

10-30

SPD 18-2001(Temp)

Secretary of State  
 Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
 A Statement of Need and Justification accompanies this form..

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on upon filing by the  
Date prior to or same as filing date

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division	Administrative Rules Chapter Number
Christina Hartman	411
500 Summer Street NE, E-10	(503) 945-6398
Salem, OR 97301-1074	

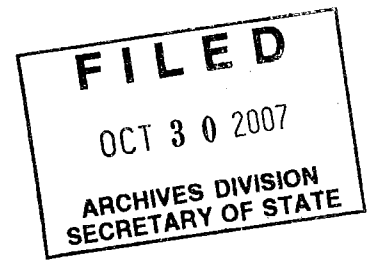
Rules Coordinator	Address	Telephone
to become effective <u>November 1, 2007</u> through <u>April 29, 2008.</u>		
<small>Date upon filing or later</small>	<small>A maximum of 180 days including the effective date.</small>	

**RULE CAPTION**

Client-Employed Provider Program.  
 Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

**RULEMAKING ACTION**

List each rule number separately, 000-000-0000.



**ADOPT:** Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

**AMEND:**  
 411-031-0040

**SUSPEND:**

<u>ORS 409.050 &amp; 410.090</u>	<u>ORS 243.650, 243.676 &amp; 243.672</u>
<small>Stat. Auth.</small>	<small>Other Authority</small>

ORS 410.010, 410.020, 410.070, 410.612 & 410.614  
Stats. Implemented

**RULE SUMMARY**

The Department of Human Services, Seniors and People with Disabilities Division (SPD) is temporarily amending OAR 411-031-0040 to reflect the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union (SEIU), Local 503, Oregon Public Employees Union (OPEU).

Catherine A Cooper 10/30/07  
Authorized Signer Date

Catherine A. Cooper  
Printed name

Secretary of State  
**STATEMENT OF NEED AND JUSTIFICATION**  
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division

Administrative Rules Chapter Number

In the Matter of:

The temporary amendment of OAR 411-031-0040, related to the Client-Employed Provider Program.

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

Client-Employed Provider Program.

Statutory Authority: ORS 409.050 & 410.090

Other Authority: ORS 243.650, 243.676 & 243.672

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

Need for the Temporary Rule(s):

The 2007-2009 Collective Bargaining Agreement between the Home Care Commission and SEIU, Local 503, OPEU has provisions that take effect November 1, 2007. SPD is temporarily amending OAR 411-031-0040 relating to the Client-Employed Provider Program to reflect the changes made by the 2007-2009 Collective Bargaining Agreement to the accrual, cash out and use of paid leave for hourly and live in Homecare Workers, and mileage reimbursement.

Documents Relied Upon, and where they are available:

2007-2009 Collective Bargaining Agreement between the Home Care Commission and SEIU, Local 503, OPEU.

Available at: [www.dhs.state.or.us/spd/tools/cm/homecare/index.htm](http://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm)

Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to SPD, the Home Care Commission, Homecare Workers and clients and would result in non-compliance with the provisions of the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and SEIU, Local 503, OPEU.

This rule needs to be promptly amended to avoid grievances filed by the union that could result in hearings before the Employment Relations Board (ERB) unless the parties mutually agree to seek alternative dispute resolution assistance. Grievances filed with the ERB could result in costs to SPD and the Home Care Commission as a presentation must be prepared, there are grievance filing costs and attorney representation may be necessary.

In addition, Homecare Workers could file individual grievances, also resulting in ERB hearings. A flood of grievances from individual Homecare Workers could heavily cost SPD and the Home Care Commission in time and funding to prepare and participate in the grievance process. In future contract negotiations, good faith could be hard to establish if SPD has a record of non-compliance with previously negotiated contracts.

While there is a non-strike provision of the agreement, should SPD fail to implement sections of the agreement, it is possible that some Homecare Workers will not accept new jobs causing a shortage of workers or take other actions that affect client services. If this occurred, SPD could incur greater costs as individuals unable to find Homecare Workers might be forced to enter facilities to receive necessary services. This could be more expensive to SPD.

Catherine A. Cooper      10/30/01  
Authorized Signer      Date

Catherine A. Cooper

Printed name

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

**CHAPTER 411**

**DIVISION 31  
HOMECARE WORKERS ENROLLED IN THE  
CLIENT-EMPLOYED PROVIDER PROGRAM**

**411-031-0040**

**Client-Employed Provider Program**

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following criteria apply to both structures:

- (1) **EMPLOYMENT RELATIONSHIP.** The relationship between the provider and the client is that of employee and employer.
- (2) **CLIENT-EMPLOYER JOB DESCRIPTIONS.** Each Client-Employer is responsible for creating and maintaining a job description for the potential employee in coordination with the services authorized by the Case Manager.
- (3) **HOMECARE WORKERS LIABILITIES.** The only benefits available to Homecare Workers are those negotiated in the 2007-2009 Collective Bargaining Agreement between the Home Care Commission and the Service Employee's International Union, Local 503, Oregon Public Employees' Union. This agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare Workers are not state employees.
- (4) **CLIENT-EMPLOYER ABSENCES.** When a Client-Employer is absent from the home due to an illness or medical treatment and is expected to return to the home within a 30 day period, a live-in provider, that is the only live-in provider for that client, may be retained to ensure his or her presence upon the Client-Employer's return or to maintain the client's home for up to 30 days at the rate of pay immediately preceding the client's absence. Spousal Pay Providers are not eligible for payment during a client absence.
- (5) **SELECTION OF HOMECARE WORKER.** The Client-Employer carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees. The Client-Employer has the right to employ any individual who successfully meets the provider enrollment standards described in section (8) of this rule. The SPD/AAA office determines whether the employee meets minimum qualifications to provide the authorized services paid by SPD.
- (6) **EMPLOYMENT AGREEMENT.** The Client-Employer retains the full right to establish the employer-employee relationship at any time after Bureau of Citizenship and Immigration Services papers have been completed and identification photocopied. SPD will not guarantee payment for those services until all acceptable enrollment standards have been verified and both

the employer and Homecare Worker have been formally notified in writing that payment by SPD is authorized.

(7) TERMS OF EMPLOYMENT. The terms of the employment relationship are the responsibility of the Client-Employer to establish at the time of hire. These terms of employment include dismissal or resignation notice, work scheduling, and absence reporting as well as any sleeping arrangements or meals provided for live-in or hourly employees.

(8) PROVIDER ENROLLMENT.

(a) Enrollment Standards. A Homecare Worker must meet all of the following standards to be enrolled with the SPD's Client-Employed Provider Program:

(A) The Homecare Worker must maintain a drug-free work place.

(B) The Homecare Worker must be "approved" following a criminal history check as defined in OAR 407-007-0210.

(C) The Homecare Worker must have the skills, knowledge, and ability to perform, or to learn to perform the required work.

(D) The Homecare Worker's U.S. employment authorization must be verified.

(E) The Homecare Worker must be 18 years of age or older. SPD Central Office may approve a restricted enrollment, as described in section (8)(d) of this rule, for a Homecare Worker who is at least sixteen years of age.

(F) The Homecare Worker must complete an orientation as described in section (8)(e) of this rule.

(b) SPD/AAA may deny an application for provider enrollment in the Client-Employed Provider Program when:

(A) The applicant has a history of violating protective service and abuse rules;

(B) The applicant has committed fiscal improprieties;

(C) The applicant does not have the skills, knowledge or ability to adequately or safely provide services;

(D) The applicant lacks the ability or willingness to maintain Client-Employer confidentiality;

(E) The applicant has an unacceptable criminal history;

(F) The applicant is not 18 years of age;

(G) The applicant has been excluded by the Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare and all other Federal Health Care Programs; or

(H) SPD/AAA has information that enrolling the applicant as a Homecare Worker would put vulnerable clients at risk.

(c) Criminal History Rechecks. Criminal history rechecks will be conducted at least every other year from the date the Homecare Worker is enrolled. SPD/AAA may conduct a recheck more frequently based on additional information discovered about the Homecare Worker, such as possible criminal activity or other allegations.

(A) When a Homecare Worker is approved without restrictions following a criminal history check fitness determination, the approval will meet the Homecare Worker enrollment requirement statewide whether the qualified entity is a state-operated SPD office or an AAA operated by a county, Council of Governments or a non-profit organization.

