

Chapter 418 Department of Human Services, Home Care Commission

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DIVISION 10

PURPOSE AND RULEMAKING

418-010-0010

Purpose

(1) In accordance with Article XV, Section 11 of the Oregon State Constitution, the Commission ensures the high quality of homecare services by working cooperatively with area agencies and state and local agencies to accomplish the following:

(a) Establish qualifications for homecare and personal support workers with the advice and consent of the Department of Human Services (DHS) and Oregon Health Authority (OHA);

(b) Provide training opportunities for homecare and personal support workers; and seniors and individuals experiencing disabilities who employ homecare or personal support workers;

(c) Maintain a Registry of qualified homecare and personal support workers;

(d) Provide routine, emergency, and substitute referrals of homecare and personal support workers;

(e) Enter into contracts with public and private organizations and individuals for the purpose to obtain or develop training

materials and curriculum or other services as may be needed by the Commission;

(f) Serve as employer of record for collective bargaining with homecare and personal support workers;

(g) Select workers' compensation coverage on behalf of a senior or individual experiencing disability who hires a homecare or personal support worker through a publicly funded program; and

(h) Train and certify homecare or personal support workers who desire to become certified community health workers or personal health navigators and meet eligibility criteria and ensure Coordinated Care Organizations honor employment terms and conditions of Community Health Workers and Personal Health Navigator established by the Commission.

(2) The rules in Oregon Administrative Rules (OAR) Chapter 418 establish procedures for the Commission to fulfill its mission to ensure high quality, comprehensive homecare services are provided for seniors and individuals with disabilities who receive services from homecare and personal support workers who they hire and are paid with public funds.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.602

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0020

Rulemaking

The Commission adopts the Attorney General Model Rules applicable to rulemaking, effective on November 1, 2014, with the exception of 137-001-0080.

Stat. Auth.: ORS 183.341, 410.602

Stats. Implemented: ORS 183.341, 410.602

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0030

Notice of Proposed Rulemaking and Adoption of Temporary Rules

(1) Except as provided in ORS 183.335(7), (12), or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Commission shall give notice of the intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To Individuals in the interested parties lists described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter at least 28 days before the effective date of the rule;

(c) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(d) To other individuals, agencies, or organizations the Commission is required to provide an opportunity to comment pursuant to state statute or federal law or as a requirement of receiving federal funding, at least 28 days before the effective date of the rule;

(e) To the Associated Press and the Capitol Press Room at least 28 days before the effective date of the rule; and

(f) In addition to the above, the Commission may send notice of intended action to other individuals, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Commission shall maintain an interested parties list for each OAR chapter of rules for which the Commission has administrative responsibility, and an interested parties list for subtopics or programs within those chapters. An individual, group, or entity that desires to be placed on such a list to receive notices regarding proposed permanent adoption, amendment, or repeal of a rule must make such a request in writing or by electronic mail to the rules coordinator for the chapter. The request must include either a mailing address or an electronic mail address to which notices may be sent, if requested.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Commission recognizes state shuttle as mail and may use this

means to notify other state agencies. An email notification under section (1) of this rule may consist of any of the following:

(a) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(c) An email with specific instructions within the body of the email, usually including an electronic Universal Resource Locator (URL) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(d) The Commission may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule shall include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact, or specific instructions to locate these documents online.

(e) The Commission shall honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Commission adopts or suspends a temporary rule, the Commission shall notify:

(a) Legislators specified in ORS 183.335(15);

(b) Individuals on the interested parties list described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter;

(c) Other individuals, agencies, or organizations the Commission is required to notify pursuant to state statute or federal law or as a requirement of receiving federal funding;

(d) The Associated Press and the Capitol Press Room;

(e) In addition to the above, the Commission may send notice to other persons, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking; and

(f) In lieu of providing a copy of the rule or rules as proposed with the notice of intended action or notice concerning the adoption of a temporary rule, the Commission may state how and where a copy may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 183.330, 183.335, 183.341, 410.602

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-010-0040

Delegation of Rulemaking Authority

Any member or employee of the Commission who is identified on a completed Delegation of Authority form signed by the Executive Director or Chair of the Commission and filed with the Secretary of State, Administrative Rules Unit, is vested with the authority to adopt, amend, repeal, or suspend administrative rules as provided on that form until such delegation is revoked by the Executive Director or Chair of the Commission, or the person leaves employment with the Commission.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 183.325, 410.602

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

DIVISION 20

OREGON HOME CARE COMMISSION FUNCTIONS

418-020-0010

Definitions

(1) “Active” means an active homecare or personal support worker who has a current provider number; has worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker; has a current credential and has met orientation requirements of program for which the worker is enrolled.

(2) “Area Agency on Aging” means the designated entity with which DHS contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to seniors and individuals with a disability for a designated planning and service area.

(3) “Background Check” means a criminal records check and appropriate abuse check conducted in accordance with OAR chapter 407, division 7.

(4) “Case Manager” means an employee of a service delivery office who is responsible for determining service eligibility, offering services choices to eligible individuals, developing a plan of authorized services, and monitoring the effectiveness of services and supports. This term includes services coordinator and personal agent.

(5) “Collective Bargaining Agreement” or “CBA” means the Collective Bargaining Agreement between the Oregon Home Care Commission and the Service Employees International Union, Local 503.

(6) “Commission” means the Oregon Home Care Commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595 to 410.625.

(7) “Commissioner” means one of the nine members of the Home Care Commission appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members are either seniors or individuals with disabilities who are receiving or who have received homecare services. One member is appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor’s Commission on Senior Services;

(b) Department of Human Services;

(c) Oregon Disabilities Commission; and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(8) “Community Health Worker” means an individual, as defined in ORS 414.025, who assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness.

(9) “Consumer” or “Consumer-Employer” means an individual eligible for in-home and community based services.

(10) “Consumer-Employer Training Services” means activities to empower and inform consumer-employers or representatives of consumer-employers regarding their rights, role, and responsibilities as employers of homecare or personal support workers, as described in OAR chapter 411, division 35. The consumer-employer training services programs are known as STEPS to Success with Homecare Workers and STEPS to Success with Personal Support Workers.

(11) “Consumer Representative” means an individual assigned by a consumer or designated by a consumer’s legal representative to act as the consumer’s decision maker in matters pertaining to planning and implementing an in-home service plan or individual support plan.

(12) “Continuing Education” means specific minimum education requirements, defined by the Commission, which workers must complete to be referred on the Registry.

(13) “Credential” means time-limited approval by DHS or OHA for an individual to provide services as a homecare or personal support worker, which includes a begin date, designated by a service delivery office, no earlier than the individual’s most recent background check and an end date no later than 24 months from the homecare or personal support worker’s most recent background check.

(14) “Cultural Competence” is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals to enable effective work in cross-cultural situations.

(15) “DHS” means the Oregon Department of Human Services.

