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Temporary Health Care Staff Rate Setting Program

OAR 409-039-0000 to 409-039-0120

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409-039-0000: Purpose

These rules (OAR 409-039-0000 to 409-039-0130) establish requirements related to the maximum rates that a temporary staffing agency may charge to or receive from a hospital or facility that engages the temporary staffing agency.

- **Statutory/Other Authority:** House Bill 2665 (2023), ORS 676.695 to 676.725
 - **Statutes/Other Implemented:**
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409-039-0010: Definitions

The following definitions apply to OAR 409-039-0000 through 409-039-0130:

~~(1)~~ **(4) Activities of daily living:** Self-care activities that must be accomplished by an individual to meet his or her daily needs, but do not necessarily occur on a daily basis.

~~(1)~~ **(2) Agency Margin:** means the amount represented as a percentage of the bill rate, including any costs not paid directly to the temporary staff such as, but not limited to, administrative costs, contracting fees, employee costs, margin, profit.

~~(3)~~ **(2) Authority** means Oregon Health Authority.

~~(4)~~ **(3) Certified medical assistant:** An individual who is certified through the American Association of Medical Assistants as a certified medical assistant and performs administrative and clinical tasks including taking and recording vital signs, preparing patients for examinations, drawing blood, giving vaccines, recording medical histories of patients, updating and filing patient medical records, and other administrative and clinical tasks.

~~(5)~~ **(4) Certified nursing assistant:** An individual who is certified as a certified nursing assistant by the Oregon State Board of Nursing as provided in ORS 678.442 to ORS 678.448.

~~(6)~~ **(5) Direct caregiver:** Means a person who provides assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services. ~~has the meaning given that term in OAR 333-536-0005.~~

~~(7)~~ **(6) Emergency** has the meaning given the term in ORS 401.025.

~~(8)~~ **(7) Emergency Waiver** refers to the process outlined in OAR 409-039-0050(1).

~~(9)~~ **(8) Employment agency** has the meaning given that term in ORS 658.005.

(109) **Facility** means an in-home care agency as defined in 443.305; facility with a memory care endorsement facility as described in ORS 443.886; residential care facility as defined in ORS 443.400; or a skilled nursing facility as defined in ORS 442.015 that engages a temporary staffing agency to provide personnel to deliver health care services or assistance with activities of daily living to clients, patients, or residents of the facility.

(110) **Home care worker** has the meaning given that term in ORS 410.600.

(124) **Home health agency** has the meaning given for that term in ORS 443.014.

(132) **Hospital** has the meaning given for that term in ORS 442.015.

(143) **In-home care agency** has the meaning given for that term in ORS 443.305.

(154) **Indian Health Care Provider (IHCP)** means an Indian health program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or an urban Indian organization (otherwise known as an I/T/U) as defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).

(165) **Indian Health Program:** Any IHS facility, any federally recognized tribe or tribal organization, or any Federally Qualified Health Center (FQHC) with a 638 designation.

(176) **In good standing:** The status of a holder of a license, certification or registration that is not suspended, revoked, expired, resigned or lapsed.

(187) **Licensed practical nurse:** (a) An individual who is licensed as a licensed practical nurse by the Oregon State Board of Nursing as provided in ORS 678.040 and ORS 678.050. (b) A non-Oregon individual who is licensed and in good standing as a licensed practical nurse in another state if approved by the Oregon State Board of Nursing, as provided by ORS 678.031, to practice as a licensed practical nurse in this state on a single, temporary assignment of not to exceed 90 days and renewable for not to exceed 90 days (the "90-Day Nurse Licensure Exception").

(198) **Non-Emergency Waiver:** refers to the process outlined in OAR 409-039-0050(2).

(2049) **Personal support worker** has the meaning given that term in ORS 410.600.

(210) **Personnel:**

(a) A registered nurse, licensed practical nurse, certified medical assistant, certified nursing assistant or direct caregiver who provides health care services or assistance with activities of daily living to clients, patients or residents of a facility; or

(b) A registered nurse or certified nursing assistant who provides health care services to patients for or on behalf of a hospital that engages the temporary staffing agency with which the registered nurse or certified nursing assistant is associated.

(224) **Program:** The Temporary Health Care Staff Rate Setting Program in the Health Policy and Analytics Division of the Oregon Health Authority.

(232) **Program website:** means the Authority's website for the Temporary Health Care Staff Rate Setting Program, currently located at <https://www.oregon.gov/oha/hpa/hp-pco/pages/rate-setting.aspx>.

(243) **Rate:** The total amount that a temporary staffing agency may charge to or receive from a hospital or facility that engages the temporary staffing agency to assign personnel to the hospital or facility on a temporary basis.

