

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 375**

**PERSONAL SUPPORT WORKERS PROVIDING
DEVELOPMENTAL DISABILITY HOME CARE SERVICES**

411-375-0000 Purpose

(Adopted 12/28/2014)

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0010 Definitions

(Temporary Effective 01/01/2016 to 06/28/2016)

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

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

- (2) "ADL" means "activities of daily living".
- (3) "Burden of Proof" means that the existence or nonexistence of a fact is established by a preponderance of the evidence.
- (4) "CDDP" means "Community Developmental Disability Program".
- (5) "CIIS" means "children's intensive in-home services". CIIS include the services described in:
- (a) OAR chapter 411, division 300 for the Children's Intensive In-Home Services, Behavior Program;
 - (b) OAR chapter 411, division 350 for Medically Fragile Children's services; and
 - (c) OAR chapter 411, division 355 for the Medically Involved Children's Program.
- (6) "Collective Bargaining Agreement" means the Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503, Oregon Public Employees Union regarding wages, hours, rules, and working conditions.
- (7) "Confidentiality" means the conditions for use and disclosure of specific information governed by other laws and rules including, but not limited to, OAR 407-014-0000 to 407-014-0070 (Privacy of Protected Information).
- (8) "Employed Personal Support Worker" means a personal support worker who is hired by an individual with an intellectual or developmental disability or the representative of the individual. An employed personal support worker is not an independent contractor.
- (9) "Employer" means the common law employer. The common law employer is the person who conducts the employer responsibilities described in these rules and applicable rules for home care services. The employer may be the individual or a person selected by the individual or the legal representative of the individual.

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

(11) "Exceptional Personal Support Worker" means a personal support worker who is certified by the Home Care Commission to provide services for individuals who require extensive 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.

(12) "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

(13) "FICA" means "Federal Insurance Contributions Act".

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

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

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a personal support worker and an individual with whom the personal support worker is related unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

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

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

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

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

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

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

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

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

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

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

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

(17) "IADL" means "instrumental activities of daily living".

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

(19) "Inactive Provider Number" means a personal support worker has a Department issued provider number that has been terminated or inactivated by the failure to act in accordance with the qualifying actions as described in OAR 411-375-0020. A personal support worker may not be paid for work performed while their provider number is inactive.

(20) "ISP" means "Individual Support Plan".

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

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

(23) "Personal Support Worker":

(a) Means a person:

(A) Who has an active or inactive provider number;

(B) Who is hired by an individual with an intellectual or developmental disability or the representative of the individual;

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

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

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

(24) "Preponderance of the Evidence" means the greater weight of evidence, such as 51 percent vs. 49 percent, that when weighed with the evidence opposed to it has more convincing force and probable truth and accuracy than not.

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

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

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

(28) "Provider Number" means the identifying number issued to a personal support worker.

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

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

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

(32) "Service Agreement":

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

(A) Supports to be provided;

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

(C) Any specific individual health, safety, and emergency procedures that may be required, including action to be taken if an individual is unable to provide for their own safety and the individual is missing while in the community.

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

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

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

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

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

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

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

(36) "Violation of Protective Service and Abuse Rules" means, based on a substantiated allegation of abuse, a personal support worker was found to have violated the protective service and abuse rules described in OAR chapter 411, division 020, OAR chapter 407, division 045, or OAR chapter 943, division 045.

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

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

(Adopted 12/28/2014)

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

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

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

(a) Facilitating a background check;

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

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

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

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

- (b) The applicant has a history of violating protective service and abuse rules or has a founded report of child abuse or substantiated adult abuse;
- (c) The applicant has committed fiscal improprieties;
- (d) The applicant has demonstrated a lack of skills, knowledge, or ability to adequately or safely provide home care services;
- (e) The applicant has an unacceptable background check or the background check results in a closed case pursuant to OAR 407-007-0325;
- (f) The applicant is on the list of excluded or debarred providers maintained by the Office of the Inspector General (<http://exclusions.oig.hhs.gov/>);
- (g) The Department, CDDP, CIIS, or Support Services Brokerage has information that enrolling the applicant as a personal support worker may put vulnerable individuals at risk; or
- (h) The tax identification number or Social Security number for the applicant does not match the legal name of the applicant as verified by the Internal Revenue Service or Social Security Administration.

(5) RESTRICTED PROVIDER ENROLLMENT.

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

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

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

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

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

(a) Be at least 18 years of age;

(b) Have approval to work based on a background check completed by the Department as described in OAR 407-007-0200 to 407-007-0370 and section (7) of this rule, and be free of convictions or founded allegations of abuse by the appropriate agency including, but not limited to, the Department, CDDP, CIIS, or Support Services Brokerage;

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

(d) Be legally eligible to work in the United States;

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

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

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

(C) Ability to communicate with the individual; and

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

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

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

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

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

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

(7) BACKGROUND CHECKS.

