

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division		Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398

Rules Coordinator	Address	Telephone
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RULE CAPTION

ODDS: Independent Providers Delivering Developmental Disabilities Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

May 18, 2016	2 p.m.	Human Services Building 500 Summer Street NE, Rm. 160 Salem, Oregon 97301	Staff
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Hearing Date	Time	Location	Hearings Officer
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Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

411-375-0035; 411-375-0055

AMEND:

411-375-0000; 411-375-0010; 411-375-0020; 411-375-0040; 411-375-0050;
411-375-0070; 411-375-0080

REPEAL:

411-375-0030 and Temporary Rules: 411-375-0010(T); 411-375-0050(T);
411-375-0055(T); 411-375-0070(T); 411-375-0080(T)

AMEND & RENUMBER:

411-375-0060 to 411-375-0045

Stat. Auth.: **ORS 409.050**

Other Auth.:

RULE SUMMARY

The Department of Human Services, Office of Developmental Disabilities Services (Department) is proposing to update the rules for independent providers delivering developmental disabilities services in OAR chapter 411, division 375.

The rules in OAR chapter 411, division 375 are being amended to --

- Make permanent temporary changes that became effective on January 1, 2016;
- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Implement changes associated with the Fair Labor Standards Act and Collective Bargaining Agreement regarding hours, pay, and benefits for personal support workers;
- Implement changes to the termination and inactivation procedures;
- Expand OAR chapter 411, division 375 to include standards and requirements related to independent providers that are not personal support workers, as well as pulling the standards for employers from other rules and incorporating them into OAR chapter 411, division 375; and
- Provide standards for documentation for independent providers.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

June 10, 2016 at 5:00 p.m.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

ODDS: Independent Providers Delivering Developmental Disabilities Services

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of: The adoption of 411-375-0035 and 411-375-0055; amendment of 411-375-0000, 411-375-0010, 411-375-0020, 411-375-0040, 411-375-0050, 411-375-0070, and 411-375-0080; repeal of 411-375-0030 and temporary 411-375-0010(T), 411-375-0050(T), 411-375-0055(T), 411-375-0070(T), and 411-375-0080(T); and amendment and renumbering of 411-375-0060 to 411-375-0045 relating to independent providers delivering developmental disabilities services.

Statutory Authority:

ORS 409.050

Other Authority:

Stats. Implemented:

ORS 410.600, 410.606-619, 427.007

Documents Relied Upon, and where they are available:

Need for the Rule(s):

Temporary to Permanent Rules

The Department needs to make permanent temporary changes that became effective January 1, 2016. The proposed rules reflect these changes.

Definitions

The Department needs to amend OAR 411-375-0010 (Definitions) to provide consistency and streamline definitions across services. OAR 411-375-0010 is being amended to remove terms included in the general definitions rule, OAR 411-317-0000.

Transportation

To implement changes associated with the Fair Labor Standards Act and the Collective Bargaining Agreement, the Department needs to amend OAR 411-375-0050 (Personal Support Worker Benefits and Secondary Expenses) to pay for direct travel time to personal support workers between individuals. OAR 411-375-0050 is being amended

to comply with the Fair Labor Standards Act and Collective Bargaining Agreement to pay for direct travel time between individuals.

Limitation on Hours Worked

To implement changes associated with the Fair Labor Standards Act and the Collective Bargaining Agreement, the Department needs to amend OAR 411-375-0010 (Definitions) and amend OAR 411-375-0040 (Fiscal and Accountability Responsibility) to limit payment for hours to a personal support worker during a work week consistent with the Collective Bargaining Agreement unless the personal support worker is delivering relief care or an exception has been granted by the Department. These rule changes comply with the Collective Bargaining Agreement by limiting payment for hours to a single personal support worker during a work week unless the personal support worker is delivering relief care or an exception has been granted.

Common Law Employers

The Department needs to pull the standards for common law employers for personal support workers from other rules and incorporate them into OAR chapter 411, division 375. OAR 411-375-0055 is being adopted to include the standards for common law employers for personal support workers and procedures for intervention and removal of common law employers.

Documentation Requirements

The Department needs to adopt OAR 411-375-0035 (Documentation and Reporting Requirements) to determine standards for service agreements, progress notes, and incident reporting. OAR 411-375-0035 is being adopted to include documentation and reporting requirements for service agreements, progress notes, and incident reporting.

Independent Providers who are not Personal Support Workers

The Department needs to amend the rules in OAR chapter 411, division 375 to include standards and requirements related to independent providers who are not personal support workers. The proposed rules reflect these changes.

Provider Enrollment Inactivation, Termination, and Hearing Rights

The Department needs to implement changes to the termination, inactivation, appeals, and hearings process. The proposed rules clarify the Department's responsibilities in terminating and inactivating an independent provider's enrollment including notification requirements to ensure independent providers are given due process for actions taken by the Department. These rules are being amended to make clear the situations when a provider may be immediately suspended from providing services to an individual when there is imminent danger to the individual.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR chapter 411, division 375 will have the following fiscal and economic impact:

State Agencies:

The Department anticipates that due to the changes in the Collective Bargaining Agreement with personal support workers, Fair Labor Standards Act changes, and expanding the rules to include independent providers who are not personal support workers, there may be additional costs. The Department is unable to estimate the fiscal impact at this time due to the newness of the regulations and the lack of available data needed to accurately predict future needs.

Units of Local Government:

The Department anticipates that due to limitations on hours worked, case management entities may have an increased cost in recruiting additional service providers for an individual. The Department anticipates that due to changed documentation requirements, some case management entities may have increased costs. The Department has no way of estimating these costs due to the variation in standards agencies currently use for monitoring services provided by independent providers. The Department anticipates that due to the requirement for independent providers to enter their own service claims in eXPRS there may be a cost savings to case management entities. The Department is unable to estimate the potential cost savings due to the lack of available data on independent providers who may receive exceptions and the newness of this requirement.

Service Recipients:

The Department does not anticipate a fiscal or economic impact on service recipients.

Providers:

The Department does not anticipate a fiscal or economic impact on independent providers.

Public:

The Department does not anticipate a fiscal or economic impact to the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The proposed rules apply to Community Developmental Disabilities Programs (CDDPs), Support Service Brokerages, and Personal Support Workers, none of which may be considered small businesses as defined in ORS 183.310.

The proposed rules apply to independent providers who are not personal support workers. Some of those providers may be considered small businesses as defined in ORS 183.310. The Department is unable to estimate the number of independent providers who may also be small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The impact is described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The impact is described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from Self Advocates; Support Service Brokerages; SEIU 503; Advocacy Groups; Oregon Council on Developmental Disabilities; Disability Rights of Oregon, Oregon Rehabilitation Association; Association of Community Mental Health Program; and Residential and Supported Living Provider Partnerships for Community Living.

Signed Lilia Teninty, Director, Developmental Disabilities

4/15/2016

Signature

Date

DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 375

~~PERSONAL SUPPORT WORKERS~~INDEPENDENT PROVIDERS
DELIVERING DEVELOPMENTAL ~~DISABILITY HOME CARE~~
DISABILITIES SERVICES

411-375-0000 Purpose

(1) The rules in OAR chapter 411, division 375 establish the standards and procedures governing ~~personal support workers~~independent providers and the fiscal services provided on behalf of individuals who employ or contract with an ~~personal support worker~~.independent provider.

(2) ~~Personal support workers~~Independent providers provide home and community-based waiver, state plan, and general fund ~~home care~~ services to individuals eligible for developmental ~~disability~~disabilities services and receiving supports authorized by a case management entity~~the Department, Children's Intensive In-Home Services (CIIS), Community Developmental Disability Programs (CDDP), or Support Services Brokerages~~.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0010 Definitions and Acronyms

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 375.

~~(1) "Abuse" means:~~

~~(a) For a child:~~

~~(A) "Abuse" as defined in ORS 419B.005; and~~

~~(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.~~

~~(b) For an adult, "abuse" as defined in OAR 407-045-0260.~~

(21) "Active Provider Number" means an identifying number that is issued by the Department to ~~a personal support worker~~an independent provider after the ~~personal support worker~~independent provider completes the qualification and enrollment conditions as described in OAR 411-375-0020. An ~~A~~Active ~~P~~Provider ~~N~~Number is a provider number that is not currently in inactivated or terminated status.

~~(32) "ADL" means "activities of daily living". ADL are basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring.~~

~~(4) "Background Check" means a criminal records and abuse check as defined in OAR 407-007-0210.~~

~~(3) "Base Pay Rate" means the hourly wage to be paid to personal support workers, without any differentials, established in the Collective Bargaining Agreement.~~

~~(4) "Behaviorally-Driven Services and Supports" means the behavioral treatments identified in a functional needs assessment that an individual requires in addition to routine assessed ADL and IADL supports.~~

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

~~(6) "CDDP" means "Community Developmental Disability Program", as defined in OAR 411-320-0020.~~

(7) "CIIS" means "children's intensive in-home services". ~~CIIS include the services described in:~~

~~(a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;~~

~~(b) OAR chapter 411, division 350 for Medically Fragile Children's services; and~~

~~(c) OAR chapter 411, division 355 for the Medically Involved Children's Program.~~

(8) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.