(254) **Registered nurse:**

(a) An individual who is licensed as a registered nurse by the Oregon State Board of Nursing as provided in ORS 678.040 and ORS 678.050, or

(b) A non-Oregon individual who is licensed and in good standing as a registered nurse in another state if approved by the Oregon State Board of Nursing, as provided by ORS 678.031, to practice as a registered nurse in this state on a single, temporary assignment of not to exceed 90 days and renewable for not to exceed 90 days (the "90-Day Nurse Licensure Exception").

(265) **(a) Temporary staffing agency** means an entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of hospitals or facilities that engage the temporary staffing agency.

(b) "Temporary staffing agency" does not include:

(A) A staff arrangement established by an entity solely for use by the entity, or by any entity associated with the entity, and in which the only costs are salaries paid to individuals who perform work;

(B) An individual who provides the individual's services on a temporary basis;

(C) An employment agency;

(D) Home health agencies licensed under ORS 443.015;

(E) In-home care agencies licensed under ORS 443.315; or

(F) Home care workers and personal support workers listed on the home care registry.

(276) **These rules** mean the rules in OAR Chapter 406, Division 039.

- **Statutory Authority:** House Bill 2665 (2023), ORS 676.695 to 676.725.
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409-039-0020: Scope and Applicability; Exceptions

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

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

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

(3) (a) This applies per licensed facility, and

(4) (b) Per work order or contract

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

- **Statutory Authority:** House Bill 2665 (2023), ORS 676.695 to 676.725.
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409-039-0030: Health Professions (Personnel) Covered

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

- (a) Registered nurse
- (b) Licensed practical nurse
- (c) Certified medical assistant
- (d) Certified nursing assistant
- (e) Direct caregiver who provides health care services or assistance with activities of daily living to clients, patient.

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

- **Statutory Authority:** House Bill 2665 (2023), ORS 676.695 to 676.725.
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409-039-0040: Maximum Rates for a Hospital or Facility

- (1) The maximum rates a Temporary Staffing Agency may charge to or receive from hospitals and facilities, as described in Section 3 of this rule are:
 - (a) Based on the most recently available wage data from the Oregon Employment Department and include any applicable fringe benefits, charges for administrative and contract fees and other special charges; and
 - (b) Bear a reasonable relationship to this wage data from the Oregon Employment Department.
- (2) The differences in the maximum rates established in this rule are based on the following factors:
 - (a) the minimum wages in geographic regions of this state,
 - (b) shift differentials,
 - (c) holiday pay,
 - (d) type of licensed care setting,
 - (e) relevant state and federal regulatory requirements,
 - (f) personnel with specialty training, and
 - (g) information obtained through consultation with temporary staffing agencies and their representatives and providers of long-term care services, acute care services, and primary care services, or representatives of the providers described in this paragraph.
- (3) The maximum rates established under this Section include a maximum [Agency Margin](#) rate a Temporary Staffing Agency can charge for each respected position and will be published on the Program website. [The Agency Margin is 34.2%.](#)

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

- **Statutory Authority:** House Bill 2665 (2023), ORS 676.695 to 676.725.
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409-039-0050: Waivers to Charge More than the Maximum Rates

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

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

(a) There is an Emergency.

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

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

~~(1) A hospital or facility that intends to engage a temporary staffing agency authorized under ORS 676.698 at a rate higher than a maximum rate established under ORS 676.716 in order to respond to an Emergency or state of emergency may request an Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0060 in the following circumstances:-~~

~~(2) There is an Emergency.-~~

~~(3) The Governor by proclamation declares either:-~~

~~(4) a state of emergency pursuant to ORS 401.165, or-~~

~~(5) a public health emergency pursuant to ORS 433.441.-~~

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

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

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

(c) an acute incident has occurred, or imminent event is anticipated, that substantially and negatively impacts access to care.

~~(6) Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 in the following circumstances where vital staffing resources are limited and temporary intervention is needed:-~~

~~(a) An acute incident has occurred or-~~

~~(b) An imminent event is anticipated.-~~

~~(7) The Authority shall publish examples of acute incidents and/or imminent events in Section (2) of this rule on the Program website.-~~

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0060: Application Process and Review of Emergency Waiver Requests