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

(b) When a personal support worker is approved without restrictions following a background check fitness determination, the approval

must meet the personal support worker provider enrollment requirement whether the qualified entity is the Department, CDDP, CIIS, or Support Services Brokerage.

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

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

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

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

(e) The Department, CDDP, CIIS, or Support Services Brokerage may conduct a background recheck more frequently based on;

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

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

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

(8) ORIENTATION.

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

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0030 Personal Support Worker-Individual Relationship

(Adopted 12/28/2014)

(1) A personal support worker may not be:

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

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

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

(d) The spouse of the individual.

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

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

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

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

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

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

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

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

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

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

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

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

(6) The terms of the employer-employee or contractor relationship are the responsibility of the individual or the representative of the individual to establish at the time of hire or written service agreement. The terms of employment may include dismissal or notice of resignation, work scheduling, and absence reporting. The Support Services Brokerage, CDDP, or CIIS are available to provide assistance in developing the service

agreement with the individual in accordance with all applicable home care services program rules.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0040 Fiscal and Accountability Responsibility

(Adopted 12/28/2014)

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

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

(b) The Department only makes payment for home care services that are authorized in an ISP or annual plan, and included in a written job description or contract.

(c) The Department does not make service funds available to an employer to pay a personal support worker.

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

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

(3) CLAIM OR ENCOUNTER SUBMISSION. Submission of a claim, encounter, or other payment request document constitutes the agreement of a personal support worker that:

(a) The home care services were provided in compliance with the service agreement or job description in effect on the date of service;

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

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

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

(5) ANCILLARY CONTRIBUTIONS.

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

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

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

(b) BENEFIT FUND ASSESSMENT. The Workers' Benefit Fund pays for programs that provide direct benefits to an injured worker and the beneficiary of the injured worker and also assists an employer in helping an injured worker return to work. The Department of Consumer and Business Services sets the Workers' Benefit Fund assessment rate for each calendar year. The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary calculates the hours rounded up to the nearest whole hour and deducts an amount rounded up to the nearest cent. Acting on behalf

of the individual, the Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary:

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

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

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

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

(6) STATE AND FEDERAL INCOME TAX WITHHOLDING.

(a) The Department, CDDP, CIIS, Support Services Brokerage, or contracted fiscal intermediary withholds state and federal income taxes on all payments to personal support workers as indicated in the Collective Bargaining Agreement.

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

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

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

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

(Temporary Effective 01/01/2016 to 06/28/2016)

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

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

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

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

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

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

(d) A personal support worker who travels between the home or service setting of one individual and the home or service setting of another individual, on the same date, is paid at the base pay rate as defined in the Collective Bargaining Agreement for the time spent in transit between the homes or service settings.

(A) The total time spent in transit between the homes or service settings of all individuals may not total more than 10 percent of the total wages that the personal support worker claims during a pay period.

(B) When the vehicle of a personal support worker is used for transportation between the homes or service settings of two individuals, travel time is the time needed for a personal support worker to travel directly between the homes or service settings of the two individuals based on a time estimate published in a common, publicly-available, web-based, mapping program.

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

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

(E) Claims for travel time exceeding 20 percent may require a written explanation from the personal support worker. Time claimed in excess of the estimate may not be paid.

(F) Under no circumstances may a personal support worker be paid for time spent in transit to or from the residence of the personal support worker.

(G) Except as set forth in subsection (a) of this section, personal support workers do not receive any mileage reimbursement.

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0055 Limitations on Hours Worked

(Temporary Effective 01/01/2016 to 06/28/2016)

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

(a) The personal support worker is delivering 24 daily relief care; or

(b) An exception has been granted by the CDDP, Brokerage, or Department.

(2) All determinations by the Department regarding exceptions to the 50 hour limitation are final.

(3) No later than August 31, 2016, all authorized ISPs may not authorize more than 50 hours per week per personal support worker unless an exception has been granted by the CDDP, Brokerage, or Department.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0060 Overpayments

(Adopted 12/28/2014)

An overpayment is any payment made by the Department, CDDP, CIIS, or Support Services Brokerage to a personal support worker that is more than the personal support worker is authorized to receive. A personal support worker is authorized to receive payment for a number of hours that does not exceed the amount stated in a service agreement and are actually provided.

(1) Overpayments are categorized as follows:

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

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

(c) FRAUD. "Fraud" means taking actions that may result in the personal support worker receiving a benefit in excess of the correct amount whether by intentional deception, misrepresentation, or failure to account for payments or money received. "Fraud" also means spending payments or money the personal support worker was not entitled to and any act that constitutes fraud under applicable federal or state law (including 42 CFR 455.2). The Department of Justice, Medicaid Fraud Unit determines when a Medicaid fraud allegation is pursued for prosecution.

