

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

**CHAPTER 411
DIVISION 31**

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

411-031-0020 Definitions

(Amended 12/15/2013)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 031:

- (1) "AAA" means "Area Agency on Aging" as defined in this rule.
- (2) "Abuse" means abuse as defined by OAR 411-020-0002, OAR 407-045-0260, and OAR 943-045-0260.
- (3) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for the individual's 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.
- (4) "ADL" means "activities of daily living" as defined in this rule.
- (5) "Adult" means any person at least 18 years of age.
- (6) "Adult Protective Services" mean the services provided in response to the need for protection from abuse described in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045.
- (7) "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 terms AAA and Area Agency on Aging

are 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.

(8) "Burden of Proof" means the existence or nonexistence of a fact is established by a preponderance of evidence.

(9) "Career Homecare Worker" means a homecare worker with an unrestricted provider enrollment. A career homecare worker has a provider enrollment that allows the homecare worker to provide services to any eligible in-home services consumer. At any given time, a career homecare worker may choose not to be referred for work.

(10) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 028.

(11) "Collective Bargaining Agreement" means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's website: (<http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm>). Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-10, Salem, Oregon 97301.

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

(13) "Consumer" or "Consumer-Employer" means an individual eligible for in-home services.

(14) "Consumer-Employed Provider Program" refers to the program wherein a provider is directly employed by a consumer to provide either hourly or live-in in-home services. In some aspects of the employer and

employee relationship, the Department acts as an agent for the consumer-employer. These functions are clearly described in OAR 411-031-0040.

(15) "Department" means the Department of Human Services.

(16) "Disability" means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(17) "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.

(18) "Fiscal Improprieties" means a homecare worker committed financial misconduct involving a consumer's money, property, or benefits.

(a) Fiscal improprieties include but are not limited to financial exploitation, borrowing money from a consumer, taking a consumer's property or money, having a consumer purchase items for the homecare worker, forging a consumer's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare worker and a consumer-employer with whom the homecare worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

(19) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides state plan personal care services; and

(C) A relative providing Medicaid in-home services to a consumer living in the relative's home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

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

(21) "IADL" means "instrumental activities of daily living" as defined in this rule.

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

(23) "Individual" means an older adult or an adult with a disability applying for or eligible for services.

(24) "In-Home Services" mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(25) "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 IADL are identified in OAR 411-015-0007.

(26) "Lack of Ability or Willingness to Maintain Consumer-Employer Confidentiality" means a homecare worker is unable or unwilling to keep personal information about a consumer-employer private.

(27) "Lack of Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker does not possess the skills

to perform services needed by consumers of the Department. The homecare worker may not be physically, mentally, or emotionally capable of providing services to consumers. The homecare worker's lack of skills may put consumers at risk because the homecare worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the consumers.

(28) "Live-In Services" mean the Consumer-Employed Provider Program services provided when a consumer requires activities of daily living, instrumental activities of daily living, and twenty-four hour availability. Time spent by any live-in homecare worker doing instrumental activities of daily living and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements.

(29) "Older Adult" means any person at least 65 years of age.

(30) "Office of Administrative Hearings" means the panel described in ORS 183.605 to 183.690 established within the Employment Department to conduct contested case proceedings and other such duties on behalf of designated state agencies.

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

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

(33) "Provider" means the person who renders the services.

(34) "Provider Enrollment" means a homecare worker's authorization to work as a provider employed by a consumer for the purpose of receiving payment for authorized services provided to consumers of the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(35) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

(36) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(37) "Restricted Homecare Worker" means the Department or Area Agency on Aging has placed restrictions on a homecare worker's provider enrollment as described in OAR 411-031-0040.

(38) "Self-Management Tasks" means "instrumental activities of daily living" as defined in this rule.

(39) "Services are not Provided as Required" means a homecare worker does not provide services to a consumer as described in the consumer's service plan authorized by the Department.

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

(41) "Twenty-Four Hour Availability" means the availability and responsibility of a homecare worker to meet the activity of daily living and instrumental activity of daily living needs of a consumer as required by the consumer over a twenty-four hour period. Twenty-four hour availability services are provided by a live-in homecare worker and are exempt from federal and state minimum wage and overtime requirements.

(42) "Unacceptable Background Check" means a check that produces information related to a person's background that precludes the person from being a homecare worker for the following reasons:

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

(b) A homecare worker enrolled in the Consumer-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 background check and fitness determination has been conducted resulting in a "denied" status, as defined in OAR 407-007-0210.