- (1) ~~A A hospital, facility, or temporary staffing agency requesting to waive the maximum rates established in OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050(1) must submit a request for an Emergency Waiver to the Authority. hospital, facility, or temporary staffing agency requesting to waive the maximum rates established OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050(1) must submit a request for an Emergency Waiver to the Authority.~~
- (2) An Emergency Waiver request required to be filed under Section (1) of this rule shall be submitted using the form available at the Program Website.
- (3) An initial request submitted to the Authority requesting an Emergency Waiver shall be automatically approved and issued by the Authority upon submission.
- (4) An Emergency Waiver automatically approved and issued under Section (3) of this rule is valid for 90 days and may be renewed. Upon expiration of the Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority pursuant to Section (5) of this rule.
- (5) An Emergency Waiver waiving the maximum rates established in OAR 409-039-0040 for circumstances outlined in OAR 409-039-0050(1) may be renewed and issued to a hospital, facility, or temporary staffing agency that possesses a license, certification or registration in good standing to operate in Oregon. A temporary staffing agency, hospital, or facility may submit a request to renew an Emergency Waiver under this Section for an additional 90 day period.
 - (a) The Authority shall approve or deny a request to renew an Emergency Waiver within three (3) business days after such request is received by the Authority.
 - ~~(b) Such request must be made no sooner than 10 calendar days before, or later than four (4) calendar days prior to, the expiration date of the Emergency Waiver.~~
 - ~~(a)~~

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

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

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0070: Application Process and Review of Non-Emergency Waiver Requests

Application Process and Review of Waiver Requests in Circumstances other than an Emergency (Non-Emergency)

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

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

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

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than 30 calendar days before and no later than ~~ten (10)~~ fifteen (15) calendar days before the approved Non-Emergency Waiver is set to expire.

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

(4) The Authority shall approve or deny a request for a Non-Emergency Waiver made pursuant to Section (1) of this rule or a request to renew an approved Non-Emergency

Waiver pursuant to Section (3) of this rule within ten (10) business days after request is received by the Authority.

(5) For the purposes of this rule, the time for the Authority to approve or deny a request for a Non-Emergency Waiver, or a request to renew an approved Non-Emergency Waiver, that is filed with the Authority after 4:00 p.m. on a Friday, or on a Saturday, Sunday, or legal holiday, shall be considered received on the next following business day.

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

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

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0080: Reconsideration Process for Denied Waivers

- (1) A temporary staffing agency, facility, or hospital may submit a request for the Authority to reconsider a decision to deny a request to renew an Emergency Waiver under OAR 409-039-0060, or a Non-Emergency Waiver, including a renewal, under OAR 409-039-0070.
- (2) A request for reconsideration under Section (1) of this rule shall be submitted using the form available at the Program Website.
- (3) A request for reconsideration must be submitted within ten (10) business days of a denial.
- (4) The Authority shall render a determination on a request for reconsideration filed pursuant to Section (1) of this rule within ten (10) business days after the date such request is received by the Authority.
- (5) For the purposes of this rule, the time for the Authority to render a determination on a request for reconsideration that is filed with the Authority after 4:00 p.m. on a Friday, or on a Saturday, Sunday, or legal holiday, shall be considered received on the next following business day.
- (6) If the Authority denies the request for reconsideration, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed with the Authority within 15 calendar days from the date of service of the denial.

- (a) Contested case hearings shall be conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings.
- (b) The requestor shall have the burden to prove a compelling need for the Emergency Waiver or Non-Emergency Waiver.
- (c) The issues to be considered in a contested case hearing conducted pursuant to this rule shall be limited in scope to the facts and conclusions contained in the Authority's denial.

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0090: Annual Evaluation of Maximum Rates

- (1) The Authority shall annually evaluate the maximum rates established under OAR 409-039-0040 and may, based on changes in the labor market, the wage data described in ORS 676.716, and other factors the authority considers relevant, adjust these maximum rates.
 - (2) In evaluating and adjusting the maximum rates established under OAR 409-039-0040, the Authority shall solicit feedback from the same entities consulted in the creation of the initial rates, as outlined in OAR 409-039-0040.
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409-039-0100: Data Requests

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

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0110: Regular Review of Waiver Conditions and Processes

- (1) The authority shall conduct periodic, annual review of conditions for requesting waivers and the effectiveness of the administration of the program.

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.

409-039-0120: Information Sharing and Use of Data

- (1) If a temporary staffing agency, facility, or hospital that files documents, materials, information, or data with the Authority believes such information may be considered confidential and exempt from public disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478, such entity filing the confidential information must provide a redaction log that provides a reasonably detailed statement of the grounds on which confidentiality is claimed, citing the applicable statutory basis for confidentiality of each portion.
- (2) The Authority may use a confidential document, material, information, or data in administering these rules. In order to assist in the performance of the Authority's duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA's Health Licensing Office.
- ~~(3) Notwithstanding the Sections (1) and (2) of this rule, requests for an Emergency Waiver or a Non-Emergency Waiver, including supporting information and documentation, are not considered to be confidential and shall be subject to public disclosure. The Authority shall post all requests for an Emergency Waiver or a Non-Emergency Waiver, including the Authority's determination, to the Program website.~~

Statutory Authority: House Bill 2665 (2023), ORS 676.695 to 676.725.