OFFICE OF THE SECRETARY OF STATE
TOBIAS READ
SECRETARY OF STATE

MICHAEL KAPLAN
DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

OHP 5-2025
CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Temporary reversion to existing 2025 rules

EFFECTIVE DATE: 11/26/2025 THROUGH 12/31/2025

AGENCY APPROVED DATE: 11/26/2025

CONTACT: Joseph Sullivan
503-559-4945
joseph.a.sullivan@oha.oregon.gov

500 Summer St NE
Salem,OR 97301

Filed By:
Pete Edlund
Rules Coordinator

NEED FOR THE RULE(S):

OHP_4-2025 was erroneously filed with an effective date of 11/26/25, instead of 1/1/26 as intended. This temporary filing restores the rule language from OHP_5-2024 that was in place previously, for the rest of the 2025 calendar year. OHP_4-2025's new rule language will become effective on 1/1/2026, when this temporary filing expires.

JUSTIFICATION OF TEMPORARY FILING:

(1). 2026's rates would incorrectly be in effect for 2025.
(2). Temporary Health Care Staff, and the providers contracting with them, would have inconsistent billing rates, likely leading to confusion and payment errors.
(3) Without this temporary filing, 2026's rates would be effective for the rest of 2025, which was not the intent of the permanent rulemaking.
(4) The temporary filing will reinstate the previous ruleset for the rest of 2025, then expire, making the new permanent rulemaking effective as of 1/1/26, as intended.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

None.

RULES:
409-039-0010, 409-039-0020, 409-039-0030, 409-039-0040, 409-039-0050, 409-039-0060, 409-039-0070, 409-039-0090, 409-039-0100, 409-039-0120

AMEND: 409-039-0010

RULE TITLE: Definitions

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:
(1) “Activities of daily living” means self-care activities that must be accomplished by an individual to meet his or her

daily needs, but do not necessarily occur on a daily basis.
(2) “Agency Margin” means the amount represented as a percentage of the bill rate, including any costs not paid directly to the Personnel. This includes, but is not limited to, administrative costs, contracting fees, employee costs, margin, profit.
(3) “Authority” means Oregon Health Authority.
(4) “Certified medical assistant” means an individual who is certified through the American Association of Medical Assistants as a certified medical assistant and performs administrative and clinical tasks including taking and recording vital signs, preparing patients for examinations, drawing blood, giving vaccines, recording medical histories of patients, updating and filing patient medical records, and other administrative and clinical tasks.
(5) “Certified nursing assistant” means an individual who is certified as a certified nursing assistant by the Oregon State Board of Nursing as provided in ORS 678.442 to ORS 678.448.
(6) “Direct caregiver” means a person who provides assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services.
(7) “Emergency” has the meaning given the term in ORS 401.025.
(8) “Emergency Waiver” refers to the process outlined in OAR 409-039-0050(1).
(9) “Employment agency” has the meaning given that term in ORS 658.005.
(10) “Facility” means an in-home care agency as defined in 443.305; facility with a memory care endorsement facility as described in ORS 443.886; residential care facility as defined in ORS 443.400; or a skilled nursing facility as defined in ORS 442.015 that engages a temporary staffing agency to provide personnel to deliver health care services or assistance with activities of daily living to clients, patients, or residents of the facility.
(11) “Home care worker” has the meaning given that term in ORS 410.600.
(12) “Home health agency” has the meaning given for that term in ORS 443.014.
(13) “Hospital” has the meaning given for that term in ORS 442.015.
(14) “In-home care agency” has the meaning given for that term in ORS 443.305.
(15) “Indian Health Care Provider (IHCP)” means an Indian health program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or an urban Indian organization (otherwise known as an I/T/U) as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).
(16) “Indian Health Program” means any IHS facility, any federally recognized tribe or tribal organization, or any Federally Qualified Health Center (FQHC) with a 638 designation.
(17) “In good standing” means the status of a holder of a license, certification or registration that is not suspended, revoked, expired, resigned or lapsed.
(18) “Licensed practical nurse” means:
(a) An individual who is licensed as a licensed practical nurse by the Oregon State Board of Nursing as provided in ORS 678.040 and ORS 678.050; or
(b) A non-Oregon individual who is licensed and in good standing as a licensed practical nurse in another state if approved by the Oregon State Board of Nursing, as provided by ORS 678.031, to practice as a licensed practical nurse in this state on a single, temporary assignment of not to exceed 90 days and renewable for not to exceed 90 days (the "90-Day Nurse Licensure Exception").
(19) “Non-Emergency Waiver” refers to the process outlined in OAR 409-039-0050(2).
(20) “Personal support worker” has the meaning given that term in ORS 410.600.
(21) “Personnel” means:
(a) A registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver who provides health care services or assistance with activities of daily living to clients, patients or residents of a facility; or
(b) A registered nurse or certified nursing assistant who provides health care services to patients for or on behalf of a hospital that engages the temporary staffing agency with which the registered nurse or certified nursing assistant is associated.

