

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

Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
ODHS, Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301		
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FILING CAPTION
(Must be 15 words or fewer)

APD: Amending 411-031 Homecare Workers Enrolled in the Consumer-Employed Provider Program

Last Date and Time for Public Comment: Written comments are accepted until **5:00 PM on 11/23/2022** and should be sent to apd.rules@odhsaha.oregon.gov.

		TELECONFERENCE +1 971-277-2343	
10/26/2022	10:00 a.m. - 10:30 a.m.	Conference ID: 104902637#	Staff
Hearing Date	Time	Address	Hearings Officer

HEARING NOTES: To provide oral testimony during this hearing, please contact apd.rules@odhsaha.oregon.gov to sign-up ahead of time. If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS can provide are sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@odhsaha.oregon.gov or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

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

AMEND:

411-031-0020; 411-031-0030; 411-031-0040; 411-031-0050

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is proposing to permanently amend rules in chapter 411, division 031. The changes are summarized below.

Amend: 411-031-0020

Rule Title: Definitions

Rule Summary: This rule contains definitions for the Homecare Workers enrolled in the Consumer-Employed Provider Program. Definitions have been updated, added, and out-of-date ones removed to align with other rules within OHCC, ODDS, and APD. The definitions were placed in alphabetical order. The following definitions have been modified:

“Active” was added to align with the Oregon Home Care Commission definition of an active provider.

“Activities of Daily Living (ADL)” was updated.

“Adult Protective Services (APS)” was updated.

“Aging and People with Disabilities (APD)” was updated.

“APD Central Office” was added.

“Case Manager (CM)” was updated.

“Centers for Medicare and Medicaid Services (CMS)” was added.

“Collective Bargaining Agreement” was updated.

“Consumer-Employed Provider Program” was updated.

“Consumer-Employer” was updated.

“Consumer-Employer’s Representative” was added.

“Continuing Education” was added.

“Core Training” was added.

“Credential” was added.

“Department” was updated.

“Electronic Visit Verification (EVV)” was added.

“Enhanced Homecare Worker” was updated.

“Enrolled” was added.

“Enrollment Agreement” was added.

“Established Work Schedule” was updated.
“Evidence” was updated.
“Exceptional Homecare Worker” was added.
“Exerts Undue Influence” was updated.
“Fiscal Improprieties” was updated.
“Healthier Oregon” was added.
“Homecare Worker” was updated.
“In-Home Services” was updated.
“Instrumental Activities of Daily Living (IADL)” was updated.
“Local Office” was updated.
“Maintain a Drug-Free Workplace” was updated.
“Maintain Consumer-Employer Confidentiality” was updated.
“Mandatory Abuse Reporter” was updated.
“Medicaid” was added.
“Medically-Driven Services and Supports” was added.
“Natural Supports” was added.
“Non-Motorized Transportation” was updated.
“Office of Inspector General (OIG)” was added.
“Oregon Home Care Commission (OHCC)” was added.
“Person-Centered Service Plan (Service Plan)” was added.
“Personal Support Worker” was updated.
“Preponderance of the Evidence” was updated.
“Provide Services as Required” was updated.
“Provider Enrollment” was updated.
“Relative” was updated.
“Restricted Homecare Worker” was updated.
“Service Delivery Office” was added.
“Service Need” was added.
“Service Period” was added.
“Shift Services” was added.
“Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work” was updated.
“Spouse” was added.
“Substantiated for Committing Abuse” was added.
“Tasks” was added.
“Termination” was added.
“Unwelcome Nuisance to the Workplace” was updated.
“Workday” was added.
“Workweek” was added.

Amend: 411-031-0030

Rule Title: Purpose

Rule Summary: Language was updated but purpose remains the same.

Amend: 411-031-0040

Rule Title: Consumer-Employed Provider Program

Rule Summary: The following modifications are proposed:

- 411-031-0040(1) - Updated relationship between a provider and a consumer-employer.
- 411-031-0040(2) - Updated the homecare worker job description.
- 411-031-0040(3) - Changed the division title and updated language
- 411-031-0040(4) - Updated the consumer-employer absence language.
- 411-031-0040(5) - Updated the selection of homecare worker responsibilities.
- 411-031-0040(6) - Updated the employment agreement.
- 411-031-0040(7) - Updated the terms of employment.
- 411-031-0040(8) - Updated the provider enrollment standards to include the denial of initial application of provider enrollment; inactivating a provider; enhances and exceptional homecare worker eligibility; time off; removed Orientation section.
- 411-031-0040(9) - Updated the Time Off section for homecare workers.
- 411-031-0040(10) - Changed the section name to fiscal accountability. Edited language about Direct Service payments and timely submission of claims. Added language about electronic visit verification.
- 411-031-0040(12) - Deleted eating a meal from this section on payment for travel time.
- 411-031-0040(13) - Changed the section name to Workers' Compensation and Unemployment Insurance.

Amend: 411-031-0050

Rule Title: Termination, Administrative Review, and Hearing Rights

Rule Summary: The following modifications are proposed:

- 411-031-0050(1) - Edited language and added language for exclusions to appeal and hearing rights.
- 411-031-0050(3) - Edited language and added language for reason to terminate a homecare workers provided number.
- 411-031-0050(4) - Updated language for the administrative review process.
- 411-031-0050(5) - Added language to provide due process to a denial of renewal enrollment number.
- 411-031-0050(6) - Edited and added language for proposed terminations to allow for 60-day due process.
- 411-031-0050(7) - Edited and added language for immediate suspension of a homecare worker provider enrollment number to allow for 90 days to request a hearing and if not hearing the termination notice becomes a final order by default.
- 411-031-0050(8) - Changed name to Contested Case Hearings and updated language.
- 411-031-0050(9) - Updated language for termination if no contested case hearing request filed.
- 411-031-0050(10) - Rule added for language as to Payment suspension due to fraud that the Department of Justice is investigating.

Other changes may be made to OAR chapter 411, division 031 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

STATEMENT OF NEED

Need for Rule(s):

Changes have been made to the Homecare Workers Enrolled in the consumer-employed provider program rules to align with the Collective Bargaining Agreement as well as to align with requirements of the Administrative Procedures Act.

Other changes may be made to OAR chapter 411, division 031 to correct grammatical errors, ensure consistent terminology, address issues

identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

Documents Relied Upon, and where they are available:

The Collective Bargaining Agreement (CBA) and the Administrative Procedures Act (APA).

CBA: <http://www.dhs.state.or.us/spd/tools/cm/homecare/21-23-SEIU%20OHCC.pdf>

APA: https://www.oregonlegislature.gov/bills_laws/ors/ors183.html

EQUITY IMPACT STATEMENT

Required by HB 2993 (2021 Regular Session)

Although the Department does not currently collect race and ethnicity data for homecare workers, personal support workers, or personal care attendants, SEIU, Local 503 provided race and ethnicity statistics based on a survey completed by providers. This information was self-reported by respondents who chose to participate in the survey and reflected amongst respondents: 6% Black or African American; 10% Asian or Pacific Islander; 4% Indigenous; 11% Hispanic of Latinx; and 69% White.

According to the U.S. Census Bureau 2020, Oregon's 4.2 million population identifies their race in the following manner: 2% Black or African American; 6% Asian, Native Hawaiian, or Pacific Islander; 6% some other race alone; and 75% White. 13.9% identify as Hispanic or Latinx. 10% of Oregon's population identifies as two or more races. (see <https://data.census.gov/cedsci/table?q=0400000US41&tid=DECENNIALPL2020.P1>)

ODHS Tribal affairs and the APD Equity Impact Review team provided input and determined pros and cons. Pros included but are not limited to: the APD process of a tribal member becoming a homecare worker is a somewhat quicker process than going through the process to become a caregiver through the Tribes; becoming a homecare worker is one possible employment/career opportunity for tribal members. It can allow for a family member to provide care to an elder and get paid, and it could be a longer-term career option, with decent pay, paid training, benefits, etc. Downsides to the review include but are not limited to: the relationship between tribal

elder and homecare worker is defined as that of an employee and employer, the elder (or their representative) is responsible for creating a job description, interviewing and hiring their own employees, and establishing a work schedule and those roles may not be familiar or comfortable; homecare workers are represented by a union; rules for background checks can disproportionately negatively affect and disqualify people of color; Electronic Visit Verification (EVV) requirement, using geolocation, that could be seen as an invasion of privacy or effort by government to track people's whereabouts; homecare workers are also Mandatory Reporters, and that role may be uncomfortable; homecare workers must have a social security number that matches the homecare workers legal name as verified by the IRS or SSA and this has potential to negatively impact Transgender, agender, non-binary, and any individual who is in the process of "legally" changing their name.