(9) "Common Law Employer" means a person responsible for the management of personal support workers in their duties described in these rules. Common law employers are also known as as an employer of record (EOR).

(10) "Common Law Employer Proxy" means a person who is delegated specific tasks to assist a common law employer in the duties of a common law employer.

~~(911) "Community Transportation" is transportation provided to~~means the ancillary service described in OAR 411-435-0050 that enables an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services. Community transportation is available through the Community First Choice State Plan Amendment.

~~(10) "Comprehensive Services" means "comprehensive services" as defined in OAR 411-320-0020.~~

~~(1112)~~ "Confidentiality" means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070 (Privacy of Protected Information).

~~(1213)~~ "Department Funds" means state public funds or Medicaid funds used to purchase developmental disabilities services for individuals

enrolled in services as defined in this rule~~the Department of Human Services.~~

~~(13) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, who is chosen by an individual or the legal representative of the individual, not a paid provider for the individual, and authorized by the individual or the legal representative of the individual to serve as the representative of the individual or the legal representative of the individual in connection with the provision of funded supports. An individual or a legal representative of the individual is not required to appoint a designated representative.~~

~~(14) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(15) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.~~

~~(16) "Employed Personal Support Worker" means a personal support worker who is hired by an individual with an intellectual or developmental disability or the representative of the individual. An employed personal support worker is not an independent contractor.~~

~~(17) "Employer" means the person who conducts the employer responsibilities described in these rules and applicable rules for home care services. The employer may be the individual or a person selected by the individual or the legal representative of the individual.~~

~~(18)~~14 "Enhanced Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require advanced medicallyy or behaviorallyy-driven services and supports as defined and assessed through a functional needs assessment tool.

(15) "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.

~~(19)~~16 "Exceptional Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services

for individuals who require extensive medically or behaviorally-driven services and supports, ~~beyond the enhanced services provided by an enhanced personal support worker~~, as assessed by a functional needs assessment tool and whose service needs also require staff to be awake more than ~~twenty~~20 hours in a ~~twenty-four~~24 hour period.

~~(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.~~

(17) "eXPRS" means "Express Payment and Reporting System". eXPRS is the Department's information system that tracks and documents service delivery of claims funded by the Department.

(18) "Failure to Act as a Mandatory Reporter" means that a personal support worker has reasonable cause to believe that the abuse of a child, an older adult, adult with an intellectual or developmental disability or mental illness, or a resident of a nursing facility has occurred, but fails to report the suspected abuse as required by ORS 419B.015, ORS 124.065, ORS 430.743, or ORS 441.645.

(19) "Failure to Provide Services as Required" means an independent provider does not provide services to an individual as described in the service agreement.

~~(2120)~~ "FICA" means "Federal Insurance Contributions Act".

~~(2221)~~ "Fiscal Improprieties" means financial misconduct involving the money, property, or benefits of an individual.

(a) Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking property or money from an individual, having an individual purchase items for the ~~personal support worker~~independent provider, forging the signature of an individual, falsifying payment records, claiming payment for hours not worked, repeatedly claiming payment for hours not prior authorized, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a personal support worker and an individual with

whom the personal support 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.

~~(2322)~~ "Fiscal Intermediary" means a person or entity that receives and distributes ~~service~~Department funds on behalf of an individual who employs or contracts with a personal support worker to provide ~~home care~~ services.

~~(24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a Final Order.~~

~~(25) "Home Care Services" mean the services provided in accordance with:~~

~~(a) OAR chapter 411, division 034 for state plan personal care services;~~

~~(b) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;~~

~~(c) OAR chapter 411, division 305 for family support services for children with intellectual or developmental disabilities;~~

~~(d) OAR chapter 411, division 308 for in-home support for children with intellectual or developmental disabilities;~~

~~(e) OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities;~~

~~(f) OAR chapter 411, division 340 for support services for adults with intellectual or developmental disabilities;~~

~~(g) OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities;~~

~~(h) OAR chapter 411, division 350 for medically fragile children's services; or~~

~~(i) OAR chapter 411, division 355 for the Medically Involved Children's Program.~~

~~(2623) "IADL" means "instrumental activities of daily living". IADL include activities other than ADL required to continue independent living, such as:~~

~~(a) Meal planning and preparation;~~

~~(b) Budgeting;~~

~~(c) Shopping for food, clothing, and other essential items;~~

~~(d) Performing essential household chores;~~

~~(e) Communicating by phone or other media; and~~

~~(f) Traveling around and participating in the community.~~

(2724) "Imminent Danger" means there is reasonable cause to believe the life or physical, emotional, or financial well-being of an individual is in danger if no intervention is immediately initiated.

~~(2825) "Inactive Provider Number/Inactivation" means a personal support worker/an independent provider has a Department issued provider number that has been terminated or inactivated by the failure to act in accordance with the qualifying actions as described in OAR 411-375-00720(1) or OAR 411-375-0070(2). A personal support worker may not be paid for work performed while their provider number is inactive.~~

~~(26) "Independent Provider" means a personal support worker, a person who is paid as a contractor, or a self-employed person. An agency or the employee of an agency is not an independent provider.~~

~~(29) "Independent Contractor" means "independent contractor" as defined in ORS 670.600.~~

~~(30) "Individual" means a child or an adult with an intellectual or developmental disability applying for, or determined eligible for, Department-funded services. Unless otherwise specified, references to individual also include the legal or designated representative of the individual, who has the ability to act for the individual and exercise the rights of the individual.~~

~~(31) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.~~

~~(3227) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering that is driven by the individual. The ISP reflects services and supports that are important for the individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.~~

~~(3328) "Lack of Skills, Knowledge, or Ability to Adequately or Safely Provide Home Care Services" means an personal support workerindependent provider does not possess the skills to perform home care services as defined in this rule. The personal support workerindependent provider may not be is not physically, mentally, or emotionally capable of providing home care services. And the lack of skills may put an individual at risk because the personal support workerindependent provider fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individual.~~

~~(34) "Legal Representative":~~

~~(a) For a child, means the parent of the child unless a court appoints another person or agency to act as the guardian of the child; and~~

~~(b) For an adult, means an attorney at law who has been retained by or for an individual, a person acting under the authority granted in a power of attorney, or a person or agency authorized by a court to make decisions about services for an individual.~~

~~(35) "Mandatory Reporter":~~

~~(a) Means any public or private official as defined in OAR 407-045-0260 who:~~

~~(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether the knowledge of the abuse was gained in the official capacity of the public or private official; and~~

~~(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.~~

~~(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.~~

(29) "Medically-Driven Services and Supports" means the medical treatments identified in a functional needs assessment that an individual requires in addition to routine assessed ADL and IADL supports.

(3630) "Office of Administrative Hearings" means the panel described in ORS 183.605 to 183.690 established within the Employment Department to conduct contested case proceedings and other such duties on behalf of designated state agencies.

~~(37) "Personal Agent" means "personal agent" as defined in OAR 411-340-0020.~~

(3831) "Personal Support Worker":

(a) Means a person:

(A) Who has ~~an active or inactive~~ a Medicaid provider number_;

(B) ~~Who is either hired~~ Hired by an individual with an intellectual or developmental disability or the representative of the individual, ~~or an independent contractor contracted by an individual with an intellectual or developmental disability or the representative of the individual;~~

(C) Who receives money from the Department for the purpose of providing ~~home care~~ services to an individual in the home or community of the individual; and

(D) Whose compensation for providing ~~home care~~ services is provided in whole or in part through a case management entity ~~the Department, CDDP, CIIS, or Support Services Brokerage.~~

(b) This definition of personal support worker is intended to be interpreted consistently with ORS 410.600.

~~(3932)~~ "Preponderance of the Evidence" means ~~the greater weight of that one party's evidence, such as 51 percent vs. 49 percent, that when weighed with the evidence opposed to it has is more convincing than the other party's evidence in a contested case hearing force and probable truth and accuracy than not.~~

~~(4033)~~ "Protective Service and Abuse Rules" mean the rules described in OAR chapter 411, division 020, OAR chapter 407, division 045, OAR chapter 413, division 015, and OAR chapter 943, division 045.

~~(41)~~ "Provider" means ~~a person, organization, or business selected by an individual or the representative of an individual and paid with service funds to provide home care services according to the ISP for the individual.~~

~~(4234)~~ "Provider Enrollment" means the process for enrolling ~~a personal support worker employed or contracted by an individual~~ an independent provider for the purpose of receiving payment for authorized ~~home care~~ services provided to ~~the~~ an individual. Provider enrollment includes the completion and submission of a Provider Enrollment Agreement before receiving a provider number.

~~(4335)~~ "Provider Number" means the identifying number issued to a ~~qualified personal support worker~~ independent provider.