(22) “Program” means the Temporary Health Care Staff Rate Setting Program in the Health Policy and Analytics Division of the Oregon Health Authority.
(23) “Program website” means the Authority’s website for the Temporary Health Care Staff Rate Setting Program, currently located at https://www.oregon.gov/oha/hpa/hp-pco/pages/rate-setting.aspx.
(24) “Rate” means the total amount that a temporary staffing agency may charge to or receive from a hospital or facility that engages the temporary staffing agency to assign personnel to the hospital or facility on a temporary basis.
(25) “Registered nurse” means:
(a) An individual who is licensed as a registered nurse by the Oregon State Board of Nursing as provided in ORS 678.040 and ORS 678.050; or
(b) A non-Oregon individual who is licensed and in good standing as a registered nurse in another state if approved by the Oregon State Board of Nursing, as provided by ORS 678.031, to practice as a registered nurse in this state on a single, temporary assignment of not to exceed 90 days and renewable for not to exceed 90 days (the "90-Day Nurse Licensure Exception").
(26) “Temporary staffing agency” means:
(a) An entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of hospitals or facilities that engage the temporary staffing agency.
(b) “Temporary staffing agency” does not include:
(A) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;
(B) An individual who provides the individual’s services on a temporary basis;
(C) An employment agency;
(D) Home health agencies licensed under ORS 443.015;
(E) In-home care agencies licensed under ORS 443.315; or
(F) Home care workers and personal support workers listed on the home care registry.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0020

RULE TITLE: Scope and Applicability; Exceptions

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

These rules apply to temporary staffing agencies, facilities, and hospitals, except as provided below:

(1) These rules do not apply to Indian Health Care Providers or Indian Health Programs.

(2) A temporary staffing agency engaged by a hospital to provide 25 or fewer personnel in a single licensed care setting may charge to and receive from a hospital, rates that exceed the maximum rates set under OAR 409-039-0040. This 25 or fewer exception applies collectively to all personnel provided by a temporary staffing agency for each single licensed care setting. This applies:

(a) Per licensed facility, and

(b) Per work order or contract.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0030

RULE TITLE: Health Professions (Personnel) Covered

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

(1) Facilities: For facilities, the maximum rates established in OAR 409-039-0040 apply to the following categories of personnel:

(a) Registered nurse,

(b) Licensed practical nurse,

(c) Certified medical assistant,

(d) Certified nursing assistant, and

(e) Direct caregiver who provides health care services or assistance with activities of daily living to clients, residents, or patients.

(2) Hospitals: Maximum rates apply to a registered nurse or certified nursing assistant providing health care services to patients.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0040

RULE TITLE: Maximum Rates for a Hospital or Facility

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

(1) The maximum rates a Temporary Staffing Agency may charge to or receive from hospitals and facilities, as described in Section 3 of this rule:

(a) Are based on the most recently available wage data from the Oregon Employment Department and include any applicable fringe benefits, charges for administrative and contract fees and other special charges; and

(b) Bear a reasonable relationship to this wage data from the Oregon Employment Department.

(2) The differences in the maximum rates established in this rule are based on the following factors:

(a) The minimum wages in geographic regions of this state;

(b) Shift differentials;

(c) Holiday pay;

(d) Type of licensed care setting;

(e) Relevant state and federal regulatory requirements;

(f) Personnel with specialty training; and

(g) Information obtained through consultation with temporary staffing agencies and their representatives and providers of long-term care services, acute care services, and primary care services, or representatives of the providers described in this paragraph.

(3) The maximum rates established under this Section include the maximum Agency Margin rate a temporary staffing agency can charge for each respective position and will be published on the Program website. The maximum Agency Margin is 34.2%.

(4) Maximum Rates for a Hospital or Facility are effective starting January 1, 2025 and listed in 409-039-0040 Table 1. These maximum rates apply to rates negotiated on or after January 1, 2025.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

409-039-0040: Maximum Rates for a Hospital or Facility, Table 1

Personnel Type	**Maximum Rates**	**Maximum Rates** (Holiday and Overtime)
RN (Hospital)	$131.95	$197.93
RN (Other Facilities)	$117.49	$176.24
LPN/LVN	$70.32	$105.74
CMA	$47.06	$70.59
CNA (Hospitals and Other Facilities)	$42.23	$63.35
Direct Caregiver	$36.28	$54.42

AMEND: 409-039-0050

RULE TITLE: Waivers to Charge More than the Maximum Bill Rates

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

A temporary staffing agency, hospital, or facility may apply for a waiver of the maximum rates described in ORS 676.716 in either of the following two circumstances.

(1) Emergency Waiver. A hospital, facility or temporary staffing agency that intends to engage at a rate higher than a maximum rate established under ORS 676.716, in order to respond to an Emergency or state of emergency, may request an Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0060 in the following circumstances:

(a) There is an Emergency;

(b) A state of emergency is declared pursuant to ORS 401.165; or

(c) The Governor declares a public health emergency pursuant to ORS 433.441.

(2) Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 if the applicant clearly demonstrates to the Authority that:

(a) it has made reasonable, good faith efforts to stay within the maximum rates;

(b) it has exhausted all other possibilities to stay within the maximum rates; and

(c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.

