OREGON BULLETIN

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JEANNE P. ATKINS
Secretary of State
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INFORMATION ABOUT ADMINISTRATIVE RULES

General Information

The Administrative Rules Unit, Archives Division, Secretary of State publishes the Oregon *Administrative Rules Compilation* and the online *Oregon Bulletin*. The *Oregon Administrative Rules Compilation* is an annual print publication containing complete text of Oregon Administrative Rules (OARs) filed through November 15 of the previous year. The *Oregon Bulletin* is a monthly online supplement that contains rule text adopted or amended after publication of the print Compilation, as well as Notices of Proposed Rulemaking and Rulemaking Hearing. The Bulletin also includes certain non-OAR items when they are submitted, such as Executive Orders of the Governor, Opinions of the Attorney General and Department of Environmental Quality cleanup notices.

Background on Oregon Administrative Rules

ORS 183.310(9) defines "rule" as "any agency directive, standard, regulation or statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of any agency." Agencies may adopt, amend, repeal or renumber rules, permanently or temporarily (up to 180 days), using the procedures outlined in the *Oregon Attorney General's Administrative Law Manual*. The Administrative Rules Unit assists agencies with the notification, filing and publication requirements of the administrative rulemaking process.

OAR Citations

Every Administrative Rule uses the same numbering sequence of a three-digit chapter number followed by a three-digit division number and a four-digit rule number (000-000-0000). For example, Oregon Administrative Rules, chapter 166, division 500, rule 0020 is cited as OAR 166-500-0020.

Understanding an Administrative Rule's "History"

State agencies operate in an environment of ever-changing laws, public concerns and legislative mandates which necessitate ongoing rulemaking. To track changes to individual rules and organize the original rule documents for permanent retention, the Administrative Rules Unit maintains history lines for each rule, located at the end of the rule text. OAR histories contain the rule's statutory authority, statutes implemented and dates of each authorized modification to the rule text. Changes are listed chronologically in abbreviated form, with the most recent change listed last. In the history line "OSA 4-1993, f. & cert. ef. 11-10-93," for example, "OSA" is short for Oregon State Archives; "4-1993" indicates this was 4th administrative rule filing by the Archives in 1993; "f. & cert. ef. 11-10-93" means the rule was filed and certified effective on November 10, 1993.

Locating Current Versions of Administrative Rules

The online version of the OAR Compilation is updated on the first of each month to include all rule actions filed with the Administrative Rules Unit by the 15th of the previous month. The annual printed OAR Compilation volumes contain text for all rules filed through November 15 of the previous year. Administrative Rules created or changed after publication in the print Compilation will appear in a subsequent edition of the online Bulletin. These are listed by rule number in the Bulletin's OAR Revision Cumulative Index, which is updated monthly. The listings specify each rule's effective date, rulemaking action, and the issue of the Bulletin that contains the full text of the adopted or amended rule.

Locating Administrative Rule Publications

Printed volumes of the Compilation are deposited in Oregon's Public Documents Depository Libraries listed in OAR 543-070-0000. Complete sets and individual volumes of the printed OAR Compilation may be ordered from the Administrative Rules Unit, Archives Division, 800 Summer Street NE, Salem, Oregon 97301, (503) 373-0701.

Filing Adminstrative Rules and Notices

All hearing and rulemaking notices, and permanent and temporary rules, are filed through the Administrative Rules Unit's online filing system. To expedite the rulemaking process, agencies are encouraged to file a Notice of Proposed Rulemaking Hearing specifying hearing date, time and location, and to submit their filings early in the submission period. All notices and rules must be filed by the 15th of the month to be included in the next month's Bulletin and OAR Compilation postings. Filings must contain the date stamp from the deadline day or earlier to be published the following month.

Administratrative Rules Coordinators and Delegation of Signing Authority

Each agency that engages in rulemaking must appoint a rules coordinator and file an Appointment of Agency Rules Coordinator form with the Administrative Rules Unit. Agencies that delegate rulemaking authority to an officer or employee within the agency must also file a Delegation of Rulemaking Authority form. It is the agency's responsibility to monitor the rulemaking authority of selected employees and keep the forms updated. The Administrative Rules Unit does not verify agency signatures as part of the rulemaking process.

Publication Authority

The Oregon Bulletin is published pursuant to ORS 183.360(3). Copies of the original Administrative Orders may be obtained from the Archives Division, 800 Summer Street, Salem, Oregon, 97310; (503) 373-0701. The Archives Division charges for such copies.

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division. Any discrepancies with the published version are satisfied in favor of the Administrative Order.

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EXECUTIVE ORDER NO. 16 - 01

AMENDS EXECUTIVE ORDER 99-09 RELATING TO THE GOVERNOR'S ADVISORY COMMITTEE ON MOTORCYCLE SAFETY OR2015

IT IS HEREBY DIRECTED AND ORDERED:

1. Executive Order 99-09, relating to the Governor's Advisory Committee on Motorcycle Safety, is restated and reaffirmed, with the following amendment.

2. Section 7 of Executive Order 99-09 is amended to state as follows:

"This Order shall expire on November 1, 2019."

Done at Salem, Oregon this 25th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

EXECUTIVE ORDER NO. 16 - 02

DETERMINATION OF STATE OF EMERGENCY IN BENTON, CLACKAMAS, CLATSOP, COLUMBIA, LANE, LINCOLN, LINN, MARION, MULTNOMAH, POLK, TILLAMOOK, WASHINGTON, AND YAMHILL COUNTIES AS WELL AS COOS, CURRY, DOUGLAS, JACKSON, JOSEPHINE, AND KLAMATH COUNTIES DUE TO A SEVERE WINTER STORM THAT INCLUDES HIGH WINDS, FLOODING, AND LANDSLIDES

Pursuant to ORS 401.165, I find that a threat to life, safety, property, and significant damage to the state roads on the federal-aid highway system exists due to severe winter storms that have caused and continue to cause a natural disaster in the above-identified jurisdictions. Having begun on December 07, 2015, and continuing to the date of this Order, these severe storms are causing heavy rains, high winds, flooding, landslides, and erosion at various locations within these jurisdictions, resulting in critical transportation failures, loss of power and communications capabilities, and evacuations and sheltering needs. This storm system damaged state highways throughout the jurisdictions with, among other events, numerous washouts, sinkholes, serious debris flows, and mudslides.

IT IS HEREBY DIRECTED AND ORDERED:

1. The Office of Emergency Management (OEM) shall activate the State's Emergency Operations Plan, and shall coordinate access to and use of personnel and equipment of all state agencies necessary to assess, alleviate, respond to, mitigate or recover from conditions caused by this emergency. OEM shall coordinate all essential protective measures in support of disaster areas identified above.

2. The Oregon National Guard, Oregon State Police, Oregon Public Utility Commission and Oregon Department of Transportation shall provide any assistance that is deemed necessary to assist in the response to this emergency and to provide all necessary support to the above identified jurisdictions. All other state agencies shall be prepared to assist as requested by OEM.

3. The Oregon Department of Transportation shall provide appropriate assistance and seek federal resources to effect repair and reconstruction of the federal aid highway system in above identified jurisdictions.

Approved verbally as to Benton, Clackamas, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington and Yamhill Counties on December 10, 2015, and approved verbally as to the remaining counties on December 14, 2015.

Formalized at Salem, Oregon, this 25th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

EXECUTIVE ORDER NO. 16 - 03

GOVERNOR'S COUNCIL ON EDUCATOR ADVANCEMENT

Every Oregon student deserves a caring, competent, and culturally responsive educator in the classroom. A diverse, well-supported educator workforce is critical to ensuring that every Oregon student graduates high school with a plan for his or her future.

High-quality preparation and ongoing, effective professional development and supports for teachers and school leaders translates into better student learning and higher achievement.

Educators want and deserve specialized professional learning and ongoing support, more than current levels of federal, state, and local systems are designed to deliver. And building an effective system of professional development and support requires us to empower, connect, and tap into the expertise of current classroom teachers and leaders across the state.

New, higher standards were established in 2011 to guide and evaluate the practices of effective teachers and school leaders in public schools throughout Oregon. In 2013, the Legislature redoubled our State's commitment to advance the education profession by actively investing in and supporting excellence in teaching and learning.

A dedicated appropriation was established by the Legislature to foster a statewide umbrella of support across professional development for teachers and school leaders, known as the *Network for Quality Teaching and Learning ("Network")*. Now in its third year of implementation, a re-examination of the *Network* structure, funding, metrics of success, and leverage of resources has become necessary to address these demands:

• Greater alignment across preparation, induction, and ongoing professional development.

• A more equitable and sustainable funding mechanism to distribute funds across both rural and urban school districts sensitive to local contexts and priorities.

• Leveraging of expertise of teachers and administrators — and resources of local, regional, non-profit, and philanthropic organizations — to maximize on-the-ground supports for Oregon educators.

• Centralized coordination and quality assurance with partner input across all *Network* projects and supports such as the *Oregon Educator Network, TELL Oregon Survey,* and *TeachInOregon website*.

• A systemic approach to continuously assess needs and coordinate future priorities for resources to support Oregon educators.

• A research consortium across education agencies and institutions to analyze and identify promising practices that explain improved teacher quality and student outcomes over time.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. The Governor's Council on Educator Advancement ("Council") is hereby established.

2. The Council shall consist of fifteen (15) members appointed by the Governor including:

a. Six or more licensed/certified educators currently practicing in Oregon public schools;

b. Representatives from education institutions, non-profits, professional and philanthropic organizations with expertise in the direct provision and support of high-quality preparation and professional learning for teachers and administrators, including equity and cultural competency.

c. Representatives of the public at-large.

3. Additional members of the Council shall include:

a. One member of the Oregon State Senate designated by the Senate President;

b. One member of the Oregon House of Representatives designated by the Speaker of the House;

c. The Chief Education Officer;

d. The Deputy Superintendent of Public Instruction;

e. The Executive Director of the Teachers Standards and Practices Commission;

f. The Early Learning System Director.

4. The Governor shall appoint the chair of the Council, who shall provide leadership and direction of the Council. The chair shall establish an agenda, work plan, and timeline for the Council. The chair may appoint and approve the creation of subcommittees of the Council. The chair may, on behalf of the Governor, convene additional advisory committees for purposes of informing Council findings and recommendations.

5. The charge of the Council is to coordinate comprehensive support to deliver excellence in teaching and learning, and enhance Oregon's ability to elevate the educator profession and advance teacher and school leadership, including:

a. Enhancing a culture of leadership and collaborative responsibility for learning and advancing the profession of teaching;

b. Strengthening and enhancing existing evidence-based practices that improve student achievement;

c. Attracting and retaining capable and promising new teachers by offering sustained professional mentoring;

d. Retaining effective teachers by providing enhanced leadership opportunities;

e. Promoting collaboration by developing and supporting professional development opportunities for teachers in schools and districts to learn from each other;

f. Building a more diverse educator workforce that mirrors Oregon's student demographics and supporting the development of culturally responsive educators; and

g. Using data on teaching and learning conditions to determine the impact of *Network* and identify where changes, resources, and supports are most needed.

6. The Council shall develop recommendations for ensuring the open access and efficient delivery of professional learning to all Oregon educators by 1) leveraging the expertise of exemplary teachers and school leaders; and 2) streamlining resources, assistance, and support from federal, state, and non-profit partners.

7. Based on these goals, the Council shall develop a coherent, transparent, and accountable governance model for programs and practices outlined in ORS 342.950 (the *Network*) and the associated fund outlined in ORS 342.953 (the *Network for Quality Teaching and Learning Fund ("Network Fund"))*, with a focus on fostering:

a. An integrated system of supports that spans the career of an educator;

b. A connected educator network that maximizes teacher voice and engagement and diminishes the impact of isolated programs;

c. A mechanism for analyzing and sharing of practices that improve student outcomes and improve teaching and learning conditions;

d. Sustainable funding for *Network* priorities that adapts to districts' local priorities for educator support, assures adherence to state benchmarks of best practice, minimizes disparities between rural and urban areas, and reduces reliance on competitive grant funding;

e. Common outcomes and coordination of reporting on impact across the *Network;* and

f. Innovation and responsiveness to the changing needs of educators.

8. A quorum for Council meetings shall consist of a majority of the appointed members.

9. The Council shall report written findings and recommendations to the Governor on or before September 1, 2016.

10. The Chief Education Office and Oregon Department of Education shall provide staff support to the Council. All other state agencies shall provide assistance to the Council upon request.

11. Council members are not entitled to reimbursement of expenses or per diem provided in ORS 292.495.

12. This Order shall remain in effect until recommendations of the Council are considered and acted upon by the Oregon Legislature, unless the Governor requests that the Council's work continue beyond that time.

Done at Salem, Oregon, this 25th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

EXECUTIVE ORDER NO. 16 - 04

DESIGNATING SEGMENTS OF THE CHETCO RIVER (CURRY COUNTY) AND MOLALLA RIVER (CLACKAMAS COUNTY) AS STATE SCENIC WATERWAYS AND DIRECTING SCENIC WATERWAY STUDIES TO USE A COLLABORATIVE PROCESS

Oregon is blessed with a diversity of river systems that richly contribute to our quality of life. Oregonians feel connected to our rivers and value their importance to our economies, communities, and ecosystems.

In 1970, the people of Oregon voted to establish the Oregon Scenic Waterways Act. This law protects the free-flowing character of designated rivers for fish, wildlife and recreation; protects and enhances scenic, cultural and natural values along scenic waterways; and establishes a process and criteria for adding new rivers to the scenic waterway system. The state Scenic Waterways system now includes approximately 1,150 miles on 19 rivers and Waldo Lake. No new Scenic Waterway has been designated since 1988.

Stewardship of our rivers is ever more important as the population along our rivers increases and a changing climate results in low snowpack levels, high temperatures, and significantly low streamflows. These changes impact recreation, fish and wildlife, and community and economic health.

Pursuant to the provisions of ORS 390.805 to 390.025, the Oregon Parks and Recreation Department (OPRD) undertook studies of the Chetco, Molalla and Grande Ronde rivers. OPRD consulted with the Oregon Water Resources Department and other state agencies, requested input from local governments, landowners and other interested parties, and conducted hearings in the counties in which those rivers are located.

At the conclusion of its process, OPRD identified segments of the Chetco and Molalla Rivers as meeting Scenic Waterways Act criteria and described those segments in the OPRD Scenic Waterway Qualification Reports (Scenic Waterway Reports) which were approved by the Parks and Recreation Commission in April 2015. OPRD received concurrence in its identifications from the Water Resources Commission in November 2015, and these identifications were submitted to me on December 28, 2015.

I wish to ensure that the outstanding scenic, fish, wildlife, geological, botanical, cultural, and outdoor recreational values of special Oregon rivers are conserved for Oregonians today and in the future through a collaborative process that includes tribal governments, local governments, state and federal agencies, landowners, conservation organizations, recreation organizations, agriculture interests, forestry interests, and businesses.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. Consistent with the recommendations of the Oregon Parks and Recreation Commission, and with the concurrence of the Oregon Water Resources Commission, I hereby designate the segments of the Chetco River and Molalla River and related adjacent land described in the Scenic Waterway Reports as Oregon State Scenic Waterways subject to the provisions of ORS 390.805 to 390.925.

2. In undertaking future scenic waterway qualification studies including scenic waterway flows, OPRD and the Oregon Water Resources Department will utilize a collaborative process that includes tribal governments, local governments, landowners, and conservation, recreation, river use, agriculture, forestry, and business organizations, in addition to the statutorily required consultation with state agencies under ORS 390.855.

This Executive Order shall remain in effect until it is otherwise modified, amended or terminated.

Done at Salem, Oregon, this 25th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

EXECUTIVE ORDER NO. 16 - 05

OREGON SMALL BUSINESS ADVISORY CABINET

In 2015, more than 40,000 new jobs were added in Oregon, growth that is a full percentage point higher than the national average. The continued development of Oregon's businesses is a key to sustaining this level of growth. Seventy percent of new jobs are created when existing Oregon businesses expand; state government adds value to the overall economic enterprise when it bolsters the services available to small business owners and emerging entrepreneurs, thus fostering growth.

For the expenditures of state resources to be effective, they must reflect the ever-changing landscape of entrepreneurship in Oregon. Addressing the needs of traditionally underserved communities and geographically remote areas is imperative to laying the groundwork for a strong economy for future generations.

It is essential that Oregon's entrepreneurial and small business communities be engaged when decisions are made by the state government on how to improve services and maintain job growth statewide.

NOW THEREFORE, IT IS HEREBY ORDERED AND DIRECTED:

1. The Oregon Small Business Advisory Cabinet (the "Cabinet") is established.

2. The Cabinet consists of small business owners, state government officials, and representatives of the financial community appointed by the Governor.

3. The Cabinet shall develop recommendations on three priorities:

a. How state government can further the support and promotion of small business owners and prospective entrepreneurs.

b. How state government can increase access to capital.

c. How state government can streamline regulations to help small business owners and prospective entrepreneurs navigate the myriad laws and policies of state government.

4. The Cabinet will meet every other month beginning in March 2016.

5. The Cabinet will deliver recommendations to the Governor by October 1, 2016.

6. Work on projects or special assignments at the request of the Governor's Office.

7. Cabinet members shall receive no compensation for their services, or reimbursement for their expenses incurred in the performance of their duties.

8. This Order shall expire on October 31, 2016.

Done at Salem, Oregon, this 26th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

EXECUTIVE ORDER NO. 16 - 06

PUBLIC RECORDS

Upon assuming the office of Governor in February 2015, I offered a package of bills to the Legislative Assembly relating to ethics and governmental accountability. A key component of that package was Senate Bill 9, which mandated that an audit be conducted of state agencies' responses to public records requests with respect to issues of cost, timeliness and procedures. The Legislature approved Senate Bill 9 and I signed it into law on June 15, 2015.

The Secretary of State's Audits Division has conducted the audit required by Senate Bill 9, and on November, 2015, released the audit results in a document entitled "State Agencies Respond Well to Routine Public Records Requests, but Struggle with Complex Requests and Emerging Technologies." (The audit and the audit results are hereinafter referred to collectively as the "Audit.") The Audit examined a sampling of large, medium and small agencies and found that for the most part Oregon state agencies handle routine requests well and struggle with complex requests.

The Audit also revealed other issues that affect agencies' ability to respond to requests such as retention policies, changing technologies and fee structures.

The Audit included specific recommendations, including a recommendation that the Oregon Department of Administrative Services ("DAS") create standardized rates for copying and standardized rates for employee labor among state agencies in order to resolve some of the inconsistency in public records requests fees statewide.

The Audit further recommended that DAS be empowered to provide guidance to agencies regarding communication technologies as they relate to public records.

The Audit found, further, that the variation in responses to public records requests is due, at least in part, to a lack of statewide policies and guidelines with regard to record types created by emergent technology, a standardized fee structure, and automated processes and procedures that make records retention arduous and subjective.

It is also clear that as a result of the rise of modern communications technology, the volume of records subject to search and potential legal review significantly impacts the ability for an agency to respond in a timely manner and causes concern and mistrust to grow in the public's view.

The purpose of the Government of the State of Oregon is to serve the people of Oregon. State government must therefore be open and transparent. All Oregonians deserve full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees.

NOW THEREFORE, IT IS HEREBY DIRECTED AND ORDERED:

1. DAS shall develop and promote model public records management policies, approved by the State Archivist, for use by executive branch agencies no later than June 30, 2016. All state agencies shall comply with ORS 192.018 within 90 days of DAS' promotion of model policies by either adopting the DAS policy or modifying it to meet agency-specific records management needs.

2. DAS shall improve accessibility and government transparency by fully implementing all of the recommendations outlined in the SOS audit, which are incorporated herein. DAS shall work with and report to the Governor's office in the implementation of the audit recommendations. This work shall begin immediately. The recommendations that shall be fully implemented include, but are not limited to:

a. Streamlining and standardizing state agency processes and procedures regarding responses to public records requests;

b. Working with state agencies to develop a standard protocol for tracking public records requests, and documentation related to each request;

c. Developing uniform statewide standards and guidelines on agency fee structures or charging policies; and

d. Working with agencies to develop streamlined management processes, administrative rules, and statewide policy guidance regarding internal processes and procedures for records retention and management.

3. This Order shall remain in effect until it is otherwise modified, amended or terminated.

Done at Salem, Oregon, this 26th day of January, 2016.

/s/ Kate Brown
Kate Brown
GOVERNOR

ATTEST

/s/ Jeanne P. Atkins
Jeanne P. Atkins
SECRETARY OF STATE

PUBLIC NOTICE
PROPOSED PROSPECTIVE PURCHASER AGREEMENT
FOR FORMER GAS STATION

COMMENTS DUE: 5 p.m., Wednesday March 2, 2016
PROJECT LOCATION: 6115 NW St. Helens Road, Portland, Oregon
PROPOSAL: The Department of Environmental Quality seeks comments on its proposed consent order for a prospective purchaser agreement with GBR Partnership, referred to as GBR, concerning the acquisition of a former gas station site located at 6115 NW St. Helens Road in Portland. The project is a joint venture between GBR and Environmental Compliance Consultants, Inc, an environmental consulting and waste management company known as ECC. GBR plans to acquire the property and ECC will decommission the existing underground storage tank system. ECC will use the property as an EPA-approved waste transfer facility.
HIGHLIGHTS: The property was developed as a gasoline station before 1960. In October 1989, 1950s-era underground storage tanks containing gasoline, diesel and marine fuel were decommissioned, removed from the property and replaced. During the decommissioning, evidence of petroleum hydrocarbon contamination in soil and groundwater near the former underground storage tank pit and dispenser island was observed. Monitoring wells were installed at the property as early as April 1990. Remedial actions historically performed at the property included soil removal in 1989 and soil vapor extraction from 1993 to at least 1997. Groundwater monitoring at the property was suspended in June 2001. During the last groundwater monitoring, benzene was detected in groundwater at a maximum concentration of 15,000 parts-per-billion. The property was vacated after June 2001 and has remained vacant.