~~(44) "PSW" means "Personal Support Worker" as defined in this rule.~~

~~(45) "PSW-IC" means "Personal Support Worker-Independent Contractor". A PSW-IC is a personal support worker who is contracted by an individual with an intellectual or developmental disability or the representative of the individual. A PSW-IC is an independent contractor except for purposes of collective bargaining.~~

~~(46) "Registry" means the Provider Registry maintained by the Oregon Home Care Commission.~~

~~(4736) "Restricted Personal Support Worker" means the Department or the designee of the Department has placed restrictions on the provider enrollment of a personal support worker as described in OAR 411-375-0020.~~

~~(48) "Service Agreement":~~

~~(a) Is the written agreement consistent with an ISP that describes at a minimum:~~

~~(A) Type of service to be provided;~~

~~(B) Hours, rates, location of services, and expected outcomes of services; and~~

~~(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community under the service of a contractor or provider organization.~~

~~(b) For employed personal support workers, the service agreement serves as the written job description.~~

~~(49) "Service Funds" means state public funds or Medicaid funds used to purchase developmental disability services for individuals enrolled in home care services as defined in this rule.~~

~~(50) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.~~

~~(51) "Support Services Brokerage" means "Brokerage" as defined in OAR 411-340-0020.~~

~~(37) "Termination" means an independent provider has a Department issued provider number that has been terminated in accordance with OAR 411-375-0070(3).~~

~~(38) "Travel Directly" means that a personal support worker's travel from one individual's home or service setting to another individual's home or service setting is not interrupted for reasons other than to eat a meal, purchase fuel for the vehicle being used for the travel, use a restroom, or change buses, trains, or other modes of public transit.~~

~~(5239) "These Rules" mean the rules in OAR chapter 411, division 375.~~

~~(53) "Unacceptable Background Check" means an administrative process that produces information related to the background of a person that precludes the person from being a personal support worker for one or more of the following reasons:~~

~~(a) Under OAR 407-007-0275, the person applying to be a personal support worker has been found ineligible due to ORS 443.004;~~

~~(b) Under OAR 407-007-0275, the person was enrolled as a personal support worker for the first time, or after any break in enrollment, after July 28, 2009 and has been found ineligible due to ORS 443.004; or~~

~~(c) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.~~

~~(40) "Unacceptable Conduct at Work" means an independent provider has repeatedly engaged in one or more of the following behaviors:~~

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

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

(41) "Violation of a Drug-Free Workplace" means there was a credible complaint against an independent provider for:

(a) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while:

(A) Responsible for the care of an individual;

(B) In the individual's home; or

(C) Transporting the individual.

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

(42) "Violation of Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, an independent provider was found to have violated the protective service and abuse rules described in OAR chapter 411, division 020, OAR chapter 407, division 045, OAR chapter 413, division 015, or OAR chapter 943, division 045.

(43) "Workday" means 12:00 AM through 11:59 PM.

(44) "Work Week" means 12:00 AM Sunday through 11:59 PM Saturday,

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0020 Independent Provider Enrollment and Personal Support Worker Qualifications and Orientation

~~(1) A personal support worker must possess an active provider number issued by the Department to receive service funds from the Department for providing home care services.~~

~~(2) An active provider number with the Department is not a guarantee that a personal support worker shall receive any minimum amount of work or payment from the Department, CDDP, CIIS, or Support Service Brokerage.~~

~~(3) The CDDP, CIIS, or Support Services Brokerage shall assist the Department in determining whether a personal support worker meets the minimum qualifications to provide the authorized home care services paid by the Department. This assistance may include, but is not limited to:~~

~~(a) Facilitating a background check;~~

~~(b) Verifying the legal eligibility of a personal support worker to work; and~~

~~(c) Reviewing and verifying the valid certifications or licenses for the personal support worker if required to perform needed home care services.~~

~~(4) The Department, CDDP, CIIS, or Support Service Brokerage may deny a provider enrollment in the following circumstances:~~

~~(a) The applicant has been suspended or terminated as a provider by another division within the Department or the Oregon Health Authority;~~

~~(b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated adult abuse;~~

~~(c) The applicant has committed fiscal improprieties;~~

~~(d) The applicant has demonstrated a lack of skills, knowledge, or ability to adequately or safely provide home care services;~~

~~(e) The applicant has an unacceptable background check or the background check results in a closed case pursuant to OAR 407-007-0325;~~

~~(f) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General ();~~

~~(g) The Department, CDDP, CIIS, or Support Services Brokerage has information that enrolling the applicant as a personal support worker may put vulnerable individuals at risk; or~~

~~(h) The tax identification number or Social Security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.~~

~~(5) RESTRICTED PROVIDER ENROLLMENT.~~

~~(a) The Department may enroll an applicant as a restricted personal support worker. A restricted personal support worker may only provide services to a specific individual who is a family member, neighbor, or friend.~~

~~(A) After conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370, the Department may approve a restricted enrollment for an applicant with a prior criminal record, unless under OAR 407-007-0275 the applicant has been found ineligible due to ORS 443.004.~~

~~(B) The Department may approve a restricted enrollment for an applicant based on the lack of skills, knowledge, or ability of the applicant to adequately or safely provide home care services.~~

~~(b) To remove restricted personal support worker status, the applicant must complete a new application and background check and be approved by the Department.~~

~~(6) A personal support worker who is paid to provide home care services must:~~

~~(1) INDEPENDENT PROVIDER QUALIFICATIONS: An independent provider who is qualified to provide services must:~~

~~(a) Be at least 18 years of age.;~~

(b) Have approval to work based on a background check completed by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (37) of this rule, ~~and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to, the Department, CDDP, CIIS, or Support Services Brokerage;~~

(c) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 unless hired or contracted with prior to July 28, 2009 and remaining in the original position for which the ~~personal support worker~~ independent provider was hired or contracted ~~for;~~

(d) Be free of convictions, founded allegations of abuse, or substantiated allegations of abuse by the appropriate agency including, but not limited to, the Department or case management entity.

~~(de)~~ Be legally eligible to work in the United States.;

~~(ef)~~ Demonstrate by background, education, references, skills, and abilities that the ~~personal support worker~~ independent provider is capable of safely and adequately performing the tasks specified in an ISP, with such demonstration confirmed in writing by ~~an~~ the individual, or ~~the~~ their legal or designated representative ~~of the individual,~~ including:

(A) Ability and sufficient education to follow oral and written instructions and keep any required records;

(B) Possess the physical health, mental health, good judgment, and good personal character determined necessary to provide ~~home care~~ services;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the ~~personal support worker~~ independent provider has knowledge of emergency procedures specific to the individual.;

(fg) Maintain confidentiality and safeguard individual information. Unless given specific permission by an individual or the legal representative of an individual, the ~~personal support worker~~independent provider may not share any personal information about the individual including medical, social service, financial, public assistance, legal, or other personal details.;

(gh) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>).;

(hi) Complete and submit a Provider Enrollment Agreement to the Department and possess a current provider number issued by the Department.;

(ij) Have a tax identification number or Social Security number that matches the legal name of the ~~personal support worker~~independent provider as verified by the Internal Revenue Service or Social Security Administration; ~~and~~.

(jk) If providing ~~home care~~ services requiring professional licensure, possess a current and unencumbered license. The individual, ~~or their~~the designated or legal representative of the individual, ~~or the case management entity~~ Department, CDDP, CIIS, or Support Service Brokerage must check the license status to verify the license is current and unencumbered.

(l) If transporting an individual, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation. Copies of these documents must be available to any case management entity that authorizes community transportation upon authorization and as requested.

(m) An independent provider must meet the qualifications for a provider as described in the Oregon Administrative Rules that are relevant to the specific service when applicable.

(2) INDEPENDENT PROVIDER EXCLUSIONS. An independent provider may not be authorized to provide services to an individual if:

(a) The independent provider is the parent of the individual if the individual is less than 18 years of age;

(b) The independent provider is the legal representative of the individual who has not appointed a designated representative to plan supports for the individual;

(c) The independent provider is the designated representative of the individual;

(d) The independent provider is the spouse of the individual; or

(e) The independent provider is the common law employer or common law employer proxy for the individual.

(73) BACKGROUND CHECKS.

(a) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work statewide when the subject individual is working in the same employment role with the same population. The Background Check Request Form must be completed by the subject individual to show intent to work statewide.

(b) When an personal support worker independent provider is approved without restrictions following a background check fitness determination, the approval must meet the personal support worker provider enrollment requirements for the employment role of the independent provider whether the qualified entity is the Department, CDDP, CIIS, or Support Services Brokerage.

(c) If an personal support worker independent provider has been approved under OAR 407-007-0200 to 407-007-0370 on a background check submitted to the Department between July 1, 2012 and June 30, 2014, the personal support worker independent provider may use that approval notice to work statewide with the same population until a new background check is needed. Statewide clearance does not apply to a restricted personal support worker.

(d) Background check approval is effective for two years from the date of fitness determination to provide ~~home care~~ services except in the following circumstances:

(A) A new fitness determination is conducted resulting in a change in approval status; or

(B) The Department has terminated the provider enrollment for the ~~personal support worker~~ independent provider.

(e) The ~~Department, CDDP, CHS, or Support Services Brokerage~~ case management entity may conduct a background recheck more frequently based on:

(A) Additional information discovered about the ~~personal support worker~~ independent provider, such as possible criminal activity or other allegations; or

(B) At the request of the individual or designated common law employer. Upon request, the personal support worker must provide any additional info to complete the updated background recheck within 30 days.