(43) "Unacceptable Conduct at Work" means a homecare worker has repeatedly engaged in one or more of the following behaviors:

(a) Delay in arrival to work or absence from work not prior-scheduled with a consumer that is either unsatisfactory to a consumer or neglects the consumer's service needs; or

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

(44) "Violation of a Drug-Free Workplace" means there was a substantiated complaint against a 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 a consumer, while in the consumer's home, or while transporting the consumer; or

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

(45) "Violation of Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a homecare worker was found to have violated the protective service and abuse rules described in OAR chapter 411, division 020, OAR chapter 407, division 045, or OAR chapter 943, division 045.

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

Stats. Implemented: ORS 410.010, 410.020, & 410.070

411-031-0030 Purpose

(Amended 3/26/2013)

The rules in OAR chapter 411, division 031 establish the standards and procedures governing homecare workers and the fiscal services provided on behalf of Department/AAA consumers to homecare workers enrolled in the Consumer-Employed Provider Program. Homecare workers provide home and community-based waiver, state plan, and Oregon Project Independence in-home services to the Department/AAA consumers. In-home services supplement the ability of the Department/AAA consumers 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 Consumer-Employed Provider Program
(Amended 12/15/2013)

The Consumer-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes a provider is required for activities of daily living (ADLs), instrumental activities of daily living (IADLs), and twenty-four hour availability. The hourly structure assumes a provider is required for ADLs and IADLs 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 a provider and a consumer is that of employee and employer.
- (2) **CONSUMER-EMPLOYER JOB DESCRIPTIONS.** A consumer-employer is responsible for creating and maintaining a job description for a potential provider in coordination with the services authorized by the consumer's case manager.
- (3) **HOMECARE WORKER LIABILITIES.** The only benefits available to homecare workers are those negotiated in the Collective 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) **CONSUMER-EMPLOYER ABSENCES.** When a consumer-employer is absent from his or her home due to an illness or medical treatment and is expected to return to the home within a 30 day period, the consumer's live-in provider may be retained to ensure the live-in provider's presence upon the consumer's return or to maintain the consumer's home for up to 30 days at the rate of pay immediately preceding the consumer's absence.
- (5) **SELECTION OF HOMECARE WORKER.** A consumer-employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer has the right to employ any

person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department/AAA office determines whether a potential homecare worker meets the enrollment standards needed to provide services authorized and paid for by the Department.

(6) EMPLOYMENT AGREEMENT. A consumer-employer retains the full right to establish an employer-employee relationship with a person at any time after the person's Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. Payment for services is not guaranteed until the Department has verified that a person meets the provider enrollment standards described in section (8) of this rule and notified both the employer and homecare worker in writing that payment by the Department is authorized.

(7) TERMS OF EMPLOYMENT. A consumer-employer must establish terms of an employment relationship with an employee at the time of hire. The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and any sleeping arrangements or meals provided for live-in or hourly employees. Termination and the grounds for termination of employment are determined by a consumer-employer. A consumer-employer has the right to terminate an employment relationship with a homecare worker at any time and for any reason.

(8) PROVIDER ENROLLMENT.

(a) ENROLLMENT STANDARDS. A homecare worker must meet all of the following standards to be enrolled with the Department's Consumer-Employed Provider Program:

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

(B) The homecare worker must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions. The Department/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 Department may approve a restricted enrollment, as described in section (8)(d) of this rule, for a homecare worker who is at least 16 years of age.

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

(G) The homecare worker must have a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(b) The Department/AAA may deny an application for provider enrollment in the Consumer-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 background 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;

(G) The Department/AAA has information that enrolling the applicant as a homecare worker may put vulnerable consumers at risk; or

(H) The applicant's tax identification number or social security number does not match the applicant's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(c) BACKGROUND CHECKS.

(A) When a homecare worker is approved without restrictions following a background check fitness determination, the approval must meet the homecare worker provider enrollment requirement statewide whether the qualified entity is a state-operated Department office or an AAA operated by a county, council of governments, or a non-profit organization.

(B) Background check approval is effective for two years unless --

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

(ii) Approval has ended because the Department has inactivated or terminated a homecare worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.

(C) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare worker enrollment.

(D) Background rechecks are conducted at least every other year from the date a homecare worker is enrolled. The Department/AAA may conduct a recheck more frequently based on additional information discovered about a homecare worker, such as possible criminal activity or other allegations.

(d) RESTRICTED PROVIDER ENROLLMENT.

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

(i) Unless disqualified under OAR 407-007-0275, the Department/AAA may approve a homecare worker with a prior criminal record under a restricted enrollment to provide services to a specific consumer who is a family member, neighbor, or friend after conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370.