In June 2015, soil-gas and groundwater samples were collected from the property to facilitate discussions with DEQ concerning a possible prospective purchaser agreement. Five of nine monitoring wells historically installed in the vicinity of the property were located. Three of the identified monitoring wells were re-developed and sampled. The June 2015 groundwater samples contained significantly lower concentrations of benzene and related volatile organic compounds than samples collected in June 2001. In addition, soil-gas samples collected from the building did not reveal volatile organic compounds at concentrations posing vapor intrusion risks to future occupants.

DEQ proposes to enter into a consent order with GBR, the prospective purchaser. Under the terms of the consent order, GBR agrees to decommission the underground storage tank system and remove up to 50 tons contaminated soil, if encountered. If soil containing petroleum hydrocarbons or volatile organic compounds at levels exceeding occupational worker Risk-Based Concentrations for the vapor intrusion pathway remains following removal, GBR is required to execute and record an institutional control requiring vapor mitigation controls on future buildings. In addition, the consent order requires GBR to develop and survey two monitoring wells if found to be usable, perform four quarters of groundwater monitoring and decommission the monitoring wells when authorized by DEQ. GBR also will be required to prepare a contaminated media management plan.

Due to a delay in the proposed property transaction, the consent order with GBR expired on Dec. 31, 2015. DEQ is opening an additional comment period to extend the deadline for the property transaction in the prospective purchaser agreement to Sept. 30, 2016. The scope of work for the prospective purchaser agreement remains unchanged from the original proposal.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed consent order will provide GBR with a release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed consent order will also provide GBR with third party liability protection.
HOW TO COMMENT: Send comments to DEQ Project Manager Jeff K. Schatz at 700 NE Multnomah Street, Ste 600, Portland, OR 97232-4100 or schatz.jeff@deq.state.or.us. For more information contact the project manager at 503-229-5024.

Find information about requesting a review of DEQ project files at: http://www.deq.state.or.us/records/recordsRequestFAQ.htm

Find the File Review Application form at: http://www.deq.state.or.us/records/RecordsRequestForm.pdf

To access site summary information and other documents in the DEQ Leaking Underground Storage Tank (LUST) Cleanup database, go to http://www.deq.state.or.us/lq/tanks/lust/LustPublicLookup.asp, then enter 26-89-0213 in the LUST Number boxes and click "Lookup" at the bottom of the page. Next, click the link labeled 26-89-0213 in the Log Number column. Alternatively, you may go directly to the database website for this page at http://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=26-89-0213&SourceIdType=12.

If you do not have web access and want to review the project file contact the DEQ project manager.
THE NEXT STEP: DEQ will review and consider all comments received during the comment period. If DEQ decides to enter into the consent order, it will be executed by the parties and recorded with Multnomah County.
ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, email at deqinfo@deq.state.or.us, or 711 for people with hearing impairments.

REQUEST FOR COMMENTS
PROPOSED PROSPECTIVE PURCHASER AGREEMENT
FOR FORMER REYNOLDS METALS COMPANY SITE

COMMENTS DUE: 5 p.m., Wednesday, March 2, 2016
PROJECT LOCATION: 5100 NW Sundial Road, Troutdale, Oregon
PROPOSAL: The Department of Environmental Quality seeks comments on its proposed Stipulated Supplemental Judgment with the City of Troutdale to update the parties' existing Stipulated General Judgment relating to property within or near the former Reynolds Metals Company site, which has undergone extensive cleanup since it was listed as a Superfund site in 1994.

The update:

• Expands the scope of liability release from the release allowed by the original 1995 statute (ORS 465) to also include protections afforded by statutory amendments passed in 2011 (ORS 466 and 468B); and

• Adds to the agreement additional public improvements as contemplated and/or authorized by the original agreement.

DEQ created the prospective purchaser agreement program in 1995 through amendments to the state's Environmental Cleanup Law. The prospective purchaser agreement is a tool that expedites the cleanup of contaminated property and encourages property transactions that would otherwise not likely occur because of the liabilities associated with purchasing a contaminated site.

The proposed Stipulated Supplemental Judgment will expand the City of Troutdale's release from liability for claims by the State of Oregon under ORS 465.200 to 465.545 and 465.990, 466.640, and 468B.310 regarding existing hazardous substance releases at or from the property. The proposed judgment will also expand the City of Troutdale's third party liability protection.
HOW TO COMMENT: Send comments to DEQ Project Manager Erin McDonnell at mcdonnell.erin@deq.state.or.us or 700 NE Multnomah Street, Suite 600, Portland, Oregon 97232, or. For more information, contact the project manager at 503-229-6900.

Find information about requesting a review of DEQ project files.

Find the file review application form.

To access site summary information and other documents in the DEQ Environmental Cleanup Site Information database, select

"Search complete ECSI database," then enter ECSI 154 in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled ECSI 154 in the Site ID/Info column. Alternatively, you may go directly to the database website for this page.

If you do not have web access and want to review the project file, contact the DEQ project manager.

THE NEXT STEP: DEQ will consider all public comments received by the date and time stated above before making a final decision regarding the proposed consent judgment, which will then be filed with the court.

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. Please notify DEQ of any special physical or language accommodations or if you need information in large print, Braille or another format. To make these arrangements, call DEQ at 503-229-5696 or toll free in Oregon at 800-452-4011; fax to 503-229-6762; or email to deqinfo@deq.state.or.us. People with hearing impairments may call 711.

NOTICE OF CONSENT ORDER
NOTICE OF CONSENT ORDER WITH N. COLUMBIA BLVD., LLC

PROJECT LOCATION: 1601 North Columbia Boulevard, Portland, Oregon 97217

NOTICE: The Department of Environmental Quality has issued a consent order to implement cleanup actions at the property. In 2010, DEQ selected remedial actions and received public comments on them. The property is under new ownership and the consent order establishes an agreement between DEQ and N. Columbia Blvd., LLC to implement the remedy described in the record of decision for the property.

SITE DESCRIPTION: The property is an approximately 19-acre industrial site and is bordered to the north by the Columbia Slough, to the northeast by a ramp to Interstate 5, to the south by Old Columbia Boulevard and the Union Pacific Railroad line, and to the west by an open ravine. The site has been used for industrial purposes since approximately 1950. A former tenant sieved and reprocessed sand, some of which was used as fill in the early 1990's. In March 2015, N. Columbia Blvd., LLC, acquired the property and is now the site owner. As a result of historic activities, site soils and stormwater have been impacted by contaminants, principally metals including lead and chromium.

Metals in sandblast grit are present in fill areas in the northern portion of the site. Soil sampling in the western vegetated area indicated elevated concentrations of some metals, and stormwater and catch basin sediment have been impacted by contaminants in various sampling events.

CURRENT ACTIVITIES: N. Columbia Blvd., LLC will carry out the primary components of the record of decision for the property are:

- Containment and isolation of contaminants in soil though engineering controls
- Erosion control on the Columbia Slough bank
- Controlling contaminants from entrainment in the stormwater system
- Institutional Controls

ACCESSIBILITY INFORMATION: DEQ is committed to accommodating people with disabilities. If you need information in another format, please contact DEQ toll free in Oregon at 800-452-4011, 711 for people with hearing impairments or email.

PUBLIC NOTICE OF A RECOMMENDATION OF CONDITIONAL NO FURTHER ACTION FOR THE WILLAMETTE INDUSTRIES SAGINAW MILL PROPERTY, LOCATED AT 32941 EAST SAGINAW ROAD, SAGINAW, OREGON

Oregon Department of Environmental Quality (DEQ) is giving public notice of a proposed Conditional No Further Action determination for the cleanup of soil contamination at the Willamette Industries Saginaw Mill property located at 32941 East Saginaw Road, Saginaw, Oregon. In the January 28, 2016 Staff Report, DEQ recommended a Conditional No Further Action determination for the site.

Contamination in soil and groundwater at the site resulted from historic past practices at the facility involving lumber milling and manufacturing, the storage of petroleum hydrocarbons, and handling of waste wood ash.

Recent interim removal actions have been completed to address areas of impact that required remediation and to address upland sources that could cause future impact to the Coast Fork Willamette River through overland transport or from discharge from the existing storm sewer catch basins and infrastructure.

In September 2012, approximately 16 tons of petroleum contaminated soil was removed from two locations at the site. Soil excavated from this area was profiled and disposed of at the Short Mountain Landfill near Eugene, Oregon in November 2012.

The storm drain catch basins and pipelines at the site were cleaned, pressure-washed, and flushed in September 2013. The catch basin contents were removed with a vacuum truck. Over 3,700 gallons of the catch basin solids, drain pipeline cleaning wastes, and water wastes were appropriately disposed. In addition, 281 tons of ash were removed from the ash pile in September 2013 and taken to a permitted landfill for appropriate disposal.

A site-specific risk assessment using conservative exposure assumptions along with the limited extent of impacts to sediments was done. It showed that consumption of fish from the segment of the river likely will not pose an unacceptable risk.

Given these findings and conclusions, DEQ recommends a conditional no further action for this site conditioned upon establishment of an easement and equitable servitudes which will require the use of a contaminated media management plan to address potential future risks to occupational workers from exposure to limited areas of the soils and groundwater impacts.

If you have any comments about the proposed Conditional No Further Action determination, please send them to Norman Read no later than 5 p.m., March 1, 2015 at DEQ, 165 E. 7th Avenue, Suite 100, Eugene, OR 97401. You can also email Norman Read at read.norm@deq.state.or.us.

To access DEQ's draft Conditional No Further Action Memo and other documents in the DEQ Environmental Cleanup Site Information database, go to: www.deq.state.or.us/lq/ECSI/ecsi.htm then enter "1874" in the Site ID box and click "Submit" at the bottom of the page. Next, click the link labeled "1874" in the Site ID/Info column. To review the project file in person, call the Eugene DEQ Reception at (541) 686-7838 for a file review appointment. All comments will be addressed and considered before DEQ makes its final decision to formalize the Conditional No Further Action status for the site.

Notices of Proposed Rulemaking and Proposed Rulemaking Hearings

The following agencies provide Notice of Proposed Rulemaking to offer interested parties reasonable opportunity to submit data or views on proposed rulemaking activity. To expedite the rulemaking process, many agencies have set the time and place for a hearing in the notice. Copies of rulemaking materials may be obtained from the Rules Coordinator at the address and telephone number indicated.

Public comment may be submitted in writing directly to an agency or presented orally at the rulemaking hearing. Written comment must be submitted to an agency by 5:00 p.m. on the Last Day for Comment listed, unless a different time of day is specified. Oral comments may be submitted at the appropriate time during a rulemaking hearing as outlined in OAR 137-001-0030.

Agencies providing notice request public comment on whether other options should be considered for achieving a proposed administrative rule's substantive goals while reducing negative economic impact of the rule on business.

In Notices of Proposed Rulemaking where no hearing has been set, a hearing may be requested by 10 or more people or by an association with 10 or more members. Agencies must receive requests for a public rulemaking hearing in writing within 21 days following notice publication in the Oregon Bulletin or 28 days from the date notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received by an agency, notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

**Auxiliary aids for persons with disabilities are available upon advance request. Contact the agency Rules Coordinator listed in the notice information.*

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Board of Examiners for Engineering and Land Surveying
Chapter 820

Rule Caption: To revise rules related to examination and registration.

Date:	Time:	Location:
5-10-16	1:30 p.m.	670 Hawhtorne Ave. SE, Suite 220 Salem, OR 97301

Hearing Officer: Jason Kent
Stat. Auth.: ORS 537.797, 670.310, 672.020, 672.025, 672.028 & 672.255
Stats. Implemented: ORS 672.002–672.325
Proposed Amendments: 820-010-0615, 820-010-0720, 820-010-5000, 820-025-0005, 820-025-0015
Proposed Repeals: 820-010-5000(T), 820-025-0015(T)
Last Date for Comment: 5-10-16, Close of Hearing
Summary: OAR 820-010-0615 — To amend language to require the posting of a renewal certificate.

OAR 820-010-0720 — To clearly define when the "full-time partner, manager, officer or employee" needs to be physically present in the office in order to advertise or to offer to perform professional services.

OAR 820-010-5000 — To include the due date of February 1 for applications to sit for the Certified Water Right Examination.

OAR 820-025-0005 — To amend the language that the registrant's name on the seal will be the same as the name on file with the Board office.

OAR 820-025-0015 — To revise the language related to final documents.
Rules Coordinator: Jenn Gilbert
Address: Board of Examiners for Engineering and Land Surveying, 670 Hawthorne Ave. SE, Suite 220, Salem, OR 97301
Telephone: (503) 934-2107

Board of Nursing
Chapter 851

Rule Caption: Clarifies renewal requirements for State Certification for Nurse Practitioners

Date:	Time:	Location:
2-18-16	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR 97224

Hearing Officer: Bonnie Kostelecky, Board President
Stat. Auth.: ORS 678.380
Stats. Implemented: ORS 678.380
Proposed Amendments: 851-050-0138
Last Date for Comment: 2-18-16, 5 p.m.
Summary: Updating the criteria for renewal of NP State Certification based on updates that have been previously amended and adopted in OAR 851-050-0142 and 851-056-0014.
Rules Coordinator: Peggy A. Lightfoot
Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

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Rule Caption: Regarding APRN authority to dispense for Nurse Practitioners and Clinical Nurse Specialists

Date:	Time:	Location:
2-18-16	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR

Hearing Officer: Bonnie Kostelecky, Board President
Stat. Auth.: ORS 678.390
Stats. Implemented: ORS 678.390
Proposed Amendments: 851-056-0000, 851-056-0020
Last Date for Comment: 2-18-16, 5 p.m.
Summary: Updating the criteria for prescription drug dispensing training program. "Prescribing and Dispensing Authority in Oregon: For Advanced Practice Registered Nurses" shall become the "handbook" for purposes of education and attestation to the prescription drug dispensing training program.
Rules Coordinator: Peggy A. Lightfoot
Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

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Rule Caption: Regarding CRNA scope, licensure, and education.

Date:	Time:	Location:
2-18-16	9 a.m.	17938 SW Upper Boones Ferry Rd. Portland, OR

Hearing Officer: Bonnie Kostelecky, Boad President
Stat. Auth.: ORS 678.150, 678.245, 678.285 & 678.111
Stats. Implemented: ORS 678.245, 678.285 & 678.111
Proposed Adoptions: 851-052-0050, 851-052-0060
Proposed Amendments: 851-052-0000, 851-052-0010, 851-052-0020, 851-052-0030, 851-052-0040, 851-052-0100
Last Date for Comment: 2-18-16, 5 p.m.
Summary: Consistently using the term "client," "competence," and "diagnosis" within Oregon Nurse Practice Act.

Removing definitions defined in ORS 678.245

Defining medical services provided by CRNAs.

Amending rules necessary to establish the scope of the CRNA, educational and competency requirements, as well as the procedures for maintenance of licensure.

Defines educational program approval process for CRNA programs in Oregon.

Defines office-based care standards for CRNAs in Oregon.
Rules Coordinator: Peggy A. Lightfoot
Address: Board of Nursing, 17938 SW Upper Boones Ferry Rd., Portland, OR 97224
Telephone: (971) 673-0638

Department of Consumer and Business Services,
Building Codes Division
Chapter 918

Rule Caption: Clarifies process for disconnect of electrical installation or product.

Date:	Time:	Location:
2-23-16	9:30 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff
Stat. Auth.: ORS 479.820
Stats. Implemented: ORS 479.820
Proposed Adoptions: 918-271-0105
Last Date for Comment: 2-26-16, 5 p.m.
Summary: This proposed rule clarifies the process by which the division may disconnect or order the disconnection of an electrical installation or product that fails to comply with minimum safety standards, electrical product safety standards or constitutes an immediate hazard to life or property. The proposed rule allows property owner to request hearing after electrical disconnection has taken place.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Rule Caption: Amending certification requirements for building officials, inspectors and plans examiners.

Date:	Time:	Location:
2-23-16	10 a.m.	1535 Edgewater St. NW Salem, OR 97304

Hearing Officer: Staff
Stat. Auth.: ORS 446.250, 446.255, 447.010, 455.030, 455.055, 445.062, 455.110, 455.622, 455.720, 455.730, 455.735 & 455.740
Stats. Implemented: ORS 446.250, 446.255, 447.010, 455.030, 455.055, 445.062, 455.110, 455.622, 455.720, 455.730, 455.735 & 455.740
Proposed Adoptions: Rules in 918-098, 918-281, 918-695
Proposed Amendments: Rules in 918-098, 918-281, 918-695
Proposed Repeals: Rules in 918-098, 918-281, 918-695
Last Date for Comment: 2-26-16, 5 p.m.
Summary: These proposed rules amend the division's certification requirements for persons performing work in Oregon as a building official, inspector, or plans examiner. These proposed rules contain a variety of changes including, but not limited to: persons qualify for certain certifications using a nationally recognized certification; amending the renewal requirements for the Oregon Inspector Certification, eliminating new application provisions for a manufactured structure installation inspector and park and camp inspector certifications, and modifying qualification requirements for persons who want to perform medical gas plumbing inspections. Additionally, these rules clarify the potential conflict of interests, scope of work, and duties and responsibilities of building officials, inspectors, and plans examiners.
Rules Coordinator: Holly A. Tucker
Address: Department of Consumer and Business Services, Building Codes Division, PO Box 14470, Salem, OR 97309-0404
Telephone: (503) 378-5331

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Department of Consumer and Business Services,
Insurance Division
Chapter 836

Rule Caption: Amendments to Rules Setting Requirements for Holding Company Forms A, B, C, D, E, F

Date:	Time:	Location:
2-24-16	1:30 p.m.	Dept. of Consumer & Business Services, Labor & Industries Bldg. 350 Winter St. NE, Conf. Rm. E Salem, OR

Hearing Officer: Jeannette Holman
Stat. Auth.: ORS 732.572 & 732.574
Stats. Implemented: ORS 732.517–732.592
Proposed Amendments: 836-027-0005, 836-027-0010, 836-027-0012, 836-027-0100, 836-027-0125, 836-027-0140, 836-027-0160
Last Date for Comment: 2-24-16, 5 p.m.
Summary: These proposed rules make changes to rules to which forms are included as exhibits to the rules. The changes are necessary to reflect statutory changes made in 2013 and 2015 related to enterprise risk reporting and holding companies. The forms were updated in a temporary rule to allow insurers to submit requisite documents on the correct forms. This rulemaking will change the language of the rule to allow the division to make changes to the rules without rulemaking. Rather than being an exhibit to the rule, the forms will be available on the DCBS website at the Division of Financial Regulation webpage. Failure to update the rule will require additional time should future changes to the forms be necessary resulting in delay of company transactions.
Rules Coordinator: Karen Winkel
Address: Department of Consumer and Business Services, Insurance Division, 350 Winter St. NE, Salem, OR 97301
Telephone: (503) 947-7694

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Department of Consumer and Business Services,
Workers' Compensation Division
Chapter 436

Rule Caption: Amendment of rules governing workers' compensation medical services and medical billing and payment

Date:	Time:	Location:
2-22-16	9 a.m.	Labor & Industries Bldg. 350 Winter St. NE, Rm. F Salem, OR

Hearing Officer: Fred Bruyns
Stat. Auth.: ORS 656.248 & 656.726(4)
Stats. Implemented: ORS 656.245, 656.248, 656.252, 656.327 & 656.704
Proposed Amendments: Rules in 436-009, 436-010
Last Date for Comment: 2-25-16, Close of Business
Summary: The public may also listen to the hearing or testify by telephone: Dial-in number is 213-787-0529; Access code is 9221262#.

The agency proposes to amend OAR 436-009, "Oregon Medical Fee and Payment Rules," to:

- Adopt updated medical fee schedules (Appendices B, C, D, and E) and resources for the payment of health care providers;
- Increase maximum allowable payment rates by three percent for physician services except for physical therapy services;
- Replace two laboratory HCPCS codes with seven new codes assigned by the Centers for Medicare and Medicaid Services (CMS): replace G0431 with G0480, G0481, G0482, and G0483; replace G0434 with G0477, G0478, and G0479;
- Require that requests for reconsideration of administrative orders be received by the director before the order becomes final;
- Specify how providers must complete boxes 32 and 32a on the National Uniform Claim Committee 1500 Claim Form;
- Exclude platelet rich plasma injections from compensability;
- Eliminate the list of hospitals subject to including Medicare Severity Diagnosis Related Group (MS-DRG) codes on their bills, in favor of a general requirement to include the MS-DRG codes, unless the hospital is a critical access hospital or if the bill contains revenue code 002x.
- Replace the requirement for an insurer or insurer's representative to respond to a question from a provider or a worker about reimbursement within 48 hours with a requirement to do so within two days; require that explanations to workers about out-of-pocket expenses and explanations of benefits sent to health care providers specify two days instead of 48 hours to respond to questions;

- Remove a redundant requirement for health care providers to send multidisciplinary treatment programs to insurers - already in OAR 436-010;

- Establish new Oregon Specific (billing) Codes and associated fees for closing medical examinations of three levels of complexity, and for related closing reports;

- Increase the maximum payable for hearing aids, without approval by the insurer or director, from $5000 to $7000 for a pair and from $2500 to $3500 for a single hearing aid;

- Allow a worker to upgrade a hearing aid by paying the price difference;

- Require that compounded drugs be billed at the component ingredient level, listing each ingredient national drug code (NDC), and that ingredients without an NDC are not reimbursable;

- Set the maximum allowable fee for a non-sterile compound drug at 83.5% of the average wholesale price (AWP) for each individual component ingredient, plus a compounding fee of $2.00 for each ingredient;

- Set the maximum allowable fee for a sterile compound drug at 83.5% of the average wholesale price (AWP) for each individual component ingredient, plus a compounding fee of $4.00 for each ingredient;

- Replace the mileage reimbursement rate payable to interpreters, currently $0.50 per mile, with the private vehicle mileage rate published in Bulletin 112; and

- Clarify that, in the matrix for health care provider types, when a provider is not, or is no longer, eligible to provide treatment as a Type B attending physician, if care is provided because it is authorized by an attending physician, physician assistants are not required to have a written treatment plan.