(16) “Enrollment and Application Packet” means the program-specific documents an individual must complete to be approved to provide services as a homecare worker or personal support worker.

(17) “Employment Agreement” means an agreement between a consumer-employer or consumer representative and a homecare or personal support worker, which defines workplace rules and expectations.

(18) “Enhanced Homecare Worker” means a homecare worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require medically driven services and supports as defined and assessed by DHS.

(19) “Enhanced Personal Support Worker” means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require advanced medical- or behavioral-driven services and supports as defined and assessed by DHS by a functional needs assessment tool.

(20) “Exceptional Personal Support Worker” means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require extensive medical- or behavioral-driven services and supports, beyond the enhanced services provided by an enhanced personal support worker, as assessed by a functional needs assessment tool; and whose service needs also require staff to be awake more than twenty hours in a twenty-four hour period.

(21) “Functional Needs Assessment” means a comprehensive assessment tool that documents physical, mental and social functioning and risk factors; choices and preferences; service and support needs; and strengths and goals.

(22) “Grievance” means a formal allegation of acts, omissions, applications, or interpretations that are believed to be violations of the terms or conditions of the Collective Bargaining Agreement.

(23) “Homecare Worker” means a provider, as described in OAR chapter 411, division 31, who is directly employed by a consumer to provide either hourly or live-in services for the consumer. The term homecare worker includes:

(a) Providers in the:

(A) Consumer-Employed Provider Program;

(B) Spousal Pay Program;

(C) State Plan Personal Care Program for seniors and individuals with physical disabilities; and

(D) The Oregon Project Independence Program.

(b) The term “homecare worker” does not include workers employed by an in-home agency.

(24) “Independent Choices Program” means the program described in OAR chapter 411, division 30, which is a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services, which are identified in the participant’s service plan and prior approved by DHS or an Area Agency on Aging.

(25) “Individual” means an older adult or an adult with a disability applying for or eligible for services. The term “individual” is synonymous with “client” and “consumer”.

(26) “Individual Support Plan” or “ISP” means the plan defined in OAR chapter 411, division 375, which includes written details of the supports, activities, and resources required for an individual with intellectual or developmental disabilities to achieve and maintain personal goals and health and safety.

(27) “Live-In Services” means those services, as defined in OAR chapter 411, division 030, which are provided for a senior or an individual with a physical disability who requires 24-hour availability for activities of daily living and self-management tasks.

(28) “OHA” means the Oregon Health Authority.

(29) “Oregon Intervention System” or “OIS” means a system of training to people who work with designated individuals to provide elements of positive behavioral support and non-aversive behavioral intervention.

(30) “Orientation” means an introduction to in-home programs and basic expectations for homecare or personal support workers, which is arranged through a service delivery office, in accordance with these rules.

(31) “Personal Health Navigator” means an individual, as defined in ORS 414.025, who provides information, assistance, tools and support to enable a consumer to make the best health care decisions in the consumer’s particular circumstances and in light of

the consumer’s needs, lifestyle, combination of conditions, and desired outcomes.

(32) “Personal Support Worker” means a person, as defined in ORS 410.600:

(a) Who is hired by an individual with a developmental disability or mental illness or a parent or guardian of an individual with a developmental disability or mental illness;

(b) Who receives monies from DHS or OHA for the purpose of providing services for the individual with a developmental disability or mental illness; or

(c) Who provides services through the Independent Choices Program for a senior or an individual with a physical disability; and

(d) Whose compensation is provided in whole or in part through DHS or OHA, a support services brokerage or other public agency; and who provides services in the home or community.

(e) All other personal support workers, including provider organizations and supervisors, and those who perform solely volunteer personal services-related tasks are excluded from this definition.

(33) “Professional Development Recognition” means the recognition by the Commission of homecare and personal support workers who are continuing their education and have met Commission training requirements for recognition.

(34) “Program” means a program governed by Oregon Administrative Rules and administered by DHS or OHA, which authorizes home and community services to be provided through public funding.

(35) “Provider” means a homecare or personal support worker who is eligible to be hired by a consumer-employer or a consumer representative to provide in-home or community services authorized in the consumer’s service plan.

(36) “Provider Number” means an identifying number issued to each homecare and personal support worker who is enrolled as a provider through DHS or OHA.

(37) “Registry” means the Commission’s online listing of homecare and personal support workers who are available for work. The primary function of the Registry is to provide consumer choice by generating a list of homecare or personal support workers whose qualifications most closely match requirements entered in an individual consumer-employer profile.

(38) “Relief Worker” means a homecare or personal support worker who provides services in place of a homecare or personal support worker who is unavailable. This term is synonymous with “substitute worker”.

(39) “Respite Worker” means a homecare or personal support worker who provides services in place of a family caregiver or other member of a consumer’s natural support system who typically provides unpaid services. The term respite may also refer to a substitute for a live-in homecare worker.

(40) “Restricted Provider Number” means a number assigned by DHS to a homecare or personal support worker who is only approved to provide services for a specific consumer.

(41) “Service Delivery Office” means a DHS or OHA office, Area Agency on Aging, Community Developmental Disability Program, Support Services Brokerage or Community Mental Health Program office that is responsible for case management and authorization of publicly funded services provided by homecare or personal support workers.

(42) “Service Plan” means a written plan of authorized in-home and community services, developed in accordance with DHS or OHA rules and policies or an Individual Support Plan.

(43) “State Plan Personal Care Services” means the assistance with personal care and supportive services described in OAR chapter 411, division 34, provided for an individual by a homecare or personal support worker.

(44) “Stipend” means a predetermined amount of money granted to a homecare or personal support worker to attend Commission training, in accordance with Commission requirements.

(45) “Substitute Worker” means “Relief Worker”.

(46) “Worker” means a “Homecare Worker” or “Personal Support Worker”.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.600, 410.603, 410.605, 410.606, 410.608, 410.612

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0020

Qualifications for Homecare and Personal Support Workers

(1) Homecare Worker Minimum Qualifications:

(a) Submit completed application and enrollment packet to a service delivery office;

(b) Pass a DHS background check and cooperate with a recheck every two years or when requested;

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;

(d) Meet in-home program specific guidelines;

(e) Be 18 years of age or older. Age exceptions may be made by DHS on a case-by-case basis for family members at least 16 years of age; and

(f) Within 30 days of receiving a provider number, attend an orientation that utilizes materials provided or approved by the Commission.

(A) When completion of an orientation is not available at a local service delivery office within 30 days, orientation must be completed within 90 days of enrollment.

(B) If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number will be inactivated and any authorization for service payment will be discontinued, in accordance with OAR chapter 411, division 31.

(C) Homecare workers must attend a live-in service orientation before being hired to provide live-in services.