STATUTORY/OTHER AUTHORITY: ORS 676.722

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0060

RULE TITLE: Application Process and Review of Emergency Waiver Requests

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

(1) A hospital, facility, or temporary staffing agency requesting to waive the maximum rates established in OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050(1) must submit a request for an Emergency Waiver to the Authority.

(2) An Emergency Waiver request required to be filed under Section (1) of this rule will be submitted using the form available at the Program Website.

(3) An initial request submitted to the Authority requesting an Emergency Waiver will be automatically approved and issued by the Authority upon submission.

(4) An Emergency Waiver automatically approved and issued under Section (3) of this rule is valid for 90 calendar days and may be renewed. Upon expiration of the Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority pursuant to Section (5) of this rule.

(5) An Emergency Waiver waiving the maximum rates established in OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050 (1) may be renewed and issued to a hospital, facility, or temporary staffing agency that possesses a license, certification or registration in good standing to operate in Oregon. A temporary staffing agency, hospital, or facility may submit a request to renew an Emergency Waiver under this Section for an additional 90 calendar day period.

(a) The Authority will approve or deny a request to renew an Emergency Waiver within three (3) business days after such request is received by the Authority.

(b) Such request must be made no sooner than 10 business days before, or no later than four (4) business days prior to, the expiration date of the Emergency Waiver.

(c) For the purposes of this rule, a request to renew an Emergency Waiver that is filed with the Authority on or after 4:00 p.m. on a weekday, or on a Saturday, Sunday, or legal holiday, will be considered received on the next following business day.

(6) Upon approval of an Emergency Waiver under this rule, a temporary staffing agency engaged by a hospital or facility for which an emergency waiver is issued under this rule may charge to or receive from the hospital or facility rates consistent with the Emergency Waiver.

STATUTORY/OTHER AUTHORITY: ORS 676.722

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0070

RULE TITLE: Application Process and Review of Non-Emergency Waiver Requests

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

(1) A Non-Emergency Waiver waiving the maximum rates established in OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050(2) may be issued to a hospital, facility, or temporary staffing agency that possesses a license, certification or registration in good standing to operate in Oregon. A hospital, facility, or temporary staffing agency requesting such waiver must submit a request for a Non-Emergency Waiver to the Authority.

(2) A Non-Emergency Waiver request required to be filed under Section (1) of this rule will be submitted using the form available at the Program Website.

(3) A Non-Emergency Waiver requested may be for a period of 30, 60 or 90 calendar days. A temporary staffing agency, facility, or hospital may request to renew an approved Non-Emergency Waiver.

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than 25 business days before, and no later than twelve (12) business days before, the approved Non-Emergency Waiver is set to expire.

(b) Upon expiration of the Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority.

(4) The Authority will approve or deny a request for a Non-Emergency Waiver made pursuant to Section (1) of this rule or a request to renew an approved Non-Emergency Waiver pursuant to Section (3) of this rule within ten (10) business days after request is received by the Authority.

(5) For the purposes of this rule, a request to renew an Emergency Waiver that is filed with the Authority on or after 4:00 p.m. on a weekday, or on a Saturday, Sunday, or legal holiday, will be considered received on the next following business day.

(6) A temporary staffing agency, hospital, or facility for which a Non-Emergency Waiver is approved under this rule may charge and/or pay rates consistent with the terms of the Non-Emergency Waiver.

(7) Upon expiration of the Non-Emergency Waiver, or renewed Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040.

STATUTORY/OTHER AUTHORITY: ORS 676.722

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0090

RULE TITLE: Annual Evaluation of Maximum Rates

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:
(1) The Authority will annually evaluate the maximum rates established under OAR 409-039-0040 and may adjust these maximum rates based on changes in the labor market, the wage data described in ORS 676.716, and other factors the authority considers relevant, including temporary staff wages, bill rates, and agency margin.
(2) In evaluating and adjusting the maximum rates established under OAR 409-039-0040, the Authority will solicit feedback from the same entities consulted in the creation of the initial rates, as outlined in OAR 409-039-0040.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0100

RULE TITLE: Data Requests

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:
(1) In furtherance of the Authority's annual evaluation of the maximum rates pursuant to OAR 409-039-0090, the Authority may request information from temporary staffing agencies to assess and evaluate the maximum rates established under OAR 409-039-0040.
(2) A temporary staffing agency must respond to all requests from the Authority under this rule within 45 calendar days from the date such request is issued.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725

AMEND: 409-039-0120

RULE TITLE: Information Sharing and Use of Data

RULE SUMMARY: reverting to prior rule language for the remainder of 2025

RULE TEXT:

(1) If a temporary staffing agency, facility, or hospital that files documents, materials, information, or data with the Authority believes such information may be considered confidential and exempt from public disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478, such entity filing the confidential information must provide a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable statutory basis for confidentiality of each portion.

(2) The Authority may use a confidential document, material, information, or data in administering these rules. In order to assist in the performance of the Authority's duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA's Health Licensing Office.

STATUTORY/OTHER AUTHORITY: ORS 676.716

STATUTES/OTHER IMPLEMENTED: ORS 676.695 - 676.725