The agency proposes to amend OAR 436-010, "Medical Services," to:

- Require that requests for reconsideration of administrative orders be received by the director before the order becomes final;

- Replace the requirement for an insurer to forward a copy of an independent medical exam report to the attending physician or authorized nurse practitioner within 72 hours of its receipt of the report with a requirement to do so within three days; and

- Clarify that, in the matrix for health care provider types, when a provider is not, or is no longer, eligible to provide treatment as a Type B attending physician, if care is provided because it is authorized by an attending physician, physician assistants are not required to have a written treatment plan.

Rules Coordinator: Fred Bruyns
Address: Department of Consumer and Business Services, Workers' Compensation Division, PO Box 14480, Salem, OR 97309-0405
Telephone: (503) 947-7717

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Department of Corrections
Chapter 291

Rule Caption: Training Requirements on Arrest Procedures for Parole and Probation Officers
Stat. Auth.: ORS 137.545, 144.350, 144.360, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.545, 144.331, 144.334, 144.350, 144.360, 144.610, 144.613, 179.040, 423.020, 423.030 & 423.075
Proposed Amendments: 291-014-0110, 291-014-0120
Last Date for Comment: 3-21-16, Close of Business
Summary: Parole/Probation Officers must participate in a minimum of eight hours annual training in arrest procedures. These rule amendments require the local state director to create annual training requirements that may exceed the minimum hours.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

Rule Caption: Marriages and Domestic Partnership Solemnization Ceremonies for Inmates in Department of Corrections Facilities.
Stat. Auth.: ORS 137.285, 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 137.285, 179.040, 423.020, 423.030 and 423.075 & 2007 OL Ch. 99
Proposed Amendments: 291-133-0005 through 291-133-0035
Last Date for Comment: 3-21-16, Close of Business
Summary: These revisions are necessary update the department's policies and procedures regarding marriages and solemnization ceremonies for inmates in department facilities. The rules will recognize same-sex marriages to reflect changes in state and federal laws. The department will no longer transport inmates between facilities for the purpose of participating in a marriage or solemnization ceremony. Married or domestic partnership inmates who reside in the same facility will not be housed in the same cell.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Rule Caption: Processing of Mail for Inmates in Department of Corrections Facilities
Stat. Auth.: ORS 179.040, 423.020, 423.030 & 423.075
Stats. Implemented: ORS 179.040, 423.020, 423.030 & 423.075
Proposed Adoptions: 291-131-0026
Proposed Amendments: 291-131-0005 through 291-131-0050
Last Date for Comment: 3-21-16, Close of Business
Summary: These rule revisions are necessary to update and clarify procedures for processing incoming and outgoing mail to inmates in department facilities. Revisions include but are not limited to clarification on the use of the inmate's court name, handling of official mail, and further clarification on the material that constitutes prohibited mail. Many of the revisions are of a housekeeping nature.
Rules Coordinator: Janet R. Worley
Address: Department of Corrections, 2575 Center St. NE, Salem, OR 97301-4667
Telephone: (503) 945-0933

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Department of Energy
Chapter 330

Rule Caption: Amending Biomass Tax Credit rules to increase application fee.

Date:	Time:	Location:
2-22-16	10 a.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR 97301

Hearing Officer: Elizabeth Ross
Stat. Auth.: ORS 469.040 & 315.141
Stats. Implemented: ORS 469B.403 & 315.141
Proposed Amendments: 330-170-0010, 330-170-0050
Last Date for Comment: 2-22-16, 5 p.m.
Summary: The proposed rules for the Biomass Producer or Collector Tax Credit program increase the application fee from $100 plus 2.5 percent of the tax credit amount to $100 plus 3.8 percent of the tax credit amount for tax years beginning on or after January 1, 2016. The proposed fee increase was explained and included in the Oregon Department of Energy's budget approved by the legislature as part of the 2015-2017 budget process. ORS 315.141(5)(b) directs the department to collect a fee not to exceed the cost to the department of determining the amount of certified cost. Currently, the department is not collecting fees sufficient to recover the actual cost of the program. The department plans to file the rules at the end of February, 2016, before it expects to receive applications for the 2016 tax year.

A call-in number is available for the public hearing, please see website for details: http://www.oregon.gov/energy/Pages/Rulemaking-Biomass-Producer_Advisory_Committee.aspx
Rules Coordinator: Elizabeth Ross

Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301
Telephone: (503) 378-8534

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Rule Caption: Amending Energy Incentives Program energy conservation tax credit rules to implement HB 2448.

Date:	Time:	Location:
2-22-16	2 p.m.	Oregon Dept. of Energy 625 Marion St. NE Salem, OR 97301

Hearing Officer: Elizabeth Ross
Stat. Auth.: ORS 469.040, 469B.294, 469B.306 & 2015 OL Ch. 545
Stats. Implemented: ORS 469B.270–469B.306, 315.331 & 2015 OL Ch. 545
Proposed Adoptions: 330-210-0110
Proposed Amendments: 330-210-0000, 330-210-0010, 330-210-0020, 330-210-0030, 330-210-0040, 330-210-0045, 330-210-0050, 330-210-0060, 330-210-0070, 330-210-0080, 330-210-0090, 330-210-0100, 330-210-0150
Last Date for Comment: 2-23-16, 5 p.m.
Summary: The proposed rules for the Energy Incentives Program (EIP) energy conservation tax credit implement changes provided in Oregon Laws 2015, chapter 545 (HB 2448). HB 2448 and the proposed rules make modifications to the EIP energy conservation tax credit program that allow ODOE to require performance agreements as part of the final certification process and to require in a performance agreement that energy conservation projects with $1 million or more in certified total project costs annually recertify the tax credit.

The proposed rules provide that these performance agreements may include project requirements for operations, energy savings, timeframes, and performance. The proposed rules also provide the criteria that ODOE will use to evaluate EIP conservation projects below the $1 million threshold for possible performance agreements when project owners apply for final certification.

HB 2448 authorizes ODOE to require performance agreements for energy conservation projects with $1 million or more in certified total project costs to include a requirement to annually recertify the tax credit three times. The proposed rules provide the timeline, requirements, application process, and review process for recertifying the tax credit. This process will provide project owners with a five-year tax credit in portions over the five year period. The overall total amount of the tax credit remains the same, provided the project owner successfully completes each recertification. The change in law also creates a $750 fee to cover costs associated with tax credit recertification; this fee is collected at each recertification.

The department plans for the rules to be effective upon filing and apply to applications for final certification under ORS 469B.291 submitted on or after September 1, 2015, and to tax years beginning on or after January 1, 2015. The department requests public comment on these draft rules. A call-in number is available for the public hearing, please see website for details and other materials: http://www.oregon.gov/energy/CONS/Pages/Rulemaking-Energy_Incentive_Program.aspx.
Rules Coordinator: Elizabeth Ross
Address: Department of Energy, 625 Marion St. NE, Salem, OR 97301
Telephone: (503) 378-8534

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Department of Environmental Quality
Chapter 340

Rule Caption: Increase Title V Permit Fees by the Consumer Price Index

Date:	Time:	Location:
2-18-16	5 p.m.	811 SW Sixth Ave. Portland, OR 97204

Hearing Officer: Susan Carlson
Stat. Auth.: ORS 468.020, 468.065, 468A.025, 468A.040, 468A.050, 468A.310 & 468A.315
Stats. Implemented: ORS 468.065, 468A.050 & 468A.315
Proposed Amendments: 340-220-0030, 340-220-0040, 340-220-0050
Last Date for Comment: 2-22-16, 4 p.m.
Summary: DEQ proposes rules to increase Title V operating permit fees by the change in the consumer price index (CPI) as authorized by federal and state law. The proposed fee increases are necessary for DEQ to provide essential services associated with Oregon's Title V permitting program.

The proposed rules would increase the fees in two phases. This approach would save administrative costs by holding a single public notice and comment period for the two rulemakings.

Phase one: DEQ will propose the phase one rules at the commission's meeting in June 2016. The proposed fee increase effective for the 2016 invoice year is 0.45 percent based on the Bureau of Labor Statistics September 2015 consumer price index for the period of September 2014 to August 2015. DEQ would apply this CPI increase to permit fees on the invoices DEQ will issue in August 2016 for annual emissions during 2015 and the operating period Nov. 15, 2016 to Nov. 14, 2017.

Phase two: DEQ will propose the phase two rules at a commission meeting between December 2016 and May 2017. The proposed fee increase effective for the 2017 invoice year is 0.45 percent based on the Bureau of Labor Statistics September 2016 consumer price index for the period September 2015 to August 2016. This is an estimate identical to the 2016 increase. DEQ would apply this CPI increase to permit fees on the invoices DEQ will issue in August 2016 for annual emissions during 2016 and the operating period Nov. 15, 2017 to Nov. 14, 2018.
Rules Coordinator: Meyer Goldstein
Address: Department of Environmental Quality, 811 SW Sixth Ave., Portland, OR 97204
Telephone: (503) 229-6478

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Sea Urchin and Sea Cucumber Commercial Fisheries Regulations.

Date:	Time:	Location:
3-18-16	8 a.m.	Oregon Dept. of Fish and Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Other Auth.: SB 247 (2015)
Stats. Implemented: ORS 506.109, 506.129, 506.306, 508.760 & 508.762
Proposed Adoptions: Rules in 635-005
Proposed Amendments: Rules in 635-005
Last Date for Comment: 3-18-16, Close of Hearing
Summary: These proposed rules: 1) Amend the number of limited entry permits in the sea urchin fishery from 30 permits to 12 permits; 2) Adopt new rules to disallow use of enriched air; and 3) Adopt new rules to incorporate California sea cucumbers into the permit. These modifications will increase long-term sustainability of the sea urchin fishery. In particular, the proposed rules will: 1) Reduce the total harvest potential of the fleet to better match productivity of the resource; 2) Increase the investment of active fishers by a reduction in the number of new permits allocated through a lottery; 3) Maintain the status quo in gear use which will help preserve the deep water populations that are important to productivity and the fishery; and 4) Incorporate permitting for commercial harvest of California sea cucumbers (which typically involves only sea urchin harvesters) into the limited entry system for sea urchins.
Rules Coordinator: Michelle Tate

Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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Rule Caption: Amend Division 415 rules to refer specifically to Division 140 rules for sage-grouse mitigation issues.

Date:	Time:	Location:
3-18-16	8 a.m.	Oregon Dept. of Fish and Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502
Stats. Implemented: ORS 496.012, 496.112, 496.118, 496.138, 496.146, 498.500 & 498.502
Proposed Amendments: 635-415-0025
Last Date for Comment: 3-18-16, Close of Hearing
Summary: Approve permanent rules for Division 415. This amendment in Division 415 directs sage-grouse specific mitigation issues to refer to Division 140, Greater Sage-Grouse Conservation Strategy for Oregon, and creates an exception for any energy facility that has submitted a preliminary application for site certificate pursuant to ORS 469.300 et seq. on or before the effective date of this rule
Rules Coordinator: Michelle Tate
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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Rule Caption: Amend Rules for Protected Wildlife, Holding and Propagating

Date:	Time:	Location:
3-18-16	8 a.m.	Oregon Dept. of Fish and Wildlife 4034 Fairview Industrial Dr. SE Salem, OR 97302

Hearing Officer: ODFW Commission
Stat. Auth.: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Stats. Implemented: ORS 496.012, 496.138, 496.146, 497.298, 497.308, 497.312, 497.318, 498.022, 498.029, 498.052, 498.222 & 498.242
Proposed Amendments: Rules in 635-044
Last Date for Comment: 3-18-16, Close of Hearing
Summary: The proposed rule amendments are needed to change or update various aspects of agency management of protected wildlife, holding, and propagating.
Rules Coordinator: Michelle Tate
Address: Department of Fish and Wildlife, 4034 Fairview Industrial Dr. SE, Salem, OR 97302
Telephone: (503) 947-6044

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Department of Human Services, Aging and People with Disabilities and Developmental Disabilities
Chapter 411

Rule Caption: Nursing Assistant Training and Competency Evaluation Program (NATCEP)

Date:	Time:	Location:
2-18-16	9 a.m.	Human Services Bldg., Rm. 160 500 Summer St. NE Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070, 441.615, 441.637, 441.710, 441.715 & 441.990
Stats. Implemented: ORS 410.070, 441.055, 441.615, 441.637, 441.715 & 441.990
Proposed Amendments: 411-070-0470, 411-089-0030
Last Date for Comment: 2-23-16, 5 p.m.
Summary: The Department of Human Services (Department) is proposing to amend the rules for nursing facilities in OAR 411-070-0470 and OAR 411-089-0030 to make changes that will become effective April 1, 2016 related to the Nursing Assistant Training and Competency Evaluation Program (NATCEP). The changes will:

- Improve the description of reimbursable fees and costs for both Medicaid facilities and individuals.
- Remove redundant rule language.
- Strengthen facility requirements to inform new hire CNAs of the reimbursement program.
- Ensure a more reasonable timeline for the CNA's reimbursement by changing the timeframe from 12 months to 3 months.
- Expand the Department's authority by establishing a tracking and enforcement process. Changes to OAR 411-089 will allow for the enforcement of OAR 411-070-0470.

The Department will also remove redundant rule language, update the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.
Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

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Rule Caption: In-Home Services

Date:	Time:	Location:
2-18-16	10 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Staff
Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070
Proposed Adoptions: 411-030-0068
Proposed Amendments: 411-030-0020, 411-030-0070, 411-030-0080, 411-030-0100
Proposed Repeals: 411-030-0020(T), 411-030-0068(T), 411-030-0070(T), 411-030-0080(T), 411-030-0100(T)
Last Date for Comment: 2-22-16, 5 p.m.
Summary: The Department of Human Services (Department) is amending OAR 411-030 to make permanent temporary changes that became effective September 21, 2015. The amendments:

- Revise the definition and eligibility requirements for live-in services
- Define and add eligibility requirements for shift services.
- Change the eligibility requirements for services received in the Spousal Pay and the Independent Choices Programs.
- Fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

Rules Coordinator: Kimberly Colkitt-Hallman
Address: Department of Human Services, Aging and People with Disabilities and Developmental Disabilities, 500 Summer St. NE, E48, Salem, OR 97301
Telephone: (503) 945-6398

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Department of Human Services, Child Welfare Programs
Chapter 413

Rule Caption: Clarifying the definition of "relative" applicable to outgoing intercountry Convention adoptions
Stat. Auth.: ORS 417.262 & 418.005
Stats. Implemented: ORS 417.262, 417.265 & 418.005
Proposed Amendments: Rules in 413-120
Proposed Repeals: 413-120-0925(T)

Last Date for Comment: 2-22-16, 5 p.m.
Summary: The Department of Human Services, Office of Child Welfare Programs, is proposing to permanently adopt temporary amendments adopted on January 1, 2016, which clarified who is considered a "relative" for purposes of outgoing intercountry adoptions subject to The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA).

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout child welfare program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify definitions and processes.

Written comments may be submitted until Monday, February 22, 2016 at 5:00 p.m. via email to kris.a.skaro//www.dhs.state.or.us/policy/childwelfare/drafts/drafts.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Child Welfare Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Department of Human Services,
Self-Sufficiency Programs
Chapter 461

Rule Caption: Amending rules relating to APD (Aging and People with Disabilities) programs

Date:	Time:	Location:
2-25-16	3 p.m.	APD Collaborative Disability Determination Unit 3420 Cherry Ave. NE, Rm. 140 Salem, OR 97303

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 411.816, 413.085, 414.685
Other Auth.: 42 CFR 435.915
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.050, 411.060, 411.070, 411.121, 411.404, 411.704, 411.706, 413.085, 414.685
Proposed Amendments: 461-125-0370, 461-135-0750, 461-180-0010, 461-180-0090, 461-180-0140
Proposed Repeals: 461-125-0370(T), 461-135-0750(T), 461-180-0010(T), 461-180-0090(T), 461-180-0140(T)
Last Date for Comment: 3-4-16, 5 p.m.
Summary: OAR 461-125-0370 about disability as the basis of need is being amended to state that an individual may request free assistance with Social Security disability applications and administrative appeals from the Department when the individual meets the requirements listed below. This will assist these individuals in meeting the requirement to pursue assets under OAR 410-200-0220 and makes permanent temporary changes adopted on October 5, 2015. To qualify for free assistance, the individual must be:

- Determined to have a disability under OAR 461-125-0370(1)(c);
- Receiving benefits from one of the OCCS Medical Programs (see OAR 461-001-0000);
- Receiving SNAP benefits; and
- Served by the Aging and People with Disabilities (APD) or Area Agency on Aging (AAA) Office in Baker City, Bend, Brookings, Burns, Canby, Coos bay, Enterprise, Estacada, Hermiston, John Day, La Grande, La Pine, Madras, North Bend, Ontario, Pendleton, Prineville, Redmond, Roseburg, or The Dalles, Oregon. (Additional offices may be added when the permanent rule is adopted.)

To align with changes to the State Medicaid Plan, the Department of Human Services is changing the start date for some APD assistance programs as described below. These changes were effective December 1, 2015, and make permanent temporary rules adopted on December 15, 2015.

- OAR 461-135-0750 about OSIPM eligibility for certain individuals in long-term care or home and community based care is being amended to state that OSIPM eligibility is not effective prior to the first day of the month that includes the effective date for long-term care (the effective date for long-term care is determined in accordance with OAR 461-180-0040). Currently OSIPM is not effective until the effective date for long-term care.
- OAR 461-180-0010 about the effective dates for adding a new person to an open case is being amended to state that the date benefits are requested for the individual establishes a date of request (DOR) for the individual and that the effective dates for OSIPM and General Assistance Medical (GAM) eligibility are determined in accordance with OAR 461-180-0090. Currently eligibility is effective on the DOR if all eligibility requirements are met on the DOR, and if they are not eligible on the DOR, eligibility is effective on the date that all eligibility requirements are met.
- OAR 461-180-0090 about the effective date for initial month medical benefits is being amended to state that GAM, OSIPM, and Qualified Medicare Beneficiary Disabled Worker (QMB-DW) medical benefits are effective on the first day of the month that includes the DOR if the individual is eligible on the DOR. If the individual is not eligible on the DOR, but meets all eligibility requirements within the application processing time frames of OAR 461-115-0190, eligibility is effective on the first day of the month that includes the date that all eligibility requirements are met. Limitations and exceptions to this change are included for certain residents of public institutions and state psychiatric institutions, inmates (including inmates with suspended benefits), and individuals moving to Oregon from another state. Currently eligibility is effective on the DOR if all eligibility requirements are met on the DOR, and if all eligibility requirements are not met on the DOR, eligibility is effective on the date that all eligibility requirements are met.
- OAR 461-180-0140 about the effective dates for retroactive medical benefits is being amended to state that for OSIPM the earliest date of eligibility for retroactive medical is the first day of the third month before the month that includes the DOR. Limitations and exceptions to this change are included for certain inmates, and individuals moving to Oregon from another state. Currently the earliest date of eligibility is three months before the DOR.

In addition, non-substantive edits may be made to these rules to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; improve ease of reading; and clarify Department rules and processes.

Written comments may be submitted until Friday, March 04, 2016 at 5:00 p.m. via email to kris.a.skaro@state.or.us, faxed to 503-373-7032, or mailed to Kris Skaro, Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon, 97301.

Rule text showing edits is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Rule Caption: Amending rules relating to the ERDC program

Date:	Time:	Location:
2-22-16	11 a.m.	Human Services Bldg. 500 Summer St. NE, Rm. 255 Salem, OR 97301

Hearing Officer: Kris Skaro
Stat. Auth.: ORS 409.050, 411.060, 411.070 & 411.816
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141 & 2015 OL Ch. 760
Proposed Amendments: 461-115-0016, 461-150-0090, 461-155-0150
Proposed Repeals: 461-115-0016(T), 461-155-0150(T)

Last Date for Comment: 2-26-16, 5 p.m.
Summary: OAR 461-115-0016 about the ERDC application process and reservation list is being amended to permanently adopt a temporary rule that went into effect on January 1, 2016. The change exempts participants in the Early Head Start Child Care Partnership provider sites contracted with the Department from the ERDC reservation list. The ERDC reservation list is used to keep the ERDC caseload within the legislatively mandated cap. The list was activated on January 4, 2016.

OAR 461-150-0090 about prospective budgeting and annualizing and prorating contracted or self-employment income is being amended to clarify that the section regarding how to determine countable income when past contract or self-employment income is not representative of future income does not apply to the ERDC program.

OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to implement rate increases negotiated between the Department and child care providers and child care centers and funded in HB 5026 (Oregon Laws 2015, chapter 760). See amended rule text to see specific rate changes based on location of the provider, age of the child, and type of billing. This makes permanent a temporary rule adopted on January 1, 2016. This rule is also amended to implement incentive payments for providers who achieve a three star or higher rating with the Quality Rating Improvement System (QRIS). The payment for three, four, and five star ratings is $54, $72, or $90 respectively.

In addition, non-substantive edits may be made to: ensure consistent terminology throughout self-sufficiency program rules and policies; make general updates consistent with current Department practices; update statutory and rule references; correct formatting and punctuation; remove unnecessary language; improve ease of reading; and clarify Department rules and processes.

Rule text showing proposed edits is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_proposed.htm.
Rules Coordinator: Kris Skaro
Address: Department of Human Services, Self-Sufficiency Programs, 500 Summer St. NE, E-48, Salem, OR 97301
Telephone: (503) 945-6067

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Department of State Police
Chapter 257

Rule Caption: Agency procedures for sex offender registration and for forwarding registrations to OSP.