(B) Criminal history check approval is effective for two years unless:

(i) Based on possible criminal activity or other allegations against the Homecare Worker, a new fitness determination is conducted resulting in a change in approval status; or

- (ii) Approval under probationary status has ended following a final fitness determination, as defined in OAR 407-007-0210 and described in OAR 407-007-0310 and OAR 407-007-0320; or
  - (iii) The approval has ended because DHS has inactivated or terminated the Homecare Worker's provider enrollment for one or more reasons described in this rule or OAR 411-031-0050.
- (C) Prior criminal history check approval for another DHS provider type is inadequate to meet criminal history check requirements for Homecare Worker enrollment.
- (d) Limited enrollment.
- (A) SPD/AAA may approve a limited enrollment for a provider as an Exclusive Homecare Worker based on the applicant's personal choice to provide services only to specific family members, friends or neighbors. To remove Exclusive Homecare Worker status and be designated as a Career Homecare Worker, a Homecare Worker must complete a new application and criminal history check and be approved by SPD/AAA.
- (B) SPD/AAA may approve a limited enrollment for a provider as a Restricted Homecare Worker to provide services to specific individuals. To remove Restricted Homecare Worker status and be designated as a Career Homecare Worker, the applicant must complete a new application and criminal history check and be approved by SPD/AAA.
- (i) Criminal History. After conducting a weighing test as described in OAR chapter 407, division 007, SPD/AAA may approve a Homecare Worker with prior criminal history under a restricted enrollment to provide services to only specific individuals who are family members, neighbors or friends.
- (ii) Based on the applicant's lack of skills, knowledge or abilities, SPD/AAA may approve an applicant as a Restricted Homecare Worker to provide services only to specific individuals who are family members, neighbors or friends.
- (iii) Based on an exception to the age requirements for provider enrollment approved by SPD Central Office as described in section (8)(a)(E) of this rule, a Homecare Worker who is at least 16 years of age may be approved as a Restricted Homecare Worker.
- (C) Applicants who choose to provide services only to family, friends or neighbors, will only be approved for limited enrollment as a Restricted Homecare Worker when:
- (i) The applicant has a potentially disqualifying criminal history that following a weighing test he or she would be denied as a Career Homecare Worker; or
  - (ii) The applicant lacks the skills, knowledge or abilities to be approved as a Career Homecare Worker; or
  - (iii) The applicant is at least 16 years of age and has been approved by SPD Central Office for an exception to the age requirements for provider enrollment as described in section (8)(a)(E) of this rule.
- (e) Homecare Worker Orientation. Homecare Workers must participate in an orientation arranged through a SPD/AAA office. The orientation should occur within the first 30 days after becoming enrolled in the Client-Employed Provider Program and prior to beginning work for any specific SPD/AAA clients. When completion of an orientation is not possible within those timelines, orientation must be completed within 90 days of being enrolled. If a Homecare Worker fails to complete an orientation within 90 days of provider enrollment, their provider number will be inactivated and any authorization for payment of services will be discontinued.
- (f) A Homecare Worker's provider enrollment may be inactivated when:
- (A) The Homecare Worker has not provided any paid services to any client in the last twelve months;

- (B) The Homecare Worker fails to complete a criminal history check authorization or provide fingerprints in accordance with the criminal history check, when requested by SPD/AAA;
- (C) The Homecare Worker informs SPD/AAA they will no longer be providing Homecare Worker services in Oregon;
- (D) The provider fails to participate in a Homecare Worker orientation arranged through an SPD/AAA office within 90 days of provider enrollment; or
- (E) A complaint is being investigated against a Homecare Worker who, at the time, is not providing any paid services to clients.

(9) PAID LEAVE.

(a) Live-in Homecare Workers. Irrespective of the number of clients served, SPD will authorize one twenty-four hour period of leave each month, when a live-in Homecare Worker or Spousal Pay Provider is the only live-in provider during the course of a month. For any part of a month worked, the live-in Homecare Worker will receive a proportional share of that twenty-four hour period of leave authorization. A prorated share of the twenty-four hours will be allocated proportionately to each live-in when there is more than one live-in provider per client.

(A) Accumulation and Usage. A provider may not accumulate more than 144 hours of accrued leave. The employer, Homecare Worker, and Case Manager will coordinate the timely use of these hours. Live-in Homecare Workers must take vacation leave in 24-hour increments.

Accrued leave must be taken while employed as a live-in.

(B) The Right to Retain Live-in Paid Leave. The Homecare Worker retains the right to access earned paid leave when terminating employment with one employer, so long as the Homecare Worker is employed with another employer as a live-in within one year of termination.

(C) Transferability of Live-In Paid Leave. Live-in Homecare Workers who convert to hourly or separate from live-in service and return as an hourly Homecare Worker within one year from the last date of live-in services will be credited with their unused hours of leave up to a maximum of 32 hours.

(D) Cash out of paid leave.

(i) DHS will pay live-in Homecare Workers 50 percent of all unused paid leave on January 31 of each year. The balance of paid leave is reduced 50 percent with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 may only be paid up to the amount of remaining unused paid leave.

(iii) Effective July 1, 2008, a live-in Homecare Worker may submit a request for payment of 50 percent of unused paid leave if:

(I) The live-in Homecare Worker's client-employer is no longer eligible for In-Home Services described in chapter 411, division 030; and

(II) The live-in Homecare Worker does not have alternative residential housing.

(iv) If a request for payment of 50 percent of unused paid leave based on sections (9)(a)(D)(iii)(I) and (9)(a)(D)(iii)(II) of this rule is granted, the Homecare's paid leave balance is reduced to zero.

(b) Hourly Homecare Workers. On July 1st of each year, active Homecare Workers who worked 80 authorized and paid hours in any one of the three months that immediately precede July (April, May, June) will be credited with one 16 hour block of paid leave to use during the current fiscal biennium (July 1 through June 30) in which it was accrued. On February 1st of each year, active employees who worked 80 authorized and paid hours in any one of the three months that immediately precede February (November, December, January) will be credited with 16 hours of paid time off. One 16 hour block of paid leave will be credited to each eligible Homecare

Worker, irrespective of the number of clients they serve. Such leave will not be cumulative from biennium to biennium.

(A) Utilization of Hourly Paid Leave.

(i) Such time off must be utilized in one eight -hour block subject to authorization. If the Homecare Worker's normal workday is less than eight hours, such time off may be utilized in blocks equivalent to the normal workday. Any remaining hours that are less than the normally scheduled workday may be taken as a single block.

(ii) Hourly Homecare Workers may take unused paid leave when their employer is temporarily unavailable for the Homecare Worker to provide services.

(B) Limitations of Hourly Paid Leave. Homecare Workers will not be compensated for paid leave unless the time off work is actually taken except as noted in section (9)(b)(D) of this rule.

(C) Transferability of Hourly Paid Leave. An hourly Homecare Worker who transfers to work as a live-in Homecare Worker (within the biennium that their hourly leave is earned) will maintain their balance of hourly paid leave and begin accruing live-in paid leave.

(D) Cash out of paid leave.

(i) DHS will pay hourly providers for all paid leave unused on January 31 of each year. The balance of paid leave is reduced to zero with the cash out.

(ii) Vouchers requesting payment of paid leave received after January 31 will not be paid if paid leave has already been cashed out.

(10) SPD FISCAL AND ACCOUNTABILITY RESPONSIBILITY.

(a) Direct Service Payments. SPD will make payment to the provider on behalf of the client for all in-home services. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the Homecare Worker to demand or receive additional payment for these Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based Services Waiver is prohibited.

(b) Timely Submission of Claims. In accordance with OAR 410-120-1300, all claims for services must be submitted within 12 months of the date of service.

(c) Ancillary Contributions.

(A) Federal Insurance Contributions Act (FICA). Acting on behalf of the Client-Employer, SPD will apply any applicable FICA regulations and will:

(i) Withhold the Homecare Worker-employee contribution from payments; and

(ii) Submit the Client-Employer contribution and the amounts withheld from the Homecare Worker-employee to the Social Security Administration.

(B) Benefit Fund Assessment. The Workers' Benefit Fund Assessment pays for programs that provide direct benefits to injured workers and their beneficiaries and that assist employers in helping injured workers return to work. The Department of Consumer & Business Services sets the Workers' Benefit Fund Assessment Rate for each calendar year. SPD 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 Client-Employer, SPD will:

(i) Deduct the Homecare Worker-employees' share of the Benefit Fund Assessment Rate for each hour or partial hour worked by each paid Homecare Worker;

(ii) Collect the Client-Employer's share of the Benefit Fund Assessment for each hour or partial hour of paid services received; and

(iii) Submit the client and Homecare Worker's contributions to the Workers' Benefit Fund.

(C) SPD will pay the employer's share of the Unemployment Tax.



(d) Ancillary Withholdings. For purposes of section (10)(d) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) SPD will deduct from the Homecare Worker's monthly salary or wages the specified amount for payment to a labor organization.

