OREGON 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

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411-031-0020 Definitions *(Amended 03/01/2023)*

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

(1) "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 OAR chapter 418, Division 020.

(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) "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.

(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) "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-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.

(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.

(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.

(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.

(31) "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.

(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.

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

(33) "In-Home Services" means 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)" means 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.

(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.

(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.

(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.

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

(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.

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

(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.

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

(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.

(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.

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

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

(67) "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.

(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.

(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 *(Amended 03/01/2023)*

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 *(Amended 02/01/2024)*

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-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 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 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 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 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.

(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) 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 Health Systems Division, Oregon Department of Human Services Background Check Unit, Oregon Eligibility Partnership (OEP), Oregon Department of Human Services Self Sufficiency Program (SSP), the Oregon Home Care Commission, or a provider 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 INITITAL 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 OAR chapter 418, division 20 rules; or

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

(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.

(d) 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, 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 OAR 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.

(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:

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

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

(h) EXCEPTIONAL HOMECARE WORKER ELIGIBLITY. 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 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) 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) FISCAL ACCOUNTABILITY.

(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) 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.

(h) 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 15 Section 6 of the Collective Bargaining Agreement.

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

(B) Use a restroom; or

(C) 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.

(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 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) 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
(Amended 02/01/2024)

(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) 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 DENIAL OF RENEWAL, PROPOSED TERMINATION OR IMMEDIATE SUPSENSION 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 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) 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 Health Systems Division, Oregon Department of Human Services Background Check Unit, Oregon Eligibility Partnership (OEP), Oregon Department of Human Services Self Sufficiency Program (SSP), the Oregon Home Care Commission, or a provider 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 PROCESS FOR VIOLATIONS RESULTING IN DENIALS OF RENEWALS AND PROPOSED TERMINATION OFPROVIDER 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 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 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.

(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 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 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.

(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