(ii) Based on an applicant's lack of skills, knowledge, or abilities, the Department/AAA may approve the applicant as a restricted homecare worker to provide services to a specific consumer who is a family member, neighbor, or friend.

(iii) Based on an exception to the age requirements for provider enrollment approved by the Department 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 restricted homecare worker must complete a new application and background check and be approved by the Department/AAA.

(e) HOMECARE WORKER ORIENTATION. Homecare workers must participate in an orientation arranged through a Department/AAA office. The orientation must occur within the first 30 days after the homecare worker becomes enrolled in the Consumer-Employed Provider Program and prior to beginning work for any specific Department/AAA consumers. 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, the

homecare worker's provider number is inactivated and any authorization for payment of services is discontinued.

(f) INACTIVATED PROVIDER ENROLLMENT. A homecare worker's provider enrollment may be inactivated when --

(A) The homecare worker has not provided any paid services to any consumer in the last 12 months;

(B) The homecare worker's background check results in a closed case pursuant to OAR 407-007-0325;

(C) The homecare worker informs the Department/AAA the homecare worker is no longer providing services in Oregon;

(D) The homecare worker fails to participate in an orientation arranged through a Department/AAA office within 90 days of provider enrollment;

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

(F) The homecare worker's provider payments, all or in part, have been suspended based on a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(9) PAID LEAVE.

(a) LIVE-IN HOMECARE WORKERS. Irrespective of the number of consumers served, the Department authorizes one twenty-four 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 receives a proportional share of the twenty-four hour period of leave authorization. A prorated share of the twenty-four hours is allocated proportionately to each live-in when there is more than one live-in provider per consumer.

(A) ACCUMULATION AND USAGE FOR LIVE-IN PROVIDERS. A live-in homecare worker may not accumulate more than 144 hours of accrued leave. A consumer-employer, homecare worker, and case manager must coordinate the timely use of accrued hours. Live-in homecare workers must take vacation leave in twenty-four hour increments or in hourly increments of at least one but not more than twelve hours. A live-in homecare worker must take accrued leave while employed as a live-in.

(B) THE RIGHT TO RETAIN LIVE-IN PAID LEAVE. A live-in 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. A live-in homecare worker who converts to hourly or separates from live-in service and returns as an hourly homecare worker within one year from the last day of live-in services is credited with their unused hours of leave up to a maximum of 32 hours.

(D) CASH OUT OF PAID LEAVE.

(i) The Department pays 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) A live-in homecare worker providing live-in services seven days per week for one consumer-employer may submit a request for payment of 100 percent of unused paid leave if --

(I) The live-in homecare worker's consumer-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.

(A) 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) are credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which the paid leave was accrued.

(B) On February 1st of each year, active homecare workers who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) are credited with one 16 hour block of paid leave.

(C) One 16 hour block of paid leave is credited to each eligible homecare worker, irrespective of the number of consumers the homecare worker serves. Such leave may not be cumulative from biennium to biennium.

(D) UTILIZATION OF HOURLY PAID LEAVE.

(i) Time off must be utilized in one eight hour block subject to authorization. If a homecare worker's normal workday is less than eight hours, the time off may be utilized in blocks equivalent to the homecare worker's normal workday. Any remaining hours that are less than a

normally scheduled workday may be taken as a single block.

(ii) Hourly homecare workers may take unused paid leave when the homecare worker's employer is temporarily unavailable for the homecare worker to provide services. In all other situations, a homecare worker who is not working during a month is not eligible to use paid time off in that month.

(E) 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)(G) of this section.

(F) TRANSFERABILITY OF HOURLY PAID LEAVE. An hourly homecare worker who transfers to work as a live-in homecare worker (within the biennium that the hourly leave is earned) maintains the balance of hourly paid leave and begins accruing live-in paid leave.

(G) CASH OUT OF PAID LEAVE.

(i) The Department pays 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) DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) DIRECT SERVICE PAYMENTS. The Department makes payment to a homecare worker on behalf of a consumer for all in-home services. The payment is considered full payment for the Medicaid home and community-based services rendered. Under no circumstances is a homecare worker to demand or receive additional payment for Medicaid home and community-based services from a

consumer or any other source. Additional payment to homecare workers for the same home and community-based services covered by Medicaid 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 a consumer-employer, the Department applies applicable FICA regulations and --

(i) Withholds a homecare worker-employee contribution from payments; and

(ii) Submits the consumer-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 the workers' beneficiaries and 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 Department 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 consumer-employer, the Department --

(i) Deducts a homecare worker-employees' share of the Benefit Fund assessment rate for each hour or partial hour worked by each paid homecare worker;

(ii) Collects the consumer-employer's share of the Benefit Fund assessment for each hour or partial hour of paid services received; and

(iii) Submits the consumer-employer's and homecare worker-employee's contributions to the Workers' Benefit Fund.