(B) In order to receive this payment, the labor organization must enter into a written agreement with SPD to pay the actual administrative costs of the deductions.

(C) SPD will pay the deducted amount monthly to the designated labor organization.

(e) State and Federal Income Tax Withholding.

(A) SPD will withhold state and federal income taxes on all payments to Homecare Workers, as indicated in the Home Care Commission's Collective Bargaining Agreement with the Service Employee's International Union.

(B) Homecare Workers must complete and return a current Internal Revenue Service W-4 form to the local office. SPD will apply standard income tax withholding practices in accordance with the Code of Federal Regulations, Title 26, Part 31 (26 CFR 31).

(11) Homecare Worker Expenses Secondary to Performance of Duties.

(a) Providers may be reimbursed at \$0.485 cents per mile effective October 1, 2007 when they use their own car for service plan related transportation, if prior authorized by the Case Manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Medical transportation through the DHS, Division of Medical Assistance Programs (DMAP), volunteer transportation, and other transportation services included in the service plan will be considered a prior resource.

(c) DHS is not responsible for vehicle damage or personal injury sustained while using a personal motor vehicle for DMAP or service plan-related transportation, except as may be covered by workers' compensation.

(12) Workers' Compensation and health insurance are available to eligible Homecare Workers as defined in the 2007-2009 Home Care Commission's Bargaining Agreement with the Service Employee's International Union. In order to receive Homecare Worker services, the Client-Employer must provide written authorization and consent to SPD for the provision of workers' compensation insurance for their employee.

(13) OVERPAYMENTS.

(a) An overpayment is any payment made to a Homecare Worker by SPD that is more than the person is authorized to receive.

(b) Overpayments are categorized as follows:

(A) Administrative Error Overpayment. Occurs when SPD failed to authorize, compute or process the correct amount of in-home service hours or wage rate.

(B) Provider Error Overpayment. Occurs when SPD overpays the Homecare Worker due to a misunderstanding or unintentional error.

(C) Fraud Overpayment. "Fraud" means taking actions that could result in receiving a benefit in excess of the correct amount, whether by intentional deception, misrepresentation or failure to account for payments or money received. "Fraud" also means spending payments or money the provider was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). SPD will determine, based on a preponderance of the evidence, when fraud has resulted in an overpayment. The Department of Justice, Medicaid Fraud Unit will determine when a Medicaid Fraud allegation will be pursued for prosecution.

(c) Overpayments are recovered as follows:

(A) Overpayments will be collected prior to garnishments, such as child support, Internal Revenue Service back taxes, and educational loans.

(B) Administrative or provider error overpayments will be collected at no more than 5 percent of the Homecare Worker's gross wages.

(C) Fraud Overpayments. SPD will determine when a fraud overpayment has occurred and the manner and amount to be recovered.

(D) Providers no longer employed as Homecare Workers, will have any remaining overpayment deducted from their final check. The provider is responsible for repaying the amount in full when the final check is insufficient to cover the remaining overpayment.

Stat. Auth.: ORS 409.050 & 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 410.612 & 410.614

2005 - 2007

2007 - 2009

**COLLECTIVE BARGAINING  
AGREEMENT**

**Between**

**HOME CARE COMMISSION**

**And**

**SERVICE EMPLOYEES INTERNATIONAL UNION,  
LOCAL 503, OPEU**

## TABLE OF CONTENTS

ARTICLE 1 – PARTIES TO THE AGREEMENT .....	1
ARTICLE 2 – RECOGNITION .....	1
ARTICLE 3 – TERM OF AGREEMENT .....	1
ARTICLE 4 – COMPLETE AGREEMENT .....	1
ARTICLE 5 – SEPARABILITY .....	2
ARTICLE 6 – NO STRIKE/NO LOCKOUT .....	2
ARTICLE 7 – UNION RIGHTS .....	2
ARTICLE 8 – PAYROLL/TAX WITHHOLDING VOUCHER SYSTEMS .....	4
ARTICLE 10 – <del>REMOVAL FROM THE REGISTRY</del> OREGON HOME CARE COMMISSION REGISTRY AND REFERRAL SYSTEM (OHCC RRS) .....	5
ARTICLE 11 – GRIEVANCE PROCEDURE .....	9
ARTICLE 12 – HEALTH PLAN .....	10
ARTICLE 13 – WORKERS’ COMPENSATION .....	11
ARTICLE 14 – WAGES .....	11
ARTICLE 15 – MILEAGE AND PUBLIC TRANSPORTATION REIMBURSEMENT .....	12
ARTICLE 16 – TIME OFF .....	12
ARTICLE 17 – TASK LIST OF AUTHORIZED SERVICES .....	14
ARTICLE 18 – TEMPORARY CONSUMER ABSENCES .....	14
ARTICLE 19 – WAGE OVERPAYMENTS .....	14
ARTICLE 20 – HEALTH AND SAFETY .....	14
<del>LETTER OF AGREEMENT – HCW REFERRALS</del> .....	16
HEALTH INSURANCE SIDE LETTER .....	18
STATEMENT OF INTENT – TRAINING .....	20
INTENT STATEMENT – DHS TERMINATION APPEAL PROCEDURE .....	22

**JOINT INTRODUCTORY STATEMENT TO COLLECTIVE BARGAINING**  
**AGREEMENT**

The parties to this Collective Bargaining Agreement affirm the commitment of the Homecare Commission and the Service Employees International Union, Local 503, OPEU to maintain a partnership based on principles of mutual respect, courtesy and dignity.

We acknowledge that this is a unique employer-employee relationship that also requires collaboration with consumers, their family members, DHS/AAA staff and advocates. It is our intent to create an atmosphere where those same principles of respect, courtesy and dignity apply to all of those partnerships.

On Behalf of the Homecare Commission

On Behalf of SEIU Local 503, OPEU

## ARTICLE 1 – PARTIES TO THE AGREEMENT

This Agreement is entered into between Service Employees International Union, Local 503, OPEU (Union) and the Home Care Commission (Employer) acting through the Department of Administrative Services (DAS).

## ARTICLE 2 – RECOGNITION

**Section 1.** The Employer recognizes the Union as the exclusive bargaining representative for all Homecare Workers (Employees) represented by the Union as listed in Section 2.

**Section 2.** The Employer and the Union have established a single bargaining unit that consists of:

All full-time, part-time, hourly, and live-in publicly funded Homecare Workers employed through the Employer, who are Client-Employed Providers (CEPs), Spousal Pay Providers, State Plan Personal Care for seniors and people with disabilities, and providers in the Oregon Project Independence (OPI) Program, and for whom compensation is paid by Department of Human Services (DHS) or other public agency that receives money from DHS.

All other Homecare Workers, including those employed by other employers, and supervisors are excluded.

**Section 3.** When there has been a determination of the Employment Relations Board to modify the bargaining unit listed in Section 2 of this Article or when the Parties reach mutual agreement to modify, negotiations will be entered into as needed or as required by law.

## ARTICLE 3 – TERM OF AGREEMENT

### Section 1.

(a) This Agreement shall become effective on the date of the last signature by representatives of DAS and the Union on the complete agreement after full acceptance by the Parties, and expires on June 30, 2007 2009.

(b) Either party may give written notice during the one hundred eighty (180)-day period preceding the expiration of the Agreement.

(c) Negotiations shall commence at a mutually agreeable date after receipt of such notice.

**Section 2.** This Agreement shall not be opened during its term except by mutual agreement of the Parties, by proper use of Article 6 - Separability, or as otherwise specified in the Agreement.

## ARTICLE 4 – COMPLETE AGREEMENT

**Section 1.** Pursuant to their statutory obligations to bargain in good faith, the Employer and the Union have met in full and free discussion concerning matters in "employment relations" as defined by ORS 243.650(7). This Agreement incorporates the sole and complete agreement between the Employer and the Union resulting from these negotiations. The Union agrees that the Employer has no further obligation during the term of this Agreement to bargain wages, hours, or working conditions except as specified below.

**Section 2.** The Parties recognize the full right of the Employer to issue rules, regulations and procedures and that these rights are diminished only by the law and this Agreement, including interpretative decisions which may evolve pursuant to the proper exercise of authority given by the law or this Agreement.

**Section 3.** The Employer agrees to bargain over any change(s) it proposes to make to mandatory subjects of bargaining not covered by the Agreement pursuant to the Public Employee Collective Bargaining Act (PECBA). Changes to any of the terms and conditions contained in the Agreement may be made by mutual agreement or as otherwise allowed by ORS 243.702.

