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**TEMPORARY ADMINISTRATIVE ORDER**  
INCLUDING STATEMENT OF NEED & JUSTIFICATION

**DMAP 70-2022**

CHAPTER 410

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

**FILED**

08/16/2022 4:54 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE  
& LEGISLATIVE COUNSEL

FILING CAPTION: Identifies When A Personal Care Attendant May Be Terminated For Also Being A State Employee

EFFECTIVE DATE: 08/31/2022 THROUGH 02/26/2023

AGENCY APPROVED DATE: 08/15/2022

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Filed By:

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NEED FOR THE RULE(S):

The Collective Bargaining Agreement (CBA) between the State and SEUI 503 includes a letter of agreement where the state agrees to conduct a public rulemaking process that will define when a State Employee or case management entity employee cannot also be a Provider. Provider includes Personal Care Attendants.

JUSTIFICATION OF TEMPORARY FILING:

- (1) If the agency does not amend this rule by 8/31/2022 SEUI 503 may choose to file a grievance against OHA for not complying with the LOA.
- (2) PCA providers, PCA eligible consumers, Oregon Health Authority
- (3) Failure to file the rule amendment by August 31, 2022 would mean OHA is in violation of the collective bargaining agreement with SEIU 503 and could lead to an unfair labor practice complaint brought against the agency.
- (4) OHA would not be in violation of the collective bargaining agreement with SEIU if the rule is filed temporarily by August 31, 2022.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

<https://www.oregon.gov/dhs/SENIORS-DISABILITIES/HCC/PSW-HCW/Documents/2021-2023-SEIU-OHCC-Contract.pdf>

AMEND: 410-172-0820

RULE SUMMARY: This rule describes scenarios in which a personal care attendants Medicaid provider enrollment may be terminated. The amendment will describe in more detail when termination could occur if the PCA is found to also be a state employee or employee of a contracted entity responsible for assessment or authorization of services.

CHANGES TO RULE:

410-172-0820

Provider Enrollment Termination ¶¶

(1) The Authority may take action, including denial, suspension or termination, on a personal care attendant's provider enrollment or re-enrollment, and the provider number as described in OAR Chapter 410 Division 120. The termination, suspension, and appeal rights for Personal Care Attendants are described in OAR 410-120-1560 through 410-120-1600.¶

(2) Immediate termination of a PCA will be determined by the Division based on reasonable cause to believe there is an imminent danger to current or future consumers. If there is good cause to believe that an individual's life, physical, emotional, or financial well-being is at risk, the Division will issue a Notification of Immediate Sanction to the PCA that may result in termination and prepare any necessary documents to support the decision should the PCA requests a hearing.¶

(3) The Authority may deny or terminate a PCA provider enrollment and provider number when the PCA:¶

(a) Has been appointed the representative of an individual they are employed by or found to be a spouse or legal representative of the individual they are employed by;¶

(b) Fails to obtain a background check as requested by the Authority or has a background check at any time that results in an adverse fitness determination pursuant to OAR chapter 943, division 007;¶

(c) Lacks the skills, knowledge, or ability to perform the required work as described in these rules and OAR chapter 418, division, 020;¶

(d) Forged or otherwise falsified one or more credentials, education or training documentation, or other records submitted to Authority to obtain approval as a qualified provider;¶

(e) Violates the protective service and abuse rules described in OAR Chapter 413, division 15, OAR chapter 411, division 20, and OAR chapter 407, division 45;¶

(f) Commits one or many Fiscal Improprieties as defined in OAR 410-172-075576, one time or as a pattern of behavior;¶

(g) Fails to provide the authorized personal care services. Coerces or colludes with the individual to sign or approve false, blank or inaccurate timesheets or document false or inaccurate information in the EVV system;¶

(h) Fails to arrive and depart work at a date and time documented in the work schedule authorized by the individual;¶

(i) Fails to maintain a drug-free workplace;¶

(j) Has been or is currently excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General from participation in Medicaid, Medicare, or any other state or federal health care programs;¶

(k) Has been sanctioned or convicted of a felony or misdemeanor related to a crime, or violation of Title XVIII, XIX, or XX of the Social Security Act, or related state laws;¶

(L) Fails to maintain confidentiality, security and privacy of protected health information, as required by HIPAA and State privacy laws;¶

(m) Exerts undue influence, including coercion, over an individual or their consumer-employer representative;¶

(n) Introduces or creates an unwelcome nuisance to the workplace as determined by the individual;¶

(o) Fails to perform the duties of a mandatory reporter in ORS 419B.010 and ORS 430.765;¶

(p) Fails to inform the Division 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;¶

(q) fails to meet one or more of the mandatory training and competency evaluation requirements described in OAR 418-020-0035;¶

(r) Is an employee with the State of Oregon of Oregon Health Authority's Health Systems Division, OHA's Independent and Qualified Agent, the Oregon Home Care Commission, or any other entity with the ability to assess for or authorize personal care services for the BH PCA Program;¶

(s) Fails to adhere to the hourly cap described in the CBA or to the service limitations in the BH PCA authorization, service plan and State Plan Amendment;¶

(t) Knowingly engages in activities that may pose risks to the health and safety of an eligible individual, or others in the community, including exposure to an infectious disease;¶

(u) Engages in discrimination of others based on race, national origin, color, sex, gender identity, sexual orientation, age, religion, physical, intellectual, developmental, or mental disability, military status, or marital or family status and as described in OAR 410-120-1380(1)(c)(A);¶

(v) Offers medically unnecessary services or more services than necessary to the eligible individual;¶

(w) Knowingly submits or causes to be submitted information or documents that contain inaccurate, misleading, or omitted information and such inaccurate, misleading, or omitted information would result, or has resulted, in an overpayment.¶

(4) The Authority may suspend a provider and provider payments in the event it has determined there is suspected fraud or abuse or a credible allegation of fraud as described in OAR 410-120-1510.¶

(5) The following situations are excluded from the provider appeal process described in this rule:¶

(a) Terminations or renewal denials based on a background check required prior to enrollment and every two

years while enrolled. A PCA who receives a denial notice from the background check unit has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370. PCAs will not receive a separate notice from the Division when terminations or denials are issued as a result of a background check; ¶

(b) Termination due to inactivity or no proof of participation for a period of 18 months or more; ¶

(c) Personal Care attendants who fail to provide required and accurate information or information requested by the Division for a provider enrollment number within the time limits identified in Authority's letter with initial application or revalidation of the provider enrollment. ¶

(6) A PCA may appeal the Authority's decision to deny or terminate the provider enrollment and provider number by filing a written request for a hearing with the Authority. PCA provider appeal rights and the provider appeal process are described in OAR 410-120-1560. Appeals involving providers are conducted by Authority in accordance with OAR 410-120-1560 to 410-120-1700. ¶

(7) When a provider, representative, or PCA Service Coordinator has reason to believe a PCA has committed one or more of the violations listed in section (2) of this rule, they must refer the alleged violation to the Division and any other appropriate state or federal entity.

Statutory/Other Authority: ORS 413.042, 430.640

Statutes/Other Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715