Based upon the above data and reviews by ODHS Tribal Affairs and APD Equity Review Teams, APD estimates that the adoption of changes to the above OARs will have an impact on racial equity in the State of Oregon, but APD estimates that it will be a low impact as these rules will apply to all HCW's throughout the state.

FISCAL AND ECONOMIC IMPACT

Fiscal and Economic Impact:

APD estimates there will be no fiscal impact to any state agencies, units of local government, or members of the public. These rules do not apply to small businesses. Under statute, a small business means a corporation, partnership, sole proprietorship, or other legal entity formed for the purpose of making a profit, which is independently owned and operated from all other businesses, and which has 50 or few employees.

Statement of Cost of Compliance:

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

State Agencies: The Department estimates there will be no fiscal impact on state agencies.

Units of Local Government: The Department estimates there will be no fiscal impact on state agencies.

Consumers: The Department estimates there will be no fiscal impact on units of local government.

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

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

(2) Effect on Small Businesses:

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

Small businesses, as defined by ORS 183.310, are not subject to these rules.

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

Small businesses, as defined by ORS 183.310, are not subject to these rules. Therefore, there are no reporting, recordkeeping, or administrative activities required.

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

Small businesses, as defined by ORS 183.310, are not subject to these rules. Therefore, there are no costs associated with professional services, equipment supplies, labor, or administration.

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

A small business, or representative of a small business, as defined in ORS 183.310 was invited to the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Was an Administrative Rule Advisory Committee consulted? Yes, a rule advisory committee was held via Zoom on July 6, 2022, at 2 p.m. Those who were unable to attend were given an opportunity to participate via email.

Nakeshia Knight-Coyle, Director, Aging and People with Disabilities

09/27/2022

Signature

Date

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

**CHAPTER 411
DIVISION 31**

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

411-031-0020 Definitions

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

~~(1) "Ability and Willingness to Maintain Consumer-Employer Confidentiality" means a homecare worker is able and willing to keep personal information about a consumer-employer private.~~

~~(12) "Abuse" means abuse as defined by OAR 411-020-0002 and OAR 407-045-0260.~~

(2) "Active" means a homecare worker who has:

(a) A valid and current provider number issued by APD;

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

(c) A valid and current credential; and

(d) Met the orientation and training requirements of the homecare worker program as set forth in chapter 418, Division 020.

~~(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 and behavior as defined in OAR 411-015-0006.~~

(3) "Activities of Daily Living (ADL)" means those personal, functional activities required by an individual for continued well-being, which are essential for the individual's health and safety. ADLs consist of bathing, cognition, dressing, eating, elimination, grooming, mobility, and personal hygiene as defined in OAR 411-015-0006.

~~(4) "Administrative Review" means the internal process the Department uses to review a decision to terminate or not to terminate a homecare worker's provider enrollment.~~

~~(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, and OAR chapter 407, division 045.~~

(4) "Adult" means any person at least 18 years of age.

(5) "Adult Protective Services (APS)" means the APD program that responds to abuse and self-neglect of older adults and adults with physical disabilities as described in OAR chapter 411, division 020, including screening, triage or consultation, on-site assessment, investigation, intervention, documentation, and APS risk management.

~~(7) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.~~

(6) "Aging and People with Disabilities (APD)" means the program within the department primarily responsible for serving older adults and people with disabilities as defined in OAR chapter 411, division 015 and division 030.

(7) "APD central office" means the unit within the Department responsible for program and policy development and oversight. (OAR 411-027-0005(9)).

(8) "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.

(9) "Base Pay Rate" means the hourly wage to be paid to homecare workers, without any differentials, established in the Collective Bargaining Agreement.

~~(10) "Burden of Proof" means the existence or nonexistence of a fact is established by a preponderance of evidence.~~

~~(11) "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.~~

~~(12) "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 writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-2, Salem, Oregon 97301.~~

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

(11) "Centers for Medicare and Medicaid Services (CMS)" means the agency within the U.S. Department of Health and Human Services (HHS) that administers Medicare, Medicaid, the Children's Health Insurance Program (CHIP), and the state and federal health insurance marketplaces.

(12) "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 writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-2, Salem, Oregon 97301.

(13) "Community Transportation" means non-medical transportation a homecare worker provides to a consumer-employer:

- (a) Using the homecare worker's personal vehicle; and
- (b) Provided in accordance with the consumer-employer's authorized service plan.

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

~~(15) "Consumer-Employed Provider Program" refers to the program wherein a provider is directly employed by a consumer to provide hourly 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.~~

~~(16) "Department" means the Department of Human Services.~~

~~(17) "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.~~

(14) "Consumer-Employed Provider Program" means the program wherein a qualified Homecare Worker is directly employed by a consumer to provide 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) "Consumer-Employer" means an individual eligible for in-home services receiving services through the Consumer-Employer Provider Program or Oregon Project Independence.

(16) "Consumer-Employer's Representative" means an individual assigned by a consumer, or designated by a consumer's legal representative, to act as the consumer-employer as defined in chapter 411, division 30.

(17) "Continuing Education" means training approved by the Oregon Home Care Commission consistent with the requirements outlined in chapter 418, division 20 rules. Continuing education is separate from orientation or core training pursuant to chapter 418, division 20 rules.

(18) "Core Training" means the mandated training, or series of trainings, required for homecare workers pursuant to chapter 418, division 20 rules.

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

(20) "Department" means the Oregon Department of Human Services (ODHS), Aging and People with Disabilities.

~~(18) "Enhanced Homecare Worker" means a homecare worker who is certified by the Oregon Home Care Commission to provide services and supports for consumers who require assistance with certain medically-driven services and supports.~~

~~(19) "Established Work Schedule" means the work schedule established by the consumer-employer to best meet the consumer's assessed needs and agreed to by the homecare worker employed by the consumer. A homecare worker adheres to the established work schedule by arriving to work on time, requesting absence from work in a timely manner, and notifying the consumer-employer of unscheduled absences in a timely manner.~~

~~(20) "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.~~

(21) "Electronic Visit Verification (EVV)" means an interface that records the homecare worker's start time, end time, and geolocation for a service delivered by a homecare worker in real time.

(22) "Enhanced Homecare Worker" means a homecare worker who is certified by the Oregon Home Care Commission to provide services and supports for consumers who require assistance with certain medically driven services and supports as assessed by the case manager.

(23) "Enrolled" means an individual has met the requirements in OAR 418-020-0020(1)(a) through (f) to become a Medicaid approved homecare worker and has been issued a Medicaid provider number.

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

(25) "Established Work Schedule" means the work schedule established by the consumer-employer to best meet the consumer-employer's assessed needs and agreed to by the homecare worker employed by the consumer-employer. A homecare worker adheres to the established work schedule by arriving to work on time, requesting absence from work in a timely manner, and notifying the consumer-employer of unscheduled absences in a timely manner.

(26) "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.

~~(21) "Exerts Undue Influence" means a homecare worker assumes or attempts to assume control of a consumer-employer's decision-making, finances, home, property, medication, social interaction or ability to communicate. Exertion of undue influence may exist whether or not a consumer-employer willfully allows the homecare worker to assume such control.~~

(27) "Exceptional Homecare Worker" means a homecare worker who is certified by the Oregon Home Care Commission to provide services and supports for consumers who have been assessed as needing awake staff at least 16 hours a day and who have exceptional behavioral needs.

(28) "Exerts Undue Influence" means a homecare worker assumes or attempts to assume control of a consumer-employer's decision-making, finances, home, property, medication, social interaction, or ability to communicate. Exertion of undue influence may exist whether or not a consumer-employer willfully allows the homecare worker to assume such control.