(2) Personal Support Worker Minimum Qualifications:

(a) Submit completed application and enrollment packet;

(b) Pass a DHS or OHA background check and cooperate with a recheck when requested;

(c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;

(d) Be 18 years of age or older; and

(e) Meet program specific guidelines; including attending an orientation within 90 days of receiving a provider number.

(3) Homecare and Personal Support Worker Orientation. Service delivery offices providing homecare or personal support worker orientation must:

(a) Offer orientation frequently enough that new homecare or personal support workers meet program timelines for completing orientation; and

(b) Use presentation and materials created by or approved by the Commission and DHS or OHA.

(c) Make every attempt to provide orientation in a culturally appropriate manner, including:

(A) Attempt to convey the availability of translation and interpreter services in the six languages, besides English, most commonly spoken by consumers in the office's service delivery area.

(B) Attempt to provide written materials and an interpreter fluent in the workers' primary language if three or more speakers of that language will be in attendance; and

(C) Attempt to provide an interpreter fluent in the workers' primary language if one or two speakers of that language will be in attendance.

(d) Provide reasonable accommodations for homecare or personal support workers who experience disability, in accordance with Title II of the Americans with Disabilities Act.

(e) Allow the Union to make presentations to potential members at orientations, at a mutually agreeable time, in accordance with the current collective bargaining agreement.

(4) Workplace Substance Abuse Policy: The Commission encourages homecare and personal support workers and consumer-employers to voluntarily seek help with drug and alcohol dependence and provides information and referral on request.

(a) The Commission is committed to protecting the safety, health, and well-being of consumers of in-home services and homecare and personal support workers, through establishing a workplace substance abuse policy.

(b) This policy recognizes that substance abuse by homecare or personal support workers, consumers, family members or others in consumers' homes is disruptive, adversely affect the quality of in-home services, and pose serious health risks to users and others.

(c) This policy recognizes that workers' abuse of alcohol and other drugs during non-working hours may affect their ability to provide quality in-home services.

(d) Workers are expected to report to work unimpaired and fit for duty.

(A) If the use of a prescribed or over-the-counter medication may compromise the safety of a worker, a consumer-employer, or the public, it is the worker's responsibility to use appropriate personnel procedures such as calling in sick and notifying the consumer-employer and case manager to avoid unsafe workplace practices.

(B) It is a violation of the Commission's substance abuse policy for a worker to intentionally misuse or abuse prescription or over-the-counter medications. Appropriate action will be taken if job performance declines or if accidents occur, in accordance with DHS or OHA rules.

(e) It is a violation of the Commission's substance abuse policy for a worker to use, possess, sell, trade, manufacture, or offer for sale illegal drugs or intoxicants in the workplace.

(f) A worker who is convicted of any criminal drug or alcohol violation in the workplace or during non-working hours must notify the service delivery office in writing within five calendar days of the conviction. The service delivery office will take appropriate action in accordance with DHS or OHA rules.

(g) DHS case managers authorize services in settings that do not jeopardize the health and safety of providers, in accordance with OAR chapter 411, division 30.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0030

Homecare and Personal Support Worker Training

(1) Training is offered by the Commission to homecare and personal support workers statewide to enhance worker skills and the quality of in-home and community services provided for consumer-employers.

(a) Training is provided without charge to homecare and personal support workers, consumer-employers, consumer-representatives, and appropriate service delivery staff.

(b) Stipends for actual hours in attendance at Commission-sponsored classes may be available to homecare and personal support workers who have provided publicly funded services in any of the three months before training or during the month of the training.

(A) The Commission determines the amount of a stipend and may provide a stipend for each eligible class only once per year.

(B) The Commission determines which classes are approved for stipends for homecare and personal support workers.

(2) Public Availability of Training. When classes are not filled, members of the public may attend, after registering and paying training fees determined by the Commission. Members of the public will not be eligible for stipends.

(3) Certifications for Homecare and Personal Support Workers.

(a) Cardio Pulmonary Resuscitation (CPR) and First Aid Certification:

(A) The Commission pays for active homecare and personal support workers, who meet the qualifications established by the Commission, to take First Aid training and adult CPR; and, if providing services to children, child CPR.

(B) Homecare and personal support workers must request payment in writing to the Commission before taking CPR and First Aid training.

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(C) The Commission does not reimburse homecare or personal support workers who have paid for CPR and First Aid classes.

(b) Professional Development Recognition. The Commission awards Professional Development Recognition to homecare and personal support workers who have:

(A) Completed 20 hours of core, safety and skills training classes;

(B) Current CPR and First Aid certification; and

(C) An acceptable attendance record is one in which an individual homecare does not have a no show rate greater than 30 percent at Commission classes. This is defined by the Commission and published in monthly training newsletters and on the Professional Development Recognition web page. The application is located at: <http://www.oregon.gov/dhs/spd/adv/hcc/docs/pro-dev.pdf>.

(c) Enhanced Homecare Worker Certification.

(A) To be certified as an enhanced homecare worker, a homecare worker must:

(i) Have an active, unrestricted provider number;

(ii) Have current CPR and First Aid Certification;

(iii) Complete a written application;

(iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and

(v) If accepted, successfully complete enhanced homecare worker coursework and assessments.

(B) Enhanced homecare workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced homecare worker certification, a homecare worker must:

(i) Maintain an active homecare worker credential, CPR and First Aid certification.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(d) Enhanced Personal Support Worker Certification.

(A) To be certified as an enhanced personal support worker, a personal support worker must:

(i) Have an active unrestricted provider number;

(ii) Have current CPR and First Aid Certification;

(iii) Complete a written application;

(iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and

(v) If accepted, successfully complete Enhanced Personal Support Worker coursework and assessments.

(B) Enhanced personal support workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced personal support worker certification, a personal support worker must:

(i) Maintain an active personal support worker credential, CPR and First Aid certification.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(e) Exceptional Personal Support Worker Certification:

(A) To be certified as an exceptional personal support worker, a personal support worker must complete:

(i) Enhanced personal support worker certification;

(ii) A written application;

(iii) Oregon Intervention System general or parent level certification as appropriate; and

(iv) If accepted, 10 — 12 hours of coursework and pass course assessments.

(B) For ongoing exceptional personal support worker certification a personal support worker must:

(i) Maintain an active personal support worker credential; CPR and First Aid; and Oregon Intervention System certifications.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(C) Exceptional personal support workers are eligible for an exceptional service payment rate only when providing services for

a consumer-employer assessed by DHS as having exceptional

needs.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.604, 410.625

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0040

Consumer-Employer Training Services

The Commission offers voluntary training services to consumer-employers and consumer representatives on how to select, manage, and dismiss homecare and personal support workers. These services may be referred to as STEPS to Success with Homecare Workers, STEPS to Success with Personal Support Workers, or generically as STEPS services.

(1) Providers of STEPS services are approved by or under contract with the Commission.