## **ARTICLE 5 – SEPARABILITY**

In the event that any provision of this Agreement is at any time declared invalid by any court of competent jurisdiction, declared invalid by final Employment Relations Board (ERB) order, made illegal through enactment of federal or state law or through government regulations having the full force and effect of law, such action shall not invalidate the entire Agreement, it being the express intent of the Parties hereto that all other provisions not invalidated shall remain in full force and effect. The invalidated provision shall be subject to re-negotiation by the Parties within a reasonable period of time from either party's request.

## **ARTICLE 6 – NO STRIKE/NO LOCKOUT**

**Section 1.** During the term of this Agreement, the Union, its members and representatives agree not to engage in, authorize, sanction or support any strike, slowdown or other acts of curtailment or work stoppage.

**Section 2.** The Employer agrees that, during the term of this Agreement, it shall not cause or initiate any lockout of Employees.

**Section 3.** This Article does not apply to the consumers' sole and undisputed rights provided in the law, including the selection and termination of employment of the Employee.

## **ARTICLE 7 – UNION RIGHTS**

**Section 1. Bulletin Boards.** The Union shall be allowed to provide and maintain a bulletin board or share space on an existing bulletin board in an area regularly accessible by represented Employees where space is deemed available by Management of the facility. Such space shall not be denied for arbitrary or capricious reasons.

**Section 2. New Member Orientation.** When an orientation is scheduled for representable Employees, the Union shall be invited will be allowed to make a twenty minute presentation at a mutually agreeable time about the organization, representational status, and union benefits and to distribute and collect membership applications.

**Section 3. Union Presentations at Trainings.** The Union shall be granted twenty (20) minutes before scheduled training for Union business. Such meeting shall not cause a

delay in the scheduled start time of the training. The Union commits to making a good faith effort to make a presentation at trainings scheduled by the Employer.

A Union representative will coordinate with the HCC Training Manager or designee regarding which specific trainings a Union representative will attend. The Home Care Commission will include scheduled meeting information in the monthly Homecare Worker Training Newsletter, if the information is received prior to the monthly printing deadline. The Union shall make all reasonable efforts to provide sufficient notice to the HCC designee so any changes to training arrangements, if needed, can be made.

**Section 34. List and Information.** By the tenth (10<sup>th</sup>) calendar day of each month, the Union shall receive a list of all current Employees' name, address, telephone number, social security number or identification number, provider number, hours worked, gross pay, union dues, fair share payments and other deductions for the previous month's activity. The list will be provided in an agreed-upon format and transmitted electronically.

**Section 45.** The Union agrees to pay reasonable costs associated with fair share and dues deduction administration and/or system changes to accommodate fair share and/or dues deduction.

**Section 56.** The Union shall indemnify and hold the Employer or designee harmless against claims, demands, suits, or other forms of liability which may arise out of action taken by the Employer or designee for the purpose of complying with the provisions of this Article.

**Section 67. Dues Deduction.**

(a) Upon written request from the Employee, monthly Union dues plus any additional voluntary Union deductions shall be deducted from the Employee's salary and remitted to the Union. Additionally, upon written notice from the Union, authorized increases in dues in the form of special assessments shall be deducted from the Employee's salary and remitted to the Union according to this Section. Such notice shall include the amount and duration of the authorized special assessment(s). Monthly Union dues will cease, upon written notice from the Employee. All applications for Union membership or dues cancellation, which the Employer receives, shall be promptly forwarded to the Union. Employee applications for Union membership or dues cancellation, which the Union receives, shall be promptly forwarded to the Employer.

(b) Dues deduction shall continue until such time that the Employee requests cancellation of the dues deduction in writing.

(c) Upon return from any break in service of not more than twelve (12) months, reinstatement of the dues deduction shall occur for those workers who were having dues deducted immediately prior to said break in service.

(d) Dues deduction shall only occur after all mandatory and priority deductions are made in any pay period.

**Section 78. Fair Share.** All Employees in the bargaining unit who are not members of the Union shall make fair share payments in-lieu-of dues to the Union.

(a) Fair share deductions shall be made in the first full month of Employee service but shall not be made for any month in which the Employee works less than thirty-two (32) hours.



(b) Bargaining unit members who exercise their right of non-association, for example, when based on a bona fide religious tenet or teaching of a church or religious body of which such Employee is a member, shall pay an amount of money equivalent to regular monthly Union fair share dues to a non-religious charity or to another charitable organization mutually agreed upon by the Employee and the Union and such payment shall be remitted to that charity by the Employee in accordance with ORS 243.666. At time of payment, the Employee shall simultaneously send verifiable notice of such payment to the Employer and the Union.

(c) Upon return from any break in service of not more than twelve (12) months, reinstatement of fair share deduction shall occur for those workers who were having fair share deduction immediately prior to said break in service.

(d) Fair share deductions shall only occur after all mandatory and legal deductions are made in any pay period.

(e) Fair Share Adjustment Summaries for SEIU Local 503, OPEU Home Care Members. The payroll summaries will be forwarded to the Union by the tenth (10<sup>th</sup>) calendar day of the following month. The Fair Share Adjustment Summary will reconcile the previous month's remittance with the current month's remittance. The Fair Share Adjustment Summary will be an alphabetical listing and shall show the following:

Name (last name first, full first name, middle initial);

Formatted Social Security Number (000-00-0000) or identification number;

Provider number;

Prior month deduction;

Current month deduction;

Variance (difference between prior month deduction and current month).

(f) Any additional information requested under this Section may be made available electronically to the Union.

**Section 89. List of Representatives.** The Union shall provide the Employer with a list of the names of authorized Union staff representatives and elected officers, and shall update those lists as necessary.

**Section 910. Other Deductions.** Voluntary payroll deductions made to the Union for Employee benefits shall be submitted at the same time as regular dues deductions.

No later than the tenth (10<sup>th</sup>) calendar day of each month, the Union shall receive a benefit register for each benefit listing each Employee, the amount deducted, and the purpose of the deduction.

## **ARTICLE 8 – PAYROLL/TAX WITHHOLDING VOUCHER SYSTEMS**

**Section 1. A properly completed voucher must be submitted for payment. A properly completed voucher is one that has been signed by the client and the homecare worker and legibly documents the number of hours worked.**

**Section 2. The Homecare Worker may properly submit their voucher at any point after service for that pay period has been completed. Properly completed vouchers should be submitted for payment no later than fourteen (14) days of the last service date for the period in which the voucher covers, wherever possible. In no event will the employee be denied payment for hours worked if vouchers are submitted past the fourteen (14) days.**

Section 13. Paychecks Vouchers shall be issued and postmarked ~~processed in the payment system~~ within three (3) ~~two (2)~~ working days (excluding Oregon and Federal holidays) of the proper submission of a completed time voucher by the Employee.

Section 24. Vouchers shall be issued no later than seven (7) calendar days from proper submission and processing of the prior pay period's voucher. Newly hired homecare workers shall also be entitled to receive written confirmation of the date they are authorized to begin providing services and receive their vouchers within seven (7) days from the date services began. Whenever possible, a relief worker shall receive their voucher prior to beginning services, but no later than seven (7) days from the date relief services began.

Section 35. Upon initial hire, an employee shall have the option to be paid on a monthly or bi-monthly basis regardless of the number of hours worked each month. An employee may change the option twice each calendar year.

## ARTICLE 9 – NO DISCRIMINATION

Section 1. The Union and the Employer agree not to engage in unlawful discrimination against any Employee because of religion, sex, race, creed, color, national origin, sexual orientation, age, physical or mental disability or Union activities.

Section 2. This article does not apply to the consumers' sole and undisputed rights provided in the law, including the selection and termination of employment of the Homecare Workers.