(f) ~~A personal support worker~~ An independent provider must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290 to the ~~Department, CDDP, CHS, or Support Services Brokerage~~ case management entity within 24 hours.

(4) The Department may not complete provider enrollment in the following circumstances:

(a) The applicant has been suspended or terminated as a provider by another division within the Department or the Oregon Health Authority;

(b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated adult abuse;

(c) The applicant has committed fiscal improprieties;

(d) The applicant has demonstrated a lack of skills, knowledge, or ability to adequately or safely provide services;

(e) The applicant has an unacceptable background check or the background check results in a closed case pursuant to OAR 407-007-0325;

(f) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>);

(g) The case management entity has documentation the applicant is not capable of performing required services in a professionally competent, safe, legal, or ethical manner; or

(h) The tax identification number or Social Security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

(5) A personal support worker must attend a personal support worker orientation consistent with the Collective Bargaining Agreement.

(6) RESTRICTED PERSONAL SUPPORT WORKER PROVIDER ENROLLMENT.

(a) The Department may enroll an applicant as a restricted personal support worker. A restricted personal support worker may only provide services to a specific individual who is a family member, neighbor, or friend.

(A) After conducting a weighing test as described in OAR 407-007-0200 to 407-007-0370, the Department may approve a restricted enrollment for an applicant with a prior criminal record, unless under OAR 407-007-0275 the applicant has been found ineligible due to ORS 443.004.

(B) The Department may approve a restricted enrollment for an applicant based on the lack of skills, knowledge, or ability of the applicant to adequately or safely provide services.

(b) To remove restricted personal support worker status, the applicant must complete a new application and background check and be approved by the Department.

(7) ENHANCED AND EXCEPTIONAL PERSONAL SUPPORT WORKERS.

(a) ENHANCED PERSONAL SUPPORT WORKERS.

(A) A personal support worker must be certified by the Home Care Commission as an enhanced personal support worker to provide services for individuals who require advanced medically or behaviorally-driven services and supports as assessed by a functional needs assessment.

(B) Enhanced personal support workers are paid for providing ADL and IADL services at the enhanced personal support worker rate set forth in the Collective Bargaining Agreement. The enhanced personal support worker rate is effective the first day of the month following the month in which both:

(i) The personal support worker is certified by the Oregon Home Care Commission to provide services; and

(ii) The outcome of the individual's functional needs assessment indicates the need for assistance with advanced medically or behaviorally-driven services.

(b) EXCEPTIONAL PERSONAL SUPPORT WORKER.

(A) A personal support worker must be certified by the Home Care Commission as an exceptional personal support worker to provide services for individuals who require assistance with extensive medically or behaviorally-driven services and supports as assessed by a functional needs assessment.

(B) Exceptional personal support workers are paid for providing ADL and IADL services at the exceptional personal support worker rate set forth in the Collective Bargaining Agreement. The exceptional personal support worker rate is effective the first day of the month following the month in which both:

(i) The personal support worker is certified by the Oregon Home Care Commission to provide services; and

(ii) The outcome of the individual's functional needs assessment indicates the need for assistance with extensive medically or behaviorally-driven services and at least 20 hours per day of attendant care support excluding 2:1 support hours.

(c) A personal support worker who has been certified by the Oregon Home Care Commission to provide enhanced or exceptional supports may not receive the enhanced or exceptional rate when providing services to an individual whose functional needs assessment does not indicate the need for assistance with advanced or extensive medically or behaviorally-driven services except as required by the Collective Bargaining Agreement.

(8) INDEPENDENT PROVIDER CONTINUED ENROLLMENT RESPONSIBILITIES.

(a) An independent provider is responsible for maintaining an active provider number by:

(A) Completing and submitting a new Provider Enrollment Agreement to the Department at least 55 calendar days prior to the end date of the agreement; and

(B) Completing and submitting a Background Check Request Form and receiving approval to work by the Department at least 55 calendar days prior to the end of the background check approval period.

(b) An independent provider is responsible to attend trainings and maintain certifications as required by applicable program rules.

~~(8) ORIENTATION.~~

~~(a) A personal support worker who wants to be available for referral on the Registry must attend a Personal Support Worker Orientation provided by the Department consistent with OAR 418-020-0020.~~

~~(b) A personal support worker must attend a Personal Support Worker Orientation consistent with the Collective Bargaining Agreement.~~

~~(9) ENHANCED AND EXCEPTIONAL PERSONAL SUPPORT WORKERS. Enhanced Personal Support Workers and Exceptional Personal Support Workers must meet the certification requirements as described in OAR 418-020-0030.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

REPEAL 411-375-0030 Personal Support Worker-Individual Relationship

~~(1) A personal support worker may not be:~~

~~(a) The parent of the individual if the individual is less than 18 years of age;~~

~~(b) The legal representative who has not appointed a designated representative to plan supports for the individual;~~

~~(c) A designated representative of the individual.; or~~

~~(d) The spouse of the individual.~~

~~(2) For an employed personal support worker, the relationship between a personal support worker and an individual or the representative of the individual is an employee and employer relationship.~~

~~(3) For a PSW-IC, the relationship between a PSW-IC and an individual or the representative of the individual is a contractor relationship.~~

~~(4) It is the responsibility of an employer to create and maintain:~~

~~(a) A written job description, signed by the personal support worker and the employer, for each potential employed personal support worker. The job description must contain:~~

~~(A) The elements from an authorized ISP and supporting documents that are relevant to the position;~~

~~(B) The specific duties and available hours to provide home care services as identified in the ISP; and~~

~~(C) Authorized hours of home care services provided by the employed personal support worker to the individual. Authorized hours may not exceed the maximum amounts of units of service authorized in the ISP or annual plan.~~

~~(b) A written service agreement for each PSW-IC must:~~

~~(A) Describe the services and responsibilities of the PSW-IC;~~

~~(B) Contain all the elements from an authorized ISP and supporting documents to assure the PSW-IC may execute the service agreement; and~~

~~(C) Be signed by the parties to the contract.~~

~~(5) An individual or the representative of the individual carries primary responsibility for locating, interviewing, screening, hiring, firing, or contracting with a personal support worker. The individual or the representative of the individual has the right to employ or contract with any personal support worker enrolled as a provider as described in OAR 411-375-0020 who meets the specific home care services program qualifications.~~

~~(6) The terms of the employer-employee or contractor relationship are the responsibility of the individual or the representative of the individual to~~

~~establish at the time of hire or written service agreement. The terms of employment may include dismissal or notice of resignation, work scheduling, and absence reporting. The Support Services Brokerage, CDDP, or CIIS are available to provide assistance in developing the service agreement with the individual in accordance with all applicable home care services program rules.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0035 Documentation and Reporting Requirements

(1) SERVICE AGREEMENT.

(a) An independent provider may not provide services to an individual without a completed and authorized Service Agreement.

(b) An independent provider must maintain a copy of the authorized Service Agreement for the authorized service period.

(c) For personal support workers, the Service Agreement serves as a job description.

(d) For independent providers who are not personal support workers, the independent provider's signature on the individual's ISP may serve as the Service Agreement.

(2) PROGRESS NOTES.

(a) Independent providers must maintain regular progress notes. The progress note must include, at minimum, the following information regarding the service rendered:

(A) Date and time the service was provided; and

(B) Information regarding progress towards achieving the intended ISP goal identified in the Service Agreement for which the service was delivered.

(b) For a personal support worker, progress notes must be submitted to the case management entity upon request from the case management entity and with a timesheet as part of the claim for payment.

(c) For an independent provider who is not a personal support worker, progress notes must be submitted as required by applicable program rules.

(3) INCIDENT REPORTING.

(a) Independent providers must notify the individual's case management entity of any injury, accident, act of physical aggression, or unusual incident involving an individual.

(b) Independent providers must notify the individual's case management entity of any reasonable suspicion that an individual is the victim of abuse.

(c) Independent providers who are mandatory reporters must also make reports of suspected abuse consistent with ORS 419B.015, ORS 124.065, ORS 430.743, or ORS 441.645.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0040 Fiscal and Accountability Responsibility

(1) DIRECT SERVICE PAYMENTS. The ~~Department, CIIS, CDDP, Support Services Brokerage,~~ case management entity or contracted fiscal intermediary makes payment to ~~a personal support worker~~ an independent provider on behalf of an individual for all ~~home care~~ services.

(a) Payment is considered full payment for the ~~home care~~ services rendered. The ~~personal support worker~~ independent provider may not, under any circumstances, demand or receive additional payment for ~~home care~~ Department-funded services from the individual or any other source.

(b) The Department only makes payment for ~~home care~~ services that
=

(A) aAre authorized in an ISP, ~~or annual plan, and and~~ included in a ~~written job description or contract~~Service Agreement;

(B) The provider has been authorized in eXPRS to deliver the service; and

(C) The provider has delivered the service.

(c) The Department does not make ~~service~~Department funds available to an individual or common law employer to pay an independent provider~~a personal support worker~~.

~~(d) All service funds paid to a personal support worker must come through a fiscal intermediary~~

(d) The Department only makes payment to an enrolled provider who actually performs the authorized services. Federal regulations prohibit the Department from making payment to a collection agency.