(2) Services are designed to meet consumer-employer needs and are provided in a culturally competent manner. Providers offer a continuum of services based on individual needs and preferences, on topics including but not limited to:

(a) Understanding the service plan and specific tasks authorized by the consumer's case manager;

(b) Creating job descriptions, locating workers, interviewing, completing reference checks, and hiring a homecare or personal support worker;

(c) Creating an employment agreement;

(d) Training, supervising and communicating effectively with workers;

(e) Ensuring work is performed satisfactorily;

(f) Correcting unsatisfactory work performance and discharging unsatisfactory workers;

(g) Scheduling and tracking hours worked and maintaining employment records;

(h) Developing a backup plan for coverage of services; and

(i) Preventing and reporting fraud and abuse.

(3) STEPS services must be provided in a timely manner.

(a) Consumers must be contacted within five working days of referral.

(b) A planning interview for STEPS services must be conducted with consumers or representatives within 10 business days of referral, unless a consumer requests a later date.

(c) Individualized consumer services must begin within 10 business days of the planning interview, unless a consumer or consumer representative requests a later date.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0050

Registry

The Commission maintains an online Registry of qualified homecare and personal support workers to provide routine, emergency, and substitute referrals to consumer-employers.

(1) DHS and OHA responsibilities:

(a) DHS and OHA shall collect for each homecare worker or personal support worker:

(A) Name, address, and phone number or numbers and where available, email address;

(B) The program or programs under which the worker is approved to provide services;

(C) The provider number;

(D) Begin and end dates of credential period;

(E) Date of most recent background check;

(F) Restricted or unrestricted status; and

(G) Other information as requested.

(b) In accordance with interagency agreements, DHS and OHA will:

(A) Provide continuing technical support, including electronic system changes needed by the Commission to ensure:

(i) Receipt of information from state electronic provider data management systems and any fiscal intermediaries providing consumer and provider information necessary for Registry matching functions; and

(ii) Accuracy of data downloaded real-time or on a daily basis.

(B) Provide technical support, including system changes to ensure security rights information transferred to the Commission's

Registry from current or future electronic systems are accurate and maintained.

(C) Continue to provide information needed by the Commission's Registry when any updates and changes to current electronic servers and systems are implemented.

(2) Service Delivery Office Responsibilities. Staff must enter into the Registry within five business days of the information becoming available:

(a) The date and location of each completed homecare worker or personal support worker orientation.

(b) The expiration dates of CPR and First Aid certification for homecare or personal support workers who present original documents at the service delivery office.

(3) Service Delivery Staff Use of Registry. DHS and OHA Service Delivery office staff will use the Registry exclusively to refer homecare or personal support workers to consumer-employers:

(a) When a consumer-employer or consumer representative requests names of homecare or personal support workers, an individual employer profile must be created and used for generating a Registry list of homecare or personal support workers who best match the consumer's profile.

(A) Service delivery staff must not create generic lists for distribution to multiple consumer-employers.

(B) Service delivery staff must not recommend specific homecare or personal support workers to consumer-employers or serve as employment references for such workers.

(b) Service delivery staff must refer consumer-employers or consumer representatives needing assistance with the Registry or those otherwise needing assistance locating homecare or personal support workers to the Commission Registry support or to the STEPS consumer training services program.

(4) Referral Requirements. For a homecare or personal support worker's name to appear on a Registry referral list, a homecare or personal support worker must:

(a) Have an active, unrestricted provider number;

(b) Be seeking employment;

(c) Authorize release of information by selecting this option on the Registry or in writing to the appropriate service delivery office;

(d) Maintain a complete, accurate profile;

(e) Have a valid telephone number and email address, if available. If a homecare or personal support worker does not have a working telephone number in the Registry, he or she will not be available for referral in the Registry and will be notified by the Commission via U.S. Mail or email;

(f) Update profile information at least every 30 days;

(g) Update changes including availability, telephone number, or other profile information when such changes occur; and

(h) Meet Commission annual continuing education requirements.

(5) Appropriate Use. The purpose of the Registry is for individual consumer-employers, persons authorized to act on behalf of consumers, or individuals hiring in-home workers privately, to find qualified homecare or personal support workers.

(6) Inappropriate Employer Use. Employer profiles or help wanted advertisements placed for purposes other than for individual searches as described in this rule are not authorized.

(7) Inappropriate Use by Homecare and Personal Support Workers. Homecare and personal support workers may not use the Registry for purposes other than its intended use. Homecare and personal support workers may not:

(a) Use the Registry to refer other homecare or personal support workers or contact other homecare or personal support workers;

(b) Use the Commission's name on business cards or other promotional materials;

(c) Represent themselves in print, electronic or social media as employees of the Commission, DHS, OHA, or any service delivery office.

(8) Violations of OAR 418-020-0050 by homecare or personal support workers will be investigated by the Commission.

(a) Sanctions may be imposed for non-compliance with these rules. Depending on severity and recurrence of violation, a sanction may include one or more of the following actions:

(A) Written warning;

(B) Suspension of availability for Registry referral for a prescribed period;

(C) Suspension of availability for Registry referral until conditions for suspension are corrected; or

(D) Training requirements.

(b) Depending on the severity of allegations of misconduct or inappropriate use, the Commission may suspend availability for referral during investigation.

(c) Notice of Sanction. If the Commission imposes a sanction, the Commission shall attempt to serve a notice of sanction upon the homecare or personal support worker by regular mail based on the last contact information provided by the worker, or, if requested by the recipient of the notice, by electronic mail. The Notice of Sanction will comply with OAR chapter 137, division 3 and OAR chapter 411, division 1, as applicable.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, 410.606

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-020-0060

Workers' Compensation

(1) The Commission elects workers' compensation coverage on behalf of consumer-employers who employ homecare and personal support workers.

(2) Consumer-employers and consumer representatives must:

(a) Sign required documents for homecare or personal support worker to receive workers' compensation coverage;

(b) Report homecare or personal support worker injuries to the Commission as soon as becoming aware of worker injury; and

(c) Provide information to the Commission and workers' compensation carrier when workers report injury.

(3) Service delivery office staff will:

(a) Collect from each consumer-employer, at time of eligibility for services, appropriate signed workers' compensation documents;

(b) Report injuries immediately to the Commission; and

(c) Respond to requests for information from the Commission and workers' compensation carrier when workers report injuries and when claims are filed.

(4) The Commission will:

(a) Assist homecare and personal support workers who are injured while performing service plan authorized tasks with filing claims; and

(b) Work as the agent of consumer-employers while providing information to the insurance carrier's claims adjusters, attorneys, return-to-work specialists, and vocational rehabilitation administrators.