## ARTICLE 10 – REMOVAL FROM THE REGISTRY-OREGON HOME CARE COMMISSION REGISTRY AND REFERRAL SYSTEM (OHCC RRS)

Section 1. Removal from the Registry for Inactivity. ~~If an Employee has not worked for any client for the previous twelve (12) months, he/she will automatically be removed from the registry. If an Employee requests removal from the Registry, or reports not available for work, the Employee will be inactivated for further referrals. At any time thereafter, should a previous Employee request to re-enter the home care workforce and is deemed qualified by the Employer, the Employee shall be added back to the Registry.~~

Section 2. ~~An active Employee will be provided written notification within ten (10) working days of the conclusion of an investigation in the event the Employer intends to remove the Employee from the Registry based on that investigation.~~

Section 3. Removal from the Registry of Active Employees. ~~An active Employee may be removed from the registry when the facts support the Employer's claim of misconduct, poor performance or other violations of the rule(s) adopted by the Employer and removal from the Registry is a reasonable penalty for a proven offense. An investigation shall be conducted prior to removal. An employee may request and be given any Registry information pertaining to that individual employee within three (3) business days. The employee will be informed of projected costs, if any, for gathering and providing the requested information for the purposes of making the required advance payment, as appropriate. Actual charges shall be based on actual costs incurred.~~

Section 4. ~~The Employer's removal from the Registry of an actively employed Homecare Worker resulting from the loss of a provider number pursuant to the DHS Administrative Review Process (ARP) is not subject to the grievance procedure. Should an ARP appeal result in the restoration of the provider number, DHS shall promptly notify the Employer of such determination. The Employer shall reactivate the Employee on the Registry where such removal was based solely on facts related to the provider number termination. Failure to reactivate the Employee on the Registry is subject to the grievance procedure.~~

Section 5. ~~Employer removals from the Registry, other than described in Section 4 of this Article, are subject to the grievance procedure and the ERB's decision will be based on whether the facts support the Employer's written claim and removal from the Registry is a reasonable penalty.~~

Section 6. ~~The state-wide Registry shall be operational no later than July 1, 2006.~~

Section 1. Inclusion in the OHCC RRS. All employees referenced in Article 2, Section 2 will be included in the OHCC RRS.

Section 2. Definitions.

(a) Active – The overall condition of the provider number status designating that the homecare worker is available for referral.

(b) Approved Prior to Conversion – A detailed description of the homecare worker's provider number status for homecare workers who were approved to work prior to conversion to Oregon ACCESS. This status will be retained until their credential status is updated in Oregon ACCESS. Homecare workers with this status may be referred on the OHCC RRS.

(c) Approved to Work – A detailed description of the homecare worker's provider number status. Homecare workers with this status may be referred on the OHCC RRS.

(d) Career – A level of provider in Oregon ACCESS who has no restrictions for whom they may serve.

(e) Provider Number – The number assigned to an individual homecare worker through the Oregon ACCESS system when the DHS/SPD/AAA office approves a homecare worker to work.

(f) HK – Homecare Workers – The provider type acronym or code assigned to homecare workers that are members of the collective bargaining unit in Oregon ACCESS. This acronym (or any successor acronym) in Oregon ACCESS identifies homecare workers in the collective bargaining unit.

(g) Oregon ACCESS – The computer system used by DHS/SPD/AAA to store and maintain consumer/employer and homecare worker information.

(h) Oregon Home Care Commission Registry and Referral System – an on-line computer system to match employers who need services in their homes to homecare workers who are able and willing to meet those needs. All homecare workers are downloaded from Oregon ACCESS into the OHCC RRS.

(i) Restricted – A level of provider in Oregon Access who is restricted to working for specific consumer/employers.

Section 3. Homecare Workers Available for Referral. To be referred in the OHCC RRS, a homecare worker must:

(a) Provide written permission to release his/her information on the OHCC RRS.

(b) Have a Career, Active, Approved to Work, and HK provider number in Oregon ACCESS. Homecare workers with an Approved Prior to Conversion status will also be included.

(c) Have verification of the date of Orientation. Homecare workers who do not have verification of their Orientation date and want to be referred on the OHCC RRS will have 90 days from the date the OHCC RRS is rolled out in their area to complete an orientation. A homecare worker may during the roll out phase of the OHCC RRS in their area, complete an OHCC sponsored OHCC RRS training to meet the Orientation requirement. The OHCC will update the OHCC RRS with the orientation date for those who attend the training.

(d) Be seeking employment.

Only Homecare Workers who meet the criteria above will be available for referral in the OHCC RRS.

Section 4. Homecare Worker Authorization to Release Contact Information. Homecare workers must provide signed written authorization to permit release of their contact information through the internet based OHCC RRS. Homecare workers must also provide signed written authorization to terminate permission to release their contact information. Homecare workers must submit the written authorization or de-authorization to the Home Care Commission or a DHS SPD/AAA office.

Section 5. Homecare Workers Seeking Employment. Homecare workers who are seeking work are responsible for updating their availability for referral every 60 days in the OHCC RRS. Homecare Workers no longer seeking employment can change their availability to work status in the OHCC RRS at any time.

Section 6. OHCC RRS Referrals. Referrals to consumers will be in random order based on matching. Matching is based on search criteria entered by the consumer or the consumer's representative and the profile information entered by the homecare worker.

Section 7. Unavailability for Referral in the OHCC RRS due to Employment Status in Oregon ACCESS. Homecare Workers or former employees who have any of the following conditions in Oregon ACCESS will be unavailable for referral in the OHCC RRS.

(a) Has not provided any paid services to any consumer/employer in the last 12 months and his/her provider number is inactivated;

(b) Has voluntarily terminated his/her provider number in Oregon ACCESS by submitting a written letter to the DHS/SPD/AAA office stating s/he will no longer be providing homecare worker services in Oregon;

(c) Has a restricted provider number and is limited to working for specific consumer/employers;

(d) Has lost his/her provider number through termination by DHS/SPD;

(e) Has failed to complete a criminal history check authorization or provide fingerprints as requested by the Department and as a result, his/her provider number has been inactivated;

(f) Does not attend orientation within 90 days of provider enrollment, his/her provider number will be inactivated; and,

(g) Has any other type of status in Oregon ACCESS that will not allow the employee to be available for referral according to the rules of the Department.

Section 8. Unavailability for Referral in the OHCC RRS due to Misconduct, Poor Performance, or Violation of Rule. An Employee will not be referred in the OHCC RRS and the Employer will change his/her RRS Process Status to "Removed by OHCC" when the facts support the Employer's claim of misconduct, poor performance or other violations of the rule(s) adopted by the Employer, and this removal is a reasonable penalty for a proven offense. An investigation shall be conducted prior to ending the employee's ability to be available for referral in the OHCC RRS; the employee, SEIU and SPD will be notified in writing within fifteen (15) days of the decision. The employee will have the right to Union representation during an investigatory interview. The employee may request and be given any OHCC RRS information pertaining to that individual employee within three (3) business days. The employee will be informed of projected costs, if any, for gathering and providing the requested information for the purposes of making the required advance payment, as appropriate. Actual charges shall be based on actual costs incurred.

Section 9. Employee Grievances due to Unavailability for Referral in the OHCC RRS. Employees no longer available for referral in the OHCC RRS due to reasons other than described in Section 10 of this Article are subject to the grievance procedure. The Employment Relations Board's (ERB) decision will be based on whether the facts support the Employer's written claim that the Employee should no longer be referred in the OHCC RRS is a reasonable penalty. If the Employer's decision is reversed, the employee will be available for referral in the registry, provided the homecare worker completes and signs a new Homecare Worker Application and authorizes the release of his/her contact information in the OHCC RRS.

Section 10. Provider Number Terminations by the DHS. A homecare worker whose provider number is terminated through the DHS Administrative Review Process (ARP) will be unavailable for referral in the OHCC RRS and is not subject to the grievance procedure. Should an ARP appeal result in the restoration of the provider number, the Employer will be notified of the reactivation through the DHS Oregon ACCESS system. The homecare worker will be available for referral in the OHCC RRS when the provider number is restored to the Active/Approved to Work/Career status in Oregon ACCESS and the homecare worker completes and signs a new Homecare Worker Application and authorizes the release of his/her contact information in the OHCC RRS.

Section 11. Exclusive use of the OHCC RRS. DHS/SPD/AAA offices will use the OHCC RRS exclusively once the system is available in their area.

## ARTICLE 11 – GRIEVANCE PROCEDURE

**Section 1.** Grievances are defined as acts, omissions, applications, or interpretations alleged to be violations of the terms or conditions of this Collective Bargaining Agreement.

**Section 2.** The Employer encourages, whenever possible, an informal resolution approach between the Employee and local DHS/Area Agencies on Aging (AAA) or Area Agencies on Aging and Disabilities (AAAD) representative(s) over the application of the terms and conditions of the Collective Bargaining Agreement that are within their authority to administer.

**Section 3.** Grievances shall be filed within thirty (30) calendar days of the date the grievant or the Union knows or by reasonable diligence should have known of the alleged grievance. Once filed, the Union shall not expand upon the original elements and substance of the written grievance.

Grievances shall be reduced to writing, stating the specific Article(s) alleged to have been violated, a clear explanation of the alleged violation, and the requested remedy. Grievances shall be processed in the following manner:

**Step 1.** The Union on the grievant's behalf may submit the grievance in writing within thirty (30) calendar days to the Home Care Commission Executive Director or designee. The grievant and Union representative (designated by the Union) or the Union representative will attempt to meet with the Home Care Commission Executive Director or designee within thirty (30) calendar days following the Commission's receipt of the grievance. Such meeting, if held, may be face-to-face or via teleconference. Failure to meet will not invalidate the grievance.