Date:	Time:	Location:
2-18-16	12:30 p.m.	190 Aumsville Hwy. Salem, OR 97317

Hearing Officer: Lt Mark Cotter
Stat. Auth.: ORS 810.810
Stats. Implemented: ORS 810.810 & 181.814 & 181.070 & 192.430 & 183
Proposed Adoptions: 257-070-0100, 257-070-0110, 257-070-0120, 257-070-0130
Proposed Amendments: 257-070-0015
Proposed Repeals: 257-070-0010
Last Date for Comment: 2-18-16, 2 p.m.
Summary: This rule outlines the procedures agencies who register sex offenders will use to complete a registration and forward that information to the Oregon State Police.

The rule provides procedures for completing the registrations online and for transmission of information to the Oregon State Police.

The rule states that the Oregon State Police will update sex offender registry records and keep them electronically. The Oregon State Police will no longer keep paper records.
Rules Coordinator: Shannon Peterson
Address: Department of State Police, 255 Capitol St. NE, 4th Floor, Salem, OR 97310
Telephone: (503) 934-0183

Department of Transportation
Chapter 731

Rule Caption: Oregon Innovative Partnerships Program
Stat. Auth.: ORS 184.616, 184.619 & 367.824
Stats. Implemented: ORS 367.800–367.826
Proposed Amendments: 731-070-0010, 731-070-0020, 731-070-0050, 731-070-0055, 731-070-0060, 731-070-0080, 731-070-0110, 731-070-0130, 731-070-0140, 731-070-0160, 731-070-0170, 731-070-0350
Proposed Repeals: 731-070-0030, 731-070-0190, 731-070-0195, 731-070-0360
Proposed Renumberings: 731-070-0250 to 731-070-0046
Proposed Ren. & Amends: 731-070-0240 to 731-070-0042, 731-070-0245 to 731-070-0044, 731-070-0260 to 731-070-0048
Last Date for Comment: 2-22-16, Close of Business
Summary: ORS 367.800 et seq., established the "Oregon Innovative Partnerships Program," to develop partnerships with private entities or units of local government for expedited project delivery and innovation in transportation projects. These rule revisions have been proposed to reflect how ODOT has administered the program and make certain technical clarifications intended to streamline the proposal process including:

- Elimination of the "Conceptual Proposal" step in favor having only "Detailed proposals." ODOT's experience showed that Conceptual proposals did not contain sufficient information to substantiate or refute the proposer's claims.

- In recognition of ODOT's preference for soliciting proposals for transportation projects rather than accepting unsolicited proposals, the "Solicitation of Proposals for OIPP Projects" section is moved in front of the Unsolicited Proposal section to add clarity for the reader.

- Streamline certain technical sections by referencing other ODOT policies and procedures rather than including unnecessary detail in these rules.

- Clarify ODOT's authority to negotiate with proposers; and

- Increase fees for "Detailed" unsolicited proposals to better reflect the actual cost of processing and evaluating these proposals.

Rules Coordinator: Lauri Kunze
Address: Department of Transportation, 355 Capitol St. NE, MS 51, Salem, OR 97301
Telephone: (503) 986-3171

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Higher Education Coordinating Commission
Chapter 715

Rule Caption: Amending the rule to adopt the new school applicant fee schedule.

Date:	Time:	Location:
2-17-16	1 p.m.	775 Court Street NE Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 351.735(5)
Stats. Implemented: ORS 345.010–345.997
Proposed Amendments: 715-045-0007
Last Date for Comment: 2-24-16, 5 p.m.
Summary: The Higher Education Coordinating Commission (Commission) is proposing to adopt fees in rule because current fees are scheduled to sunset in statute effective July, 2015. The proposed rule change in OAR 715-045-0007 would not increase the fees but adopt the existing fees in rule. The Oregon Department of Education, where the Private Career Schools unit was previously housed, was given 2 years in statute to adopt the fee schedule in rule assuming during the two years no suggested revisions were proposed. Now under the authority of the Commission, the PCS unit needs to have the fees adopted in rule prior to their scheduled sunset.
Rules Coordinator: Kelly Dickinson

Address: Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301
Telephone: (503) 947-2379

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Rule Caption: Amending the PCS Personnel Rules to grant more flexibility for schools and teachers.

Date:	Time:	Location:
2-17-16	2 p.m.	775 Court Street NE Salem, OR 97301

Hearing Officer: Kelly Dickinson
Stat. Auth.: ORS 351.735(5)
Stats. Implemented: ORS 345.010–345.997
Proposed Amendments: 715-045-0001, 715-045-0012
Last Date for Comment: 2-24-16, 5 p.m.
Summary: The Commission is proposing to amend 715-045-0012(9), 715-045-0012(11)(e), 715-045-0012(13)(a), and 715-045-0012(13)(a)(C)(c) to make non-substantive changes. The Commission is proposing to amend 715-045-0012(3)(b) and 715-045-0012(3)(c) to clarify language and define current practices in rule.

The Commission is proposing to amend 715-045-0012 (3) (d) (A) to increase flexibility for career school teachers by allowing a combination of two years of work experience, two years of education, or any combination of both in the subject that they instruct. The Commission is proposing to amend 715-045-0012(3)(d)(B) to require that new teachers work experience must have been within the last five years. This rule now allows the Executive Director to grant a waiver if the teacher does not meet the requirement. The Commission is proposing to amend 715-045-0012(3)(d)(C) to require that If a credential or qualifying examination is required for employment in the field, then the two years of experience must include one year of work experience as a certified practitioner in the subject in which they instruct. The Commission is proposing to amend 715-045-0012(3)(d)(D) to allow the Executive Director to grant a waiver from the requirements written above upon receipt of a written request from the school in limited circumstances. This rule allows the Executive Director to grant a waiver. In previous years the language allowed the Commission to grant a waiver. We are bringing back the flexibility to support schools, in industries or schools that are located in remote areas of the state. The Commission is proposing to amend 715-045-0012(3)(f) to develop adequate work experience requirements for specific industries in collaboration with specific licensing agencies instead of having to issue multiple waivers. The Commission is proposing to amend 715-045-0012(4) to remove the restriction on product representatives and allows more flexibility in enrichment. The Commission is proposing to amend 715-045-0012(5)(b) to require career schools indicate the state and end date of substitute teachers. The Commission is proposing to amend 715-045-0012(7)(c) the continuing education requirement to no longer require commission approval. In order to remove this requirement, the Commission is proposing to amend 715-045-0001 to remove the Commission approval requirement in the definition.
Rules Coordinator: Kelly Dickinson
Address: Higher Education Coordinating Commission, 775 Court St NE, Salem, OR 97301
Telephone: (503) 947-2379

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Land Conservation and Development Department
Chapter 660

Rule Caption: Conform rules to Oregon Laws 2015, chapter 104 and update a data source

Date:	Time:	Location:
3-10-16	8 a.m.	Curry County Event Center 29392 Ellensburg Ave. Gold Beach, OR 97444

Hearing Officer: LCDC
Stat. Auth.: ORS 197.040
Other Auth.: Statewide Planning Goals (OAR 660-015)
Stats. Implemented: ORS 197.065, 215.263, 215.265, 215.780, 215.783 & 2015 OL Ch. 104, Sec. 3
Proposed Amendments: 660-033-0020, 660-033-0030, 660-033-0100
Last Date for Comment: 3-10-16, Close of Hearing
Summary: The proposed amendments will modify rules to conform to Oregon Laws 2015, chapter 104 regarding parcels split by urban growth boundaries (HB 2457) and to update the Natural Resources Conservation Service (NRCS) data source to reflect the most recent federal update.
Rules Coordinator: Casaria Taylor
Address: Land Conservation and Development Department, 635 Capitol St. NE, Suite 150, Salem, OR 97301
Telephone: (503) 373-0050, ext. 322

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Landscape Contractors Board
Chapter 808

Rule Caption: Amends CEH rules regarding teaching, the approval of courses and official transcripts

Date:	Time:	Location:
2-25-16	9 a.m.	LCB, 2111 Front St. NE Suite 2-101 Salem, OR 97301

Hearing Officer: Elizabeth Boxall, Administrator
Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.676
Proposed Amendments: 808-040-0025, 808-040-0050, 808-040-0060
Last Date for Comment: 2-25-16, Close of Hearing
Summary: Amends CEH rules regarding teaching and presenting requirements, the approval of courses and the elimination of the requirement to submit an official transcript as documentation.
Rules Coordinator: Kim Gladwill-Rowley
Address: Landscape Contractors Board, 2111 Front Street NE, Suite 2-101, Salem, OR 97301
Telephone: (503) 967-6291, ext. 223

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Oregon Department of Education
Chapter 581

Rule Caption: Radio Frequency Identification Device Policy for Students

Date:	Time:	Location:
2-22-16	11 a.m.	255 Capitol St. NE Rm. 200A Salem OR

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 339.890
Stats. Implemented: ORS 339.890
Proposed Adoptions: 581-021-0505
Last Date for Comment: 3-3-16, 9 a.m.
Summary: Requires school districts that wish to use Radio Frequency Identification (RFID) to track students develop a policy; establishes standards that protect privacy and insure security, requires notification to parents and students, and allows parents and students to opt-out of required programs.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Rule Caption: Identification of Academically Talented and Intellectually Gifted Students

Date:	Time:	Location:
2-22-16	11 a.m.	255 Capitol St. NE Salem OR

Hearing Officer: Emily Nazarov
Stat. Auth.: ORS 343.391–343.413
Stats. Implemented: ORS 326.051
Proposed Amendments: 581-022-1310

Last Date for Comment: 3-3-16, 9 a.m.
Summary: Requires school districts to use research based best practies when determining eligibilty of under-represented populations. Changing to more inclusive and equitable language when describing student populations. Replaces OAKS total reading score to the total ELA/Literacy SBAC score for identification eligibility.
Rules Coordinator: Cindy Hunt
Address: Oregon Department of Education, 255 Capitol St. NE, Salem, OR 97310
Telephone: (503) 947-5651

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Oregon Health Authority,
Division of Medical Assistance Programs
Chapter 410

Rule Caption: Amending Prior Authorization Approval Criteria Guide

Date:	Time:	Location:
2-17-16	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Proposed Amendments: 410-121-0040
Proposed Repeals: 410-121-0040(T)
Last Date for Comment: 2-19-16, 5 p.m.
Summary: The Pharmaceutical Services program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows: The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx based on the P&T (Pharmacy and Therapeutic) Committee recommendations.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Amending PDL November 19, 2015 DUR/P&T Action

Date:	Time:	Location:
2-17-16	10:30 a.m.	500 Summer St. NE, Rm. 160 Salem, OR 97301

Hearing Officer: Sandy Cafourek
Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316
Stats. Implemented: ORS 414.065, 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354
Proposed Amendments: 410-121-0030
Proposed Repeals: 410-121-0030(T)
Last Date for Comment: 2-19-16, 5 p.m.
Summary: The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:
410-121-0030:
Preferred:
Budesonide
Exenatide Pen Injector
Non-Preferred:
Ciclesonide Nasal Spray/ Pump
Due to changes in supplemental rebate contracts, the following changes were made:
Removed Pegasys™
Added Sovaldi™
Added Evotaz™
Added Eliquis™
Added Pradaxa™
Removed Androgel™
Added Janumet™
Removed Humalog™
Removed Humalog Mix 50/50™
Removed Humalog Mix 75/25™
Removed Humulin R™
Removed Humulin N™
Removed Humulin 70/30™
Removed Makena™
Removed Apriso™
Removed Exelon™
Removed Capaxone™
Removed Avonex™
Removed Betaseron™
Removed Stalevo™
Removed Zubsolv™
Removed Bethkis™
Added Renagel™
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Updating Behavioral Rehabilitation Services Rate Table Incorporated by Reference and Web Address
Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-170-0110
Proposed Repeals: 410-170-0110(T)
Last Date for Comment: 2-19-16, 5 p.m.
Summary: The Authority needs to amend the date of the Behavioral Rehabilitation Services rate table referenced in 410-170-0110 to reflect new rate changes. Also, the web address that links to the updated rate table needs to be updated in the rule.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Adding PDF Links to Durable Medical Equipment (DMEPOS) Tables and Updating Rule Language
Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Proposed Amendments: 410-122-0204, 410-122-0240, 410-122-0300, 410-122-0360, 410-122-0365, 410-122-0380, 410-122-0475, 410-122-0480, 410-122-0510, 410-122-0525, 410-122-0640, 410-122-0678
Last Date for Comment: 2-19-16, 5 p.m.
Summary: Amending this rule to add pdf links to Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) tables on the Secretary of State website and update rule language.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Prioritized List, Effective 1/1/16, including Modifications Effective 10/1/15 and Biennial Changes January 1, 2016-December31, 2017
Stat. Auth.: ORS 414.065 & 414.727
Stats. Implemented: ORS 414.065 & 414.727
Proposed Amendments: 410-141-0520
Proposed Repeals: 410-141-0520(T)
Last Date for Comment: 2-19-16, 5 p.m.
Summary: The OHP program administrative rules govern the Division's payments for services provided to clients. The Authority is amending 410-141-0520. This change will reference the approved

Health Evidence Review Committee (HERC) Prioritized List of Health Services, effective January 1, 2016–December 31, 2017 and incorporate interim modifications made October 1, 2015. The changes will be effective January 1, 2016.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Rule Caption: Annual Updates; Relative Value Unit (RVU) Weight; Clinical Lab, ASC
Stat. Auth.: ORS 413.042
Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743
Proposed Amendments: 410-120-1340
Proposed Repeals: 410-120-1340(T)
Last Date for Comment: 2-19-16, 5 p.m.
Summary: The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division temporarily amends OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab and Ambulatory Surgical Centers.
Rules Coordinator: Sandy Cafourek
Address: Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301
Telephone: (503) 945-6430

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Oregon Health Authority,
Public Health Division
Chapter 333

Rule Caption: Temporary Licensure for Wildland Fire Response

Date:	Time:	Location:
3-9-16	2 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1D Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 682.017 & 682.216
Stats. Implemented: ORS 682.017 & 682.216
Proposed Adoptions: 333-265-0056
Last Date for Comment: 3-11-16, 5 p.m.
Summary: The Oregon Health Authority (Authority), Public Health Division, Emergency Medical Services and Trauma Systems Program is proposing to permanently adopt a rule which allows an out-of-state EMS provider to obtain a temporary Oregon license in order to assist with emergency medical needs of staff on fire response teams. The State of Oregon will often experience critical fire dangers which result in evacuations and threatens critical infrastructure and physical structures. In 2015, the Authority received a request to expedite limited license reciprocity for out-of-state EMS providers in order to address these critical fire dangers. In response, a temporary rule (OAR 333-265-0055) was adopted that expires on February 16, 2016. This rulemaking will replace those temporary changes permanently.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Rule Caption: Ambulance service agency providing secure transport

Date:	Time:	Location:
3-9-16	3 p.m.	Portland State Office Bldg. 800 NE Oregon St., Rm. 1D Portland, OR 97232

Hearing Officer: Jana Fussell
Stat. Auth.: ORS 682.017
Stats. Implemented: ORS 682.017–682.117 & 682.991
Proposed Adoptions: 333-250-0085
Proposed Amendments: 333-250-0040, 333-250-0041
Last Date for Comment: 3-11-16, 5 p.m.
Summary: The Oregon Health Authority, Public Health Division, Emergency Medical Services and Trauma Systems Program is proposing to permanently amend and adopt Oregon Administrative Rules in chapter 333, division 250 relating to ambulance service agencies. Ambulance service agencies are often requested to provide transport to individuals suffering from a behavioral health crisis who are in custody or on diversion, often referred to as 'secure transport.' These rules address policy and education requirements that are necessary for an ambulance service agency to provide secure transport. Approval of secure transport providers are addressed in OAR 309-033-0432.
Rules Coordinator: Brittany Sande
Address: Oregon Health Authority, Public Health Division, 800 NE Oregon St., Suite 930, Portland, OR 97232
Telephone: (971) 673-1291

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Oregon Medical Board
Chapter 847

Rule Caption: Update the names of the podiatric surgery certifying board and the podiatry licensing examination council
Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.085, 677.097, 677.190, 677.265, 677.512, 677.759, 677.805, 677.812, 677.820, 677.825, 677.830 & 677.837
Proposed Amendments: 847-008-0070, 847-017-0003, 847-017-0015, 847-017-0020, 847-080-0010, 847-080-0018, 847-080-0021, 847-080-0022, 847-080-0035
Last Date for Comment: 2-22-16, Close of Business
Summary: The proposed rule amendments update the name of the American Board of Podiatric Surgery (ABPS) to its current name, American Board of Foot and Ankle Surgery (ABFAS). The rules also update the name of the American Podiatric Medical Association Council on Podiatry Education to the Council on Podiatric Medical Education.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

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Rule Caption: Volunteer Emeritus license qualifications include demonstration of competency
Stat. Auth.: ORS 677.120 & 677.265
Stats. Implemented: ORS 677.100, 677.120, 677.132, 677.265 & 677.420
Proposed Amendments: 847-023-0005
Last Date for Comment: 2-22-16, Close of Business
Summary: The proposed rule amendments clarify that applicants for Volunteer Emeritus licensure must be able to demonstrate competency to qualify for licensure. These applicants will be required to demonstrate competency if they have not completed postgraduate training or been certified or recertified by an accepted specialty board within the past ten years or if the applicant has ceased the practice of medicine for 12 or more months. If the applicant has ceased the practice of medicine for 24 or more months, the applicant will be required to complete a re-entry plan approved by the Board.
Rules Coordinator: Nicole Krishnaswami
Address: Oregon Medical Board, 1500 SW 1st Ave., Suite 620, Portland, OR 97201
Telephone: (971) 673-2667

Oregon Public Employees Retirement System
Chapter 459

Rule Caption: Clarify the criteria for disability eligibility determinations.

Date:	Time:	Location:
2-23-16	2 p.m.	PERS Boardroom. 11410 SW 68th Pkwy. Tigard, OR 97223

Hearing Officer: Daniel Rivas
Stat. Auth.: ORS 238.650 & 238A.450
Stats. Implemented: ORS 238.320, 238.335 & 238A.235
Proposed Amendments: 459-015-0010, 459-015-0050, 459-076-0010
Last Date for Comment: 3-1-16, 5 p.m.
Summary: PERS disability eligibility standards require a member be totally disabled and unable to perform any work for which qualified. When an individual receives unemployment benefits, they certify each week that they are able to work and are actively seeking work. For a member who is receiving unemployment benefits and applies for disability, this weekly certification for unemployment benefits is in direct contrast to the disability requirement that the member be totally disabled and unable to perform any work for which qualified.

The rule modifications incorporate the recent decision in the Drake case, in which the Court of Appeals upheld the PERS Board's Final Order that the member was not eligible for a disability retirement while receiving unemployment benefits for two years. The amendments establish that a member's receipt of unemployment benefits is substantial evidence that the member is not disabled. PERS will still perform a full medical review in making a final determination on disability eligibility. PERS will also be working with the Employment Department in the event a member is determined to be totally disabled and continues to receive unemployment benefits.

Medical records will continue to be collected for disability claims and ongoing disability reviews regardless of unemployment benefit payment findings.
Rules Coordinator: Daniel Rivas
Address: Oregon Public Employees Retirement System, PO Box 23700, Tigard, OR 97281
Telephone: (503) 603-7713

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Oregon Youth Authority
Chapter 416

Rule Caption: Rule amendments control marijuana and vapors, and comply with youth offender foster care statutory change.

Date:	Time:	Location:
2-17-16	10 a.m.	Oregon Youth Authority 530 Center St. NE, Suite 200 Salem, OR 97301

Hearing Officer: Winifred Skinner
Stat. Auth.: ORS 420A.025
Stats. Implemented: ORS 183.341, 183.430 & 420.888–420.892
Proposed Amendments: 416-530-0010, 416-530-0020, 416-530-0030, 416-530-0035, 416-530-0040, 416-530-0060, 416-530-0070, 416-530-0090, 416-530-0200
Last Date for Comment: 2-29-16, Close of Business
Summary: As a result of 2015 HB 2314, proposed rule amendments allow a youth offender's relative to maintain a youth offender foster home under certain circumstances. Rule amendments also include: controlling marijuana and inhalant delivery systems in youth offender foster homes; add definitions for clarity; add a process for sex trafficking victim notification; control youth offender confidentiality on social media outlets; update food and nutrition requirements; update allowable youth offender discipline; require carbon monoxide detectors in youth offender foster homes; add requirements for safe and accessible transportation; and add a requirement for provision of culturally-specific personal care and grooming items.
Rules Coordinator: Winifred Skinner
Address: Oregon Youth Authority, 530 Center St. NE, Suite 200, Salem, OR 97301-3765
Telephone: (503) 373-7570

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Psychiatric Security Review Board
Chapter 859

Rule Caption: Updates and Clarifies Activities Related to the Psychiatric Security Review Board's Adult Panel

Date:	Time:	Location:
2-16-16	10 a.m.	610 SW Alder St. Portland, OR 97205

Hearing Officer: Sid Moore
Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.385
Proposed Amendments: 859-020-0005 through 859-020-0015
Last Date for Comment: 2-16-16, 5 p.m.
Summary: These rules set forth the organization, membership, powers, and duties of the Psychiatric Security Review Board's Adult Panel and Executive Director. The proposed additions and modifications are designed to clarify the roles of the adult panel and Executive Director.
Rules Coordinator: Sid Moore
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

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Rule Caption: Updates and Clarifies the Responsibilities of the Psychiatric Security Review Board's Adult Panel

Date:	Time:	Location:
2-16-16	10 a.m.	610 SW Alder St. Portland, OR 97205

Hearing Officer: Sid Moore
Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.315–161.351
Proposed Amendments: 859-030-0005 through 859-030-0010
Last Date for Comment: 2-16-16, 5 p.m.
Summary: These rule amendments clarify the responsibilities and jurisdiction—including length of jurisdiction—of the Psychiatric Security Review Board's adult panel.
Rules Coordinator: Sid Moore
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

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Rule Caption: Updates and Clarifies Procedures Surrounding Psychiatric Security Review Board Adult Panel Administrative Meetings

Date:	Time:	Location:
2-16-16	10 a.m.	610 SW Alder St., Suite 420 Portland, OR 97205

Hearing Officer: Sid Moore
Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.385, 161.387 & 161.346
Proposed Amendments: 859-040-0005 through 859-040-0025
Last Date for Comment: 2-16-16, 5 p.m.
Summary: These rule modifications clarify procedures surrounding the Psychiatric Security Review Board's Adult Panel administrative meetings, including items such as quorums, public meetings, and records.
Rules Coordinator: Sid Moore
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

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Rule Caption: Updates and Clarifies Psychiatric Security Review Board's Rules on Use and Disclosure of Public Records.