(5) Homecare or personal support workers injured while providing authorized services must:

(a) Report work injuries as soon as becoming aware of injuries to the:

(A) Consumer-employer or consumer-representative;

(B) Case manager; and

(C) Commission;

(b) Cooperate with the Commission and workers' compensation carrier by providing all required documents and returning phone calls timely; and

(c) Keep the consumer-employer or consumer-representative informed regarding work restrictions resulting from injuries at work, medical appointments, and return to work dates.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.606, 410.625, 656.039

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

DIVISION 30

PUBLIC CONTRACTING AND PROCUREMENT

418-030-0000

Application

The rules contained in OAR chapter 418, division 30 govern the public contracting of the Oregon Home Care Commission. In addition to these rules, the Commission is subject to ORS Chapters 279A, 279B and 279C.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.604, 410.625

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-030-0010

Procurement Authority

(1) The Commission may:

(a) Enter into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the Commission;

(b) Contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with, and dispose of real and personal property in its own name; and

(c) Enter into an interagency agreement or contract with any state agency for the performance of the Commission's duties or the leasing of office space.

(2) The Commission delegates to the executive director the authority to act on behalf of the Commission to carry out its duties and responsibilities, including but not limited to, entering into contracts or agreements.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 279A.065, 279A.070, 410.604, 410.625

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

418-030-0020

Adoption of Oregon Health Authority Rules

The Oregon Home Care Commission adopts the rules in OAR chapter 943, division 60, except for rules and definitions which are not applicable to the work of the Commission authorized in ORS 410.595–410.625 as follows:

(1) Each instance of "Oregon Health Authority" or "Authority" means "Oregon Home Care Commission" or "Commission."

(2) The following rules, and subparts thereof, are not applicable:

(a) 943-060-0010, definitions (2)(a) and (c), (3)(a) through (o), and (8);

(b) 943-060-0020;

(c) In 943-060-0050, omit agreements under ORS 190.485, 190.112 and 660.342 (as renumbered to 660.334);

(d) 943-060-0080;

(e) 943-060-0090; and

(f) 943-060-0110(1), (11), and (12).

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.604, 410.625

Hist.: HCC 1-2014, f. 11-26-14, cert. ef. 12-1-14

DIVISION 40

HEMOCARE CHOICE PROGRAM

418-040-0000

Purpose

The rules in OAR chapter 418, division 40 establish the rules for the Homecare Choice Program administered by the Oregon Home Care Commission. The purpose of the program is to provide private pay individuals with access to the Commission's statewide Registry to hire employees to provide in-home services and to assist participants in meeting the legal responsibilities of being a household employer.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0010

Definitions

(1) “Abuse” means “abuse” as defined in OAR 407-045-0260, 411-020-0002, 413-015-0115, and OAR 943-045-0250.

(2) “Active” means a homecare or personal support worker has a current provider number and has worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker.

(3) “Activities of Daily Living (ADLs)” means daily self-care activities such as eating and feeding, dressing, grooming, bathing, personal hygiene, mobility and movement, toileting and elimination, cognitive and emotional support, and communication.

(4) “Background Check” means a criminal records and abuse check conducted in accordance with OAR chapter 407, division 007.

(5) “Chargeback” means a reversal of a credit card charge after an individual successfully disputes a program charge on his or her credit card.

(6) “Commission” means the Oregon Home Care Commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution and ORS 410.595 to 410.625.

(7) “Communication” means assistance that enables an individual to communicate with another person.

(8) “Companionship” means engaging a participant in social, physical, and mental activities and includes, but is not limited to, conversation, reading, games, hobbies, crafts, and accompanying the participant during social activities and outings. Companionship also means being present to monitor safety and well-being or to protect an individual who requires assistance in caring for him or herself.

(9) “Continuing Education” means specific minimum education requirements defined by the Commission.

(10) “Credit Card Refund” means a refund of an unused account balance that is credited to the same credit card that originated the payment.

(11) “Department” means the Department of Human Services (DHS).

(12) “Enrollment Agreement” means the program-specific document an individual must complete to be approved to participate in the Homecare Choice Program.

(13) “FICA” is the acronym for the Social Security payroll taxes collected under authority of the Federal Insurance Contributions Act.

(14) “Fiscal Improprieties” means a provider committed financial misconduct involving a participant’s money, property, or benefits. Fiscal improprieties include, but are not limited to:

(a) Financial exploitation, as defined in OAR 407-045-0260 and OAR 411-020-0002;

(b) Borrowing money from the participant;

(c) Taking a participant’s property or money;

(d) Having a participant purchase items for the provider;

(e) Forging a participant’s signature;

(f) Falsifying payment records;

(g) Claiming payment for hours not worked; or

(h) Other similar acts intentionally committed for financial gain.

(15) “Fiscal Intermediary” means an entity that provides fiscal intermediary services that support all programmatic, policy, and financial aspects of the Homecare Choice Program. Fiscal Intermediary services include, but are not limited to, enrollment functions, processing payroll, and paying state and federal taxes on behalf of participants.

(16) “FUTA” is the acronym for Federal Unemployment Tax Assessment, which is a United States payroll (or employment) tax imposed by the federal government on both employees and employers.

(17) “Guardian” means the parent of an individual less than 18 years of age or a person who has been appointed by a court to make personal, health, or other decisions for a functionally incapacitated individual under ORS chapter 125.

(18) “Homecare Choice Provider” means a person who has met the enrollment standards described in OAR 418-040-0040(1)(a)(A)–(N) and is authorized to provide services to program participants.

(19) “Homecare Worker” means a homecare worker as defined in OAR 411-031-0020.

(20) “Imminent Danger” means there is reasonable cause to believe an individual’s life or physical, emotional, or financial well-being is in danger if an intervention is not immediately initiated.

(21) “Individual” means a person enrolled as a participant in the Homecare Choice Program. The term “individual” is synonymous with “consumer-employer” and “participant.”

(22) “Instrumental Activities of Daily Living” means self-management activities, other than activities of daily living, required by an individual to live independently at home and includes house-keeping, laundry, meal preparation, shopping and errands, transportation, medication assistance, medication reminding, assistance with oxygen, and arranging for medical appointments.

(23) “Medication Assistance” means helping a participant with one or more steps in the process of taking medication including, but not limited to, opening medications containers, helping the participant self-administer his or her own medications, and assisting the participant with one or more steps of medication administration at the participant’s direction.

(24) “Medication Reminding” means providing a participant with an audio, visual, or verbal reminder to take his or her medications when a participant is able to direct services.

(25) “Non-Sufficient Fund Fee” means the charge an individual pays if a payment check is denied or is unable to be processed by the individual’s banking institution due to lack of sufficient funds to pay the check.

(26) “OHA” means the Oregon Health Authority.

(27) “Orientation” means an introduction to the Homecare Choice Program and a review of basic expectations and requirements for Homecare Choice providers.

(28) “Payment Method” means the financial instrument used to pay for services.

(29) “Personal Support Worker” means a personal support worker as defined in OAR 410-172-0190 and 411-375-0010.

(30) “Prepayment” means the advance payment of two weeks of service hours multiplied by the service rate.