The Commission designee shall respond to the grievance in writing within fifteen (15) calendar days following the Step 1 meeting or the date when the Parties agreed that such a meeting would not be necessary.

**Step 2.** No grievance may be processed under this Step which has not first been filed and investigated in accordance with Step 1 above. When the response at Step 1 does not resolve the grievance or no response is received within the fifteen (15) calendar days, a Notice of Appeal and appropriate filings ~~the grievance appeal~~ may be filed in writing to the Employment Relations Board (ERB) for hearing and the Homecare Commission ~~for hearing~~ within ~~thirty (30)~~ forty-five (45) calendar days from the date the ~~whether or not a~~ Step 1 response was due or has been received, unless the Parties mutually agree to seek alternative dispute resolution assistance. The filing shall include the formal written grievance and any related information. The ERB shall have no authority to rule contrary to, to amend, add to, subtract from, change or eliminate any of the terms of this Agreement. The Parties waive any right to appeal ERB decisions at Step 2. The decision of ERB shall be final and binding except for decisions made outside the scope of their authority as defined in this paragraph.

**Section 4. Time Limits.** The time limits specified in this Article shall be strictly observed, unless either Party requests a specific extension of time, which, if agreed to, must be stipulated in writing and shall become part of the grievance record. "Filed" for purposes of all steps shall mean date of receipt by mail, hand delivery, by facsimile (fax), or as otherwise agreed to by the Home Care Commission Executive Director, or designee, and the Union. If the Employer fails to issue a response within the time limits, the Union may advance the grievance by written notice to the next step unless withdrawn by the Union. If the Union fails to meet the specified time limits, the grievance shall be considered withdrawn and cannot be resubmitted.

**Section 5.** The Employer is not responsible for any compensation of Employees or their representative for time spent investigating or processing grievances nor any travel or subsistence expenses incurred by a grievant or Union Steward in the investigation or processing of grievances.

**Section 6.** Each party shall bear the cost of its own presentation at Step 2, including preparation and post-hearing briefs, if any.

**Section 7.** At the conclusion of the ERB proceeding, the Parties shall share cost of filing and answer fees. Neither party will request representation costs or civil penalties under ERB rules.

## **ARTICLE 12 – HEALTH PLAN**

**Section 1. Employer Contribution.** Effective April 1, ~~2005~~, 2007 the Employer shall provide health insurance for eligible participating Employees as follows:

(a) For each eligible participating Employee who lives in the Kaiser Permanente service delivery area, the Employer shall pay ~~four hundred thirty-one dollars and eighty cents (\$431.80)~~ four hundred sixty-two dollars and ninety-three cents (\$462.93) for the medical and vision insurance plan described in Appendix A.

(b) For each eligible participating Employee who lives outside the Kaiser Permanente service delivery area, the Employer shall pay ~~five hundred forty-nine dollars and thirty-seven cents (\$549.37)~~ six hundred thirty-seven dollars and fifty cents (\$637.50) for the Oregon Dental Service (ODS) medical and vision insurance plan described in Appendix B.

(c) For each eligible participating Employee, the Employer shall provide forty-one dollars and sixty-four cents (\$41.64) for Kaiser Permanente Dental or thirty-nine dollars and forty-nine cents (\$39.49) for ODS Dental.

For plan years beginning April 1, 2008 and April 1, 2009, the Employer contribution shall not exceed a total maximum increase of twelve (12%) in the composite rates for each plan year. Such increases shall be based on the actual plan participation for the month prior to notice by the carriers of the new rates for the affected plan year.

**Section 2.** ~~Effective April 1, 2006, the Employer's contribution for medical insurance will be adjusted to reflect Kaiser and ODS rate increases, as indicated below. Additionally, effective April 1, 2006, the Employer will contribute up to the following maximum amounts for dental and vision:~~

<u>Kaiser Permanente</u>		<u>Oregon Dental Service</u>	
Medical	\$431.80	Medical	\$649.96
Dental	\$ 41.64	Dental	\$ 39.49
Vision	\$ 5.29	Vision	\$ 7.16

~~The increases shall not exceed a total maximum increase of thirteen percent (13%) in the composite rates for the plan year beginning April 1, 2007. Such increases shall be based on the actual plan participation for the month prior to notice by the carriers of the new rates for the affected plan year.~~

**Section 32. Eligibility.** Initial eligibility shall begin thirty (30) days after the second month when an Employee has worked a minimum of eighty (80) authorized and paid hours in each of

the two (2) immediately preceding months. An Employee will lose eligibility for the Employer contribution thirty (30) days after he/she fails to work a minimum of eighty (80) authorized and paid hours in each of the two (2) immediately preceding months.

**Section 43.** Employees shall not be eligible to receive the Employer contribution for health care benefits under this Article if the worker is receiving other health care benefits, except for Medicare and Veterans' benefits. For purposes of eligibility determination by the health plan administrator, the Employee must declare when receiving other health care benefits.

**Section 54.** The Union agrees to administer the health plan in accordance with this Article and the National Association of Insurance Commissioners (NAIC) acts and regulations. The Employer will pay the Union for the cost of health plan administration in accordance with the contract on health insurance administration that will be executed by the Parties.

### **ARTICLE 13 – WORKERS' COMPENSATION**

**Section 1.** Upon receipt of client request and authorization, the Employer shall provide Workers' Compensation insurance coverage to actively employed Homecare Workers by an appropriate insurer. The Employer will ask the Department of Human Services to facilitate the distribution and collection of such authorization forms.

**Section 2.** During the covered period, the Employer acting through DAS agrees to meet quarterly, or as otherwise mutually agreed, with representatives from the Union and the designated carrier to review available data concerning claims, claims costs, and projected premium expenditures.

**Section 3.** To assure continued affordable health and Workers' Compensation insurance is available to its members, the Union agrees to provide the best, good faith efforts to work with and support the designated insurance carrier in the areas of loss control, return to work, timely claims management and to provide and promote mandatory and/or voluntary training opportunities to its members.

### **ARTICLE 14 – WAGES**

**Section 1.** ~~Effective July 1, 2005, increase the hourly rates by \$0.25 and effective July 1, 2006 an additional \$0.25 increase.~~ The rate schedule for compensation of eligible Employees is outlined below:

<b>Activities of Daily</b>	<b><u>Hourly</u> <u>Effective</u></b>	<b><u>Live-In</u> <u>Effective</u></b>	<b><u>Hourly</u> <u>Effective</u></b>	<b><u>Live-In</u> <u>Effective</u></b>	<b><u>Hourly</u> <u>Effective</u></b>	<b><u>Live-In</u> <u>Effective</u></b>
<b>Living</b>	<b><u>7/1/07</u></b>	<b><u>7/1/07</u></b>	<b><u>11/1/07</u></b>	<b><u>11/1/07</u></b>	<b><u>7/1/08</u></b>	<b><u>7/1/08</u></b>
Full Assistance	\$9.76	\$9.76	<u>\$9.90</u>	<u>\$9.90</u>	<u>\$10.20</u>	<u>\$10.20</u>
Substantial Assistance/ Minimal Assistance	\$9.53	\$9.53	<u>\$9.90</u>	<u>\$9.90</u>	<u>\$10.20</u>	<u>\$10.20</u>
Self-management Tasks	\$9.53	\$4.05	<u>\$9.90</u>	<u>\$4.30</u>	<u>\$10.20</u>	<u>\$4.55</u>
24-hour Availability	N/A	\$4.05	<u>N/A</u>	<u>\$4.30</u>	<u>N/A</u>	<u>\$4.55</u>



The employee's average hourly rate of pay will depend on the number of qualifying hours for each type of assistance provided.

## **Section 2. Relief and Fill-in Worker Wages**

~~A Relief Worker who is authorized to work from one (1) to sixteen (16) continuous hours will be paid nine dollars and forty cents (\$9.40) effective 7/1/05 and nine dollars and sixty-five cents (\$9.65) effective 7/1/06.~~

~~— A Relief Worker who is authorized to work beyond sixteen (16) hours within any twenty-four (24) hour period will be paid at the twenty-four (24) hour availability rate in Section 1 of this Article for each of those subsequent hours.~~

**(a) A relief worker is defined as a homecare worker who provides substitute services for a twenty-four (24) hour live-in homecare worker who is taking his/her paid time off in a twenty-four (24) hour block(s). A Relief Worker shall be paid one hundred sixty-five dollars (\$165.00) per 24-hour period effective 11/1/07 and one hundred seventy-five dollars (\$175.00) effective 7/1/08.**

**(b) A Fill-in Worker is defined as a homecare worker who provides substitute services for a twenty-four (24) hour live-in homecare worker who has no paid time off to use. The pay rate for the Fill-in Worker shall be the same rate as the live-in provider.**

**(c) The wage rate for Relief and Fill-in work will be confirmed when the local office is notified of the need for substitute services.**

**Section 3.** Twenty-four (24) hour availability pay will be made only in client consumer/employer plans that are specifically designated as twenty-four (24) hour care plans.