~~(22) "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:~~

~~(A) Financial exploitation, as defined in OAR 411-020-0002(1)(e);~~

~~(B) Borrowing money, property, or belongings from a consumer;~~

~~(C) Taking a consumer's property or money;~~

~~(D) Accepting or receiving items or services purchased for the homecare worker by a consumer-employer;~~

~~(E) Forging a consumer's signature;~~

~~(F) Falsifying payment records;~~

~~(G) Claiming payment for hours not worked;~~

~~(H) Claiming to deliver services to a consumer during a time also claimed for travel;~~

~~(I) Repeatedly working or claiming to work hours not prior authorized on a consumer-employer's service plan or repeatedly working or claiming to work hours over the maximum authorized weekly number of hours allowed~~

~~for the homecare worker as outlined in the Collective Bargaining Agreement;~~

~~(J) Claiming hours worked for a consumer-employer while taking time off or when a relief care worker is paid for providing services;~~

~~(K) Requesting or demanding payment for services from either the Department or the consumer in excess of the amount paid following the submission and processing of a properly completed claim; or~~

~~(L) Intentional acts committed for financial gain.~~

(29) "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:

(A) Financial exploitation, as defined in OAR 411-020-0002(1)(e);

(B) Borrowing money, property, or belongings from a consumer;

(C) Taking a consumer's property or money;

(D) Accepting or receiving items or services purchased for the homecare worker by a consumer-employer;

(E) Requesting or demanding payment from the consumer-employer for any reason;

(E) Forging a consumer-employers signature;

(F) Falsifying requests for payment which includes but is not limited to:

(i) Submitting incorrect start and end times of work; or

(ii) Submitting payment for days that were not worked.

(G) Claiming payment for hours not worked which includes but is not limited to:

(i) Claiming payment for specific start and stop times of work that were not actually worked; or

(ii) Claiming payment for a total number of hours that is more than the hours actually worked.

(H) Claiming to deliver services to a consumer-employer during a time also claimed for travel;

(I) On two or more occasions, working or claiming to work hours not prior authorized on a consumer-employer's service plan or working or claiming to work hours over the maximum authorized weekly number of hours allowed for the homecare worker;

(J) Claiming hours worked for a consumer-employer while taking time off or when another homecare worker is paid for providing services;

(K) Requesting or demanding payment for services from either the Department or the consumer-employer for more than the amount paid following the submission and processing of a properly completed claim;

(L) One or more intentional acts of dishonesty for purposes of unearned financial gain; and

(M) Creating an overpayment whether intentionally or unintentionally and not paying it back within 6 months.

(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.

(30) "Healthier Oregon" means an OHP Plus equivalent benefit (410-120-1210(4)(h)) for individuals described in 461-135-1080.

~~(3123)~~ "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide services to the consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider of a Medicaid in-home services recipient including those eligible for the Spousal Pay services;

(B) A consumer-employed provider of an Oregon Project Independence Program service recipient;

(C) A consumer-employed provider of a Healthier Oregon service recipient; or

(D) A consumer-employed provider that provides state plan personal care services.

~~(A) A consumer-employed provider of Medicaid in-home services program described in OAR Chapter 411 Division 030;~~

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

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

~~(D) 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 Disabilities Services or the OHA Health Systems Division, Behavioral Health.

~~(24) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided by homecare workers to consumer-employers at regularly scheduled times.~~

~~(25) "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.~~

~~(26) "Inactivated" means the process through which a homecare worker is made temporarily ineligible to work for any consumer-employer.~~

(32) "Individual" means an adult applying for or eligible for services per OAR 411-015-0100.

~~(27) "Individual" means an older adult or an adult with a disability applying or eligible for services.~~

~~(28) "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.~~

~~(29) "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.~~

~~(30) "Mandatory Reporter" means an individual who is required under ORS 124.050 – 124.060 to report the abuse or suspected abuse of a child, an older adult, or the resident of a nursing facility, to the Department or to a law enforcement agency.~~

~~(31) "Medically-Driven Services and Supports" means medical or behavioral treatments, assessed by a case manager and included in a consumer's service plan, which a consumer requires in addition to assessed ADL and IADL services. These services and supports must be delegated and monitored by a Department-appointed registered nurse.~~

(33) "In-Home Services" mean those services that meet an individual's assessed need related to activities of daily living and instrumental activities

of daily living when the individual resides in a living arrangement that meets the criteria described in OAR 411-030-0033.

(34) "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.

(35) "Local Office" means the local service staff of the Department or Area Agency on Aging (Type A and B).

(36) "Maintain a Drug-Free Workplace" means the Homecare Worker has a duty to:

(a) Be free of the influence of alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a consumer-employer, while in the consumer's home or care setting, or while transporting the consumer;
or

(b) Not manufacture, possess, sell, offer to sell, trade, or use illegal drugs while providing authorized services to a consumer-employer or while in the consumer-employers home or care setting.

(37) "Maintain Consumer-Employer Confidentiality" means the homecare worker's responsibility to not disclose personally identifiable information about a consumer- employer unless otherwise authorized by law.

(38) "Mandatory Abuse Reporter" for the purpose of these rules, means any public or private official who is required by state abuse statutes to report alleged abuse. This includes per ORS 419B.005(s) Personal Support Worker and (t) Homecare Workers.

(39) "Medicaid" means the program that provides health care coverage and long-term services to low-income individuals. The program is jointly funded by the federal government and states and administered by the State. For purpose of these rules, Medicaid means the state and federal program that provides the funding for long-term services and supports for qualified individuals including those through the Consumer-Employer program.

(40) "Medically-Driven Services and Supports" means medical or behavioral treatments, assessed by a case manager, and included in a consumer-employers' service plan, which a consumer-employer requires in addition to assessed ADL and IADL services.

(41) "Natural Supports" or "Natural Support System" means resources and supports (e.g., relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential natural support. The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

~~(32) "Non-Motorized Transportation" means traveling on foot, riding a bicycle, or other similar means of transportation.~~

(42) "Non-Motorized Transportation" means traveling on foot, riding a bicycle, or other means of moving between two locations that do not rely on an external energy source.

~~(33)~~(43) "Office of Administrative Hearings" means the Office described in ORS 183.605 - 183.690 established within the Employment Department to conduct contested case proceedings, and other such duties, on behalf of designated state agencies.

~~(34) "Older Adult" means any person at least 65 years of age.~~

~~(35) "Oregon Homecare Commission" means the commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595 - 410.625.~~

(44) "Office of Inspector General (OIG)" means the office within the United States Department of Health and Human Services (HHS) that is charged with identifying and combating waste, fraud, and abuse.

(45) Oregon Home Care Commission (OHCC) means the commission that was established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595 - 410.625.

~~(4636)~~ "Oregon Project Independence" means the program of in-home services described in OAR chapter 411, division 032.

~~(37) "Personal Support Worker" has the meaning given in OAR 411-375-0010.~~

~~(38) "Preponderance of the Evidence" means that one party's evidence is more convincing than the other party's.~~

(47) "Person-Centered Service Plan (Service Plan)" means the written details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety. The plan is written by the case manager with input and approval from the individual.

(48) "Personal Support Worker" means the worker defined in OAR 411-375-0010.

(49) "Preponderance of the Evidence" means that the factfinder is persuaded that the proponent of the fact has demonstrated that the fact asserted is more likely true than not.

~~(39) "Provide Services as Required" means a homecare worker provides services to a consumer as described in the consumer's service plan.~~

(5040) "Provider" means the person who renders the services.

~~(41) "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.~~

(51) "Provide Services as Required" means a homecare worker provides services to a consumer-employer as described in the consumer-employers service plan.

(52) "Provider Enrollment" means the application and agreement between the Department and a qualified Medicaid provider to deliver services to a Medicaid eligible individual for compensation. The Provider Enrollment

agreement must be renewed at the same time the provider's credentials are renewed.

(5342) "Provider Number" means an identifying number issued to each homecare worker who is enrolled as a provider through the Department.

~~(43) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.~~

~~(44) "Relief Homecare Worker" means a homecare worker who works for a consumer-employer when the consumer-employer's regularly scheduled homecare worker is absent.~~

~~(45) "Representative" or "Consumer-Employer's Representative" means a person authorized by the individual to serve as a representative in connection with the provision of services and supports.~~

~~(46) "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.~~

~~(47) "Self-Management Tasks" means "Instrumental Activities of Daily Living" as defined in this rule.~~

(54) "Relative" means a person who is related to the individual by blood, marriage, or adoption.

(55) "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.

(56) "Service Delivery Office" means the Department or Area Agency on Aging that coordinates the consumer's service plan.

(57) "Service Need" means the assistance an individual requires from another person for those tasks, functions or activities identified in OAR 411-015-0006 and 411-015-0007.

(58) "Service Period" means two specific consecutive workweeks, defined by the Department, for a total of 14 calendar days.