(e) All Department funds paid to a personal support worker must come through a fiscal intermediary.

(2) TIMELY SUBMISSION OF CLAIMS. In accordance with 42 CFR 447.45, all claims for ~~home care~~ services must be submitted within 12 months from the date of ~~home care~~ services in order to be considered for payment. A claim submitted after 12 months from the date of ~~home care~~ services may not be considered for payment.

(3) CLAIM OR ENCOUNTER SUBMISSION.

(a) Submission of a claim, encounter, or other payment request document constitutes the agreement of ~~a personal support worker~~an independent provider that:

(aA) The ~~home care~~ services were provided in compliance with the ~~s~~Service ~~a~~Agreement-or job description in effect on the date

of service;

(~~b~~B) The information on the claim, encounter, or other payment request document, regardless of the format, is true, accurate, and complete; and

(~~c~~C) The ~~personal support worker~~independent provider understands that payment of the claim, encounter, or other payment request document is from ~~service~~Department funds and that any falsification or concealment of a material fact may result in prosecution under federal and state laws.

(b) The independent provider must submit a claims for payment directly into eXPRS, unless an exception has been granted by the case management entity.

(A) Claims for payment submitted by independent providers who are not personal support workers must include documentation from the provider of services delivered.

(B) Claims for payment submitted by personal support workers must meet the requirements of a properly completed timesheet as defined by the Collective Bargaining Agreement including submission of progress notes as required by this rule.

(4) CLAIM OR ENCOUNTER AUTHORIZATION. Authorization of a submitted claim, encounter, or other payment request document by the employer, constitutes agreement that the ~~personal support worker~~independent provider provided services in accordance with the claim.

(5) INDEPENDENT PROVIDER PAYMENT LIMITATIONS.

(a) Department funds may not pay for services delivered by an independent provider who does not possess an active provider number issued by the Department on the date services are delivered.

(b) An active provider number with the Department is not a guarantee that an independent provider shall receive any minimum amount of work or payment from the case management entity.

(c) Payment is not made for services delivered to any individual prior to:

(A) The return of a signed Service Agreement, specific to the individual, to the case manager of the individual.

(i) When the provider is a personal support worker, a completed Service Agreement must include a dated signature from the common law employer and the personal support worker.

(ii) When the provider is an independent provider, but not a personal support worker, a completed service agreement must include the name and dated signature of the individual or the representative of the individual.

(B) Authorization of the services in eXPRS.

(d) A personal support worker may not work more than 50 hours in a work week, per individual, unless:

(A) The personal support worker is delivering daily relief care; or

(B) An exception has been granted by the case management entity. All determinations regarding exceptions to the 50 hour limitation are final.

(e) A personal support worker may not work more than 40 hours in a work week for any one child in a CIIS program.

(6) ANCILLARY CONTRIBUTIONS FOR PERSONAL SUPPORT WORKERS.

(a) FICA. Acting on behalf of the individual, the ~~Department, CIIS, CDDP, Support Services Brokerage~~ case management entity, or contracted fiscal intermediary shall apply any applicable FICA regulations including:

(A) Withholding the FICA contribution of the personal support worker from the payment to the personal support worker; and

(B) Submitting the FICA contribution of the individual and the amounts withheld from the payment to the personal support worker to the Social Security Administration.

(b) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to an injured worker and the beneficiary of the injured worker and also assists an employer in helping an injured worker return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The ~~Department, CDDP, CIIS, Support Services Brokerage, case management entity~~ or contracted fiscal intermediary 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 individual, the ~~Department, CDDP, CIIS, Support Services Brokerage, case management entity~~ or contracted fiscal intermediary:

(A) Deducts the share of the Benefit Fund assessment rate for the personal support worker for each hour or partial hour worked;

(B) Collects the share of the Benefit Fund assessment rate for the individual for each hour or partial hour of paid ~~home care~~ services received; and

(C) Submits the contributions of the personal support worker and the individual to the Workers' Benefit Fund.

(c) The ~~Department, CDDP, CIIS, Support Services Brokerage, case management entity~~ or contracted fiscal intermediary submits the unemployment tax.

(76) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(a) The ~~Department, CDDP, CIIS, Support Services Brokerage, case management entity~~ or contracted fiscal intermediary withholds state

and federal income taxes on all payments to personal support workers as indicated in the Collective Bargaining Agreement.

(b) ~~Employed p~~Personal support workers must complete and return a current Internal Revenue Service (IRS) W-4 form. ~~A PSW-IC must complete and return a current IRS W-9 form.~~

(A) Personal support workers working with individuals receiving services through a CDDP or Support Services Brokerage must return all applicable IRS forms to the local office of the CDDP or Support Services Brokerage.

(B) Personal support workers working with individuals receiving services through CIIS must return the IRS forms to the Central Office of the Department.

(C) The ~~Department, CDDP, CIIS, Support Services Brokerage, case management entity~~ or contracted fiscal intermediary must apply standard income tax withholding practices in accordance with 26 CFR 31.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-~~0060~~ 0045 Overpayments

An overpayment is any payment made by the Department or case management entity to an independent provider that is more than the independent provider is authorized to receive. A independent provider is authorized to receive payment for a number of hours that does not exceed the amount stated in a Service Agreement and are actually provided.

(1) Overpayments are categorized as follows:

(a) ADMINISTRATIVE ERROR. The case management entity failed to authorize, compute, or process the correct amount of service hours or wage rate.

(b) INDEPENDENT PROVIDER ERROR. The Department overpays the independent provider due to a misunderstanding or unintentional error.

(c) FRAUD. "Fraud" means taking actions that may result in the independent provider 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 independent provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department of Justice, Medicaid Fraud Unit determines when a Medicaid fraud allegation is pursued for prosecution.

(2) Overpayments for personal support workers are recovered as follows:

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

(b) Overpayments due to administrative error or personal support worker error are recouped at no more than five percent of the total for the hours paid until repaid in full.

(c) When a fraud overpayment has occurred, the Department shall determine the manner and the amount to be recovered.

(d) When a provider is no longer employed as a personal support worker, any remaining overpayment is deducted from the final check to the provider. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

(3) Overpayments for independent providers who are not personal support workers are recovered as described in OAR chapter 407, division 120.

~~An overpayment is any payment made by the Department, CDDP, CIIS, or Support Services Brokerage to a personal support worker that is more than the personal support worker is authorized to receive. A personal support worker is authorized to receive payment for a number of hours that does~~

~~not exceed the amount stated in a service agreement and are actually provided.~~

~~(1) Overpayments are categorized as follows:~~

~~(a) ADMINISTRATIVE ERROR. The Department, CDDP, CIIS, or Support Services Brokerage failed to authorize, compute, or process the correct amount of home care service hours or wage rate.~~

~~(b) PERSONAL SUPPORT WORKER ERROR. The Department overpays the personal support worker due to a misunderstanding or unintentional error.~~

~~(c) FRAUD. "Fraud" means taking actions that may result in the personal support worker 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 personal support worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department of Justice, Medicaid Fraud Unit determines when a Medicaid fraud allegation is pursued for prosecution.~~

~~(2) Overpayments for employed personal support workers 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 error or personal support worker error overpayments are recouped at no more than five percent of the total for the hours paid until repaid in full.~~

~~(c) When a fraud overpayment has occurred, the Department shall determine the manner and the amount to be recovered.~~

~~(d) When a provider is no longer employed as a personal support worker, any remaining overpayment is deducted from the final check to the provider. The provider is responsible for repaying the amount in~~

~~full when the final check is insufficient to cover the remaining overpayment.~~

~~(3) Overpayments for a PSW-IC are recovered as follows:~~

~~(a) For overpayments discovered within 10 days after the overpayment, the full amount is deducted from the next payment to the PSW-IC.~~

~~(b) For overpayments discovered more than 10 days after the overpayment, the overpayment must be repaid within 30 days of the discovery of the overpayment on a schedule to be negotiated between the PSW-IC, services coordinator or personal agent, and the individual or the representative of the individual. The repayment period may not exceed two pay cycles. If possible, the overpayment must be repaid within the current ISP year for the individual.~~

~~(c) If a PSW-IC terminates his or her employment contract as a personal support worker before the overpayment has been fully recovered, any remaining amount is deducted from the final payment to the PSW-IC. The PSW-IC is responsible for repaying the amount in full when the final payment is insufficient to cover the remaining overpayment.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0050 Personal Support Worker Benefits and Secondary Expenses

(1) The only benefits available to personal support workers are negotiated in the Collective Bargaining Agreement and provided in Oregon Revised Statute. The Collective Bargaining Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Personal support workers are not employees of a case management entity.

(2) Workers' compensation, as defined in Oregon Revised Statute, is available to eligible personal support workers as described in the Collective Bargaining Agreement. In order to receive services provided by a personal

support worker, an individual, the designated common law employer or the common law employer proxy must provide written authorization and consent to the Department for the provision of workers' compensation insurance for the personal support worker.

(3) COMMUNITY TRANSPORTATION.