Date:	Time:	Location:
2-16-16	10 a.m.	610 SW Alder St., Suite 420 Portland, OR 97205

Hearing Officer: Sid Moore
Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.387, 192.501, 192.502, 192.440, 192.496(3), 179.505 & 192.556
Proposed Adoptions: 859-045-0005, 859-045-0010
Last Date for Comment: 2-16-16, 5 p.m.
Summary: This rule outlines the procedures used by the Psychiatric Security Review Board in its use, handling, and disclosure of public records.
Rules Coordinator: Sid Moore
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

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Rule Caption: Updates Psychiatric Security Review Board Hearings Procedures, including evidence, witnesses, and burdens of proof.

Date:	Time:	Location:
2-16-16	10 a.m.	610 SW Alder St., Suite 420 Portland, OR 97205

Hearing Officer: Sid Moore
Stat. Auth.: ORS 161.387
Stats. Implemented: ORS 161.346, 161.387, 161.336, 161.385, 161.395, 161.351, 161.341, 161.332, 192.501, 192.502 & 192.610
Proposed Amendments: 859-050-0001 through 859-050-0105
Last Date for Comment: 2-16-16, 5 p.m.
Summary: These rule modifications outline and modify the procedures the Psychiatric Security Review Board uses when it conducts hearings for those judged Guilty Except for Insanity and other hearings involving adults placed under the Board's jurisdiction.
Rules Coordinator: Sid Moore
Address: Psychiatric Security Review Board, 610 SW Alder St., Suite 420, Portland, OR 97205
Telephone: (503) 229-5596

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Public Utility Commission
Chapter 860

Rule Caption: In the Matter of Rulemaking to Implement 2015 Senate Bill 611: Qualified Project Determination.

Date:	Time:	Location:
2-23-16	1 p.m.	Public Utility Commission Hearing Rm. 201 High St. SE Salem, OR

Hearing Officer: Ruth Harper
Stat. Auth.: ORS 756.040 & 2015 OL Ch. 23, Sec. 5
Stats. Implemented: 2015 OL Ch. 23, Sec. 5 & 2015 OL Ch. 31, Sec. 7
Proposed Adoptions: 860-200-0005, 860-200-0050, 860-200-0100, 860-200-0150
Proposed Repeals: 860-200-0005(T), 860-200-0050(T), 860-200-0100(T), 860-200-0150(T)
Last Date for Comment: 3-10-16, 5 p.m.
Summary: These permanent rules will implement 2015 Senate Bill 611 and 2015 House Bill 2485 (codified in Oregon Laws 2015, chapters 23 and 31) by providing guidance for information to be included in the applications for qualified project determination per the legislation. These rules establish an application process for a qualified project determination by facilitating the gathering and review of necessary materials regarding an applicant's project. The temporary rules in place to provide this guidance expire May 3, 2016.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 594 on comments and file them as a Word or PDF attachment to an e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at http://apps.puc.state.or.us/edockets/docket.asp?DocketID=19933. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html.

Participants wishing to monitor the hearing by telephone must contact Diane Davis at diane.davis@state.or.us or (503) 378-4372 by close of business February 19, 2016, to request a dial-in number. The Commission strongly encourages those planning to present oral comment at the hearing to attend in person.
Rules Coordinator: Diane Davis
Address: Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088
Telephone: (503) 378-4372

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Rule Caption: In the Matter of Amendments to OAR 860-038-0300(2), Regarding Information to Residential Customers.
Stat. Auth.: ORS Ch. 183, 756 & 757
Stats. Implemented: ORS 756.040 & 757.600–757.667
Proposed Amendments: 860-038-0300
Last Date for Comment: 2-25-16, 5 p.m.
Summary: AR 555 Part 2 — This rulemaking proposes changes to the rule language regarding the price, power source, and environmental impact information provided to residential customers of the electric companies subject to the rule. The proposed frequency of reporting this information is changed from quarterly to annually.

The Commission encourages participants to file written comments as early as practicable in the proceedings so that other participants have the opportunity to consider and respond to the comments before the deadline. Please reference Docket No. AR 555 on comments and file them as a WORD or PDF attachment to an e-mail to the Commission's Filing Center at PUC.FilingCenter@state.or.us.

Interested persons may review all filings online at http://apps.puc.state.or.us/edockets/docket.asp?DocketID=16912. For guidelines on filing and participation, please see OAR 860-001-0140 through 860-001-0160 and 860-001-0200 through 860-001-0250 found online at http://arcweb.sos.state.or.us/pages/rules/oars_800/oar_860/860_001.html.
Rules Coordinator: Diane Davis
Address: Public Utility Commission of Oregon, PO Box 1088, Salem, OR 97308-1088
Telephone: (503) 378-4372

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Water Resources Department
Chapter 690

Rule Caption: Procedures for Extending Reservations of Water for Economic Development

Date:	Time:	Location:
2-25-16	10:30 a.m.	Oregon Water Resources Dept. 725 Summer St. NE, Rm. 124 Salem, OR 97301
3-1-16	6 p.m.	Best Western Sunridge Inn 1 Sunridge Ln., Sunridge Rm. Baker City, OR 97814

Hearing Officer: John Roberts, Jason Spriet
Stat. Auth.: ORS 536 & 537
Stats. Implemented: ORS 536.220, 536.310, 537.249, 537.356 & 537.358
Proposed Adoptions: 690-079-0170
Proposed Amendments: 690-079-0010, 690-079-0160
Last Date for Comment: 3-4-16, 5 p.m.
Summary: A reservation of water for future economic development sets aside a quantity of water for storage to meet future needs. The existing OAR 690, Division 079 rules, which outline procedures to establish and extend reservations, have not been updated since the statutes governing reservations were amended in 1995 and 1997. As a result, the Division 079 rules are not consistent with changes in

statute. A number of reservations are set to expire over the next few years; therefore, these Division 079 rules are intended to clarify the information requirements and process the Department will follow in considering requests to extend reservations.
Rules Coordinator: Diana Enright
Address: Water Resources Department, 725 Summer St. NE, Salem, OR 97301
Telephone: (503) 986-0874

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Rule Caption: Malheur Lake Basin Program Provisions

Date:	**Time:**	**Location:**
2-24-16	10 a.m.	Harney County Community Ctr. 484 N. Broadway Burns, OR 97720
2-25-16	1 p.m.	Oregon Water Resources Dept. 725 Summer St. NE, Rm. 124 Salem, OR, 97301

Hearing Officer: Bruce Corn, John Roberts
Stat. Auth.: ORS 536 and 537
Other Auth.: ORS 536.340(1)(a); 537.525(3), (5), (7) and (8); 537.621(2); 537.777(1); 537.780(1) and (1)(h)
Stats. Implemented: ORS 536.310; 537.249; 537.356; 537.358
Proposed Adoptions: 690-512-0010, 690-512-0020, 690-512-0090
Proposed Repeals: 690-512-0040
Last Date for Comment: 3-1-16, 5 p.m.
Summary: OAR Chapter 690, Division 512 is the Malheur Lake Basin Program. In general, a Basin Program describes how water may be used in major river and lake basins and their tributaries. The Malheur Lake Basin Program currently describes that new uses may only be established if water is available unless the use is for an instream right, permit to store water between March 1 and May 31, use of stored water, and multi-purpose storage projects authorized under OAR 690-512-0100. The Malheur Lake Basin Program also reserves water for future economic development in the Home Creek sub-basin.

Current data, comprising substantial evidence, indicate that groundwater levels are declining in areas of the Greater Harney Valley Groundwater Area of Concern. Additional allocation of groundwater within this area may exacerbate these declines. A comparison between estimated annual recharge and previously allocated groundwater volumes indicates that groundwater is fully allocated in some areas of the basin. The Department is proposing to establish the Greater Harney Valley Groundwater Area of Concern in part of the Malheur Lake Basin, which will allow some pending applications to be approved if offset water can be provided, and limit future applications from being approved while a groundwater study is completed. Exempt uses will not be limited.

The Department is also proposing to repeal OAR 690-512-0040, which describes how water availability is determined for new surface water and groundwater uses. The process described in this rule is obsolete and has been replaced by a water availability model. The determination of water availability is made consistent with OAR Chapter 690, Division 310 using the definition of "water is available" under OAR-690-300-010.
Rules Coordinator: Diana Enright
Address: Water Resources Department, 725 Summer St. NE, Salem, OR 97301
Telephone: (503) 986-0874

Board of Accountancy
Chapter 801

Rule Caption: Amend to update the effective date of professional standards adopted by the Board
Adm. Order No.: BOA 2-2015(Temp)
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 801-001-0035
Subject: The professional standards as used throughout OAR Chapter 801 are those that are in effect as of January 1, 2016.
Rules Coordinator: Kimberly Fast—(503) 378-2268

801-001-0035
Professional Standards

The professional standards, interpretations, rulings and rules designated and adopted by the Board in OAR chapter 801 are those in effect as of January 1, 2016.

Stat. Auth.: ORS 183.332 & 673.410
Stats. Implemented: ORS 183.337 & 673.410
Hist.: BOA 2-2003, f. 12-23-03 cert. ef. 1-1-04; BOA 2-2005, f. 2-24-05 cert. ef. 3-1-05; BOA 5-2005, f. 11-22-05, cert. ef. 1-1-06; BOA 1-2006, f. 12-22-06, cert. ef. 1-1-07; BOA 1-2007, f. 12-27-07 cert. ef. 1-1-08; BOA 1-2008, f. 12-30-08, cert. ef. 1-1-09; BOA 1-2009, f. 12-15-09 cert. ef. 1-1-2010; BOA 1-2010, f. 12-15-10, cert. ef. 1-1-11; BOA 1-2011, f. 12-28-11, cert. ef. 1-1-12; BOA 1-2013, f. & cert. ef. 1-8-13; BOA 1-2014, f. 2-14-14, cert. ef. 3-1-14; BOA 2-2014, f. 12-15-14, cert. ef. 1-8-15; BOA 2-2015(Temp), f. 12-30-15, cert. ef. 1-1-16 thru 6-28-16

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Board of Examiners for Engineering and Land Surveying
Chapter 820

Rule Caption: To adopt a photogrammetry examination rule and to amend the Oregon specific examination rule.
Adm. Order No.: BEELS 1-2016
Filed with Sec. of State: 1-14-2016
Certified to be Effective: 1-14-16
Notice Publication Date: 12-1-2015
Rules Adopted: 820-010-3020
Rules Amended: 820-020-0040
Subject: OAR 820-010-3020 — The adopted language relates to the photogrammetry examination required for registration as a Registered Professional Photogrammetrist.

OAR 820-020-0040 — The amended language updates the examination subversion rule to apply only to the Oregon specific examinations administered by the Board.
Rules Coordinator: Jenn Gilbert—(503) 934-2107

820-010-3020
Photogrammetry Examination

(1) The Oregon approved photogrammetry examination is the Colonial States Board of Surveyor Registration (CSBSR) Examination and is held once a year, in April. To sit for the CSBSR Examination, a completed Examination form and required examination fee must be received by the Board offices no later than February 1.

NOTE: See http://www.oregon.gov/OSBEELS/Pages/index.aspx for examination dates, times, costs, and details.

(2) To withdraw from the CSBSR Examination, and forward the Examination form and examination fees to the next examination administration, a written request to withdraw and forward the Examination form and examination fees must be received by the Board offices no later than March 1. Examination forms and fees may only be forwarded upon withdrawal once, and only to the next examination administration. After one withdrawal, the original Examination form will no longer be forwarded and examination fees will not be forwarded or refunded.

(3) To withdraw from the CSBSR Examination without forwarding, and request a refund of the fees, a written request to withdraw and for the fees to be refunded must be received by the Board offices no later than March 1. After one withdrawal, examination fees are non-refundable.

(4) The cutoff score for the CSBSR Examination is established by the Colonial States Board of Surveyor Registration.

(5) Examinees may request reasonable accommodations to the examination's administration.

(a) Reasonable accommodations will be provided for examinees who have a documented disability within the meaning of the Americans with Disabilities Act of 1990. Reasonable accommodations may be provided for examinees whose religious convictions prohibit them from testing on the scheduled examination dates.

(b) Requests for reasonable accommodations must be submitted on the Board approved form, and accompanied by supporting documentation, by the applicable deadline.

(6) Examination Review. As the CSBSR does not facilitate examination reviews and appeals, CSBSR examination reviews are not permitted.

(7) Examination Subversion.

(a) Any Applicant who is under investigation for examination subversion, as defined in OAR 820-005-0085 will not be considered by the Board until the investigation and any ensuing disciplinary action are complete.

(b) An Applicant disciplined for examination subversion is subject to imposition of civil penalties and denial of registration. A Registrant who is disciplined for examination subversion is subject to imposition of civil penalties and suspension or revocation of registration.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 1-2016, f. & cert. ef. 1-14-16

820-020-0040
Oregon Specific Examination Subversion: Grounds for Invalidation of Examination Results

(1) Examination subversion is the use of any means to alter the results of an examination to cause the results to inaccurately represent the competency of an examinee.

(2) The Board may invalidate the examination results of an examinee who engages in examination subversion. Examination subversion may include, but is not limited to:

(a) Communication between examinees inside of the examination room.

(b) Giving or receiving any unauthorized assistance on the examination while an examination is in process.

(c) Having any unauthorized printed, written, or digital material in the examinee's possession used to, or that might serve to aid the examinee on the examination.

(d) Having any unauthorized mechanical, digital, electronic or other device or mechanism in the examinee's possession used to, or that might serve to, aid the examinee on the examination.

(e) Obtaining, using, buying, selling, distributing, having possession of, or having unauthorized access to examination questions or other secured examination material prior to, during or after the administration of the examination.

(f) Copying another examinee's answers or looking at another examinee's materials while an examination is in progress.

(g) Permitting anyone to copy answers to the examination.

(h) Removing any secured examination materials from the examination facility.

(i) Allowing another person to take the examination in the examinee's place.

(j) Placing any identifying mark upon the examinee's examination papers other than the examinee's identification number or other identifiers as directed by the examination administrator.

(k) Writing on anything other than designated examination material.

(l) Writing or erasing anything after time is called.

(m) Having a cell phone in the examinee's possession.

(n) Having a device with copying, recording, or communication capabilities in the examinee's possession. These include but are not limited to cameras, pagers, PDAs, radios, headsets, tape players, calculator watches, electronic dictionaries, electronic translators, transmitting devices, and digital media players.

(o) Having a calculator in the examinee's possession that is not approved by the examination proctor.

(p) Removing pages from an exam booklet.

(q) Leaving the exam room without authorization.

(r) Engaging in any other act of examination subversion identified by the Board or proctor but not listed above.

(3) In addition to subsections (1) and (2) of this rule, the Board may invalidate the examination results for any examinee who violates any other terms contained in testing regulations provided by the examination's administrator or proctor that are cause for dismissal or exam invalidation by the examination's administrator or proctor.

(4) At the discretion of the Board or its designee, if there is evidence of examination subversion by an examinee prior to, during, or after the administration of the examination, one or more of the following may occur:

(a) The examinee may be denied the privilege of taking the examination if examination subversion is detected before the administration of the examination.

(b) If the examination subversion detected has not yet compromised the integrity of the examination, such steps as are necessary to prevent further examination subversion shall be taken, and the examinee may be permitted to continue with the examination.

(c) The examinee may be requested to leave the examination facility if examination subversion is detected during the examination. If the examinee does not leave the facility, the examinee will be deemed a trespasser.

(d) The examinee's examination results may be voided and the application fee forfeited.

(e) The examinee may not be allowed to sit for an examination for up to three years.

(5) If examination subversion is detected after the administration of the examination, the Board or its designee shall make appropriate inquiry to determine the facts concerning the examination subversion and the Board or its designee may take either or both of the actions described in paragraphs (d) and (e) of subsection (4) above, and may also discipline the examinee under the Board's rules of professional conduct.

(6) Notwithstanding any other rule, the Board or its designee may choose not to release or make available the examination results to examinee or any other person pending the outcome of an investigation into examination subversion.

(7) Voiding any part of an examinee's examination for subversion shall constitute voiding the examinee's entire examination.

(8) Applicants are required to sign statements regarding examination subversion in order to take an examination. Applicants who refuse to sign statements regarding examination subversion will be denied the privilege of taking the examination and the application fees for the examination paid to the Board are forfeited.

Stat. Auth.: ORS 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 1-2005, f. & cert. ef. 3-16-05; BEELS 3-2008, f. & cert. ef. 11-14-08; BEELS 4-2012, f. & cert. ef. 9-14-12; BEELS 1-2013, f. & cert. ef. 3-13-13; BEELS 1-2016, f. & cert. ef. 1-14-16

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Rule Caption: Include due date for applications for the CWRE examination; to revise language regarding final documents.
Adm. Order No.: BEELS 2-2016(Temp)
Filed with Sec. of State: 1-15-2016
Certified to be Effective: 1-15-16 thru 6-30-16
Notice Publication Date:
Rules Amended: 820-010-5000, 820-025-0015
Subject: OAR 820-010-5000 — To include the due date of February 1 for applications to sit for the Certified Water Right Examination.

OAR 820-025-0015 — To revise language related to final documents.
Rules Coordinator: Jenn Gilbert—(503) 934-2107

820-010-5000
Qualification to Sit for Examination as a Water Right Examiner

In order to qualify for examination to sit for the Water Right Examiner, an applicant for certification must provide all of the following:

(1) Evidence satisfactory to the Board of active Oregon registration as a Professional Engineer, Professional Land Surveyor, or Geologist, in good standing.

(2) The Certified Water Right Examiner examination is held once a year, in April. To sit for the Certified Water Right Examiner examination, a completed Application for Certification form and required application fee must be received by the Board offices no later than February 1.

(3) Examinees may request reasonable accommodations to the examination's administration.

(A) Reasonable accommodations will be provided for examinees who have a documented disability within the meaning of the Americans with Disabilities Act of 1990. Reasonable accommodations may be provided for examinees whose religious convictions prohibit them from testing on the scheduled examination dates.

(B) Requests for reasonable accommodations must be submitted on the Board approved form, and accompanied by supporting documentation, by the February 1 deadline.

(4) Review of Examinations. With respect to the certified water right examiner examination, an Applicant may submit a written request to review the Applicant's own examination results. The Board will allow an examination review where the Applicant failed the examination and the applicant achieved a score within five points of the cutoff score. With respect to such reviews.

(a) The Applicant may examine only the question, solution, and answer key for the failed problem.

(b) The Applicant may review the examination on only one occasion. The Board will prescribe a time and place for the review.

(c) All examination reviews will be conducted in the presence of a person designated by the Board.

(d) Except as allowed by the Board for persons requiring disability assistance, no person may accompany the Applicant during the examination review.

(5) Examination Subversion.

(a) Any examinee who is under investigation for examination subversion, as defined in OAR 820-005-0040 will not be considered for certification until the investigation and any ensuing disciplinary action are complete.

(b) An Applicant disciplined for examination subversion is subject to imposition of civil penalties and denial of certification. A registrant who is disciplined for examination subversion is subject to imposition of civil penalties and suspension or revocation of certification.

Stat. Auth.: ORS 537,797, 670.310 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 5-2015(Temp), f. & cert. ef. 8-19-15 thru 2-12-16; BEELS 8-2015, f. & cert. ef. 11-13-15; BEELS 2-2016(Temp), f. & cert. ef. 1-15-16 thru 6-30-16

820-025-0015
Final Documents

(1) All final documents identified in ORS 672.020(2), 672.025(2), and 672.028(2) must bear the seal and signature of the registrant under whose supervision and control they were prepared.

(2) Documents that are not final documents must be marked as "preliminary", "not for construction", "review copy", "draft copy, subject to change", or with some similar wording to indicate that the documents are not intended to represent the final work product of the registrant. Documents submitted to a client, customer, public entity, or any other person, are final documents and must bear the seal and signature of the registrant under whose supervision and control they were prepared, unless such document is clearly marked as not a final document.

Stat. Auth.: ORS 670.310, 672.020, 672.025, 672.028 & 672.255
Stats. Implemented: ORS 672.002 - 672.325
Hist.: BEELS 3-2006(Temp), f. & cert. ef. 12-5-06 thru 6-3-07; BEELS 2-2007, f. & cert. ef. 4-5-07; BEELS 2-2012, f. & cert. ef. 5-10-12; BEELS 6-2013, f. & cert. ef. 9-11-13; BEELS 7-2013(Temp); f. & cert. ef. 11-12-13 thru 5-9-14; BEELS 10-2013(Temp), f. & cert. ef. 12-5-13 thru 3-14-14; BEELS 2-2014, f. & cert. ef. 2-26-14; BEELS 2-2015, f. & cert. ef. 5-21-15; Renumbered from 820-010-0621 by BEELS 7-2015, f. & cert. ef. 9-16-15; BEELS 2-2016(Temp), f. & cert. ef. 1-15-16 thru 6-30-16

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Board of Licensed Social Workers
Chapter 877

Rule Caption: Adoption of rule increasing fees specified in the 2015–17 Legislatively approved BLSW budget.
Adm. Order No.: BLSW 3-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 877-001-0020
Subject: The proposed amendment would increase certain renewal fees by 10%. The fee increase was adopted by the Oregon Legislature as a part of the BLSW biennial 2015–17 budget. The following fees would increase as follows:

LCSW (2 year renewal cycle) would increase from $260 to $286 every two years.