**Section 4.** Twenty-four (24) hour caregivers homecare workers shall receive no less than sixty (60) hours a month of pay at the twenty-four (24) hour availability rate. In the event that two (2) caregivers homecare workers are providing services to one (1) individual client consumer/employer in a twenty-four/five (24/5), twenty-four/two (24/2) setting, the hours/pay will be divided on a pro rata basis.

## **ARTICLE 15 – MILEAGE AND PUBLIC TRANSPORTATION REIMBURSEMENT**

Employees-Homecare workers shall be reimbursed for eligible personal vehicle miles authorized for service plan related non-medical transportation at a rate of forty cents (\$.40) and effective October 1, 2007, forty-eight and one-half cents (\$.485) per mile for the term of this Agreement.

DHS/AAA or AAAD will reimburse homecare workers for the actual cost incurred for preauthorized public transportation when needed to accompany a client.

## **ARTICLE 16 – TIME OFF**

**Section 1. Live-In Providers:** Live in providers shall accrue one (1) paid day (defined as twenty-four (24) hours) for every month of work up to a maximum of one hundred forty-four (144) hours.

**(a)** Such time off may must be taken in ~~one~~ twenty-four (24) hour increments subject to client or designee authorization and available relief. Payment for time taken shall be based on the average daily authorized wage rate for the Employee.

(b) If the accrued hours are not used by January 31 of each year, fifty percent (50%) of the remaining accrued hours will be paid out at the employee's average daily authorized wage rate and the balance shall be reduced by the number of hours cashed out. Vouchers claiming paid time off that are received after the cut off dates in this Section may only receive pay up to the balance remaining available. Cash out payment will be initiated on the first business day of February.

(c) Live-in providers who separate from service and return and provide live-in services within one (1) year from the last date live-in services were provided to a consumer shall have all unused leave credits restored.

(d) Live-in providers who convert to hourly or separate from live-in service and return as an hourly provider within one (1) year from the last date of live-in services shall be credited with their unused hours of leave up to a maximum of sixteen (16) hours. Effective July 1, 2006, hours will be credited up to a maximum of thirty-two (32) hours.

**Section 2. Non Live-In Providers-All Hourly Providers (including those providing relief coverage for other hourly workers), or 24-Hour Relief Providers and 24-Hour Fill-in Providers.** Effective July 1, 2005-2007, on July 1 of each year, all active employees who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede July (April, May, June) shall be credited with sixteen (16) hours of paid time off. On February 1 of each year, active employees who worked eighty (80) authorized and paid hours in any one (1) of the three (3) months that immediately precede February (November, December, January) shall be credited with sixteen (16) hours of paid time off. Such leave shall not be cumulative beyond the biennium in which it was earned.

(a) Such time off must be utilized in eight (8) hour blocks. If the Employee's normal workday is less than eight (8) hours, such time off may be utilized in blocks equivalent to the normal workday. Payment for time taken shall be based on the average authorized hourly wage rate for the Employee.

(b) Employees shall be allowed to take available accumulated paid time off when their regular consumer/employer is temporarily unavailable for the authorized employee to provide services to the consumer/employer. In all other situations, homecare workers who are not working during a month shall not be eligible to use paid time off in that month. As long as the affected workers remain active, such employees will be cashed out for their earned paid time off at the regular cash out interval.

(c) If the accrued hours are not used within the biennium by January 31 each year earned, the remaining accrued hours will be paid out at the employee's average daily authorized wage rate and the balance shall be reduced to zero (0). Cash out payment will be initiated on the first business day of February. Employees will not be cashed out for hours they already have requested to use at the time of the cash out. Employees will not be compensated for paid time off unless the time is actually taken. Vouchers claiming paid time off that are received after the cut off dates in this Section will not receive pay for the time used when the paid time off already has been cashed out.

**Section 3.** Time taken off will be reflected on the time sheet. The accumulated paid time hours off will be posted on each wage statement balance.

**Section 4.** Hourly caregivers homecare workers who transfer to twenty-four (24) hour care shall maintain their paid time off balance and begin accruing at the twenty-four (24) hour rate effective the first of the month in which they begin their twenty-four (24) hour assignment.

**Section 5.** It is not the Homecare Worker's responsibility to find their own replacement when they take paid leave. The client has the primary responsibility for selecting and hiring their providers. Paid leave must be prior authorized with the client consumer/employer and relief must be available if necessary and the Agency must be notified in order to authorize the relief worker and issue a voucher as per Article 8 - Payroll/Voucher Systems, Section 2. The client consumer/employer will need to sign the paid leave voucher, as they would any other voucher. Sometimes the client will require assistance from the Program Manager or designee in finding a suitable replacement provider.

#### **ARTICLE 17 – TASK LIST OF AUTHORIZED SERVICES**

**Section 1.** Case managers will request that the consumer provide a copy of approved services and maximum hours to their Homecare Worker(s). If Employee(s) do not receive a copy of a task list of authorized services and maximum authorized hours from their consumer, they may request a written copy from the case manager, which shall be provided to the Employee within five (5) business days from the date of request.

**Section 2.** If changes in hours and/or services occur other than as a result of client illness requiring alternative care or death, notice of the change shall be provided to the Employee in writing on or before the effective date of the change.

**Section 3.** The consumer retains the right to reduce the number of hours and/or services at any time.

#### **ARTICLE 18 – TEMPORARY CONSUMER ABSENCES**

A live-in provider shall continue to receive the rate of pay immediately preceding the consumer's absence from his/her home due to illness or medical treatment for up to a maximum of thirty (30) calendar days. This provision is predicated on the expectation that the consumer will be returning home within that thirty (30)-day period.

#### **ARTICLE 19 – WAGE OVERPAYMENTS**

**Section 1.** Overpayments in wages resulting from client or provider error shall be repaid at no more than five percent (5%) of the Employee's pay that is based on hours paid until repaid in full. If the Employee leaves his/her employment as a Homecare Worker before the overpayment has been fully recovered, the remaining maximum amount may be deducted from the Employee's final check(s).

**Section 2.** An Employee who disagrees with the determination that an overpayment has been made may grieve the determination through the grievance procedure.

#### **ARTICLE 20 – HEALTH AND SAFETY**

**Section 1.** When gloves and masks are not available at the consumer residence, the Employee may request from the local DHS/AAA or AAAD location and receive a sufficient amount to address assessed client needs on a monthly basis. Non-latex, non-powdered gloves will be

provided where there is a demonstrable need, including those relating to allergic reactions to latex and/or powder. Requests by the Employees for safety equipment other than the gloves and masks that are routinely provided shall be in writing and shall be provided subject to local DHS/AAA or AAAD management approval. All such requests will be responded to by Program Managers or designee in each office within twenty (20) calendar days from the receipt of the written request.

**Section 2.** Employees shall have access to information on communicable diseases, blood borne pathogens, and universal precautions through the local DHS/AAA or AAAD office. Such information shall be made available at New Homecare Worker Orientations, and will also be made available by Program Managers or designee in each office, upon request.