(31) “Program” means the Homecare Choice Program governed by these rules and administered by the Oregon Home Care Commission.

(32) “Program Service Rate” means the hourly rate for homecare services established by the Home Care Commission and charged to Homecare Choice Program participants.

(33) “Provider” means Homecare Choice provider as defined in these rules.

(34) “Provider Number” means an identifying number issued to each homecare and personal support worker enrolled as a provider through DHS or OHA.

(35) “Readiness Assessment” means a tool used to evaluate whether a provider can demonstrate understanding of basic skills and processes determined to be foundational concepts needed to work successfully with participants.

(36) “Refund” means a return of the unused balance of a participant’s prepayment.

(37) “Registry” means the Commission’s online listing of Homecare Choice providers who are available to work.

(38) “Relief Care” means the temporary provision of services with the primary purpose of relieving the individual’s caregiver.

(39) “Representative” means a person designated by a participant, or the participant’s legal guardian, who is authorized to assist with the program enrollment process, fulfilling consumer-employer responsibilities, and directing homecare services.

(40) “Self-Assessment” means an assessment tool completed by a Homecare Choice Program participant, or the representative of a participant, to evaluate the capacity and willingness of the participant or the participant’s representative, to effectively manage

and direct homecare services provided to the participant and to fulfill consumer-employer responsibilities. The self-assessment identifies the participant's need for the specific services that are included in the participant's service plan.

(41) "Service Period" means the 14 consecutive days of each provider pay period.

(42) "Service Plan" means a written document that details a participant's self-identified service needs.

(43) "SUTA" is the acronym for State Unemployment Tax Assessment. State unemployment taxes are paid by employers to finance the unemployment benefit system that exists in each state.

(44) "These Rules" mean the rules in OAR chapter 418, division 040.

(45) "Unacceptable Background Check" means a check that produces information related to the person's background that precludes the person from being a provider in the Homecare Choice Program for the following reasons:

(a) The person applying to be a provider has been disqualified under OAR 407-007-0275;

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

(c) A background check and fitness determination has been conducted resulting in an "approved with restrictions" status as defined in OAR 407-007-0210.

(46) "Work week" means the period of time that begins on 12:00 a.m. on Sunday and ends on 11:59 p.m. Saturday.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0020

Participant Eligibility

(1) In order to enroll as a participant in the Homecare Choice Program, an individual, or the individual's representative, must:

(a) Complete a self-assessment developed by the Oregon Home Care Commission.

(b) Enter into a written service plan with a Homecare Choice provider before the commencement of services.

(c) Pay the Commission in advance for services.

(d) Be able to comply with state and federal wage and tax laws and recordkeeping requirements by completing, submitting, and retaining necessary documents provided by the fiscal intermediary contracted by the Commission.

(e) Complete a Homecare Choice Program enrollment agreement.

(f) Provide information, when requested, for workers' compensation claims related to the individual's provider.

(g) Be able and willing to effectively manage and direct homecare services by performing the functions of an employer, including:

(A) Locating, screening, and hiring a qualified provider.

(B) Evaluating whether the provider has the skills and abilities to meet the individual's specific service needs.

(C) Assigning and directing the provider's work.

(D) Supervising and training the provider.

(E) Scheduling the providers' work, leave, and coverage.

(F) Tracking the hours worked and validating the authorized hours were completed by the provider.

(G) Recognizing, discussing, and attempting to correct any performance deficiencies with the provider.

(H) Discharging an unsatisfactory provider.

(2) An individual becomes ineligible to participate in the Homecare Choice Program when:

(a) The individual, or individual's representative, fails to pay for services in advance.

(b) The individual, or the individual's representative, fails to maintain an account balance equal to one service period.

(c) The individual, or the individual's representative, is unable or unwilling to effectively manage and direct homecare services by

failing to meet the requirements outlined in OAR 418-040-0020(1)(g)(A)-(H).

(d) The individual, or the individual's representative, is unable or unwilling to comply with state and federal wage and tax laws or recordkeeping requirements by failing to complete, submit, and retain necessary documents provided by a fiscal intermediary contracted with the Oregon Home Care Commission.

(e) Dangerous conditions in the individual's service setting jeopardize the health or safety of the individual or provider, and the individual, or the individual's representative, is unable or unwilling to implement necessary safeguards to minimize the dangers.

(f) Services are not able to be provided safely or adequately by the provider based on:

(A) The extent of the participant's service needs; or

(B) The choices or preferences of the participant or the participant's representative.

(3) Participants determined to be ineligible for continued participation in the Homecare Choice Program will be sent written notice 10 days in advance of the proposed action.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0030

Services

(1) Services available through the Homecare Choice Program are intended to support a participant in the participant's home and in the community. Services are identified by the participant through a self-assessment developed by the Oregon Home Care Commission.

(2) The program is responsible to review the results of an individual's self-assessment with the participant or the participant's representative and provide information about the scope of services offered through the program, the long-term care services and supports not available through the program, and other community resources that are available to individuals seeking long-term care services and supports.

(3) The service plan is determined by the participant based on the participant's self-assessment and the participant or the participant's representative determines the number of purchased service hours per service period.

(4) Services are performed by providers enrolled in the Homecare Choice Program based on the service plan. Providers are selected by the participant from the Oregon Home Care Commission's Registry.

(5) Services available through the Homecare Choice Program include assistance with:

(a) Activities of Daily Living (ADLs).

(b) Instrumental Activities of Daily Living (IADLs).

(c) Pet care.

(d) Companionship.

(e) Relief Care.

(6) Assistance with tasks related to the following activities are not available through the Homecare Choice Program:

(a) Case management. Case management means an ongoing process that includes:

(A) Assessing a participant's service needs.

(B) Evaluating the options and services required to meet the participant's needs.

(C) Developing and implementing a service plan.

(D) Coordinating services and referrals.

(E) Conducting risk assessments.

(F) Monitoring.

(b) Chore services and yard work.

(A) Chore services are services intended to ensure the individual's home is safe and allows for independent living.

(B) Chore services include:

(i) Heavy housecleaning;

(ii) Removal of hazardous debris or dirt from the home or yard; and

(iii) Moving heavy furniture.

- (c) Home adaptations or modifications.
- (d) Money management.
- (e) Moving.
- (f) Medical and nursing services.
- (g) Purchasing services and supplies, such as home delivered meals, emergency response systems, adaptive equipment, and personal protective equipment.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0040

Provider Qualifications

- (1) Provider Enrollment:

(a) ENROLLMENT STANDARDS. To be enrolled as a provider in the Homecare Choice Program a provider must meet the following standards:

(A) Submit a completed application and provider enrollment agreement to the Oregon Home Care Commission.

(B) Possess an active, unrestricted homecare or personal support worker provider number issued by DHS or OHA.

(C) Have completed the background check process described in OAR 407-007-0200 to 407-007-0370 as a homecare or personal support worker with an outcome of approved. A background recheck must occur at least every two years or sooner, if requested.