(59) "Shift Services" means those services provided by awake homecare workers, Independent Choices Program employee providers, or contracted in-home care agency provider to an individual who is authorized to receive 16 hours of services during a 24-hour work period.

~~(48) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker possesses and demonstrates the physical, mental, organizational, and emotional skills or abilities necessary to perform services which safely and adequately meet the needs of consumers.~~

(60) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare worker possesses and demonstrates the physical, mental, organizational, and emotional skills or abilities necessary to perform services which safely and adequately meet the needs of consumers as well as the homecare worker provider enrollment standards.

(61) "Spouse" means an individual who is legally married to the individual.

(62) "Substantiated for Committing Abuse" means a homecare worker was found to have committed abuse as defined in OAR chapter 411, division 020; OAR chapter 407, division 045; and ORS 419B.005.

(63) "Tasks" means distinct parts of an activity of daily living as defined in OAR chapter 411, division 015.

(64) "Termination" means a homecare worker's Department issued provider number and enrollment has been terminated in accordance with OAR 411-031-0050.

~~(49) "State Minimum Wage" or "Minimum Wage" means the rate of pay set forth in ORS 653.025.~~

~~(6550)~~ "These Rules" mean the rules in OAR chapter 411, division 031.

~~(6651)~~ "Time Off" means time where a homecare worker is not providing services to a consumer during a normally scheduled work time.

(5267) "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.

~~(53) "Unwelcome Nuisance to the Workplace" includes, but is not limited to, unwelcome guests or pets invited by a homecare worker into a consumer's home, unwelcome behaviors such as smoking, or unwelcome items resulting in the consumer's dissatisfaction or a homecare worker's inattention to the consumer's required service needs.~~

~~(68) "Unwelcome Nuisance to the Workplace" means creating disruption in the individual's home or life and includes, but is not limited to, unwelcome guests, children or pets invited by a homecare worker into a consumer-employers home, unwelcome behaviors such as smoking or vaping, or unwelcome items resulting in the consumer-employers dissatisfaction or a homecare worker's inattention to the consumer's required service needs.~~

~~(54) "Violated the Requirement to Maintain 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 care setting, 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 or care setting.~~

~~(55) "Violates the 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 or OAR chapter 407, division 045.~~

~~(69) "Workday" means 12:00 a.m. through 11:59 p.m.~~

~~(70) "Workweek" means 12:00 a.m. on Sunday through 11:59 p.m. on Saturday.~~

Stat. Auth.: ORS 409.050, 410.070, 410.090, 42 CFR 441.505

Stats. Implemented: ORS 410.010, 410.020, 410.070, 42 CFR 441.505

411-031-0030 Purpose

~~The rules in OAR chapter 411, division 031 establish the standards and procedures governing homecare workers and the fiscal services provided on behalf of the Department or 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 or AAA consumers. In-home services supplement the ability of the Department or AAA consumers to continue to live in their own homes.~~

The rules in OAR chapter 411, division 031 establish the standards and procedures governing homecare workers and the fiscal services provided on behalf of the Department or AAA consumer-employers to homecare workers enrolled in the Consumer-Employed Provider Program. Homecare workers provide Medicaid, Oregon Project Independence and Healthier Oregon funded in-home services to the Department or AAA consumers. In-home services support the ability of the consumer-employers 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

~~The Consumer-Employed Provider Program contains systems and payment structure for consumers to employ care providers to meet their~~

~~assessed ADL and IADL needs. The hourly structure assumes a provider is required for ADLs and IADLs during specific periods. Except as indicated, the criteria in this rule apply to hourly workers called Homecare Workers:~~

The Consumer-Employed Provider Program contains systems and payment structure for consumers to employ care providers to meet their assessed ADL and IADL needs. The structure assumes a provider is required for ADLs and IADLs during specific periods of time. Except as indicated, the criteria in this rule apply to workers called Homecare Workers:

~~(1) EMPLOYMENT RELATIONSHIP. The relationship between a provider and a consumer is that of employee and employer. A homecare worker shall never be a representative (see OAR 411-031-0020), or make service plan related decisions for a consumer-employer for whom the homecare worker currently provides paid services.~~

(1) EMPLOYMENT RELATIONSHIP. The relationship between a provider and a consumer-employer is that of employee and employer. A homecare worker is not permitted to be a representative (see OAR 411-031-0020) or make service plan related decisions for a consumer-employer for whom the homecare worker currently provides paid services.

~~(2) HOMECARE WORKER JOB DESCRIPTIONS. A consumer-employer or consumer-employer's representative 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. Only services and tasks authorized by the Department shall be paid.~~

(2) HOMECARE WORKER JOB DESCRIPTIONS. A consumer-employer or consumer-employer's representative is responsible for creating and maintaining a job description for a potential provider consistent with the services authorized by the consumer's case manager. Only service needs and tasks authorized by the Department shall be paid. The Department does not pay for natural support.

~~(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.~~

(3) HOMECARE WORKER BENEFITS. Benefits are determined and offered by an outside trust. The Department does not provide benefits directly to homecare workers. Homecare workers are not state employees.

~~(4) CONSUMER-EMPLOYER ABSENCES. Services from a homecare worker are not authorized for payment when a consumer-employer is hospitalized or in a facility receiving medical, mental health or substance abuse treatment services. Services from a homecare worker are not authorized for payment when a consumer-employer is traveling without the homecare worker present.~~

(4) CONSUMER-EMPLOYER ABSENCES. Services from a homecare worker must be prior authorized when a consumer-employer is hospitalized. Services from a homecare worker are not authorized when a consumer-employer is receiving treatment in a mental health, substance abuse treatment facility or any licensed 24-hour care setting. Services from a homecare worker are not authorized for payment when a consumer-employer is incarcerated.

~~(5) SELECTION OF HOMECARE WORKER. A consumer-employer or consumer-employer's representative carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The consumer-employer or consumer-employer's representative has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department or AAA office determines whether a potential homecare worker meets the enrollment standards needed to provide services authorized and paid for by the Department.~~

(5) SELECTION OF HOMECARE WORKER. A consumer-employer or consumer-employer's representative carries primary responsibility for locating, interviewing, screening, and hiring their own employees. Subject to Case Manager approval, the consumer-employer or consumer-employer's representative has the right to employ any person who successfully meets the provider enrollment standards described in section (8) of this rule. The Department or AAA office determines whether a

potential homecare worker may be enrolled and paid for by the Department.

(6) EMPLOYMENT AGREEMENT. A consumer-employer or consumer-employer's representative establishes an employer-employee relationship with a person at any time after the homecare workers Employment Eligibility Verification form (Form I-9) from the Department of Homeland Security, U.S. Citizenship and Immigration Services have been completed, identification photocopied, and the homecare worker has received authorization to work from the Department. A homecare worker cannot start work and will not receive payment for services performed until after the Department has verified that a person meets the provider enrollment standards described in section (8) of this rule, has an active provider enrollment number and the Department has notified both the employer and homecare worker in writing that payment by the Department is authorized.

~~(6) EMPLOYMENT AGREEMENT. A consumer-employer or consumer-employer's representative 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 will not be allowed until after 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 or consumer-employer's representative 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 the specific tasks authorized on the task list duties for hourly employees. Termination of the employment relationship and the grounds for termination of employment are determined by a consumer-employer or consumer-employer's representative. A consumer-employer or consumer-employer's representative has the right to terminate an employment relationship with a homecare worker at any time and for any reason.~~

(7) TERMS OF EMPLOYMENT. A consumer-employer or consumer-employer's representative must establish terms of an employment relationship with an employee at the time of hire. The terms of employment

may include work scheduling, absence reporting, and the specific tasks authorized on the employee's task list. Termination of the employment relationship and the grounds for termination of employment are determined by a consumer-employer or consumer-employer's representative. A consumer-employer or consumer-employer's representative 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 and may not work, or claim payment for service unless they meet the following criteria:

~~(A) Maintain a drug-free work place.~~

~~(B) 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 or 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) Demonstrate the skills, knowledge, and ability to perform, or to learn to perform, the required work.~~

~~(D) Possess current U.S. employment authorization that has been verified by the Department or AAA.~~

~~(E) Be 18 years of age or older.~~

~~(F) Complete an orientation as described in section (8)(e) of this rule.~~

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

~~(H) Agree to participate in continuing education training requirements as established by the Oregon Home Care Commission.~~

(A) Agree to maintain a drug-free workplace;

(B) Complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions;

(C) Demonstrate the skills, knowledge, and ability to perform, or to learn to perform, the required work;

(D) Possess current U.S. employment authorization that has been verified by the Department or AAA;

(E) Be 18 years of age or older;

(F) Complete an orientation and pass a competency evaluation per OAR 418-020-0035(6);

(G) Complete Core Training and pass a competency evaluation per OAR 418-020-0035 (6);

(H) Complete continuing education training requirements as established by the Oregon Home Care Commission and participate in trainings by deadlines established per OAR 418-020-0035;

(I) Must be free of CMS or OIG exclusions;

(J) Maintain an active Provider Enrollment Application and Agreement;

(K) Is not an employee of Aging and People with Disabilities, Area Agency on Aging, the Office of Administrative Hearings, Oregon Health Authority Human Services Division, Oregon Department of Human Services Background Check Unit, or the Oregon Home Care Commission may not be authorized to deliver services to a consumer-employer or to a participant of

the independent choices program, as defined in OAR 411-030-0100.