## LETTER OF AGREEMENT - HCW REFERRALS

~~\_\_\_\_\_ In developing the HCC Registry Program, it is the Employer's intent that referral lists of qualified Employee names be provided to consumers in random order. Should unanticipated technical problems prevent the Employer from fulfilling this statement of intent, the Employer will review the circumstances, seek guidance from all its constituencies about how to most fairly display referral lists, and revise its approach.~~

**LETTER OF AGREEMENT**  
**ARTICLE 16 -TIME OFF**

**Effective July 1, 2008, the parties agree to begin a pilot project that will apply to Live-in homecare workers (seven-day service only). The pilot program shall be in accordance with the following:**

- **A Live-in homecare worker who is separated from service due to his/her consumer/employer no longer being eligible for the in-home service program may apply for a fifty percent (50%) cash out of unused paid time off.**
- **The application must be made to SPD In-Home Service Program certifying that the Live-in homecare worker does not have alternative residential arrangements.**
- **If such cash out is made, the employees' remaining paid time off balances shall be reduced to zero (0).**
- **Payment will be initiated upon verification that the homecare worker has met the above criteria.**

**This LOA and pilot program will sunset on June 30, 2009 whether or not a successor collective bargaining agreement for 2009-2011 has been reached.**

**This agreement is non-precedent setting and cannot be referenced in any other forum except successor negotiations for this bargaining unit.**

## HEALTH INSURANCE SIDE LETTER

- A. ~~If, by 1/15/07, the composite rate for health insurance for the plan year that begins on 4/1/07 is projected to increase by more than 13% above the rates for the preceding year, then by 1/31/07, HUBB will produce data projecting total costs for health insurance for the entire biennium.~~
- B. ~~This calculation will be based on actual premium costs for the period from 7/1/05 through 6/30/06. Projected costs for 7/1/06 through 6/30/07 will be based on average premium costs for the period between 7/1/06 and 12/31/06. The calculation will also reflect the premium increase projected to take effect on 4/1/07.~~
- C. ~~If the projected health insurance costs for the biennium are less than \$25,486,991 GF, then the Employer will pay the full cost of the rate increase without accessing the contingency fund.~~
- D. ~~If the projected health insurance costs for the biennium are greater than \$25,486,991 GF, the Employer will use money from the contingency fund to pay for the costs in excess of that figure, provided that there is money remaining in the contingency fund after any increases in workers' compensation costs have been taken into account.~~
- E. ~~In determining how much of the contingency fund is needed for workers' compensation costs, the parties will factor in any rate increases by SAIF. The parties will also factor in actual and anticipated incurred claim costs that exceed SAIF's projections. To calculate the anticipated cost of incurred claims for the biennium, the parties will compare actual incurred claim costs for the fifteen (15) month period from 7/1/05 through 9/30/06 with SAIF's projected incurred claim costs for the same period. The ratio of these figures will be calculated as a percentage. That percentage will then be applied to the incurred claims costs that SAIF originally projected for the entire twenty-four (24) month period (July 1, 2005 June 30, 2007). The resulting figure will be adjusted to include applicable administrative costs and taxes. If the General Fund share of the resulting estimate is more than \$6,792,053 GF, the difference will be paid from the contingency fund up to a maximum of \$423,928 GF.~~
- F. ~~If, after paying the anticipated costs for workers' compensation as described in paragraph E above, there is insufficient money in the contingency fund to pay for the 4/1/07 health insurance rate increase, the two (2) days of paid time off scheduled to take effect on February 1, 2007 will be reduced to one (1) day or zero (0) days as needed and the resulting savings will be applied to the difference between projected health insurance costs and \$25,486,991 GF.~~
- G. ~~If, despite the actions described in sections (D) through (F) above, there is insufficient money to pay for the difference between projected health insurance costs and \$25,486,991 GF, the Union may negotiate a temporary change in plan design sufficient to reduce costs enough to eliminate any difference between projected health insurance costs and \$25,486,991 GF that remains after the adjustments described in sections (D) through (F) above or Homecare Workers shall pay the difference between projected health insurance costs and \$25,486,991 GF directly to the Homecare Workers Benefit Board.~~
- H. ~~If, after paying for workers compensation cost overruns as described in section E above and after paying for increases in health insurance costs above \$25,486,991 GF as described in section D.~~

~~above, there is money remaining in the contingency fund, that money will be used as a one-time payment to all Homecare Workers employed as of December 31, 2006~~

- ~~I. For the purpose of this side letter, health insurance shall be defined to include dental insurance and vision insurance. All dollar amounts in this side letter refer to the General Fund share of total costs.~~



## STATEMENT OF INTENT – TRAINING

It is the Employer's intent to maintain the Home Care Commission's Training Committee as a Steering Committee to make recommendations to the Commission related to training. The Committee shall consist of the following members:

1. ~~Three (3)~~ Four (4) representatives from the Home Care Commission or designated by the Commission
2. One (1) representative from the Department of Human Services
3. Four (4) representatives from SEIU/HCW

The Commission may invite other appropriate partners, as necessary or as requested by the Committee members, to attend the meeting(s) to provide their expertise on training related topics/issues.

The Committee will be kept informed of the training budget and the expenditures for training provided to homecare workers and/or consumers.

In the event that the SEIU disagrees with a recommendation from the Training Committee to the HCC, SEIU will be invited to submit a "minority report" for consideration by the Commission.

~~The Committee tasks will include prioritizing training needs, identifying training that targets HCW safety, reviewing and recommending curricula, locations and trainers; assisting with the selection process for any training contractors and evaluating the effectiveness of training provided. The goals of the training program shall be improving the skill level of homecare workers, and improving the clients' skills as an employer. In the event that the SEIU disagrees with a recommendation from the Training Committee to the HCC, SEIU will be invited to submit a "minority report" for consideration by the Commission. Systematic training of homecare workers, beginning with those groups most susceptible to injury, shall begin by January 1, 2006.~~

### Committee Tasks:

- Prioritize training needs,
- Recommend training to improve Homecare Worker and Consumer/Employer Safety,
- Recommend training topics that cover specialty areas that are a concern to HCW's, and Consumers,
- Evaluate the effectiveness of training provided,
- Recommend marketing incentive programs to increase homecare worker participation in the training program,

### Committee Goals

- Provide homecare workers with skill building opportunities to enhance the services received by consumer/employers in a safe and efficient manner,
- To empower consumer/employers with the knowledge and skills to effectively direct their services and manage their employees,

### Homecare Worker Attendance at Training

Subject to available funding and where the HCC agrees with the recommendations of the Training Committee, active HCW's will be paid for actual hours in attendance at Homecare Commission sponsored training.

The training coordinator shall be hired by no later than October 1, 2005, provided HCC is successful in its recruitment efforts. The HCC will invite SEIU representatives to participate on the interview panel for the Training Coordinator position.

Three million, six hundred seventy nine thousand, nine hundred dollars (\$3,679,900) of the funds targeted for Homecare Worker compensation will be designated for use for the HCC to cover anticipated administrative and training related costs. The Employer intends to request that DHS pursue federal funding match wherever possible and may seek other funds, e.g., grants that might be available for training. Any amount received for training through other resources will be in addition to the \$3,679,900 General Fund dollars. The HCC agrees that the minimum amount necessary to insure effective operations of the training program will be expended on administrative costs. Subject to available funding, and where the HCC agrees with the recommendation of the Steering Committee, active HCWs will be paid for actual hours in attendance at training.

The Union shall be granted thirty (30) minutes before or after the training for Union business at each training scheduled under this Letter of Agreement.

### Union Presentations

The Union shall be granted 20 minutes before scheduled training for Union business. Such meeting shall not cause a delay in the scheduled start time of the training. The Union commits to making a good faith effort to make a presentation at trainings scheduled by the Employer.

The Committee will be kept informed of the training budget and the expenditures for training provided to homecare workers and/or consumers.

## **INTENT STATEMENT – DHS TERMINATION APPEAL PROCEDURE**

The Union may distribute the DHS Appeal Procedure to the Homecare Workers at the same time it distributes the ~~2005-2007~~2009 Collective Bargaining Agreement.

DHS is receptive to reviewing the policy and receiving recommendations for policy changes from SEIU and the Homecare Workers. SEIU will be provided notice when this review will occur. At least three (3) SEIU-designated representatives will be invited to participate on the policy workgroup.

Signed this 23rd day of September, 2005 2009, at Salem, Oregon.

FOR THE HOME CARE COMMISSION:

\_\_\_\_\_  
Eva M. Corbin, Deputy Administrator  
DAS, Labor Relations Unit

\_\_\_\_\_  
Art McCurdy  
State LR Manager

\_\_\_\_\_  
~~Sharon Miller~~, Executive Director  
Home Care Commission

FOR THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 503, OPEU,  
AFL-CIO, CLC

\_\_\_\_\_  
Leslie Frane, Executive Director  
SEIU Local 503, OPEU

\_\_\_\_\_  
Karla Spence, Chief Negotiator  
SEIU Local 503, OPEU

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Joyce Willman, Chair

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Joe DiNicola, President, SEIU 503

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Kimberly Schultz, Co-Chair

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Lee Meyers, Co-Chair Alternate

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Bonnie Geier, Milton-Freewater

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Anita Pecoiff, Bend

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"Gus" Gary Cole, Astoria

\_\_\_\_\_  
Steve Shumate, Portland

\_\_\_\_\_  
Sally Cumberworth, Cave Junction

\_\_\_\_\_  
Celeste Bates-Campana, Portland

\_\_\_\_\_  
Deb Davis, Bandon

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Suzanne Pecore, Oak Grove

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Robert Grant, Roseburg

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Rita Sparks, Eugene

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Mary Hubert-Godwin, Portland

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John Cook, Grants Pass

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Erin McIntosh, Independence

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Mary Wood, Depoe Bay

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Caroline Mitchell, Bandon

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Marlane Morton, Salem