(a) A personal support worker may be reimbursed for providing community transportation related to services if the community transportation is prior authorized by a case manager and reflected in the ISP for an individual in accordance with OAR 411-435-0050. A personal support worker providing community transportation must have a valid license to drive, a good driving record, and proof of insurance for the vehicle used to transport the individual, as well as any other license or certificate that may be required under state and local law depending on the nature and scope of the transportation.

(b) Community transportation services exclude medical transportation. Medical transportation is provided through Medical Assistance Programs (MAP).

(c) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for ISP-related transportation except as may be covered by workers' compensation.

(d) Reimbursement for transporting an individual to accomplish ADL, IADL, or a health-related task within the community in which the individual lives or an employment goal identified on an ISP is on a per-mile basis as outlined in the Collective Bargaining Agreement.

(4) TRAVEL BETWEEN WORKSITES. A personal support worker who travels directly between the home or service setting of one individual and the home or service setting of another individual is paid at the base pay rate, as defined in the Collective Bargaining Agreement, for the time spent traveling directly between the homes or service settings.

(a) Unless otherwise specified in statute or rule the amount of time a personal support worker may take to travel directly travel from one individual's home or service setting to another individual's home or service setting may not exceed one hour.

(b) The total time spent traveling directly between the homes or service settings of all individuals a personal support worker is authorized to deliver services to may not total more than ten per-cent of the total wages that the personal support worker claims during a pay period as described in the Collective Bargaining Agreement.

(c) When a personal support worker uses the personal support worker's own vehicle to travel directly between the homes or service settings of two individuals, the Department shall determine the time needed for a personal support worker to travel directly between the homes or service settings of the two individuals based on a time estimate published in a common, publicly-available, web-based mapping program.

(d) When a personal support worker uses public transportation to travel directly between the homes or service settings of two individuals, payment for travel time is based on the public transportation providers' scheduled pick-up and drop-off times for the stops nearest the individuals' homes or service settings.

(e) When a personal support worker uses non-motorized transportation to travel directly between the homes or service settings of two individuals, payment for travel time shall be based on a time estimate published in a common, publicly-available web-based mapping program.

(5) Claims for travel time exceeding the Department's time estimates for the travel time require a written explanation from the personal support worker. Time claimed in excess of the Department's time estimate may not be paid.

(6) Under no circumstances may a personal support worker be paid for time spent in transit to or from the personal support worker's own residence.

(7) Personal support workers receive mileage reimbursement only as set forth in section (3) of this rule.

(8) GLOVES AND MASKS. Once all public and private resources have been exhausted, an emergency supply of protective gloves and masks must be made available to a personal support worker for the safety of the personal support worker in response to documented changing or newly identified individual need as outlined in the Collective Bargaining Agreement.

~~(1) The only benefits available to personal support workers are negotiated in the Collective Bargaining Agreement and provided in Oregon Revised Statute. The Collective Bargaining Agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Personal support workers are not employees of the Department, CDDP, CHS, or Support Services Brokerage.~~

~~(2) Workers' compensation, as defined in Oregon Revised Statute, is available to eligible personal support workers as described in the Collective Bargaining Agreement. In order to receive home care services provided by a personal support worker, an individual or the representative of the individual must provide written authorization and consent to the Department for the provision of workers' compensation insurance for the personal support worker.~~

~~(3) TRANSPORTATION. A personal support worker may be reimbursed for providing community transportation related to home care services if the community transportation is prior authorized by a services coordinator or personal agent and reflected in the ISP for an individual. A personal support worker providing community transportation must have a valid license to drive, a good driving record, and proof of insurance for the vehicle used to transport the individual, as well as any other license or certificate that may be required under state and local law depending on the nature and scope of the transportation.~~

~~(a) Community transportation services exclude medical transportation. Medical transportation is provided through Medical Assistance Programs (MAP).~~

~~(b) The Department is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for ISP-related transportation except as may be covered by workers' compensation.~~

~~(c) Reimbursement for transporting an individual to accomplish ADL, IADL, or a health-related task within the community in which the individual lives or an employment goal identified on an ISP is on a per-mile basis as outlined in the Collective Bargaining Agreement.~~

~~(4) GLOVES AND MASKS. Once all public and private resources have been exhausted, an emergency supply of protective gloves and masks must be made available to a personal support worker for the safety of the personal support worker in response to documented changing or newly identified individual need as outlined in the Collective Bargaining Agreement.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0055 Standards for Common Law Employers for Personal Support Workers

(1) COMMON LAW EMPLOYER. A common law employer is required when a personal support worker is selected by an individual to deliver supports. The Department, certified and endorsed or licensed provider agencies, nor case management entities may act as the common law employer for a personal support worker.

(2) The relationship between a personal support worker and an individual, or the designated common law employer of the individual, is an employee and employer relationship.

(3) The individual or their legal or designated representative has the right to choose any personal support worker enrolled as a provider as described in OAR 411-375-0020 who meets the specific program qualifications.

(4) SERVICE AGREEMENT. Common law employers must assure the implementation of a Service Agreement.

(5) BENEFITS. Common law employers do not qualify for any benefits including, but not limited to, financial compensation.

(6) COMMON LAW EMPLOYER REQUIREMENTS.

(a) Common law employers must be:

(A) The individual; or

(B) A person who is designated by the individual or their legal or designated representative to act as the common law employer on behalf of the individual to meet all of the employer responsibilities described in subsection (b) of this section. The legal or designated representative of an individual may be the employer. After July 1, 2016, no one may be a designated common law employer or proxy who does not sign a Department-approved form which affirms the designated common law employer is able to fulfill the responsibilities, or responsibilities delegated to them, as outlined in subsection (b) of this section. The designated common law employer must not have:

(i) A history of substantiated abuse of an adult as described in OAR 411-045-0250 to 411-045-0370;

(ii) A history of founded abuse of a child as described in ORS 419B.005;

(iii) A conviction of any crimes found in OAR 407-007-0280(1); or

(iv) An indictment or conviction of fraud pursuant to federal law under 42 CFR 455.23.

(C) Not currently employed as a provider in any capacity for the individual receiving services.

(D) Meet federal and state requirements to enter an employment relationship.

(b) Common law employers have the following responsibilities:

(A) Locating, screening, and hiring a qualified personal support worker;

(B) Assisting in developing the Service Agreement with the case management entity as needed;

(C) Ensuring that services are delivered in accordance with the Service Agreement;

(D) Supervising and training the personal support worker;

(E) Scheduling work, leave, and coverage;

(F) Tracking the hours worked and verifying the authorized hours completed by the personal support worker;

(G) Recognizing, discussing, and attempting to correct, with the personal support worker any performance deficiencies and provide appropriate and progressive disciplinary action as needed;

(H) Notifying the case management entity of any suspected fraud or abuse by the personal support worker; and

(I) Discharging an unsatisfactory personal support worker.

(c) The Department or case management entity may be required to intervene as described in section (7) of this rule when a common law employer, designated common law employer, or common law employer proxy has demonstrated an inability to meet one or more of the employer responsibilities described in subsection (b) of this section. Indicators that an employer may not be meeting one or more of the responsibilities include, but are not limited to:

(A) Provider complaints to the case management entity or Department;

(B) Scheduling providers for more time than authorized in the Service Agreement;

(C) Scheduling multiple providers for the same time period without authorization;

(D) Approving time worked without verifying that services were delivered as described in the Service Agreement;

(E) Verifying time not actually worked by a provider;

(F) Refusal to verify time worked by a provider for services that were delivered as described in the Service Agreement;

(G) Complaints to Medicaid fraud involving the employer; or

(H) Documented observation by the case management entity or Department that services are not being delivered as identified in a Service Agreement.

(d) In the event an individual is unable or unwilling to perform the duties of a common law employer and has not already designated a common law employer, the individual or their legal or designated representative must either:

(A) Designate a common law employer proxy (proxy) as defined in OAR 411-375-0010 that meets the requirements of a common law employer in subsection (a)(B) of this section.

(i) A proxy may not be delegated all of the responsibilities of the common law employer.

(ii) The proxy may not perform any common law employer tasks not delegated to the proxy on a Department approved form.

(B) Designate a common law employer as outlined in subsection (a)(B) of this section.

(e) A designated common law employer must be able to fulfill all of the duties as outlined in subsection (b) of this section and may not utilize a designated employer proxy.

(f) If an individual is unable to fulfill the responsibilities of a common law employer and is unable to designate a proxy or other common law employer who meets the requirements outlined in subsection

(a)(B) of this section, the individual may only select services from providers who are not personal support workers.

(7) INTERVENTION.

(a) For the purposes of this rule, “intervention” means the action the Department or the case management entity requires when a common law employer fails to meet the responsibilities as described in section (6)(b) of this rule.

(b) Interventions are:

(A) A review of the employer responsibilities described in section (6)(b) of this rule;

(B) Training related to employer responsibilities or referral to a Department approved resource to provide training;

(C) Corrective action taken as a result of a personal support worker filing a complaint with the Department or the case management entity; or

(D) Recommending alternative designation of common law employer responsibilities, such as a new designated common law employer or proxy.

(c) Any intervention initiated by the Department or the case management entity against a common law employer designated prior to July 1, 2016 must include accepting the common law employer responsibilities as outlined in section (6)(b) of this rule on the Department approved form.