(D) Complete Homecare Choice Program orientation.

(E) Be 18 years of age or older without exception.

(F) Possess a Social Security Number that matches the individual's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(G) Be legally eligible to work in the United States.

(H) Have sufficient communication and language skills to enable him or her to perform duties and interact effectively with participants and Commission staff.

(I) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services, as determined by the individual or his or her representative.

(J) Immediately report abuse or suspected abuse to DHS.

(K) Maintain confidentiality and safeguard the participant and the participant's family's information.

(L) Not be listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(M) Complete and pass an on-line readiness assessment. The readiness assessment includes, but is not limited to, concepts on:

- (i) Effective communication skills;
- (ii) Professional boundaries;
- (iii) Preventing fraud and abuse;
- (iv) Problem solving;
- (v) Universal precautions and disease prevention;
- (vi) Proper body mechanics; and
- (vii) Medication safety.

(b) DENIAL OF PROVIDER ENROLLMENT. The Oregon Home Care Commission may deny an application for provider enrollment in the Homecare Choice Program when:

(A) The applicant has a history of violating protective service and abuse rules in OAR chapter 407, division 45, OAR chapter 411 division 20, OAR chapter 413, division 15, or OAR chapter 943, division 45.

(B) The applicant has an unacceptable background check.

(C) The applicant is under 18 years of age.

(D) The applicant is listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(E) The applicant has committed fiscal improprieties.

(F) The Oregon Home Care Commission has information that enrolling the applicant as a provider may put vulnerable individuals at risk.

(G) The applicant's Social Security Number does not match the applicant's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(H) The applicant is not capable of performing essential functions to safely provide necessary services or is not capable of learning essential functions to safely provide necessary services.

(I) The applicant does not have sufficient communication and language skill to enable him or her to perform duties and interact effectively with participants and Commission staff.

(J) The applicant does not complete and pass a readiness assessment.

(c) VIOLATIONS RESULTING IN TERMINATION OF PROVIDER ENROLLMENT. The Oregon Home Care Commission may terminate a provider enrolled in the Homecare Choice Program in the following circumstances:

(A) The provider's enrollment as a homecare worker has been terminated based on violations described in OAR 411-031-0050.

(B) The provider's enrollment as a personal support worker has been terminated based on violations described in OAR 410-172-0200 or 411-375-0070.

(C) There is a substantiated complaint against a provider for:

(i) Being impaired by alcohol, inhalants, prescription drugs, or other drugs, including over-the-counter medications, while responsible for the care of a participant, in the participant's home, or transporting the participant; or

(ii) Manufacturing, possessing, selling, offering to sell, trading, or personally using illegal drugs while providing authorized services to a participant or while in the participant's home.

(D) The provider has a founded or substantiated allegation of abuse as described in OAR chapter 407, division 045, OAR chapter 411, division 20, OAR chapter 413, division 15, or OAR chapter 943, division 45.

(E) The provider fails to provide services as required.

(F) The provider lacks the ability or willingness to maintain confidentiality and safeguard the participant and the participant's family's information.

(G) The provider has an unacceptable background check.

(H) The provider has repeatedly demonstrated he or she is unable or unwilling to safely provide necessary services.

(I) The provider has repeatedly engaged in any of the following behaviors:

(i) Unscheduled late arrival to work or absences from work that are unsatisfactory to the participant or neglect the participant's service needs; or

(ii) Inviting unwelcome guests or pets into a participant's home, resulting in dissatisfaction or inattention to the participant's required service needs.

(J) The provider commits fiscal improprieties.

(K) The provider is listed on the Health and Human Services, Office of Inspector General or the U.S. General Services Administration's Exclusion lists.

(L) The provider fails to provide a Social Security Number that matches the provider's legal name, as verified by the Internal Revenue Service or Social Security Administration.

(d) INACTIVATION OF PROVIDER ENROLLMENT. A Homecare Choice provider's enrollment may be inactivated when his or her homecare or personal support worker enrollment has been inactivated for reasons described in OAR chapter 411, division 31 or OAR chapter 411, division 375.

(A) Homecare Choice providers will be notified in writing of the reason for inactivation and the actions required to maintain eligibility as a provider in the Homecare Choice Program.

(B) A Homecare Choice provider who fails to restore his or her homecare or personal support worker enrollment to active status within 30 days of inactivation will not be eligible to participate in the Homecare Choice Program until his or her homecare or personal support worker enrollment is restored to active status.

(2) Registry referrals.

(a) To be available for referral on the Registry, the provider must:

- (A) Have an active, unrestricted provider number.
- (B) Meet the Commission's annual continuing education requirements as a homecare worker or personal support worker.
- (C) Be seeking employment.
- (D) Maintain a complete and accurate profile.
- (E) Update his or her profile information every 30 days.
- (F) Have a valid telephone number.
- (G) Have a valid email address.
- (H) Authorize the release of contact information to perspective participants.

(b) If a provider does not meet the requirements in subsection (2)(a), the provider will not be eligible for referral on the Registry until the requirements of (2)(a) are met.

(3) A provider is responsible to review qualification requirements and background check due dates and take appropriate action to prevent lapse.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0050

Participant and Provider Employment Relationship

(1) The relationship between a provider and a program participant is that of employee and employer. Participants are required to meet the employer responsibilities described in OAR 418-040-0020(1)(g)(A)–(H).

(2) Homecare Choice providers are not state employees and are not entitled to state funded benefits, including participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan.

(3) Participants must establish the terms of an employment relationship with a provider at the time of hire.

(a) The terms of employment may include dismissal or resignation notice, work scheduling, absence reporting, and whether sleeping arrangements or meals are provided to employees.

(b) A participant has the right to terminate an employment relationship with a provider at any time and for any reason.

(4) Unless permission has been granted through the court, a participant's legal guardian may not be paid as the individual's Homecare Choice provider and serve as the employer.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0060

Homecare Choice Program Service Rate

(1) The Commission shall establish the service rate charged to program participants for homecare services at a level expected to generate total revenue sufficient to reimburse up to 107 percent of the costs associated with the program. The rate equals the actual costs incurred plus seven percent of the cost of administering the program and may include, but is not limited to:

(a) Homecare Choice Provider wages, taxes, and benefits:

- (A) Federal Unemployment Tax Act (FUTA);
- (B) State Unemployment Tax Authority (SUTA);
- (C) Workers' Compensation Assessment;
- (D) Health insurance; and
- (E) Paid time off.

(b) Homecare Choice Program staff wages, taxes, and benefits:

- (A) Federal Unemployment Tax Act (FUTA);
- (B) State Unemployment Tax Authority (SUTA);
- (C) Public Employee's Retirement contribution;
- (D) Pension bond contribution;
- (E) Social security tax;
- (F) Workers' compensation assessment;
- (G) Mass transit tax; and
- (H) Flexible benefits.