(C) The Department pays the consumer-employer's share of the unemployment tax.

(d) ANCILLARY WITHHOLDINGS. For the purpose of this subsection of the rule, "labor organization" means any organization that represents employees in employment relations.

(A) The Department deducts a specified amount from the homecare worker-employee's monthly salary or wages for payment to a labor organization.

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

(C) The Department pays the deducted amount to the designated labor organization monthly.

(e) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(A) The Department withholds state and federal income taxes on all payments to homecare workers, as indicated in the Collective Bargaining Agreement.

(B) A homecare worker must complete and return a current Internal Revenue Service W-4 form to the Department/AAA's local office. The Department applies standard income tax withholding practices in accordance with 26 CFR 31.

(11) REIMBURSEMENT FOR COMMUNITY TRANSPORTATION.

(a) A homecare worker is reimbursed at the mileage reimbursement rate established in the Collective Bargaining Agreement when the homecare worker uses his or her own personal motor vehicle for community transportation, if prior authorized by a consumer's case manager. If unscheduled transportation needs arise during non-office

hours, the homecare worker must provide an explanation as to the need for the transportation and the transportation must be approved by the consumer's case manager prior to reimbursement.

(b) Medical transportation through the Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in a consumer's service plan is considered a prior resource.

(c) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle for DMAP or community transportation, except as may be covered by workers' compensation.

(12) **BENEFITS.** Workers' compensation and health insurance are available to eligible homecare workers as described in the Collective Bargaining Agreement. In order to receive homecare worker services, a consumer-employer must consent and provide written authorization to the Department for the provision of workers' compensation insurance for the consumer-employer's employee.

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

(a) Overpayments are categorized as follows:

(A) **ADMINISTRATIVE ERROR OVERPAYMENT.** The Department failed to authorize, compute, or process the correct amount of in-home service hours or wage rate.

(B) **PROVIDER ERROR OVERPAYMENT.** The Department 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 homecare worker was

not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department determines, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Control Unit determines when to pursue a Medicaid fraud allegation for prosecution.

(b) Overpayments are recovered as follows:

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

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

(C) The Department determines when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) When a person is no longer employed as a homecare worker, any remaining overpayment is deducted from the person's final check. The person is responsible for repaying an overpayment in full when the person's 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 12/15/2013)

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

(a) Terminations based on a background 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 background check.

(c) Homecare workers that fail to complete a background 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 consumers 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. 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 background check;

(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, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required;

(g) Lacks the ability or willingness to maintain consumer-employer confidentiality. Unless given specific permission by the consumer-

employer or the consumer-employer's legal representative, the homecare worker may not share any personal information about the consumer including medical, social service, financial, public assistance, legal, or interpersonal details;

(h) Engages in unacceptable conduct at work;

(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; or

(j) Fails to provide a tax identification number or social security number that matches the homecare worker's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(3) IMMEDIATE TERMINATION. The Department/AAA 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 consumers. The homecare worker may file an appeal of this decision directly to the Department - 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 consumers, 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 becomes 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 provider enrollment is terminated by the reviewer or designee.

(6) BURDEN OF PROOF. The Department 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 Department/AAA program manager or the Department - 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/AAA changing its decision.

(a) A written notice is issued by the Department/AAA when the Department decides to terminate a homecare worker's provider enrollment. The written notice includes --

(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 allegations, 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, is scheduled with the homecare worker and any union representative. The Department/AAA program manager, or designee, meets with the homecare worker, reviews the facts, and explains why the 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 Department/AAA office. This is the first level of review for terminations pending appeal described in section (4) of this rule.

(ii) Department 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 local office if all levels of administrative review have been exhausted and the homecare worker continues to dispute the Department's decision. The local office files the request with the Office of Administrative Hearings as described in OAR chapter 137, division 003. The request for the hearing must be filed with the local office within 30 calendar days of the date of the written notice from the Department - Central Office.

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

(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.

(d) A written response of the outcome of the administrative review is 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 must have the provider enrollment restored to active status and any earned benefits such as paid leave reinstated. The written response must notify the homecare worker that the provider enrollment is restored.

(8) REQUEST FOR EXTENSION TO DEADLINE. The Department/AAA or the homecare worker may request an extension of the 10-day deadline described in subsection (7)(d) 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