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

~~(b) DENIAL OF PROVIDER ENROLLMENT. The Department or AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when the applicant --~~

~~(A) Has violated the requirement to maintain a drug-free workplace;~~

~~(B) Has an unacceptable background check;~~

~~(C) Demonstrates a lack of 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 and OAR chapter 407, division 045;~~

~~(E) Commits fiscal improprieties;~~

~~(F) Fails to provide services as required;~~

~~(G) Lacks the ability or willingness to maintain consumer-employer confidentiality;~~

~~(H) Introduces an unwelcome nuisance to the workplace;~~

~~(I) Fails to adhere to an established work schedule;~~

~~(J) Has been sanctioned or convicted of a criminal offense related to a public assistance program;~~

~~(K) Fails to perform the duties of a mandatory reporter;~~

~~(L) 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;~~

~~(M) 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; or~~

~~(N) Exerts undue influence over a consumer-employer.~~

(b) DENIAL OF INITIAL APPLICATION OF PROVIDER ENROLLMENT. The Department or AAA may deny an application for provider enrollment in the Consumer-Employed Provider Program when the applicant --

(A) Has violated the requirement to maintain a drug-free workplace;

(B) Has an unacceptable background check;

(C) Does not possess the skills, knowledge and ability to adequately or safely perform the required work;

(D) Was substantiated for committing any form of abuse to include but not limited to child abuse, elder abuse and abuse of a person with a disability;

(E) Commits fiscal improprieties;

(F) Fails to provide the required services in a consumer-employers service plan;

(G) Lacks the ability or willingness to maintain consumer-employer confidentiality;

(H) Introduces an unwelcome nuisance to the workplace;

(I) Fails to adhere to an established work schedule;

(J) Has been sanctioned or convicted of a criminal offense related to a public assistance program;

(K) Fails to perform the duties of a mandatory reporter per ORS 419B.005(s);

(L) 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;

(M) 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;

(N) Exerts undue influence over a consumer-employer;

(O) Previously had a provider number terminated by the Oregon Department of Human Services; Oregon Health Authority or similar agencies of another state within the United States;

(P) Has been excluded by Centers for Medicaid Services to work as a Medicaid provider;

(Q) Fails to meet the orientation and competency evaluation requirements described in chapter 418, division 20 rules; or

(R) Fails to meet the Provider Enrollment Standards in OAR 411-031-0040(8)(a)(A-LM).

(c) INACTIVATED PROVIDER. An Inactivated homecare worker must re-apply to become activated as a homecare worker. This new application means that the homecare worker must complete all initial steps to become a homecare worker. A homecare worker may become inactive when –

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

(B) More than two years have passed since the signature date on the most recent Provider Enrollment Application and Agreement for a homecare worker; or

(C) The homecare worker has requested to be placed on an inactive status.

(de) 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 or 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) Background rechecks are conducted at least every other year from the date a homecare worker is enrolled. The

Department or AAA may conduct a recheck more frequently based on additional information discovered about a homecare worker, such as possible criminal activity, abuse allegations or other allegations.

(E) Homecare workers must inform the Department and their consumer-employer within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crimes under OAR 125-007-0270 and potentially disqualifying conditions under 407-007-0290.

~~(e)~~ RESTRICTED PROVIDER ENROLLMENT.

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

(i) Unless disqualified under OAR 407-007-0275, the Department or 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 or 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.

(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 or AAA.

~~(e) HOMECARE WORKER ORIENTATION. Homecare workers must participate in an orientation arranged through a Department or AAA office. The homecare worker must schedule their orientation within 30 days of provider enrollment in the Consumer-Employed Provider Program. The homecare worker must complete the orientation within~~

~~90 days of provider enrollment or 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 407-007-0320(2)(d)(C);~~

~~(C) The homecare worker informs the Department or 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 or 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.~~

~~(g) ENHANCED HOMECARE WORKER ENROLLMENT. A homecare worker who is certified by the Oregon Home Care Commission to meet the enhanced homecare worker criteria in OAR 411-031-0020(18) may receive payment at the enhanced hourly rate for providing ADL and IADL services as set forth in the Collective Bargaining Agreement when:~~

~~(A) The homecare worker is employed by a consumer whose service plan indicates the need for medically-driven services and supports;~~

~~(B) The consumer's service plan specifically authorizes the homecare worker to provide the medically driven services and supports;~~

~~(C) The homecare worker provides the medically driven services and supports as set forth in the service plan; and~~

~~(D) The homecare worker has successfully completed training requirements for enhanced homecare worker certification as outlined in the Collective Bargaining Agreement.~~

~~(h) EFFECTIVE DATE OF ENHANCED HOMECARE WORKER RATE PAYMENT. A homecare worker may receive the enhanced rate effective the first day of the month following the month in which the homecare worker:~~

~~(A) Meets the enhanced homecare worker certification criteria identified in section (8)(g)(A) through (D) of this rule, and~~

~~(B) Works for a consumer employer who requires medically-driven services and supports.~~

(f) ENHANCED HOMECARE WORKER ELIGIBILITY. A homecare worker who is certified by the Oregon Home Care Commission to meet the enhanced homecare worker criteria in OAR 411-031-0020(22) may receive payment at the enhanced hourly rate for providing ADL and IADL services as set forth in the Collective Bargaining Agreement when:

(A) The homecare worker is employed by a consumer-employer whose service plan indicates the need for medically driven services and supports;

(B) The consumer-employer's service plan specifically authorizes the homecare worker to provide the medically driven services and supports;

(C) The homecare worker provides the medically driven services and supports as set forth in the service plan; and

(D) The homecare worker has successfully completed training requirements for enhanced homecare worker certification as outlined in the Collective Bargaining Agreement and OAR 418-020-0030(3)(c).

(g) EFFECTIVE DATE OF ENHANCED HOMECARE WORKER RATE PAYMENT. A homecare worker may receive the enhanced rate the beginning of the pay cycle after the Oregon Home Care Commission and Oregon Department of Human Services ensures all criteria is met which includes in which the homecare worker:

(A) Meetings the enhanced homecare worker certification criteria identified in section (8)(fg)(A) through (D) of this rule, and

(B) Workings for a consumer-employer who requires medically driven services and supports.

(h) EXCEPTIONAL HOMECARE WORKER ELIGIBILITY. A homecare worker who is certified by the Oregon Home Care Commission to meet the exceptional homecare worker criteria in OAR 411-031-0020(27) may receive payment at the exceptional hourly rate for providing ADL and IADL services as set forth in the Collective Bargaining Agreement when:

(A) The homecare worker is employed by a consumer-employer whose service plan indicates the need for services and supports defined in service rules, 411-015-0006 and 0007;

(B) The consumer-employer's service plan specifically authorizes the homecare worker to provide the necessary services and supports;

(C) The homecare worker provides the necessary services and supports as set forth in the service plan; and

(D) The homecare worker has successfully completed training requirements for exceptional homecare worker

certification as outlined in the Collective Bargaining Agreement and OAR 418-020-0030(3)(c).

(i) EFFECTIVE DATE OF EXCEPTIONAL HOMECARE WORKER RATE PAYMENT. A homecare worker may receive the exceptional rate effective at the beginning of the pay cycle after the Oregon Home Care Commission and Oregon Department of Human Services ensures all criteria is met which includes:

(A) Meeting the exceptional homecare worker certification criteria identified in section (8)(f)(A) through (D) of this rule; and

(B) Working for a consumer-employer who requires the defined services and supports.