(c) Homecare Choice Program service and supply expenses:

- (A) Office expenses;
- (B) Publicity and publications;

- (C) Professional services;
- (D) Registry maintenance and expansion;
- (E) Legal fees;
- (F) Cost allocation fees;
- (G) Translation fees;
- (H) Americans with Disabilities Act (ADA) accommodation requests;

- (I) Credit card processing fees;
- (J) Fiscal intermediary administration fees; and
- (K) Workers' compensation premiums.

(d) Any other activities undertaken to ensure:

- (A) The quality of Homecare Choice providers;
- (B) The adequacy of homecare services being provided; and
- (C) Costs of other administrative expenses associated with the program are covered.

(2) The service payment rate is set forth in the participant enrollment agreement between the program and participant. Information about the rate shall be available from the Commission and posted online at www.oregon.gov/DHS/Seniors-Disabilities/HCC/Pages/Homecare-Choice-Program.aspx.

(3) If additional revenue is needed to sufficiently cover program costs, the Commission reserves the right to modify the service rate at any time. To modify the service rate, the Commission will give 30-days advance written notice to program participants.

(4) If the Commission determines adjusting the service rate will not generate sufficient revenue to pay the costs of the program, the Commission may suspend the program following 30-days advance written notice to participants and providers. If the program is suspended, the Commission shall report to the Legislative Assembly, no later than 30 days after the suspension begins. The report must include the following information:

(a) The reason for the suspension;

(b) Any costs incurred that exceed the revenue generated by program payments; and

(c) Any additional costs during the remainder of the biennium that the suspension occurs in that are anticipated to exceed the revenue generated by program payments.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0070

Suspension or Reduction of Homecare Choice Program Referrals

If the Commission, with the assistance of DHS, determines the available provider workforce is inadequate to meet the needs of those who qualify for Medicaid funded in-home services, the Commission may suspend or reduce the number of provider referrals under the Homecare Choice Program.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.595-625

Hist.: HCC 1-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16; HCC 1-2016, f. 6-13-16, cert. ef. 6-20-16

418-040-0080

Fiscal Responsibilities

(1) Oregon Home Care Commission Fiscal Responsibilities.

(a) The Commission shall establish the Homecare Choice provider wage rate.

(b) The Commission may contract with a fiscal intermediary for the following responsibilities:

(A) Making payments to Homecare Choice providers on behalf of participants for services rendered. Payment is considered payment in full.

(B) Acting on behalf of participants, by applying applicable Federal Insurance Contributions Act (FICA) regulations, to:

(i) Withhold Homecare Choice provider contributions from payments; and

(ii) Submit participant contributions, and the amounts withheld from provider payments, to the Social Security Administration.

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(C) Applying standard income tax withholding practices in accordance with 26 CFR 31 and withholding state and federal income taxes on all payments to Homecare Choice providers.

(c) The Commission will issue a refund of a participant's unused service payment after all expenses of the participant have been paid. The portion of the service payment intended to reimburse the Commission for its costs shall not be refunded.

(A) Refunds may only be issued to the individual who authorized the original payment.

(B) Refunds shall not be issued in cash.

(d) The Commission is not a trustee and has no fiduciary obligation to the participant or payer with respect to advance service payments.

(e) Advance payments may be comingled with other advance payments from participants in the Homecare Choice Program, but will be accounted for separately in the records of the Commission. The participant, or payer, is not entitled to any interest earnings on the funds and no interest will be credited to the participant or payer, or paid in the event of a refund.

(f) The state will honor a garnishment or attachment of the participant's or payer's advance payment in the event it is served with a writ.

(g) If funds are not available to pay a provider because the Commission is required to hold or transfer funds under a legal proceeding involving the participant, or payer, participant's participation in the Homecare Choice program will be terminated as provided for in OAR 418-040-0020.

(2) Homecare Choice Participant Fiscal Responsibilities.

(a) Participants shall pay the Commission in advance for homecare services. Services may not commence until payment is received and verified by the Commission.

(b) Upon enrollment in the program, participants must submit an initial prepayment to cover two service periods. The amount of the prepayment is calculated by multiplying the program service rate by the number of anticipated service hours for each service period. Thereafter, participants must submit a prepayment equal to the current service period, while enrolled in the program, and maintain an account balance equal to a two-week service period.

(A) If the account balance does not equal an amount necessary to pay the hours to be worked in the current service period, the participant must submit additional funds to restore the balance to the required level.

(B) If the participant increases the number of purchased hours per service period after the initial prepayment is established, the on-going prepayment must also be increased to equal the current service period.

(C) The funds are held for the convenience of the participant or payer.

(D) Advance payments may be considered part of the participant's or payer's estate in the event of a bankruptcy and subject to the automatic stay, or in the event of participant's death, will be

refunded to the participant's estate, less any administrative fee due to the Commission.

(c) The participant is subject to the U.S. Department of Labor Fair Labor Standards Act and may elect to have a provider work more than 40 hours per week. The purchase of service hours that exceed 40 hours per week for an individual provider is considered overtime and shall be calculated in the pre-payment.

(A) The overtime rate equals one and one-half of the provider's hourly wage rate plus the increased cost of any payroll taxes as a result of overtime.

(B) In the event of unanticipated overtime, the additional cost will be deducted from the participant's account balance and the account balance must be replenished in the next service payment.

(d) Acceptable payment methods for services include, credit or debit card transactions, personal checks, certified checks, cashier's checks, and money orders.

(A) As allowed by law, the Commission may charge a Non-Sufficient Fund fee if the participant's personal check is not processed by his or her issuing bank due to insufficient funds.

(B) Participants must provide an alternate form of payment method if the credit card used to purchase services is invalid or if a personal check is returned due to insufficient funds.

(C) If a participant challenges program charges on the participant's credit card and the charges are found to be valid after a chargeback investigation, the participant must pay by personal check, cashier's check, or money order for the disputed charges.

(e) Participants must submit payment to the Commission for mileage reimbursement for providers that use his or her personal vehicle for authorized service related transportation.

(A) Providers are reimbursed at the mileage reimbursement rate determined by the participant.

(B) The Commission, participant, and DHS are not responsible for vehicle damage when a provider uses his or her personal motor vehicle.

(C) The Commission, participant, and DHS are not responsible for personal injury sustained when a provider uses his or her personal vehicle, except as may be covered under workers' compensation.

(3) Homecare Choice Provider Fiscal Responsibilities. Homecare Choice providers:

(a) Must comply with state and federal wage and tax laws by completing, submitting, and retaining necessary documents provided by a fiscal intermediary contracted by the Commission.

(b) Must not accept any additional compensation for hours of work that were compensated by the Homecare Choice Program.

(c) Must only claim payment for authorized services provided that have been validated by participants with whom they are employed.

(d) Shall not claim payment for services delivered by another individual.