CSWA (1 year renewal cycle) would increase from $60 to $66 every year.

LMSW (2 year renewal cycle) would increase from $200 to $220 every two years.

RBSW (2 year renewal cycle) would increase from $100 to $110 every two years.

LCSW-inactive (two year renewal cycle) would increase from $96 to $106 every two years.

LCSW-reduced requirements (2 year renewal cycle) would increase from $130 to $143 every two years.
Rules Coordinator: Randy Harnisch—(503) 373-1163

877-001-0020
Fees for Certification and Licensing

Following are the fees due, without pro ration, as a condition of obtaining and retaining a certificate or license under this division of rules:

(1) The application fee for an initial certificate or license is:
(a) Registered Baccalaureate Social Worker — $50;
(b) Licensed Master's Social Worker — $50;
(c) Clinical Social Work Associate — $150;
(d) Licensed Clinical Social Worker — $150.
(2) The fee for initial issuance of a certificate or license is:
(a) Registered Baccalaureate Social Worker — $50;
(b) Licensed Master's Social Worker — $100;
(c) Clinical Social Work Associate — $60;
(d) Licensed Clinical Social Worker — $260.
(3) The fee for the renewal of a certificate or license is:
(a) Registered Baccalaureate Social Worker:
(A) Active — $110;
(B) Inactive — $40.
(b) Licensed Master's Social Worker:
(A) Active — $220;
(B) Inactive — $80.
(c) Clinical Social Work Associate — $66;
(d) Licensed Clinical Social Worker:
(A) Active — $286;
(B) Inactive — $106.
(4) The late fee for a request for renewal of a certificate or license received by the board after the renewal date of the certificate or license is:
(a) Registered Baccalaureate Social Worker — $50;
(b) Licensed Master's Social Worker — $50;
(c) Clinical Social Work Associate — $50;
(d) Licensed Clinical Social Worker on active status — $200;
(e) Licensed Clinical Social Workers on inactive status or Licensed Clinical Social Workers renewing a license under the provisions of OAR 877-020-0060 — $50.
(5) The fees in 877-001-0020(1)(b) and (2)(b) are waived for any Clinical Social Work Associate who applies for Licensed Master's Social Worker licensure after having completed 75 hours of supervision required in 877-020-0010(3)(b)(A).
(6) The Board may waive any fees in sections (1) through (4) of this rule, upon written request, for any active duty military personnel deployed for 90 days or more outside the State of Oregon.

Stat. Auth: ORS 675.510-675.600, 675.532-675.533, SB 177(2009) & HB 2345(2009)
Stats. Implemented: ORS 675.571, 675.532, 675.533, 675.990-675.994 & 675.150
Hist.: BLSW 3-2010, f. 12-15-10, cert. ef. 1-1-11; BLSW 1-2011(Temp), f. & cert. ef. 7-5-11 thru 12-31-11; BLSW 2-2011, f. & cert. ef. 12-29-11; BLSW 1-2012, f. 12-14-12, cert. ef. 1-1-13; BLSW 3-2015, f. 12-21-15, cert. ef. 1-1-16

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Rule Caption: Adoption of rule establishing standards for child custody and parenting time evaluations.
Adm. Order No.: BLSW 4-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 877-030-0110
Subject: OAR 877-030-0110 will establish standards for regulated social workers who provide child custody and parenting time evaluations.
Rules Coordinator: Randy Harnisch—(503) 373-1163

877-030-0110
Social Workers Conducting Child Custody Evaluations and/or Parenting Time Evaluations

(1) This rule establishes the standards for all regulated social workers conducting child custody evaluations and parenting time evaluations, as described in ORS Chapter 107.

(2) For purposes of this rule "evaluator" refers to a person who is conducting a child custody or parenting time evaluation, licensed as a Clinical Social Worker under ORS 675.530, certified as a Clinical Social Work Associate under ORS 675.537, licensed as a Master's Social Worker under ORS 675.533, or registered as a Baccalaureate Social Worker under ORS 675.532, and working within their certificate, license, or registration's applicable scope of practice.

(3) An evaluator must conduct each evaluation in a fair and impartial manner with professional skill, knowledge and conduct that does not impair the evaluator's professional judgement.

(4) An evaluator must refer the child custody evaluation or parenting time evaluation services to another qualified professional whenever the evaluator is unable to continue or complete the evaluation without fair or impartial assessments, professional skill, judgement or conduct.

(5) An evaluator conducting a child custody or parenting time evaluation must, prior to starting any component of an evaluation:

(a) Inform and explain, both verbally and in writing, to each parent and party to the proceeding all of the information required in subsection (6) of this rule, which is a process disclosure and referred to in this rule as "informed consent;" and

(b) Obtain signed acknowledgement from each parent and party to the proceeding of having received, understood, and agreed to the disclosed information and terms of the informed consent provided therein.

(6) Informed consent must include, but is not limited to, the following information:

(a) Identification and acknowledgement of receipt of a copy of the court order or other document requiring the custody or parenting time evaluation, which must identify any specific requirements for the evaluation;

(b) Identification of who, in addition to the child or children, is considered to be the client during any evaluation process;

(c) Description of the qualifications of the evaluator to conduct the evaluation;

(d) Description of the evaluation process and the role of the evaluator within that process;

(e) Identification of the individual(s) for whom the evaluation will be prepared and to whom the final report and other information gathered as part of the evaluation, will be disseminated;

(f) Detailed description of all fees that are charged for the evaluation, including any subcontracting for specialized services, when those fees must be paid, and who is financially responsible for payment of all fees, pursuant to the court order or other document;

(g) Description of the timeline for conducting the evaluation, including expectations of timelines for each party and for the final report;

(h) Description of the limits of confidentiality and sharing of information, including the information gathered and the final report;

(i) Description of ex parte communications and identification of permissible communications between the parents or parties to the custody or parenting time evaluation process;

(j) Description of information that may be gathered as part of the evaluation, including the identification of those who may be interviewed or contacted;

(k) Identification of written release of information authorization(s) that may be necessary to obtain and must be provided to the evaluator in order to complete the evaluation;

(l) Definitions and descriptions of the use of professional collateral contacts, personal references, alternate parenting figures and others, who reside in the household or are necessary to contact for the evaluation; and

(m) Description of the general format of the final report and the evaluator's recommendations to be provided in that report, and to whom the final report will be provided.

(7) The evaluator must comply with all applicable rules, statutes, and orders that govern the evaluator's practice in connection with the child custody or parenting time evaluation being done.

Stat. Auth.: ORS 675.510-675.600
Stats. Implemented: ORS 675.510-675.600
Hist.: BLSW 4-2015, f. 12-21-15, cert. ef. 1-1-16

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Board of Pharmacy
Chapter 855

Rule Caption: Amend, adopt, or repeal rules in Divisions 006, 019, 025, 043, 062 & 090.
Adm. Order No.: BP 8-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 12-23-15
Notice Publication Date: 11-1-2015
Rules Adopted: 855-019-0264
Rules Amended: 855-006-0005, 855-019-0110, 855-019-0200, 855-019-0270, 855-019-0280, 855-025-0015, 855-043-0130, 855-062-0040
Rules Repealed: 855-090-0005, 855-025-0015(T), 855-043-0130(T), 855-062-0040(T)
Subject: The Division 006 Definition rules establish definitions for clinical pharmacy agreements and the practice of clinical pharmacy. Amendments also clarify compounding under a shared pharmacy

service agreement is only allowed by a pharmacy located in Oregon for a practitioner or dispenser located in Oregon for outlets and practitioners located in Oregon. These amendments are primarily related to Oregon 2015 House Bill 2028.

The division 19 Pharmacist rules establish definitions for clinical pharmacy agreements and practice of clinical pharmacy. Amendments also define the type of activities that require the professional judgment of a pharmacist. Other amendments allow a pharmacist to authorize an intern to perform the duties of a pharmacist under their direction and supervision, after the intern successfully completes his or her first academic year and only after successful completion of coursework corresponding to the specific duties. An intern may not perform final verification. State Drug Therapy Management Protocol rules are proposed for adoption. Rules are related to Oregon 2015 House Bill 2028.

Amendments in the division 19 Pharmacist rules allow a pharmacist to administer vaccines to persons who are at least seven years of age. Amendments also allow a pharmacist to prescribe immunizations, including oral vaccines, as established by written protocols approved by the Oregon Health Authority. These amendments are related to 2015 Senate Bill 520.

Amendments in the division 25 Certified Oregon Pharmacy Technician rules clarify in rule that newly licensed Certified Oregon Pharmacy Technicians do not need to complete the annual continuing education requirements prior to their first renewal. This Certificate and Order for Filing makes the current temporary rule permanent.

Amendments in the division 43 Practitioner Dispensing Rules establish a waiver clause in the Drug Delivery and Control rules. The waiver clause allows for requests for exemption of certain requirements if the waived requirements will further public health and safety. This Certificate and Order for Filing makes the current temporary rule permanent.

Amendments in the division 62 Drug Distribution Agent rules update record keeping requirements. They also identify the information that a Drug Distribution Agent who distributes product to a Wholesaler or Pharmacy must contain in their records. Amendments also reflect that a pedigree must be maintained if a Drug Distribution Agent distributes product to another Drug Distribution Agent. This Certificate and Order for Filing makes the current temporary rule permanent.

Division 90 Aerosol Sprays rules are repealed. This is because all fluorocarbon aerosol sprays which contain a medication are no longer manufactured in the United States. The rules were established in 1977 as an exception to the banned use of fluorocarbon aerosol sprays which delivered medication.

Copies of the adopted rules can be found on the Board's website at www.pharmacy.state.or.us on the Laws and Rules page.

Rules Coordinator: Karen MacLean—(971) 673-0001

855-006-0005
Definitions

As used in OAR chapter 855:

(1) "Board" means the Oregon Board of Pharmacy unless otherwise specified or required by the context.

(2) "Certified Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board and has completed the specialized education program pursuant to OAR 855-025-0005. Persons used solely for clerical duties, such as recordkeeping, cashiering, bookkeeping and delivery of medications released by the pharmacist are not considered pharmacy technicians.

(3) "Clinical Pharmacy Agreement" means an agreement between a pharmacist or pharmacy and a health care organization or a physician that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the patients of the health care organization or physician.

(4) "Collaborative Drug Therapy Management" means the participation by a pharmacist in the management of drug therapy pursuant to a written protocol that includes information specific to the dosage, frequency, duration and route of administration of the drug, authorized by a practitioner and initiated upon a prescription order for an individual patient and:

(a) Is agreed to by one pharmacist and one practitioner; or

(b) Is agreed to by one or more pharmacists at a single pharmacy registered by the board and one or more practitioners in a single organized medical group, such as a hospital medical staff, clinic or group practice, including but not limited to organized medical groups using a pharmacy and therapeutics committee.

(5) "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:

(a) As the result of a practitioner's prescription drug order, or initiative based on the relationship between the practitioner, the pharmacist and the patient, in the course of professional practice; or

(b) For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing; or

(c) The preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns; or

(d) As a component of a Shared Pharmacy Service agreement as defined in section (21) of this rule.

(6) "Confidential Information" means any patient information obtained by a pharmacist or pharmacy.

(7) "Consulting Pharmacist" means a pharmacist that provides a consulting service regarding a patient medication, therapy management, drug storage and management, security, education, or any other pharmaceutical service.

(8) The "Container" is the device that holds the drug and that is or may be in direct contact with the drug.

(9) "Dispensing or Dispense" means the preparation and delivery of a prescription drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(10) "Interpretation and evaluation of prescription orders" means the review of the order for therapeutic and legal correctness. Therapeutic review includes identification of the prescription drug ordered, its applicability and its relationship to the other known medications used by the patient and determination of whether or not the dose and time interval of administration are within accepted limits of safety. The legal review for correctness of the prescription order includes a determination that the order is valid and has not been altered, is not a forgery, is prescribed for a legitimate medical purpose, contains all information required by federal and state law, and is within the practitioner's scope of practice.

(11) "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer or distributor of a non-prescription drug or commercially packaged legend drug or device.

(12) "Monitoring of therapeutic response or adverse effect of drug therapy" means the follow up of the therapeutic or adverse effect of medication upon a patient, including direct consultation with the patient or his agent and review of patient records, as to result and side effect, and the analysis of possible interactions with other medications that may be in the medication regimen of the patient. This section shall not be construed to prohibit monitoring by practitioners or their agents.

(13) "Medication Therapy Management (MTM)" means a distinct service or group of services that is intended to optimize therapeutic outcomes for individual patients. Medication Therapy Management services are independent of, but can occur in conjunction with, the provision of a medication product.

(14) "Nationally Certified Exam" means an exam that is approved by the Board which demonstrates successful completion of a Specialized Education Program. The exam must be reliable, psychometrically sound, legally defensible and valid.

(15) "Non-legend drug" means a drug which does not require dispensing by prescription and which is not restricted to use by practitioners only.

(16) "Offering or performing of those acts, services, operations or transactions necessary in the conduct, operation, management and control of pharmacy" means, among other things:

(a) The creation and retention of accurate and complete patient records;

(b) Assuming authority and responsibility for product selection of drugs and devices;

(c) Developing and maintaining a safe practice setting for the pharmacist, for pharmacy staff and for the general public;

(d) Maintaining confidentiality of patient information.

(17) "Oral Counseling" means an oral communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient (or agent) and the patient's

pharmacy records, assesses that information and provides the patient (or agent) with professional advice regarding the safe and effective use of the prescription drug for the purpose of assuring therapeutic appropriateness.

(18) Participation in Drug Selection and Drug Utilization Review:

(a) "Participation in drug selection" means the consultation with the practitioner in the selection of the best possible drug for a particular patient.

(b) "Drug utilization review" means evaluating prescription drug order in light of the information currently provided to the pharmacist by the patient or the patient's agent and in light of the information contained in the patient's record for the purpose of promoting therapeutic appropriateness by identifying potential problems and consulting with the prescriber, when appropriate. Problems subject to identification during drug utilization review include, but are not limited to:

(A) Over-utilization or under-utilization;

(B) Therapeutic duplication;

(C) Drug-disease contraindications;

(D) Drug-drug interactions;

(E) Incorrect drug dosage;

(F) Incorrect duration of treatment;

(G) Drug-allergy interactions; and

(H) Clinical drug abuse or misuse.

(19) "Pharmaceutical Care" means the responsible provision of drug therapy for the purpose of achieving definite outcomes that improve a patient's quality of life. These outcomes include:

(a) Cure of a disease;

(b) Elimination or reduction of a patient's symptomatology;

(c) Arrest or slowing of a disease process; or

(d) Prevention of a disease or symptomatology.

(20) "Pharmacy Technician" means a person licensed by the State Board of Pharmacy who assists the pharmacist in the practice of pharmacy pursuant to rules of the Board but has not completed the specialized education program pursuant to OAR 855-025-0012.

(21) "Practice of clinical pharmacy" means:

(a) The health science discipline in which, in conjunction with the patient's other practitioners, a pharmacist provides patient care to optimize medication therapy and to promote disease prevention and the patient's health and wellness;

(b) The provision of patient care services, including but not limited to post-diagnostic disease state management services; and

(c) The practice of pharmacy by a pharmacist pursuant to a clinical pharmacy agreement.

(22) "Practice of pharmacy" is as defined in ORS 689.005.

(23) "Prescription released by the pharmacist" means, a prescription which has been reviewed by the pharmacist that does not require further pharmacist intervention such as reconstitution or counseling.

(24) "Prohibited conduct" means conduct by a licensee that:

(a) Constitutes a criminal act against a patient or client; or

(b) Constitutes a criminal act that creates a risk of harm to a patient or client.

(25) "Proper and safe storage of drugs and devices and maintenance of proper records therefore" means housing drugs and devices under conditions and circumstances that:

(a) Assure retention of their purity and potency;

(b) Avoid confusion due to similarity of appearance, packaging, labeling or for any other reason;

(c) Assure security and minimize the risk of their loss through accident or theft;

(d) Accurately account for and record their receipt, retention, dispensing, distribution or destruction;

(e) Protect the health, safety and welfare of the pharmacist, pharmacy staff and the general public from harmful exposure to hazardous substances.

(26)"Responsibility for advising, when necessary or when regulated, of therapeutic values, content, hazards and use of drugs and devices" means advice directly to the patient, either verbally or in writing as required by these rules or federal regulation, of the possible therapeutic response to the medication, the names of the chemicals in the medication, the possible side effects of major importance, and the methods of use or administration of a medication.

(27) "Shared Pharmacy Service" means a written agreement, that has been approved in writing by the board, that exists for the processing by a pharmacy of a request from another pharmacy or a practitioner licensed to prescribe the drug, to fill or refill a prescription or a drug order, or to perform processing functions including but not limited to:

(a) Dispensing;

(b) Drug utilization review;

(c) Claims adjudication;

(d) Refill authorizations;

(e) Compounding by a pharmacy located in Oregon for a practitioner or dispenser located in Oregon for Oregon outlets and practitioners located in Oregon only; and

(f) Therapeutic interventions.

(28) "Specialized Education Program" means;

(a) A program providing education for persons desiring licensure as pharmacy technicians that is approved by the board and offered by an accredited college or university that grants a two-year degree upon successful completion of the program; or

(b) A structured program approved by the board and designed to educate pharmacy technicians in one or more specific issues of patient health and safety that is offered by:

(A) An organization recognized by the board as representing pharmacists or pharmacy technicians;

(B) An employer recognized by the board as representing pharmacists or pharmacy technicians; or

(C) A trade association recognized by the board as representing pharmacies.

(29) "Supervision by a pharmacist" means being stationed within the same work area as the pharmacy technician or certified pharmacy technician being supervised, coupled with the ability to control and be responsible for the pharmacy technician or certified pharmacy technician's action.

(30) "Therapeutic substitution" means the act of dispensing a drug product with a different chemical structure for the drug product prescribed under circumstances where the prescriber has not given clear and conscious direction for substitution of the particular drug for the one which may later be ordered.

(31) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of pharmacy or conduct that endangers the health, safety or welfare of a patient or client. Unprofessional conduct includes but is not limited to:

(a) Fraud or misrepresentation in dealings relating to pharmacy practice with:

(A) Customers, patients or the public;

(B) Practitioners authorized to prescribe drugs, medications or devices;

(C) Insurance companies;

(D) Wholesalers, manufactures or distributors of drugs, medications or devices;

(E) Health care facilities;

(F) Government agencies; or

(G) Drug outlets.

(b) Illegal use of drugs, medications or devices without a practitioner's prescription, or otherwise contrary to federal or state law or regulation;

(c) Any use of intoxicants, drugs or controlled substances that endangers or could endanger the licensee or others;

(d) Theft of drugs, medications or devices, or theft of any other property or services under circumstances which bear a demonstrable relationship to the practice of pharmacy;

(e) Dispensing a drug, medication or device where the pharmacist knows or should know due to the apparent circumstances that the purported prescription is bogus or that the prescription is issued for other than a legitimate medical purpose, including circumstances such as:

(A) Type of drug prescribed;

(B) Amount prescribed; or

(C) When prescribed out of context of dose.

(f) Any act or practice relating to the practice of pharmacy that is prohibited by state or federal law or regulation;

(g) The disclosure of confidential information in violation of Board rule;

(h) Engaging in collaborative drug therapy management in violation of ORS Chapter 689 and the rules of the Board;

(i) Authorizing or permitting any person to practice pharmacy in violation of the Oregon Pharmacy Act or the rules of the Board;

(j) Any conduct or practice by a licensee or registrant which the Board determines is contrary to accepted standards of practice; or

(k) Failure to cooperate with the Board pursuant to OAR 855-001-0035.

(32) "Verification" means the confirmation by the pharmacist of the correctness, exactness, accuracy and completeness of the acts, tasks, or

functions performed by an intern or a pharmacy technician or a certified pharmacy technician.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.005, 689.151, 689.155, 689.305, 689.405 & 689.455, 689.645 & 2015 OL Ch. 362
Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; PB 2-1988, f. & cert. ef. 5-3-88; PB 2-1989, f. & cert. ef. 1-30-89; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 4-1998, f. & cert. ef. 8-14-98; BP 1-2006, f. & cert. ef. 6-9-06; BP 12-2006, f. & cert. ef. 12-19-06; BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10; BP 3-2012, f. & cert. ef. 6-19-12; BP 8-2015, f. & cert. ef. 12-23-15

855-019-0110
Definitions

In this Division of Rules:

(1) "Clinical Pharmacy Agreement" means an agreement between a pharmacist or pharmacy and a health care organization or a physician that permits the pharmacist to engage in the practice of clinical pharmacy for the benefit of the patients of the health care organization or physician.

(2) "Collaborative Drug Therapy Management (CDTM)" has the same meaning as defined in OAR 855-006-0005.

(3) "Counseling" means an oral or other appropriate communication process between a pharmacist and a patient or a patient's agent in which the pharmacist obtains information from the patient or patient's agent, and, where appropriate, the patient's pharmacy records, assesses that information and provides the patient or patient's agent with professional advice regarding the safe and effective use of the drug or device for the purpose of assuring therapeutic appropriateness.

(4) "Drug Regimen Review (DRR)" means the process conducted by a pharmacist who is consulting for a long-term-care facility or other institution, either prior to dispensing or at a later time, with the goal of ensuring that optimal patient outcomes are achieved from the drug therapy.

(5) "Drug Utilization Review (DUR)" has the same meaning as defined in OAR 855-006-0005.

(6) "Medication Therapy Management (MTM)" means a distinct service or group of services that is intended to optimize therapeutic outcomes for individual patients. Medication Therapy Management services are independent of, but can occur in conjunction with, the provision of a medication product.