(9) TIME OFF.

(a) A homecare worker requesting time off must make a request to the consumer-employer or consumer-employer's representative.

(b) The decision to approve or deny a homecare worker's request to schedule time off is made by the homecare worker's consumer-employer or the consumer-employer's representative.

(c) A homecare worker who has been approved to take time off by the consumer-employer or consumer-employer's representative must notify the consumer-employer's APD or AAA case manager before taking time off.

(d) When a homecare worker schedules time off, the APD or AAA office will make reductions to the homecare worker's authorized hours commensurate with the number of hours the homecare worker plans to take as scheduled time off.

~~(e) Under no circumstances will a homecare worker be required to secure a relief homecare worker or ensure that services are provided to a consumer-employer during the homecare worker's scheduled time off.~~

~~(f) When a homecare worker plans to provide services as a relief homecare worker, the relief homecare worker must contact the consumer-employer's APD or AAA case manager for authorization prior to providing relief services for the scheduled relief care hours.~~

(e) It is the exclusive responsibility of the consumer-employer or their representative to ensure that services are provided during the homecare worker's scheduled time off.

(f) Under no circumstances will a homecare worker be required to secure an alternative homecare worker or ensure that services are provided to a consumer-employer during the homecare worker's scheduled time off.

(g) When a consumer employer or consumer-employer representative finds another homecare worker to provide services to cover another homecare worker's time off, the consumer-employer or the consumer-employer representative must contact the consumer-employer's APD or AAA case manager to arrange for the authorization prior to the homecare worker providing services for the scheduled hours. An alternative homecare worker should not work without authorization from the case manager.

~~(10) DEPARTMENT FISCAL AND ACCOUNTABILITY RESPONSIBILITY.~~

(10) FISCAL ACCOUNTABILITY.

~~(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 home and community-based services rendered. A homecare worker must not demand or receive additional payment for 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 the Department is prohibited.~~

~~(b) TIMELY SUBMISSION OF CLAIMS. In accordance with the Collective Bargaining Agreement, and federal Medicaid regulations, all claims for services must be submitted within 365 days from the first date of service listed on the claim.~~

(a) DIRECT SERVICE PAYMENTS. The Department makes payment to a homecare worker on behalf of a consumer-employer for all in-home services. The payment is considered full payment for the services rendered. A homecare worker must not demand nor receive additional payment for any services from a consumer-employer or any other source. Additional payment to homecare workers for the same services covered by the Department is prohibited. Homecare workers will use Electronic Visit Verification (EVV) through the Oregon Provider Time Capture Direct Care Innovations (OR PTC DCI) system for real time recording of hours and tasks provided to a consumer-employer during the workday, workweek and service periods.

(b) TIMELY SUBMISSION OF CLAIMS. In accordance with federal Medicaid regulations and the Collective Bargaining Agreement, all claims for services must be submitted within 365 days from the first date of service listed on the claim. All claims must be compliant with EVV for real time recording of hours worked during the workday, workweek and service periods.

(c) A timely submission of a claim is one that is EVV compliant through these three methods:

(A) OR PTC DCI Mobile Application

(B) OR PTC DCI Landline

(C) OR PTC DCI FOB (fixed object)

(d) If a homecare worker needs to edit a time entry after it has been entered, the time entry is no longer considered EVV compliant.

(e) Entering time into the OR PTC DCI web portal, without a FOB token/code is not considered EVV compliant.

(f) 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.

(g~~e~~) **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.

(he) 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 or AAA's local office. The Department applies standard income tax withholding practices in accordance with 26 CFR 31.

(C) The Department cannot provide advice or guidance on any tax related issue.

(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 transportation that is prior-authorized in a consumer-employer's service plan. If unscheduled transportation needs arise during non-office hours, the homecare worker must explain the need for the transportation to the consumer-employer's case manager, and the transportation must be approved by the consumer-employer's case manager before reimbursement. The homecare worker must possess a valid license to drive and current, valid motor vehicle insurance and meet all homecare worker duties under Article 14 Section 9 of the Collective Bargaining Agreement.

~~(b) Medical transportation through the Oregon Health Authority (OHA), volunteer transportation, and other transportation services included in a consumer's service plan is considered a prior resource.~~

(b) Medical transportation through the Oregon Health Authority (OHA), volunteer transportation, and other transportation services included in a consumer-employer'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 OHA or community transportation, except as may be covered by workers' compensation.

(d) Except as set forth in (a) of this section, homecare workers shall not receive any mileage reimbursement.

(e) Time performing community transportation services are part of the authorized hours and must be claimed in the EVV system.

(12) PAYMENT FOR TRAVEL TIME.

(a) A homecare worker who travels directly between the home or care setting of one consumer-employer and the home or care setting of another consumer-employer will be paid at the base pay rate for the time spent traveling directly between the homes or care settings. For the purposes of this rule, "Travel Directly" means a homecare worker's travel from one consumer-employer's home or care setting to another consumer-employer's home or care setting is not interrupted other than brief stops to:

~~(A) Eat a meal;~~

~~(AB) Purchase fuel for the vehicle being used for the travel;~~

~~(BC) Use a restroom; or~~

~~(CD) Change buses, trains or other modes of public transit.~~

~~(b) The total time spent traveling directly between all of a homecare worker's consumer-employers may not exceed 10 percent of the total work time the homecare worker claims during a pay period. Unless otherwise specified in statute or rule, the amount of time a homecare~~

~~worker may take to travel directly from one consumer-employer's home or care setting to another consumer-employer's home or care setting may not exceed one hour unless an exception has been granted by the Department.~~

(b) The total time spent traveling directly between all of a homecare worker's consumer-employers may not exceed 10 percent of the total work time the homecare worker claims during a pay period.

(c) When a homecare worker uses the homecare worker's own vehicle to travel directly between two consumer-employers the Department shall determine the time needed for a homecare worker to travel directly based on a time estimate published in a common, publicly-available, web-based mapping program. The homecare worker must possess and provide proof of a valid license to drive and current, valid motor vehicle insurance.

~~(d) When a homecare worker uses public transportation to travel directly, payment for travel time shall be based on the public transportation providers' scheduled pick-up and drop-off times for the stops nearest the consumer-employers' homes or care settings.~~

(d) When a homecare worker uses public transportation to travel directly between two consumer-employers, payment for travel time shall be based on the homecare workers actual time in transit or the public transportation providers' scheduled pick-up and drop-off times for the stops nearest the consumer-employers' homes or care settings.

(e) When a homecare worker uses non-motorized transportation to travel directly, payment for travel time shall be based on a time estimate published in a common, publicly-available, web-based mapping program.

(f) Claims for travel time exceeding the Department's time estimates may require a written explanation from the homecare worker before the Department pays the claim. Time claimed in excess of the Department's time estimate may not be paid.

(g) A homecare worker shall not be paid for time spent in transit to or from the homecare worker's own residence.

(h) The Department is not responsible for vehicle damage or personal injury sustained when a homecare worker uses his or her own personal motor vehicle to travel between the homes or care settings of consumer-employers, except as may be covered by workers' compensation.

(i) Homecare workers shall not receive any mileage reimbursement for traveling between the homes or care settings of consumer-employers.

~~(13) BENEFITS~~ (13) WORKERS' COMPENSATION AND UNEMPLOYMENT INSURANCE.

Workers' compensation and unemployment are available to eligible homecare workers as described in the Collective Bargaining Agreement. In order to receive homecare worker workers' compensation, 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.

(14) 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. For this rule, "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; ~~or:~~

(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

(1) EXCLUSIONS TO APPEAL AND HEARING RIGHTS. The following are excluded from the administrative review and administrative 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 who have not worked in the last 12 months. The provider enrollment may become inactivated. To reactivate the provider enrollment number, the homecare worker must complete the application and enrollment process set forth in OAR 411-031-0040(8)(a).~~

~~(c) Homecare workers who fail to complete a background recheck.~~

~~(d) Homecare workers who are denied a provider enrollment number at the time of application.~~

~~(e) Homecare workers who are not currently providing services to any consumers and 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.~~

(a) Homecare workers who failed to complete a background recheck;

(b) Homecare workers who are not currently providing services to any consumers and whose provider enrollment is inactivated while an Adult Protective Services investigation is being completed;

(c) Homecare workers who have been excluded by Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, or any other federal programs;

(d) Terminations or renewal denials 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. Homecare workers receive notices from the background check unit and will not receive notices from the Department;

(e) Homecare workers who were inactivated based on OAR 411-031-0040(8)(b)(c); or

(f) Homecare workers who are denied a provider enrollment number at the time of initial application.

