome of the administrative review shall be sent to the homecare worker within 10 business days of the review date.

(e) If the administrative review determines that the decision to immediately terminate the provider enrollment was unjustified, the reviewer or designee shall have the provider enrollment restored to active status and any earned benefits such as paid leave reinstated.

The written response shall notify the homecare worker that the provider enrollment shall be restored.

(8) REQUEST FOR EXTENSION TO DEADLINE. SPD or the homecare worker may request an extension of the 10-day deadline described in subsection (7)(e) above 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 409.050, 410.070, & 410.090

Stats. Implemented: ORS 410.070