

TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION
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<u>Department of Human Services, Aging and People with Disabilities (APD)</u>		<u>411</u>
Agency and Division Name	Administrative Rules Chapter Number	
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FILING CAPTION

APD: Termination of Homecare Workers Provider Enrollment Numbers (COVID-19)

Agency Approved Date: [1-12-2021]

Effective Date: [1-13-2021] through [7-11-2021]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

AMEND:

411-031-0050

RULE SUMMARY:

Due to the Coronavirus (COVID-19) state of emergency, the Oregon Department of Human Services, Aging and People with Disabilities Program (APD) is immediately amending OAR chapter 411, division 31.

411-031-0050 – Adds language to specify that homecare workers may not knowingly engage in activities that might result in exposing a consumer to COVID-19. It also specifies the circumstances under which the Department may terminate the provider number of a homecare worker who fails to take reasonable precautions to prevent the transmission of COVID-19.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

APD needs to immediately amend OAR 411-031-0050 to allow APD to immediately terminate the provider number of a homecare worker who knowingly engages in activities that may result in exposure of an individual to COVID-19. APD needs to file this change to protect vulnerable individuals receiving services during the COVID-19 pandemic.

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, division 031 will result in serious prejudice to the public interest, the Commission, and APD consumers. These rules need to be adopted promptly so that APD can immediately terminate a provider number of a homecare worker who knowingly engages in activities that may result in exposure of an individual to COVID-19.

Documents Relied Upon, and where they are available:

1. Governor's Executive Order 20-03, Declaration of Emergency Due to Coronavirus available at:

https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf

2. Letter of Agreement for Expanded Leave (COVID-19) between the Oregon Home Care Commission and the SEIU Local 503, OPEU.

<https://seiu503.org/member/homecare/letters-of-agreement/>

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities 1-12-2021

Signature

Date

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

**CHAPTER 411
DIVISION 31**

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

411-031-0050 Termination, Administrative Review, and Hearing Rights
(Temporary effective 1/13/2021 through 7/11/2021)

(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.

(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

(r) Knowingly engages in activities that may result in exposure of an individual to the Coronavirus (COVID-19).

(A) Activities include:

(i) Failure to take reasonable measures to prevent transmission of COVID-19 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:

(I) Exposed or diagnosed with COVID-19 by a health care provider or the Local Public Health Authority (LPHA);

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

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

(IV) Symptomatic as described in subsection (B)(ii) of this section.

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

(i) Returns to direct consumer contact sooner than 14 calendar days after a provider has been:

(I) Diagnosed with COVID-19 or presumed to have COVID-19 by a health care provider or the Local Public Health Authority (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 Local Public Health Authority (LPHA).

(ii) Returns to direct consumer contact sooner than 72 hours after experiencing symptom of COVID-19 identified by the Centers for Disease and Control and Prevent (CDC).

(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.

(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.

(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.

(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.

(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) 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.

(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.

Stat. Auth.: ORS 409.050, 410.070, 410.090

Stats. Implemented: ORS 410.070