(2) REFERRAL OF POTENTIAL VIOLATIONS TO APD CENTRAL OFFICE. When an APD or AAA office has reason to believe a homecare worker has committed one or more of the violations listed in section (3) of this rule, the APD or AAA office shall refer the alleged violation to APD central office using the Department-approved referral form. The homecare worker who allegedly committed the violation shall be provided a copy of the completed referral form.

~~(3) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. APD central office may terminate a homecare worker's provider enrollment when a homecare worker --~~

~~(a) Has violated the requirement to maintain a drug-free work place;~~

~~(b) Has an unacceptable background check;~~

~~(c) Demonstrates a lack of 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 and OAR chapter 407, division 045;~~

~~(e) Commits fiscal improprieties;~~

~~(f) Fails to provide services as required;~~

~~(g) Demonstrates a lack of the ability or willingness to maintain consumer-employer confidentiality;~~

~~(h) Introduces an unwelcome nuisance to the workplace;~~

~~(i) Fails to adhere to an established work schedule;~~

~~(j) Has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under any public assistance program;~~

~~(k) Fails to perform the duties of a mandatory reporter;~~

~~(l) 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;~~

~~(m) 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;~~

~~(n) Works for a consumer employer or claims payment for working while the homecare worker does not have a valid, current provider number;~~

~~(o) Fails to inform the Department and their consumer employer within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crime listed in OAR 125-007-0270; or~~

~~(p) Exerts undue influence over a consumer employer.~~

~~(q) Fails to comply with a background check requested by the Department~~

(3) VIOLATIONS RESULTING IN DENIAL OF RENEWAL, PROPOSED TERMINATION OR IMMEDIATE SUPENSION OF PROVIDER ENROLLMENT. APD central office may terminate and immediately suspend a homecare worker's provider enrollment when a homecare worker --

(a) Has violated the requirement to maintain a drug-free workplace;

(b) Has an unacceptable background check;

(c) Demonstrates a lack of the skills, knowledge, and ability to adequately or safely perform the required work which includes the inability to comply with Electronic Visit Verification through the Oregon Provider Time Capture Direct Care Innovations system in OAR 411-031-0040(10)(b) and (c);

(d) Is substantiated for committing any type of abuse including but not limited to child abuse, elder abuse or abuse of a person with a disability;

(e) Commits fiscal improprieties;

(f) Fails to provide services as required which includes providing the required service needs of a consumer-employer;

(g) Demonstrates a lack of the ability or willingness to maintain consumer-employer confidentiality;

(h) Creates an unwelcome nuisance to the workplace;

(i) Fails to adhere to an established work schedule;

(j) Has been sanctioned or convicted of a criminal offense related to that individual's involvement in any program established under any public assistance program;

(k) Fails to perform the duties of a Mandatory Abuse Reporter. Homecare workers are mandatory abuse reporters and are required by state abuse statutes to report alleged abuse, ORS 419B.005(s);

(l) 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;

(m) 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;

(n) Fails to inform the Department and their consumer-employer within 14 days of being arrested, cited, or convicted of any potentially disqualifying crime listed in OAR 125-007-0270;

(o) Exerts undue influence over a consumer-employer;

(p) Falsifies information on an application or background check;

(q) ~~Is~~The provider is- terminated as a Personal Support Worker through the Office of Developmental Disabilities Services or Oregon Health Authority Health Systems Division and has an active Homecare Worker provider number; APD reserves the right to

terminate the HCW's provider number based on the other agencies termination;

(r) HCW Charges a consumer- employer or relative or representative of the consumer-employer, for any services regardless of if they are paid by the Department or by personal funds;

(s) Fails to meet the mandatory training and competency evaluation requirements in OAR 418-020-0035;

(t) Has had a provider number terminated by another state within the United States;

(u) Has been excluded by the Centers for Medicare and Medicaid Services to work as a Medicaid provider;

(v) Is an employee of Aging and People with Disabilities, Area Agency on Aging, the Office of Administrative Hearings, Oregon Health Authority Human Services Division, Oregon Department of Human Services Background Check Unit, the Oregon Home Care Commission, or to a participant of the independent choices program, as defined in OAR 411-030-0100.

(w) Fails to complete a background check when requested by the Department;

(x) Fails to complete training as required based on a previous Administrative Review of the homecare worker's provider enrollment number;

(y) Fails to adhere to the hourly cap after warning has been issued by the Department; or

(z) Knowingly engages in activities that may result in exposure of an individual to the Coronavirus (COVID-19) or other communicable diseases;

(A) Activities include:

(i) Failure to take reasonable measures to prevent transmission of COVID-19 or other communicable diseases as directed by a health care provider or the Local Public Health Authority (LPHA).

(ii) Having in-person contact with the individual with whom they do not reside while the homecare worker has been:

(I) Exposed or diagnosed with COVID-19 or other communicable diseases by a health care provider or the LPHA;

(II) Advised to self-quarantine by their health care provider or by LPHA;

(III) Subject to a quarantine or isolation order; or

(IV) Symptomatic as defined by Centers for Disease Control and Prevention (CDC).

(B) The homecare worker provider enrollment may be immediately terminated in the following circumstances:

(i) Returns to direct consumer contact sooner than 14 calendar days after the homecare workers has been:

(I) Diagnosed with COVID-19, presumed to have COVID-19 or other communicable diseases by a health care provider or the LPHA;

(II) Advised by a health care provider to self-quarantine; or

(III) Subject to a quarantine or isolation order by a health care provider or the LPHA.

(ii) Returns to direct consumer contact sooner than 72 hours after the resolution of COVID-19 or other communicable disease symptom(s).

~~(4) ADMINISTRATIVE REVIEW. Except in instances where an alleged violation presents imminent danger to present or future consumers, upon receiving notification and evidence of an alleged violation listed in section (3)(a) or (3)(c) through (3)(q) of this rule, APD central office shall complete an administrative review within 30 days.~~

(4) ADMINISTRATIVE REVIEW PROCESS FOR VIOLATIONS RESULTING IN DENIALS OF RENEWALS AND PROPOSED TERMINATION OF PROVIDER ENROLLMENT NUMBERS. Except in instances where an alleged violation presents imminent threat to the health, safety, or welfare of any individual resulting in an immediate suspension, upon receiving notification and evidence of an alleged violation listed in section (3) (a) through (3)(z) of this rule, APD central office shall complete an administrative review within 30 days.

- (a) The administrative review provides an opportunity for APD central office to review the local office's referral and decide whether to terminate a homecare worker's provider enrollment.
- (b) The administrative review may include the provision of new evidence, either by the homecare worker or by the APD or AAA office, which APD central office may consider in reaching its decision.
- (c) As a part of the administrative review, the homecare worker and a representative may take part in an administrative review conference with APD central office.
- (d) After an administrative review conference, APD central office will conclude the administrative review within 10-business days. The administrative review process is concluded when APD central office sends the homecare worker a written notice. If, based on the administrative review, APD central office determines a homecare worker did not violate one or more of the subsections of section (3) of this rule, APD central office shall send a written notice of this determination to the APD or AAA office and to the homecare worker.
- (e) Upon agreement of both parties, an extension of the 10-business day deadline may occur.

~~(5) NOTICE OF PROPOSED TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When APD central office proposes to terminate a homecare worker's provider enrollment, the homecare worker shall be provided with a written Notice of Proposed Termination of Homecare Worker Provider Enrollment. The notice must:~~

~~(a) Include a short and plain explanation of the reason for the proposed termination;~~

~~(b) Indicate the date the Notice of Proposed Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;~~

~~(c) Cite the rules supporting the decision to issue the Notice of Proposed Termination of Homecare Worker Provider Enrollment;~~

~~(d) List the effective date of the proposed termination; and~~

~~(e) Inform the homecare worker of the homecare worker's appeal rights, including:~~

~~(A) The right to legal representation;~~

~~(B) How to request a contested case hearing; and~~

~~(C) The right to continue working until a final order resolves the contested case.~~

~~(f) For terminations based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.~~

(5) NOTICE OF PROPOSED DENIAL OF RENEWAL ENROLLMENT NUMBER. When APD central office proposes to deny a homecare worker the ability to renew a provider enrollment number, the homecare worker shall be provided with a written Notice of Proposed Denial of Renewal of Provider Enrollment Number. The notice must:

- (a) Include a short and plain explanation of the reason for the proposed denial of renewal;
- (b) Indicate the date the Notice of Proposed denial of renewal of Homecare Worker Provider Enrollment was sent to the homecare worker;
- (c) Cite the rules supporting the decision to issue the Notice of Proposed denial of renewal of Homecare Worker Provider Enrollment;
- (d) List the effective date of the proposed denial of a homecare workers ability to renew a provider number; and
- (e) Inform the homecare worker of the homecare worker's appeal rights, including:
 - (A) The right to legal representation;
 - (B) How to request a contested case hearing; and
 - (C) The right to continue working until a final order resolves the contested case unless their provider number has become inactive for reasons listed in OAR 411-031-0040(8)(c).
- (f) For denials based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.