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

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

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

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

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

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

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

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0070 Provider Enrollment Inactivation and Termination
(Temporary Effective 01/01/2016 to 06/28/2016)

(1) A provider number for a personal support worker may be inactivated by the Department until the personal support worker takes action to reinstate provider enrollment when:

- (a) The personal support worker has not provided any paid home care services to an individual within the previous 12 months;
- (b) The personal support worker informs the Department, CDDP, CIIS, or Support Services Brokerage that the personal support worker is no longer providing home care services in Oregon;
- (c) The personal support worker fails to participate in a New Member Orientation for personal support workers as described in OAR 411-375-0020;
- (d) The background check for a personal support worker results in a closed case pursuant to OAR 407-007-0325;
- (e) More than two years have passed since the date on the most recent background check final fitness determination for a personal support worker;
- (f) More than two years have passed since the signature date on the most recent Provider Enrollment Application and Agreement for a personal support worker; or
- (g) The personal support worker fails to participate in training required by the Department.

(2) A provider number for a personal support worker may be inactivated during an investigation when:

- (a) The personal support worker, even if not providing any paid home care services to an individual, is being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future individuals;
- (b) The personal support worker, even if not providing any paid home care services to an individual, is being investigated by law enforcement for any of the crimes listed in OAR 407-007-0275; or

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

(3) A provider number for a personal support worker may be terminated by the Department when:

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

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

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

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

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

(d) The personal support worker has a violation of the protective service and abuse rules;

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

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

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

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

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

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

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

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

(4) NOTIFICATION OF CHANGE IN PROVIDER NUMBER STATUS.

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

(b) The Department must issue a written notice of the termination of a provider number to the personal support worker.

(c) The Department issued written notice of change in provider number status to the personal support worker must include the following:

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

(B) The alleged violation as listed in sections (1), (2), or (3) of this rule;

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

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

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

(5) TERMINATION PENDING APPEAL. The provider number of a personal support worker may not be terminated during the first 10 business days to provide the opportunity for the personal support worker to file an appeal. The personal support worker must file an appeal within 10 business days from the date of the notice of termination if they wish to continue to work during the hearing process as described in OAR 411-375-0080. If the personal support worker files an appeal in writing prior to the deadline, the provider number of the personal support worker may not be terminated until the appeal is resolved.

(a) EXCLUSIONS. A personal support worker may be terminated immediately by the Department and the personal support worker may not continue to work during the hearing process as described in OAR 411-375-0080 for terminations based on the following:

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

(B) Being excluded or debarred by the Office of the Inspector General;

(C) A conviction for fraud pursuant to federal law under 42 CFR 455.23; or

(D) An alleged violation listed in section (3) of this rule is discovered and presents imminent danger to current or future individuals.

(b) The personal support worker must file an appeal within 30 days from the date of the notice of termination as described in OAR 411-375-0080.

(6) TERMINATION IF NO HEARING REQUEST FILED. The decision of the Department becomes final if a personal support worker does not request a hearing within 30 days from the date of the notice of termination. Once the time period for the personal support worker to request a hearing has expired --

(a) The provider enrollment for a personal support worker is terminated; and

(b) A Final Order according to ORS 183 and OAR 461-025-0371 is issued by the Department to all appropriate parties with the decision.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007

411-375-0080 Hearing Rights

(Temporary Effective 01/01/2016 to 06/28/2016)

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

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

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

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

(d) Personal support workers that have been inactivated under OAR 411-375-0070.

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

(2) HEARINGS REQUESTS.

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

(b) The request for a hearing must be filed in writing on the Department approved form with the Department within:

(A) 10 days of the effective date of the termination included on the written decision issued by the Department if the personal support worker wishes to continue to work during the hearing process unless excluded by OAR 411-375-0070(5)(a); or

(B) 30 days from the effective date of the termination included on the termination notice.

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

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

(a) The personal support worker has 10 business days to respond to the offer for an informal conference with the Department.

(b) If the personal support worker accepts the offer of an informal conference, the informal conference must be scheduled with the

personal support worker and, if requested, a representative of the Union. The informal conference must involve the personal support worker and the Department to review the facts, and explain the decision to terminate the provider enrollment. The informal conference may be held by telephone. At the discretion of the Department representative, the Department representative may grant an additional informal conference to facilitate the hearing process.

(c) Participation in an informal conference by the personal support worker is not required.

(4) OFFICE OF ADMINISTRATIVE HEARINGS.

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

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

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

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 410.600, 410.606-619, 427.007