(8) REMOVAL OF COMMON LAW EMPLOYERS.

(a) The individual or their legal or designated representative may remove a designated common law employer or proxy at any time, for any reason. Such an action by the individual or their legal or designated representative is not subject to sections (8)(b) through (9) of this rule.

(b) Prior to the removal of any common law employer by the Department or case management entity there must be at least one intervention, as described in section (7) of this rule unless;

(A) There is an imminent danger to the health and safety of the individual receiving services including:

(i) Pending charges against or conviction of the designated common law employer or proxy for any crimes found in OAR 407-007-0280(1).

(ii) An open protective services case for abuse allegations as defined in OAR 407-045-0260 against the designated common law employer or proxy.

(iii) Finding of substantiated abuse of an adult as described in OAR 411-040-0250 to 411-045-0370.

(iv) Finding of abuse of a child as described in ORS 419B.005.

(B) There is a credible allegation, indictment, or conviction of fraud pursuant to federal law under 42 CFR 455.23.

(c) The Department or case management entity shall remove any common law employer or proxy for any violation of section (6)(a)(B)(i) to (a)(B)(iv) or section (8)(b) of this rule.

(d) Any common law employer or proxy may be removed by the case management entity or Department for failure to meet the responsibilities of a common law employer as referenced in section (6)(b) after a documented intervention as outlined in section (7) of this rule.

(e) Common law employers or proxies who are removed may not act in any capacity as a common law employer or proxy for any individual receiving Department funded services effective:

(A) 30 days from the date of removal; or

(B) Immediately if removed for reasons listed under section (6)(b) of this rule.

(f) If a designated common law employer or proxy is removed the individual, or their legal or designated representative may select another designated common law employer or proxy. If a designated common law employer or proxy is not selected and the individual is unable or unwilling to serve as their own common law employer, the individual may only select providers who are not personal support workers.

(9) NOTIFICATION OF COMMON LAW EMPLOYER REMOVAL. The Department or case management entity shall notify the designated common law employer and the individual and their legal or designated representative (as applicable) of the removal of the common law employer on the Department approved form.

(10) REQUEST FOR REINSTATEMENT OF COMMON LAW EMPLOYER STATUS.

(a) An individual, designated common law employer, or proxy is eligible to request reinstatement of their previous common law employer status if:

(A) The common law employer was the individual; or

(B) The designated common law employer or proxy no longer meets the criteria in section (8)(b) of this rule or is removed under section (8)(c) of this rule and the individual or their legal or designated representative agrees to the reinstatement.

(b) Requests for reinstatement:

(A) Must be submitted to the case management entity;

(B) Must include evidence of improvement in the areas for which they were removed. Evidence may include, but is not limited to:

(i) Improvements in health and cognitive functioning; or

(ii) Participation in a Department or case management entity approved training plan.

(C) May be approved by the case management entity when there is evidence of improvement in the ability to perform the responsibilities of being a common law employer and the individual agrees with the reinstatement.

(D) No more than one request for reinstatement may be submitted in a six month period unless approved by the case management entity.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0060 renumbered to 411-375-0045

411-375-0070 Provider Enrollment Inactivation and Termination

(1) An independent provider may not be paid for work performed while their provider number is inactivated. A provider number for an independent provider may be inactivated by the Department until the independent provider takes action to reinstate their provider enrollment when:

(a) The independent provider has not provided any paid services to an individual within the previous 12 months;

(b) The independent provider informs the case management entity that the independent provider is no longer providing services in Oregon;

(c) For a personal support worker, the personal support worker fails to participate in a required orientation for personal support workers as described in the Collective Bargaining Agreement;

(d) The background check for a independent provider results in a closed case pursuant to OAR 407-007-0325;

(e) More than two years have passed since the date on the most recent background check final fitness determination for an independent provider;

(f) More than two years have passed since the signature date on the most recent Provider Enrollment Application and Agreement for an independent provider;

(g) The independent provider fails to participate in training required by the Department; or

(h) The independent provider does not request a hearing within 10 business days of a notice of proposed termination.

(2) An independent provider may not be paid for work performed while their provider number is inactivated. A provider number for an independent provider may be inactivated during an investigation when:

(a) The independent provider, even if not providing any paid services to an individual, is being investigated for alleged violation of protective services and abuse rules by a case management entity for suspected abuse that poses imminent danger to current or future individuals;

(b) The independent provider, even if not providing any paid services to an individual, is being investigated by law enforcement for any of the crimes listed in OAR 407-007-0275; or

(c) The independent provider has a credible allegation of fraud pursuant to federal law under 42 CFR 455.23.

(3) An independent provider may not be paid for work performed while their provider number is terminated. A provider number for an independent provider may be terminated by the Department when:

(a) The independent provider violates the requirement to maintain a drug-free work place by:

(A) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while

responsible for the care of an individual, while in the home of the individual, or while transporting the individual; or

(B) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to an individual or while in the home of the individual.

(b) The independent provider has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;

(c) The independent provider demonstrates a lack of skills, knowledge, or ability to adequately or safely provide services as defined in these rules;

(d) The independent provider has a violation of the protective service and abuse rules as defined in these rules;

(e) Notwithstanding abuse as defined in OAR 407-045-0260, OAR 411-020-0002, OAR 943-045-0260, or child abuse and neglect as defined in OAR-413-015-0115, the independent provider fails to safely and adequately provide authorized services;

(f) The independent provider commits fiscal improprieties including, but not limited to, billing excessive or fraudulent charges or has a conviction for fraud pursuant to federal law under 42 CFR 455.23;

(g) The independent provider fails to provide services as required as defined in these rules and as described in the Service Agreement;

(h) The independent provider lacks the ability or willingness to maintain individual confidentiality;

(i) The independent provider engages in repeated unacceptable conduct at work, such as:

(A) Delay in arriving to work or absences from work not scheduled in advance with the individual or the representative of the individual that are either unsatisfactory to the individual or

the representative of the individual or that neglect the service needs of the individual; or

(B) Inviting unwelcome guests or pets into the home or community with the individual resulting in the dissatisfaction of the individual or the representative of the individual or inattention to the service needs of the individual.

(j) The independent provider has been excluded or debarred by the Office of the Inspector General;

(k) The independent provider fails to perform the applicable duties as a mandatory reporter; or

(l) The independent provider fails to provide a tax identification number or social security number that matches the independent provider's legal name as verified by the Internal Revenue Service or Social Security Administration

(4) NOTIFICATION OF PROPOSED CHANGE IN PROVIDER NUMBER STATUS.

(a) The Department must issue a written notice of the proposed inactivation of a provider number to the independent provider when the inactivation is based on section (1)(g) or section (2) of this rule.

(b) The Department must issue a written notice of the proposed termination of a provider number to the independent provider.

(c) The Department issued written notice of change in provider number status to the independent provider must include:

(A) An explanation of the reason for terminating or inactivating the provider number;

(B) The alleged violation as listed in sections (1) or (2) of this rule;

(C) The hearing rights, if any, of the independent provider as described in OAR 411-375-0080, including the right to legal

representation, if applicable, and where to file a request for hearing; and

(D) The effective date of the termination or inactivation.

(d) For terminations based on violation of the abuse and protective services rules, the written notice of termination may only contain the information allowed by law. In accordance with ORS 430.753, 430.763, and OAR 411-020-0030, the name of a complainant, witness, or alleged victim, and protected health information may not be disclosed.

(5) RETENTION OF PROVIDER NUMBER PENDING HEARING OUTCOME. The provider number of an independent provider may not be inactivated during the first 10 business days after a notice of proposed termination to provide the opportunity for the independent provider to file a request for hearing. The independent provider must file a request for hearing within 10 business days from the date of the notice of proposed termination if the independent provider wishes to continue to work during the hearing process as described in OAR 411-375-0080. If the independent provider files a written request for a hearing prior to the deadline, the provider number of the independent provider may not be inactivated or terminated until the hearing process is concluded.

(a) EXCLUSIONS. A independent provider may be terminated immediately by the Department and the independent provider may not continue to work during the hearing process as described in OAR 411-375-0080 when:

(A) Termination is based on a background check. The independent provider has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370;

(B) Termination is based on being excluded or debarred by the Office of the Inspector General;

(C) Termination is based on a conviction for fraud pursuant to federal law under 42 CFR 455.23; or

(D) Termination is based on an alleged violation listed in section (3) of this rule and the alleged violation presents imminent danger to current or future individuals.

(b) The independent provider must file a request for hearing within 90 days from the date of the notice of termination as described in OAR 411-375-0080.

(6) TERMINATION IF NO HEARING REQUEST FILED.

(a) The decision of the Department becomes final if an independent provider does not request a hearing within 90 days from the date of the notice of termination.

(b) The Department will issue a Final Order by Default to the independent provider in accordance with OAR 137-003-0670. The provider enrollment for a independent provider is terminated once the time period for the independent provider to request a hearing has expired.