~~(6) NOTICE OF EMERGENCY TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When an alleged violation presents imminent danger to current or future consumers, APD central office may issue a Notice of Emergency Termination of Homecare Worker Provider Enrollment prior to the completion of an administrative review. A Notice of Emergency Termination of Homecare Worker Provider Enrollment must:~~

- ~~(a) Include a short and plain explanation of the reason for the emergency termination;~~

~~(b) Indicate the date the Notice of Emergency Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;~~

~~(c) Cite the rules that support APD central office's decision to issue the Notice of Emergency Termination of Homecare Worker Provider Enrollment;~~

~~(d) List the effective date of the Notice of Emergency Termination of Homecare Worker Provider Enrollment; and~~

~~(e) Inform the homecare worker of the homecare worker's appeal rights, including:~~

~~(A) The right to legal representation;~~

~~(B) How to request a contested case hearing; and~~

~~(C) The right to take part in an administrative review before requesting a contested case hearing.~~

(6) NOTICE OF PROPOSED TERMINATION OF HOMECARE WORKER PROVIDER ENROLLMENT. When APD central office proposes to terminate a homecare worker's provider enrollment, the homecare worker shall be provided with a written Notice of Proposed Termination of the Homecare Worker's Provider Enrollment. The notice must:

(a) Include a short and plain explanation of the reason for the proposed termination;

(b) Indicate the date the Notice of Proposed Termination of Homecare Worker Provider Enrollment was sent to the homecare worker;

(c) Cite the rules that support APD central office's decision to issue the Notice of Proposed Termination of Homecare Worker Provider Enrollment;

(d) List the effective date of the Notice of Proposed Termination of Homecare Worker Provider Enrollment; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to legal representation;

(B) How to request a contested case hearing; and

(C) The right to continue working until a final order resolves the contested case.

(f) For terminations based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.

(7) NOTICE OF IMMEDIATE SUSPENSION OF HOMECARE WORKER PROVIDER ENROLLMENT. APD central office shall issue a Notice of Immediate Suspension of Homecare Worker Provider Enrollment if an immediate threat to the health, safety or welfare of any individual exists. A Notice and Order of Immediate Suspension of Homecare Worker Provider Enrollment must:

(a) Include a short and plain explanation of the reason for the immediate suspension;

(b) Indicate the date the Notice and Order of Immediate Suspension of Homecare Worker Provider Enrollment was served on the homecare worker and the date of the Notice;

(c) Cite the rules that support APD central office's decision to issue the Notice and Order of Immediate Suspension of Homecare Worker Provider Enrollment;

(d) List the effective date of the Notice and Order of Immediate Suspension of Homecare Worker Provider Enrollment; and

(e) Inform the homecare worker of the homecare worker's appeal rights, including:

(A) The right to legal representation;

(B) How to request a contested case hearing; and

(C) The homecare worker has a right to a hearing to be scheduled as soon as practicable to contest the immediate suspension order.

(D) If no hearing request is postmarked within 90 days of the postmarked date of the Notice and Order of Immediate Suspension the homecare worker is deemed to have waived the right to a contested case hearing on the Notice and Order of Immediate Suspension.

(f) For terminations based on substantiated protective service allegations, complainants, witnesses, the name of the alleged victim and protected health information are not to be disclosed in or with the notice.

~~(7) ADMINISTRATIVE HEARINGS. If APD central office sends a homecare worker a Notice of Proposed Termination of Homecare Worker Provider Enrollment or an Emergency Termination of Homecare Worker Provider Enrollment, the homecare worker may complete a request for an administrative hearing.~~

(8) CONTESTED CASE HEARINGS. A homecare worker sent a Notice of Denial of Renewal Enrollment, Notice of Proposed Termination of Homecare Worker Provider Enrollment or an Immediate Suspension of Homecare Worker Provider Enrollment has a right to request a contested case hearing pursuant to ORS 183.

(a) The homecare worker's request for an administrative hearing must:

(A) Be in writing;

~~(B) Be postmarked no later than 14 days after the date of the Notice of Proposed Termination of Homecare Worker Provider Enrollment or Emergency Termination of Homecare Worker Provider Enrollment was sent; and~~

~~(C) Specify the issues or decisions being appealed and the reasons for the appeal.~~

(B) Be postmarked or emailed no later than 60 days from the date of the Notice of Proposed Denial of Renewal Provider Enrollment Number.

(C) Be postmarked or emailed no later than 60 days from the date of the Notice of Proposed Termination of Homecare Worker Provider Enrollment.

(D) Be postmarked or emailed no later than 90 days from the date the Notice and Order of Immediate Suspension of Homecare Worker Provider Enrollment was sent; and

(E) Specify the issues or decisions being contested.

(b) The Department shall refer the homecare worker's administrative hearing request to the Office of Administrative Hearings as described in OAR chapter 137, division 003.

(c) When the Department refers an administrative hearing request, under these rules, to the Office of Administrative Hearings, the Department shall indicate on the referral whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(d) A homecare worker who completes an administrative hearing request may take part in an informal conference with a Department hearing representative before the administrative hearing.

~~(e) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the issue of Department's decision to terminate the homecare worker's provider enrollment.~~

(e) No additional hearing rights have been granted to homecare workers by this rule other than the right to a hearing on the Notice of Department's proposed denial of re-enrollment, proposed termination

of provider enrollment or immediate suspension of the homecare worker's provider enrollment number.

~~(8) TERMINATION IF NO ADMINISTRATIVE HEARING REQUEST FILED.~~

~~If a homecare worker is sent a Notice of Proposed Termination of Provider Enrollment or a Notice of Emergency Termination of Provider Enrollment and does not request an administrative hearing within 14 days of the date outlined in the Notice, APD central office shall send the homecare worker a Final Order by Default in accordance with OAR 137-003-0670.~~

(9) TERMINATION IF NO CONTESTED CASE HEARING REQUEST FILED.

(a) When a homecare worker is sent a Notice of Proposed Denial of Renewal Provider Enrollment and does not request a contested case hearing postmarked or emailed within 60 days from the date of the Notice of Proposed Denial of Renewal Provider Enrollment the provider enrollment will be terminated. APD central office will send the homecare worker a Final Order by Default in accordance with OAR 137-003-0670.

(b) When a homecare worker is sent a Notice of Proposed Termination of Provider Enrollment and the homecare worker does not request a contested case hearing postmarked or emailed within 60 days from the date of the Notice of Proposed Termination of Provider Enrollment, the homecare worker's provider enrollment will be terminated. APD central office will send the homecare worker a Final Order by Default in accordance with OAR 137-003-0670.

(c) When a homecare worker is sent a Notice and Order of Immediate Suspension of Provider Enrollment and the homecare worker does not request a contested case hearing postmarked or emailed within 90 days from the date on the Notice and Order of Immediate Suspension, the Notice and Order of Immediate Suspension of Provider Enrollment becomes the final order by default.

(10) PAYMENT SUSPENSION DUE TO FRAUD:

(a) When the Department has determined that there is a credible allegation of fraud, the Department must suspend provider payments pursuant to federal law under 42 CFR 455.23.

(b) The suspension of provider payments will remain in effect until such time as either APD or a prosecuting authority has determined that there is insufficient evidence of any alleged fraud, or any legal proceedings related to alleged fraud are completed.

(c) If it is determined that there is insufficient evidence of alleged fraud, or no legal proceedings are filed, or it has been determined that the HCW is exonerated of any wrongdoing after any legal proceedings have completed, the provider payments will resume.

(d) No back payments will be made for the time the payments were suspended.

(e) If a homecare worker is convicted, payments are permanently suspended.

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