(7) "Practice of Clinical Pharmacy" means:

(a) The health science discipline in which, in conjunction with the patient's other practitioners, a pharmacist provides patient care to optimize medication therapy and to promote disease prevention and the patient's health and wellness;

(b) The provision of patient care services, including but not limited to post-diagnostic disease state management services; and

(c) The practice of pharmacy by a pharmacist pursuant to a clinical pharmacy agreement.

(8) "Practice of Pharmacy" is as defined in ORS 689.005.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.005, 689.151, 689.155
Hist.: BP 2-2008, f. & cert. ef. 2-20-08; BP 8-2015, f. & cert. ef. 12-23-15

855-019-0200
General Responsibilities of a Pharmacist

ORS 689.025 states that "the practice of pharmacy in the State of Oregon is declared a health care professional practice affecting the public health, safety and welfare". Pharmacy practice is a dynamic patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use, drug-related therapy, and communication for clinical and consultative purposes. A pharmacist licensed to practice pharmacy by the Board has the duty to use that degree of care, skill, diligence and professional judgment that is exercised by an ordinarily careful pharmacist in the same or similar circumstances.

(1) A pharmacist while on duty must ensure that the pharmacy complies with all state and federal laws and rules governing the practice of pharmacy.

(2) Only a pharmacist may practice pharmacy as defined in ORS 689.005, to include the provision of patient care services. Activities that require the professional judgment of a pharmacist include but are not limited to:

(a) Drug Utilization Review;

(b) Counseling;

(c) Drug Regimen Review;

(d) Medication Therapy Management;

(e) Collaborative Drug Therapy Management or other post-diagnostic disease state management, pursuant to a valid agreement;

(f) Practice pursuant to State Drug Therapy Management Protocols;

(g) Ordering, interpreting and monitoring of a laboratory test;

(h) Oral receipt or transfer of a prescription; and

(i) Final verification of the work performed by those under their supervision.

(3) A pharmacist may not delegate any task listed in OAR 855-019-0200(2), except that a pharmacist may permit an intern to perform the duties of a pharmacist under their direction and supervision, after the intern has successfully completed his or her first academic year, and only after successful completion of coursework corresponding to those duties.

(4) An intern cannot perform final verification.

(5) A pharmacist who is supervising an intern is responsible for the actions of that intern; however, this does not absolve the intern from responsibility for their own actions.

(6) A pharmacist on duty is responsible for supervising all pharmacy personnel, and ensuring that pharmacy personnel only work within the scope of duties allowed by the Board.

(7) A pharmacist may not permit non-pharmacist personnel to perform any duty they are not licensed and trained to perform.

(8) A pharmacist while on duty is responsible for the security of the pharmacy area including:

(a) Providing adequate safeguards against theft or diversion of prescription drugs, and records for such drugs;

(b) Ensuring that all records and inventories are maintained in accordance with state and federal laws and rules;

(c) Ensuring that only a pharmacist has access to the pharmacy when the pharmacy is closed.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.025, 689.151, 689.155
Hist.: PB 15-1989, f. & cert. ef. 12-26-89; PB 2-1997(Temp), f. 10-2-97, cert. ef. 10-4-97; BP 2-1998, f. & cert. ef. 3-23-98; Renumbered from 855-041-0210, BP 2-2008, f. & cert. ef. 2-20-08; BP 6-2010, f. & cert. ef. 6-29-10; BP 8-2015, f. & cert. ef. 12-23-15

855-019-0264
State Drug Therapy Management Protocols

(1) A pharmacist may participate in statewide drug therapy management protocols developed by the Oregon Health Authority to provide approved patient care services including but not limited to:

(a) Smoking cessation therapy;

(b) Travel health services; and

(c) Immunizations.

(2) The pharmacy must maintain written or electronic policies and procedures for each state drug therapy management protocol in which it participates.

(3) A pharmacist who participates in a state drug therapy management protocol must:

(a) Retain the required training documentation set forth by the protocol and make available to the Board upon request; and

(b) Document the prescription, administration, and patient interaction in the patient's record, and provide notification to the patient's primary care provider when available.

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155, 2015 OL Ch. 362
Hist.: BP 8-2015, f. & cert. ef. 12-23-15

855-019-0270
Qualifications

(1) In this rule and in OAR 855-019-0280, an intern who is appropriately trained and qualified in accordance with Section (3) of this rule may perform the same duties as a pharmacist, provided that the intern is supervised by an appropriately trained and qualified pharmacist.

(2) A pharmacist may administer vaccines to persons who are at least 7 years of age as provided by these rules. For the purposes of this rule, a person is at least 7 years of age on the day of the person's seventh birthday.

(3) A pharmacist may administer vaccines under section (1) or section (2) of this rule only if:

(a) The pharmacist has completed a course of training approved by the Board and maintained competency;

(b) The pharmacist training includes, injection site, and Cardiopulmonary Resuscitation (CPR) specific to the age and population the pharmacist treats;

(c) The pharmacist holds active CPR certification issued by the American Heart Association or the American Red Cross or any other equivalent program intended for a healthcare provider that contains a hands-on training component and is valid for not more than three years, and documentation of the certification is placed on file in the pharmacy;

(d) The vaccines are administered in accordance with an administration protocol written and approved by the Oregon Health Authority (OHA); and

(e) The pharmacist has a current copy of the CDC reference, "Epidemiology and Prevention of Vaccine-Preventable Diseases."

(4) A pharmacist otherwise in compliance with section three of this rule may, during a declared emergency, administer a vaccine to a person who is at least three (3) years of age when;

(a) The Governor declares a state of public health emergency and authorizes the reduced age limitation; or

(b) The Public Health Director, during a declared disease outbreak, authorizes a reduction in the age limit.

(5) A pharmacist may not delegate the administration of vaccines to another person.

Stat. Auth.: ORS 689.205 433.441, 433.443 & 2015 OL Ch 295
Stats. Implemented: ORS 689.151, 689.155, 689.645 & 2015 OL Ch 295
Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06; BP 1-2007, f. & cert. ef. 6-29-07; Renumbered from 855-041-0500, BP 2-2008, f. & cert. ef. 2-20-08; BP 11-2010, f. 10-22-10, cert. ef. 1-1-11; BP 2-2014, f. & cert. ef. 1-24-14; BP 8-2015, f. & cert. ef. 12-23-15

855-019-0280
Protocols, Policies and Procedures

(1) Prior to administering a vaccine to a person who is at least 7 years of age a pharmacist must follow protocols written and approved by the Oregon Health Authority (OHA) for administration of vaccines and the treatment of severe adverse events following administration of a vaccine.

(2) A pharmacist during a declared emergency may administer a vaccine to a person who is at least three (3) years of age when;

(a) The Governor declares a state of public health emergency and authorizes the reduced age limitation; or

(b) The Public Health Director, during a declared disease outbreak, authorizes a reduction in the age limit.

(3) The pharmacy must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.

(4) The pharmacist must give the appropriate Vaccine Information Statement (VIS) to the patient or legal representative with each dose of vaccine covered by these forms. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.

(5) The pharmacist must report adverse events as required by the Vaccine Adverse Events Reporting System (VAERS) and to the primary care provider as identified by the patient.

(6) The pharmacist may prescribe, administer or dispense immunizations, including oral vaccines, as established by written protocols approved by OHA.

Stat. Auth.: ORS 689.205, 433.441, 433.443 & 2015 OL Ch 295
Stats. Implemented: ORS 689.151, 689.155, 689.645 & 2015 OL Ch 295
Hist.: BP 7-2000, f. & cert. ef. 6-29-00; BP 3-2006, f. & cert. ef. 6-9-06: Renumbered from 855-041-0510, BP 2-2008, f. & cert. ef. 2-20-08; BP 11-2010, f. 10-22-10, cert. ef. 1-1-11; BP 9-2011, f. 12-30-11, cert. ef. 1-1-12; BP 2-2014, f. & cert. ef. 1-24-14; BP 8-2015, f. & cert. ef. 12-23-15

855-025-0015
Renewal of Licensure as a Certified Pharmacy Technician

(1) A person who has taken and passed a national pharmacy technician certification examination listed in OAR 855-025-0012(1)(a)–(b) may use the following title, are referred to in these rules as, and are licensed as a "Certified Oregon Pharmacy Technician."

(2) An applicant for renewal of a Certified Oregon Pharmacy Technician license must:

(a) Pay the license fee prescribed in OAR 855-110.

(b) Satisfactorily complete a minimum of 10 continuing pharmacy educating hours during the period from September 1 through August 31, of each license renewal cycle. These hours must include:

(A) One hour of continuing pharmacy education in pharmacy law;

(B) One hour of continuing pharmacy education in patient safety or error prevention; and

(C) Eight other hours of continuing pharmacy education hours or documented onsite training, approved by the Board.

(c) OAR 855-025-0015(2)(b) does not apply to Certified Oregon Pharmacy Technicians applying for the first renewal of their license if they have not been licensed by the Board for at least one year prior to October 1 of the renewal period.

(d) Be subject to an annual criminal background check.

(3) The Board may randomly select and audit applications for renewal to verify completion of the continuing education or documented onsite training reported on the application for renewal. Certified Oregon Pharmacy Technicians whose applications for renewal are selected for audit must provide documentation of completion of the continuing pharmacy education reported.

(4) Effective January 1, 2015, national certification is not required to renew a license as a Certified Oregon Pharmacy Technician.

(5) A Certified Oregon Pharmacy Technician who fails to renew his or her license by the expiration date and whose license has been lapsed less than 180 days may renew his or her license as follows:

(a) Pay the license fee as prescribed in OAR 855-110.

(b) Pay a delinquent fee.

(6) A Certified Oregon Pharmacy Technician who fails to renew their license by the deadline and whose license has been lapsed 180 days may reinstate his or her license under OAR 855-025-0060(1).

Stat. Auth.: ORS 689.205
Stats. Implemented: ORS 689.155
Hist.: BP 1-2006, f. & cert. ef. 6-9-06; BP 10-2014, f. 12-30-14, cert. ef. 1-1-15; BP 6-2015(Temp), f. & cert. ef. 8-21-15 thru 2-16-16; BP 8-2015, f. & cert. ef. 12-23-15

855-043-0130
Drug Delivery and Control

(1) The health officer is responsible for the establishment of policies and procedures that include:

(a) Procedures for drug dispensing, storage, security, and accountability;

(b) Maintenance of all drug records required by federal and state law;

(c) Procedures for procurement of drugs.

(2) Dispensing:

(a) A drug may only be dispensed by a practitioner who has been given dispensing privileges by their licensing board or by a Registered Nurse;

(b) A drug must be dispensed in a container complying with the federal Poison Prevention Packaging Act unless the patient requests a non-complying container;

(c) A Registered Nurses may only dispense a drug listed in, or for a condition listed in, the formulary;

(d) Each drug that is dispensed must be labeled with the following information:

(A) Name of patient;

(B) Name of prescriber;

(C) Name, address, and phone number of the clinic;

(D) Date of dispensing;

(E) Name and strength of the drug. If the drug does not have a brand name, then the generic name of the drug and the drug manufacturer must be stated;

(F) Directions for use;

(G) Initials of the person dispensing;

(H) Cautionary statements, if any, as required by law;

(I) Manufacturer's expiration date, or an earlier date if preferable, after which the patient should not use the drug.

(e) A drug information fact sheet must accompany each drug dispensed from a county health clinic.

(3) Repackaged Drugs. A drug repackaged for dispensing must be in a container meeting USP standards and labeled to identify at a minimum:

(a) Brand name, or generic name and manufacturer;

(b) Strength;

(c) Lot number;

(d) Manufacturer's expiration date or an earlier date if preferable. An internal control number which references manufacturer and lot number may be used.

(4) Drug Security, Storage, and Disposal:

(a) In the absence of a dispensing practitioner or a Registered Nurse, drugs must be kept in a locked drug cabinet or drug room which is sufficiently secure to deny access to unauthorized persons. Only dispensing practitioners and Registered Nurses may have a key to the drug cabinet or drug room. In their absence, the drug cabinet or drug room must remain locked.

(b) All drugs must be stored in areas which will assure proper sanitation, temperature, light, ventilation and moisture control as recommended by the manufacturer.

(c) Drugs which are outdated, damaged, deteriorated, misbranded, or adulterated must be quarantined and physically separated from other drugs until they are destroyed or returned to their supplier.

(5) Drug Records;

(a) A dispensing record must be maintained separately from the patient chart and kept for a minimum of three years. The record must show, at a minimum, the following:

(A) Name of patient;

(B) Brand name of drug, or generic name and name of manufacturer or distributor;

(C) Date;

(D) Initials of person dispensing the prescription.

(b) All records of receipt and disposal of drugs must be kept for a minimum of three years;

(c) All records required by these rules or by federal and state law must be readily retrievable and available for inspection by the Board.

(6) Not withstanding any other requirements in this rule, when a drug is dispensed in the practice of an Expedited Partner Therapy treatment protocol, the name of the patient may be omitted from the label, the patient's name may be omitted from the records and a drug may be dispensed to the patient to be given to the patient's partner even if the partner has not been examined by a licensed health care provider acting within their scope of practice.

(7) Upon written request, the Board may waive any of the requirements of this rule if a waiver will further public health and safety. A waiver granted under this section shall only be effective when it is issued in writing.

Stat. Auth.: ORS 689.205 & 689.605

Stats. Implemented: ORS 689.155, 689.505 & 676.350

Hist.: PB 2-1992, f. & cert. ef. 3-26-92; PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1994, f. & cert. ef. 2-2-94; BP 1-2010, f. & cert. ef. 2-8-10; BP 4-2010(Temp), f. 5-3-10, cert. ef. 5-4-10 thru 10-30-10; Administrative correction 11-23-10; BP 2-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; BP 8-2015, f. & cert. ef. 12-23-15

855-062-0040

Record Keeping

(1) A Drug Distribution Agent must establish and maintain records regarding the distribution or other disposition of a drug.

(a) If a Drug Distribution Agent distributes product to a wholesaler or pharmacy, the record must contain, but is not limited to the following:

(A) The source of the drug, including the name and physical address of the seller or transferor and any broker or other person involved in the transaction, the address of the location from which the drug was shipped and the address of the location to which the drug was shipped;

(B) The name, dose and quantity of the drug distributed;

(C) The date of distribution or other disposition of the drug.

(b) If a Drug Distribution Agent distributes product to another Drug Distribution Agent, the pedigree must be maintained and provided to the recipient of the distribution.

(2) Records required by this rule must be made available for inspection and copying by any authorized official of the Drug Enforcement Agency, the Food and Drug Administration, the Department of Agriculture, authorized law enforcement agencies, and this Board.

(3) Records required under these rules must be maintained for three years.

(4) Records required under these rules that are less than 13 months old must be kept at the address of record or be immediately retrievable by computer or other electronic means, and must be immediately available for inspection. All other records required by these rules must be made available for inspection within three business days of a request.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.155

Hist.: BP 2-2009(Temp), f. 6-22-09, cert. ef. 6-26-09 thru 12-23-09; BP 5-2009, f. & cert. ef. 12-24-09; BP 5-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; BP 8-2015, f. & cert. ef. 12-23-15

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Rule Caption: Extends the effective date for Division 041 Prescription Refill rules in OAR 855-041-1120(5)-(8).
Adm. Order No.: BP 9-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 7-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 855-041-1120
Subject: Changes the effective date for division 41 Auto Refill rules in OAR 855-041-1120(5)–(8) to July 1, 2016 to allow more time for implementation. The Board expects full compliance with this part of the rule by July 1, 2016.
Rules Coordinator: Karen MacLean—(971) 673-0001

855-041-1120

Prescription Refills

(1) Where refill authority is given other than by the original prescription, documentation that such refill authorization was given, the date of authorization, and name of the authorizing prescriber or the prescriber's agent must be recorded. This documentation must be readily retrievable. Prescriptions for controlled substances in Schedules III and IV are limited to five refills or six months from date of issue, whichever comes first.

(2) If the practitioner is not available and in the professional judgment of the pharmacist an emergency need for the refill of a prescription drug has been demonstrated, the pharmacist may dispense a sufficient quantity of the drug consistent with the dosage regimen, provided it is not a controlled substance, to last until a practitioner can be contacted for authorization, but not to exceed a 72-hour supply. The practitioner shall be promptly notified of the emergency refill.

(3) Each refilling of a prescription must be accurately documented, readily retrievable, and uniformly maintained for three years. This record must include.;

(a) The identity of the responsible pharmacist;

(b) Name of the patient;

(c) Name of the medication;

(d) Date of refill; and

(e) Quantity dispensed.

(4) Refill quantities may be combined into a single filling if the prescription is not for a controlled substance or psychotherapeutic drug and the prescriber is notified of the change.

(5) A retail pharmacy may only dispense a prescription refill upon request of the patient or patient's agent. A request specific to each medication is required.

(6) Auto-Refill Programs. A retail pharmacy may only use a program that automatically refills non-controlled prescriptions that have existing refills available and are consistent with the patient's current medication therapy when the following conditions are met:

(a) Authorization for each prescription refill by a patient or patient's agent is received before the pharmacy begins the filling process;

(b) The prescription is not a controlled substance; and

(c) The pharmacy must discontinue auto-refill program enrollment at the request of the patient or patient's agent.

(7) An automated reminder cannot be used to generate a prescription refill unless the patient or patient's agent provides authorization for each individual prescription refill. The content of each reminder must include:

(a) Drug name and strength; and

(b) Date of last fill.

(8) Pick-up notification to a patient or patient's agent may only be generated upon full completion of the prescription refill.

Stat. Auth.: ORS 689.205

Stats. Implemented: ORS 689.505 & 689.515

Hist.: 1PB 2-1979(Temp), f. & ef. 10-3-79; 1PB 2-1980, f. & ef. 4-3-80; 1PB 3-1984, f. & ef. 4-16-84; 1PB 1-1986, f. & ef. 6-5-86; PB 8-1987, f. & ef. 9-30-87; PB 10-1989, f. & cert. ef. 7-20-89; PB 1-1991, f. & cert. ef. 1-24-91; PB 4-1991, f. & cert. ef. 9-19-91; PB 1-1992, f. & cert. ef. 1-31-92 (and corrected 2-7-92); PB 4-1992, f. & cert. ef. 8-25-92; PB 1-1995, f. & cert. ef. 4-27-95; PB 1-1996, f. & cert. ef. 4-5-96; PB 3-1997(Temp), f. & cert. ef. 11-12-97; BP 1-1998(Temp), f. & cert. ef. 1-27-98 thru 5-4-98; BP 2-1998, f. & cert. ef. 3-23-98; BP 2-1999(Temp), f. & cert. ef. 8-9-99 thru 1-17-00; BP 2-2000, f. & cert. ef. 2-16-00; BP 3-2000, f. & cert. ef. 2-16-00; BP 6-2000, f. & cert. ef. 6-29-00; BP 1-2002, f. & cert. ef. 1-8-02; BP 1-2003, f. & cert. ef. 1-14-03; BP 12-2010, f. & cert. ef. 12-23-10; Renumbered from 855-041-0065, BP 7-2012, f. & cert. ef. 12-17-12; BP 12-2014, f. 12-30-14, cert. ef. 1-1-16; BP 9-2015, f. 12-23-15, cert. ef. 7-1-16

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Bureau of Labor and Industries
Chapter 839

Rule Caption: Amend existing unlawful employment practice rules relating to employee and job applicant social media accounts.
Adm. Order No.: BLI 18-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 839-005-0400
Subject: Amends 839-005-0400, unlawful employment practice rules. Adds requiring an employee or applicant to establish or maintain a personal social media account as a condition of employment to existing unlawful employment practice protections.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-005-0400
Unlawful Employment Practice

(1) It is an unlawful employment practice for an employer to:

(a) Require or request an employee or an applicant for employment to establish or maintain a personal social media account, or to disclose or to provide access through the employee's or applicant's user name and password, password or other means of authentication that provides access to a personal social media account;

(b) Require an employee or an applicant for employment to authorize the employer to advertise on the personal social media account of the employee or applicant;

(c) Compel an employee or applicant for employment to add the employer or an employment agency to the employee's or applicant's list of contacts associated with a social media website;

(d) Except as provided in subsection (4)(b) of this section, compel an employee or applicant for employment to access a personal social media account in the presence of the employer and in a manner that enables the employer to view the contents of the personal social media account that are visible only when the personal social media account is accessed by the account holder's user name and password, password or other means of authentication;

(e) Take, or threaten to take, any action to discharge, discipline or otherwise penalize an employee for the employee's refusal to disclose, or to provide access through, the employee's user name and password, password or other means of authentication that is associated with a personal social media account, to add the employer to the employee's list of contacts associated with a social media website or to access a personal social media account as described in subsection (7); or

(f) Fail or refuse to hire an applicant for employment because the applicant refused to disclose, or to provide access through, the applicant's user name and password, password or other means of authentication that is associated with a personal social media account, to add the employer to the applicant's list of contacts associated with a social media website or to access a personal social media account as described in subsection (7).

(2) An employer may require an employee to disclose any username and password, password or other means for accessing an account provided by, or on behalf of, the employer or to be used on behalf of the employer.

(3) An employer may not be held liable for the failure to request or require an employee or applicant to disclose the information specified in subsection (1)(a) of this section.

(4) Nothing in this section prevents an employer from:

(a) Conducting an investigation, without requiring an employee to provide a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on receipt by the employer of specific information about activity of the employee on a personal online account or service.

(b) Conducting an investigation permitted under this subsection that requires an employee, without providing a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, to share content that has been reported to the employer that is necessary for the employer to make a factual determination about the matter.

(c) Complying with state and federal laws, rules and regulations and the rules of self-regulatory organizations.

(5) Nothing in this section prohibits an employer from accessing information available to the public about the employee or applicant that is accessible through an online account.

(6) If an employer inadvertently receives the user name and password, password or other means of authentication that provides access to a personal social media account of an employee through the use of an electronic device or program that monitors usage of the employer's network or employer-provided devices, the employer is not liable for having the information but may not use the information to access the personal social media account of the employee.