~~(1) The provider enrollment for a personal support worker may be inactivated in the following circumstances:~~

~~(a) The personal support worker has not provided any paid home care services to an individual within the previous 12 months;~~

~~(b) The personal support worker informs the Department, CDDP, CIIS, or Support Services Brokerage that the personal support worker is no longer providing home care services in Oregon;~~

~~(c) The personal support worker fails to participate in a New Member Orientation for personal support workers as described in OAR 411-375-0020;~~

~~(d) The background check for a personal support worker results in a closed case pursuant to OAR 407-007-0325;~~

~~(e) The personal support worker, even if not providing any paid home care services to an individual, is being investigated by adult or child~~

~~protective services for suspected abuse that poses imminent danger to current or future individuals; or~~

~~(f) The personal support worker has a credible allegation of fraud or has a conviction for fraud pursuant to federal law under 42 CFR 455.23.~~

~~(2) The Department may terminate the provider enrollment for a personal support worker in the following circumstances:~~

~~(a) The personal support worker violates the requirement to maintain a drug-free work place by:~~

~~(A) Being intoxicated by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of an individual, while in the home of the individual, or while transporting the individual; or~~

~~(B) Manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing authorized services to an individual or while in the home of the individual.~~

~~(b) The personal support worker has an unacceptable background check and the background check results in a closed case pursuant to OAR 407-007-0325;~~

~~(c) The personal support worker demonstrates a lack of skills, knowledge, or ability to adequately or safely provide home care services;~~

~~(d) The personal support worker violates the protective service and abuse rules;~~

~~(e) Notwithstanding abuse as defined in OAR 407-045-0260, the personal support worker fails to safely and adequately provide authorized home care services;~~

~~(f) The personal support worker commits fiscal improprieties including, but not limited to, billing excessive or fraudulent charges or~~

~~has a conviction for fraud pursuant to federal law under 42 CFR 455.23;~~

~~(g) The personal support worker fails to provide home care services as described in the ISP and service agreement;~~

~~(h) The personal support worker lacks the ability or willingness to maintain individual confidentiality;~~

~~(i) The personal support worker engages in repeated unacceptable conduct at work, such as:~~

~~(A) Delay in arriving to work or absences from work not scheduled in advance with the individual or the representative of the individual that are either unsatisfactory to the individual or the representative of the individual or that neglect the service needs of the individual; or~~

~~(B) Inviting unwelcome guests or pets into the home or community with the individual resulting in the dissatisfaction of the individual or the representative of the individual or inattention to the required service needs of the individual.~~

~~(j) The personal support worker has been excluded or debarred by the Office of the Inspector General.~~

~~(3) NOTICE OF TERMINATION. When the Department terminates the provider enrollment of a personal support worker, the Department must issue a written notice to the personal support worker.~~

~~(a) The written notice must include:~~

~~(A) An explanation of the reason for terminating the provider enrollment;~~

~~(B) The alleged violation as listed in section (2) of this rule;~~

~~(C) The appeal rights of the personal support worker as described in OAR 411-375-0080 including the right to Union representation and where to file an appeal; and~~

~~(D) The effective date of the termination.~~

~~(b) For terminations based on substantiated abuse allegations, the written notice of termination may only contain the information allowed by law. In accordance with ORS 430.753, 430.763, and OAR 411-020-0030, the name of a complainant, witness, or alleged victim, and protected health information may not be disclosed.~~

~~(4) IMMEDIATE INACTIVATION. The Department, on the recommendation of the CDDP, CIIS, or Support Services Brokerage, may immediately inactivate the provider enrollment for a personal support worker on the date an alleged violation listed in section (2) of this rule is discovered when the alleged violation presents imminent danger to current or future individuals. The Department must make a determination to terminate or reactivate the provider number within 3 business days from the date of the notice of inactivation as described in OAR 411-375-0080. The personal support worker must file an appeal within 10 business days from the date of the notice of inactivation as described in OAR 411-375-0080.~~

~~(5) TERMINATION PENDING APPEAL. When a violation does not present imminent danger to current or future individuals, the provider enrollment of a personal support worker may not be terminated during the first 10 business days to provide the opportunity for the personal support worker to file an appeal. The personal support worker must file an appeal within 10 business days from the date of the notice of termination if they wish to continue to work during the hearing process as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider enrollment of the personal support worker may not be terminated until the appeal is resolved unless subsequent conduct of the personal support worker presents an imminent danger to a current individual recipient of home care services provided by the personal support worker.~~

~~(6) TERMINATION IF NO APPEAL FILED. The decision of the Department becomes final if a personal support worker does not request a hearing within 10 business days from the date of the notice of termination. The provider enrollment for a personal support worker is terminated once the time period for the personal support worker to request a hearing has expired.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007

411-375-0080 Hearing Rights

(1) EXCLUSIONS. The following are excluded from the hearings process described in this rule:

(a) Terminations based on a background check. The independent provider has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.

(b) Termination based on being excluded or debarred by the Office of the Inspector General.

(c) Termination based on a conviction for fraud pursuant to federal law under 42 CFR 455.23.

(d) Independent providers that have been inactivated under OAR 411-375-0070(1) or (2).

(e) Independent providers that are denied a provider enrollment number at the time of initial application.

(2) HEARINGS REQUESTS.

(a) A independent provider may file a request for a hearing with the Department if the independent provider disputes the decision to terminate the provider number of the independent provider except when excluded under section (1) of this rule. If an independent providers decides to file a request for hearing, the independent provider must specify in the request, the issues or decisions being disputed and the reason for the request.

(b) The request for a hearing must be filed in writing on the Department approved form with the Department within 30 days from the effective date of the termination included on the termination notice.

(c) The Department shall refer a request for a hearing to the Office of Administrative Hearings for scheduling a contested case hearing in accordance with OAR chapter 137, division 003.

(3) INFORMAL CONFERENCE. The Department shall offer an informal conference, as described in OAR 461-025-0325, to an independent provider within five business days from the receipt of a request for hearing.

(a) The independent provider has 10 business days to respond to the offer for an informal conference with the Department.

(b) If the independent provider accepts the offer of an informal conference, the informal conference must be scheduled with the independent provider and, if requested, a legal representative. The informal conference must involve the independent provider and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) Participation in an informal conference by the independent provider is not required.

(4) OFFICE OF ADMINISTRATIVE HEARINGS.

(a) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the Department to terminate the provider number is affirmed or reversed. A Final Order is issued according to ORS 183 and OAR 461-025-0371 with the decision to all appropriate parties.

(b) No additional hearing rights have been granted to independent providers by this rule.

(5) BURDEN OF PROOF. The Department has the burden of proving the decision to terminate the provider enrollment of an independent provider by a preponderance of the evidence. Evidence submitted for a hearing is governed by OAR 137-003-0050.

~~(1) EXCLUSIONS. The following are excluded from the appeal process described in this rule:~~

~~(a) Terminations based on a background check. The personal support worker has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370.~~

~~(b) Personal support workers that have not worked within the previous 12 months. The provider enrollment may become inactivated but may not be terminated. To activate the provider enrollment number, the personal support worker must complete an application and background check.~~

~~(c) Personal support workers that fail to complete a background recheck.~~

~~(d) Personal support workers that are denied a provider enrollment number at the time of initial application.~~

~~(e) Personal support workers not currently providing services to any individuals whose provider enrollment is inactivated while an Adult or Child Protective Services investigation is being completed.~~

~~(f) Personal support workers who have been excluded or debarred by the Office of the Inspector General.~~

~~(2) FILING AN APPEAL. If a personal support worker decides to file an appeal, the personal support worker must specify in the appeal, the issues or decisions being appealed and the reason for the appeal. The appropriate party, as stated in the notice of termination, must receive the appeal within 10 business days of the notice of termination.~~

~~(3) INFORMAL CONFERENCE. The Department must conduct an informal conference, as described in OAR 461-025-0325, if requested by a personal support worker within 5 business days from the receipt of an appeal. The informal conference must be scheduled with the personal support worker and, if requested, a representative of the Union. The informal conference must involve the personal support worker and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone.~~

~~(4) OFFICE OF ADMINISTRATIVE HEARINGS.~~

~~(a) A personal support worker may file a request for a hearing with the Department if the personal support worker continues to dispute the decision to terminate the provider enrollment of the personal support worker.~~

~~(b) The request for a hearing must be filed with the Department within;~~

~~(A) 10 days of the effective date of the termination notice issued by the Department if the personal support worker wishes to continue to work during the hearing process; or~~

~~(B) 90 days from the effective date on the termination notice.~~

~~(c) The Department shall refer a request for a hearing to the Office of Administrative Hearings for scheduling a contested case hearing in accordance with OAR chapter 137, division 003.~~

~~(d) An Administrative Law Judge (ALJ) with the Office of Administrative Hearings shall determine whether the decision from the Department to terminate the provider enrollment is affirmed or reversed. A Final Order will be issued according to ORS 183 and OAR 461-025-0371 with the decision to all appropriate parties.~~

~~(e) No additional hearing rights have been granted to personal support workers by this rule.~~

~~(5) BURDEN OF PROOF. The Department has the burden of proving the decision to terminate the provider enrollment of a personal support worker by a preponderance of the evidence. Evidence submitted for a hearing is governed by OAR 137-003-0050.~~

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-410.619, 427.007