(7) As used in this section, "social media" means an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations.

Stat. Auth.: ORS 659A.805
Stats. Implemented: ORS 659A.330
Hist.: BLI 14-2013, f. & cert. ef. 12-30-13; BLI 11-2015, f. & cert. ef. 8-4-15; BLI 18-2015, f. 12-22-15, cert. ef. 1-1-16

Rule Caption: Amends existing rules and adopts new rules relating to domestic workers.
Adm. Order No.: BLI 19-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 839-020-0052
Rules Amended: 839-005-0003, 839-020-0030, 839-020-0042, 839-020-0125, 839-020-1010
Subject: Implements Oregon Law Ch. 457, 2015. Adds new protections for domestic workers. Removes domestic workers as exempt employees under discrimination statutes. Addresses pay and leave times.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-005-0003
Definitions: Enforcement of Laws Prohibiting Unlawful Practices

As used in enforcing ORS Chapter 659A, including housing discrimination under 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617):

(1) "Aggrieved Person" means either:

(a) A person who is, or was at any time, eligible to file a complaint under ORS 659A.820 or who is otherwise similarly situated; or

(b) A person who files a complaint under ORS 659A.825.

(2) "Bureau" means the Bureau of Labor and Industries.

(3) "Division" means the Civil Rights Division of the Bureau of Labor and Industries.

(4) "Employee" does not include:

(a) Any individual employed by that individual's spouse or child; or

(b) Any individual employed by that individual's parents, unless the individual is in the domestic service of their parent and is 26 years or older.

(5) "Employer" means any person in this state who, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed. Employer also includes any public body that, directly or through an agent, engages or utilizes the personal service of one or more employees, reserving the right to control the means by which such service is or will be performed, including all officers, agencies, departments, divisions, bureaus, boards and commissions of the legislative, judicial and administrative branches of the state, all county and city governing bodies, school districts, special districts, municipal corporations and all other political subdivisions of the state. Employer also includes any person who is in an employment relationship with an intern as defined in subsection (10) of this rule.

(6) "Employment agency" includes any person undertaking to procure employees or opportunities to work.

(7) "Federal housing law" means the federal Fair Housing Act (42 U.S.C. §3601–3617).

(8) "Gender expression" means the manner in which an individual's gender identity is expressed, including, but not limited to, through dress, appearance, manner, or speech, whether or not that expression is different from that traditionally associated with the individual's assigned sex at birth.

(9) "Gender identity" means an individual's gender-related identity, whether or not that identity is different from that traditionally associated with the individual's assigned sex at birth, including, but not limited to, a gender identity that is transgender or androgynous.

(10) "Intern" means a person who performs work for an employer for the purpose of training if:

(a) The employer is not committed to hire the person performing the work at the conclusion of the training period;

(b) The employer and the person performing the work agree in writing that the person performing the work is not entitled to wages for the work performed; and

(c) The work performed:

(A) Supplements training given in an education environment that may enhance employability of the intern;

(B) Provides experience for the benefit of the person performing the work;

(C) Does not displace regular employees;

(D) Is performed under the close supervision of existing staff; and

(E) Provides no immediate advantage to the employer providing the training and may occasionally impede the operations of the employer.

(d) An intern is considered to be in an employment relationship with an employer for the purposes of employee protections provided under ORS

659A.030, 659A.082, 659A.109, 659A.112, 659A.136, 659A.142, 659A.199, 659A.230, 659A.233, 659A.236, 659A.290, 659A.300, 659A.303, 659A.306, and 659A.315.

(e) "Intern" includes any person meeting the description set forth in this rule regardless of the title of the person's position or whether they are currently enrolled in an education or training program.

(11) "Labor organization" includes any organization that is constituted for the purpose, in whole or in part, of collective bargaining or in dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(12) "Person" includes one or more individuals, partnerships, associations, labor organizations, limited liability companies, joint-stock companies, corporations, legal representatives, trustees, and trustees in bankruptcy or receivers. "Person" also includes a public body as defined in ORS 30.260. For the purposes of 659A.145 or 659A.421 or the federal Fair Housing Act (42 U.S.C. §3601–3617), "person" also includes fiduciaries, mutual companies, trusts and unincorporated organizations.

(13) "Protected class" means a group of people protected by law from discrimination on the basis of a shared characteristic, such as race, sex, sexual orientation, disability, or other, or a perception of that characteristic.

(14) "Respondent" includes any person against whom a complaint or charge of unlawful practices is filed with the division or whose name has been added to such complaint or charge pursuant to ORS 659A.835(1).

(15) "Sex" means the anatomical, physiological and genetic characteristics associated with being male or female.

(16) "Sexual orientation" means an individual's actual or perceived heterosexuality, homosexuality, bisexuality, or gender identity, regardless of whether the individual's gender identity, appearance, expression or behavior differs from that traditionally associated with the individual's assigned sex at birth.

Stat. Auth.: ORS 659A.805

Stats. Implemented: ORS 659A.001 & 659A.350

Hist.: BLI 19-2000, f. & cert. ef. 9-15-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 36-2007, f. 12-27-07 cert. ef. 1-1-08; BLI 7-2008(Temp), f. 3-20-08, cert. ef. 3-25-08 thru 9-21-08; Administrative correction 10-21-08; BLI 40-2008(Temp), f. 11-10-08, cert. ef. 11-12-08 thru 5-1-09; BLI 43-2008, f. 12-3-08, cert. ef. 12-5-08; BLI 8-2010, f. & cert. ef. 2-24-10; BLI 14-2013, f. & cert. ef. 12-30-13; BLI 11-2015, f. & cert. ef. 8-4-15; BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

839-020-0030

Overtime — Generally

(1) Except as provided in OAR 839-020-0125 to 839-020-0135, all work performed in excess of forty (40) hours per week must be paid for at the rate of not less than one and one-half times the regular rate of pay when computed without benefits of commissions, overrides, spiffs, bonuses, tips or similar benefits pursuant to ORS 653.261(1). Similar benefits include, but are not limited to, discretionary bonuses, gifts, profit sharing, thrift and savings program, trusts, reimbursements for expenses, holiday, or vacation pay.

(2) Definitions:

(a) "Work week" means any seven (7) consecutive twenty four (24) hour period as determined by the employer. The beginning of the work week may be changed if the change is intended to be permanent and is not designed to evade the overtime requirements of this rule. For purposes of overtime computation, each work week stands alone;

(b) "Regular rate", for purposes of overtime computation, means a regular hourly rate, but in no case will the regular hourly rate be less than the applicable statutory minimum wage rate. In the absence of an express agreement between the employer and the employee which specifies the regular hourly rate, the regular hourly rate is determined by dividing the total remuneration for employment in any work week (excluding commissions, spiffs, bonuses, tips or similar benefits), by the total number of hours actually worked in that work week for which such remuneration was paid. The division will be guided in the application and calculation of regular rate by Title 29, Code of Federal Regulations, Part 778, Subpart C, D and E except when expressly prohibited by ORS Chapter 653 or these rules.

(c) "Base rate," for purposes of computing overtime for domestic workers, means a regular hourly rate, but in no case will the base rate be less than the greater of any applicable statutory minimum wage rate. In the absence of an express agreement between the employer and the employee which specifies the regular hourly rate, the regular hourly rate is determined by dividing the total remuneration for employment in any work week (excluding commissions, spiffs, bonuses, tips or similar benefits), by the total number of hours actually worked in that work week for which such remuneration was paid. The division will be guided in the application and calculation of base rate by Title 29, Code of Federal Regulations, Part 778, Subpart C, D and E pertaining to regular rate except when expressly prohibited by ORS Chapter 653 or these rules.

(3) Methods for determining amount of overtime payment under different compensation agreements:

(a) Compensation based exclusively on hourly rate of pay:

(A) Where the employee is employed solely on the basis of a single hourly rate, the hourly rate is the "regular rate." For hours worked in excess of forty (40) hours in a work week the employee must be paid, in addition to the straight time hourly earnings, a sum determined by multiplying one-half the hourly rate by the number of hours worked in excess of forty (40);

(B) For example, a $10 per hour rate will bring, for an employee who works 46 hours, a total weekly wage of $490 (46 hours at $10 plus six hours at $5.00). In other words the employee must be paid an amount equal to $10 per hour for 40 hours and $15.00 per hour for the six hours of overtime, or a total of $490.

(b) Compensation based upon piece-rate agreement:

(A) Where an employee is employed on a piece-rate basis, the regular hourly rate of pay is determined by adding together the total earnings, (excluding commissions, spiffs, bonuses, tips or similar benefits) for the work week and dividing this sum by the number of hours worked in the week for which such compensation is to be paid;

(B) For example, an employee who has earned $500 during a 50 hour work week must be paid an additional sum of $50 for the ten overtime hours, or a total of $550 (50 hours at $10 per hour and the ten overtime hours at $5.00 per hour).

(c) Compensation based upon weekly salary agreement for regular work week of less than 40 hours:

(A) Where the employee is employed on a weekly salary for a regular work week of fewer than 40 hours, the regular hourly rate of pay is determined by dividing the salary by the number of hours agreed to be worked in the work week which such salary is intended to compensate;

(B) For example, if an employee is hired at a salary of $525 and it is understood that this salary is compensation for a regular work week of 35 hours, the employee's regular rate of pay is $15 per hour ($525 divided by 35 hours). Thus, where the employee works in excess of 35 hours in a given work week such employee must be paid $15 per hour for each of the first 40 hours and $22.50 per hour (one and one-half times $15) for each hour worked in excess of 40 hours in such work week.

(d) Compensation based upon a weekly salary agreement for a regular work week of 40 hours:

(A) Where the employee is employed on a weekly salary for a regular work week of 40 hours, the regular hourly rate of pay is computed by dividing the salary by 40 hours;

(B) For example, where an employee is hired at a salary of $600 and it is understood that this weekly salary is compensation for a regular work week of 40 hours, the employee's regular rate of pay is $15 per hour and such employee must be compensated at the rate of $22.50 per hour for each hour worked in excess of 40 hours in such work week.

(e) Compensation based upon weekly salary agreement for regular workweeks of more than 40 hours:

(A) If the employee is employed on a weekly salary which is the agreed compensation for a set number of hours in excess of 40, the regular hourly rate of pay is determined by dividing the weekly salary by the set number of hours which such salary is intended to compensate;

(B) For example, where an employee is hired at a weekly salary of $675 and it is understood that this weekly salary is compensation for a regular work week set at 45 hours, the employee's regular rate of pay is $15 per hour and such employee must be paid an additional sum of $37.50 for such work week or a total of $712.50 (45 hours at $15 per hour and the five overtime hours at $7.50 per hour). The employee must be paid an additional $22.50 per hour for each hour worked in excess of 45 hours in such work week.

(f) Compensation based upon an agreed fixed salary for fluctuating hours (fluctuating workweek method for payment of overtime):

(A) An employee employed on a fixed salary may have hours of work which vary from work week to work week and the salary may be paid to the employee pursuant to an understanding with the employer that such employee will receive such fixed amount of compensation for whatever hours the employee is called upon to work in a work week, whether few or many. Where there is a clear mutual understanding of the parties that the fixed salary is compensation for the hours worked each work week, whatever their number, such a salary arrangement is permitted if the amount of the salary is sufficient to provide compensation to the employee at a rate not less than the applicable statutory minimum wage rate for every hour worked in those work weeks in which the number of hours worked is great-

est, and if the employee receives overtime compensation, in addition to such salary, for all hours worked in excess of 40, at a rate not less than one-half the regular rate of pay. Since, under such an arrangement, the number of hours actually worked will fluctuate from work week to work week, the regular rate of the employee will vary from week to week and is determined by dividing the number of hours worked in the work week into the amount of the salary to obtain the applicable regular hourly rate for any given work week. Payment for overtime hours worked in excess of 40 hours in such work week at one-half such hourly rate in addition to the salary satisfies the requirements of this rule because such hours have already been compensated at the regular rate, under the salary arrangement. The following examples, based upon a weekly salary of $400, are offered by way of illustration:

(i) Work week #1 — 50 hours worked; the employee's regular rate of pay is $8 per hour and the employee must be paid an additional sum equal to one-half the regular rate times the ten overtime hours worked or $40, making the total compensation for that work week $440;

(ii) Work week #2 — 60 hours worked; the employee's regular rate of pay is $6.67 per hour, which is less than the required state minimum wage rate. The employee must be paid an additional sum equal to the difference between the employee's weekly salary of $400 and the total of the amount the employee earned at the minimum wage for 40 hours plus one and one-half times the minimum wage rate for the hours worked over 40 during the work week (40 hours X minimum wage rate + 20 hours X 1.5 X minimum wage rate).

(B) The fluctuating work week method for the payment of overtime does not apply to employers covered by the federal Family Medical Leave Act of 1993, 29 USC 2601, et. seq., who comply with the Code of Federal Regulations regarding the nonpayment of leave time authorized by the Act and the special exception pertaining to the payment of overtime under the fluctuating workweek method ([S]see 29 CFR, Part 825.206 (b) and (c)). Employers who select this method for paying overtime and who are covered by this Act but choose not to comply with 29 CFR 825.206, must comply with this rule.

(g) Fixed salary for periods other than work week: Where a salary covers a period longer than a work week, such as a month, it must be reduced to its work week equivalent. A monthly salary is subject to translation to its equivalent weekly wage by multiplying by 12 (the number of months) and dividing by 52 (the number of weeks). A semi-monthly salary is translated into its equivalent weekly wages by multiplying by 24 and dividing by 52. Once the weekly wage is arrived at, the regular rate of pay and the amount of any overtime pay is determined as provided by this rule.

(4) Notwithstanding ORS 653.020, the computation of overtime in any given work week for any domestic worker will include all "hours worked" as that term is defined in OAR 839-020-0040 through -0046.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183 & 653
Stats. Implemented: ORS 653.261
Hist.: BL 1-1987, f. & ef. 1-12-87; BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 9-1996, f. & cert. ef. 10-8-96; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

839-020-0042
Sleeping Time and Certain Other Activities

Under certain conditions an employee is considered to be working even though some of the employee's time is spent sleeping or in certain other activities:

(1) Less than 24 hours duty: An employee who is required to be on duty for less than 24 hours is working even though the employee is permitted to sleep or engage in other activities when not busy.

(2) Duty of 24 hours or more: Where an employee is required to be on duty for 24 hours or more, the employer and the employee may agree to exclude bona fide meal periods and a bona fide regularly scheduled sleeping period of not more than eight hours from hours worked, provided adequate sleeping facilities are furnished by the employer and the employee can usually enjoy an uninterrupted sleep period. If sleeping period is of more than eight hours, only eight hours will be credited. Where no expressed or implied agreement to the contrary is present, the eight hours of sleeping time and lunch periods constitute hours worked:

(a) Interruptions of sleep. If the sleeping period is interrupted by a call to duty, the interruption must be counted as hours worked. If the period is interrupted to such an extent that the employee cannot get a reasonable sleep period, the entire period must be counted;

(b) For purposes of this rule a reasonable night's sleep is considered sleep time of not less than five continuous hours.

(3) Employees residing on employers' premises or working at home: An employee who resides on the employer's premises on a permanent basis or for extended periods of time is not considered as working all the time the employee is on the premises. Ordinarily, the employee may engage in normal private pursuits and thus have enough time for eating, sleeping, entertaining, and other periods of complete freedom from all duties when the employee may leave the premises for the employee's own purposes. To determine the exact hours worked, any reasonable agreement of the parties which takes into consideration all of the pertinent facts will be accepted.

(4) Notwithstanding ORS 653.020 and sections (2) and (3) of this rule, an employer must provide a domestic worker who resides in the home of the employer with both at least eight consecutive hours of rest within each 24-hour period and a space with adequate conditions for uninterrupted sleep. For purposes of this section, if the period of rest is interrupted by a call to duty, any time worked during the rest period must be paid at one and one-half times the employee's base rate regardless of the total number of hours worked in that work week.

Stat. Auth.: ORS 653
Stats. Implemented: ORS 653.010 - 653.261
Hist.: BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

839-020-0052
Leave for Domestic Workers

(1)(a) An employer who employs a domestic worker shall provide the domestic worker with a rest period of at least 24 consecutive hours in each work week.

(b) A domestic worker may agree to work on the designated day of rest, if all of the following conditions are met:

(A) The domestic worker's agreement is given voluntarily; and,

(B) The agreement is in writing, in a language easily understood by the domestic worker; is made prior to the performance of services on the designated day of rest and specifies the particular day of rest on which the domestic worker agrees to work; and is signed or acknowledged by the domestic worker and the employer.

(c) When a domestic worker works on a designated day of rest, the employer shall pay all hours worked at one and one-half times the employee's base rate regardless of the total number of hours worked in that work week.

(2)(a) An employer who employs a domestic worker shall provide the domestic worker not less than three paid personal days off each year if the domestic worker worked an average of at least 30 hours per work week during the previous year. For purposes of this subsection, a year includes any consecutive 12-month period, such as a calendar year, a tax year, a fiscal year, a contract year or the 12-month period beginning on the anniversary of the date of employment of the domestic worker.

(b) Paid personal days off shall be compensated at the domestic worker's base rate and for the average number of hours that the domestic worker works during a typical workday. For example, if a domestic worker typically works 30 hours per week during a five-day work week, the domestic worker must be paid for six hours at the base rate of pay for each personal day off.

(c) Any accrued but unused personal days off shall be paid upon termination in accordance with the requirements for final wages in ORS 652.140.

(3) An employer who employs a domestic worker shall allow the employee to accrue up to 40 hours of sick time as authorized by OL Ch. 537, 2015 and OAR chapter 839, division 7.

Stat. Auth.: OL Ch. 457, 2015
Stats. Implemented: OL Ch. 457, 2015
Hist.: BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

839-020-0125
Overtime Exemptions Pertaining to Employers Regulated Under the Federal Fair Labor Standards Act

(1) This rule applies to employers and employees subject to OAR 839-020-0030, Overtime Generally, by virtue of the repeal of ORS 653.020(7) by Section 2, Chapter 446, 1989 Oregon Laws.

(2) No employer shall be deemed to have violated OAR 839-020-0030 under the following circumstances:

(a) By employing any employee for a workweek in excess of that specified in OAR 839-020-0030 without paying the compensation for overtime employment prescribed therein; provided that, such employee received compensation for employment in excess of 12 hours in any workday, or for employment in excess of 56 hours in any workweek, as the case may be, at a rate not less than one and one-half times the regular rate at which the employee is employed; and, provided further that such employee is so employed as follows:

(A) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the

National Labor Relations Board, which provides that no employee shall be employed more than 1,040 hours during any period of 26 consecutive weeks; or

(B) In pursuance of an agreement, made as a result of collective bargaining by representatives of employees certified as bona fide by the National Labor Relations Board which provides that during a specified period of 52 consecutive weeks the employees shall be employed not more than 2,240 hours and shall be guaranteed not less than 1,840 hours (or not less than 46 weeks at the normal number of hours worked per week, but not less than 30 hours per week) and not more than 2,080 hours of employment for which the employee shall receive compensation for all hours guaranteed or worked at rates not less than those applicable under the agreement to the work performed and for all hours in excess of the guaranty which are also in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 or 2,080 hours in such period at rates not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(b)(1) and Sec. 7(b)(2), FLSA)

(b) By an independently owned and controlled local enterprise (including an enterprise with more than one bulk storage establishment) engaged in the wholesale or bulk distribution of petroleum products, if:

(A) The annual gross volume of sales of such enterprise is less than $1,000,000 exclusive of excise taxes; and

(B) More than 75 per centum of such enterprise's annual dollar volume of sales is made within the state in which such enterprise is located; and

(C) Not more than 25 per centum of the annual dollar volume of sales of such enterprise is to customers who are engaged in the bulk distribution of such products for resale; and

(D) Such employee receives compensation for employment in excess of forty hours in any workweek at a rate not less than one and one-half times the minimum wage rate applicable to the employee under ORS 653.025. (Reference: Sec. 7(b)(3), FLSA)

(c) By employing any employee for a workweek in excess of the maximum workweek applicable to such employee under OAR 839-020-0030 if such employee is employed pursuant to a bona fide individual contract, or pursuant to an agreement made as a result of collective bargaining by representatives of employees, if the duties of such employee necessitate irregular hours of work, and the contract or agreement specifies a regular rate of pay of not less than the minimum hourly rate provided in ORS 653.025 and compensation at not less than 1-1/2 times such rate for all hours worked in excess of such maximum workweek, and a weekly guarantee of pay for not more than 60 hours based on the rates so specified. (Reference: Sec. 7(f), FLSA);

(d) By employing any employee of a retail or service establishment for a workweek in excess of the applicable workweek specified in OAR 839-020-0030, if the regular rate of pay of such employee is in excess of one and one-half times the minimum hourly rate applicable under ORS 653.025 and if more than half of the employee's compensation for a representative period (not less than one month) represents commissions on goods or services. In determining the proportion of compensation representing commission, all earnings resulting from the application of a bona fide commission rate shall be deemed commissions on goods or services without regard to whether the computed commissions exceed the draw of guarantee. (Reference: Sec. 7(i), FLSA);

(e) When an employer engaged in the operation of a hospital or an establishment which is an institution primarily engaged in the care of the sick, the aged, or the mentally ill or defective who reside on the premises enters into an agreement or understanding arrived at between the employer and employee before performance of the work, that provides for a work period of 14 consecutive days in lieu of the workweek of seven consecutive days for purposes of overtime computation and provides further that for the employee's employment in excess of eight hours in any workday and in excess of 80 hours in such 14-day period, the employee receives compensation at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 7(j), FLSA);

(f) By employing an employee of a not for profit amusement or recreational establishment in excess of the applicable work week specified in OAR 839-020-0030 if the establishment does not operate for more than seven months in any calendar year, or if, the establishment's average receipts for any six months of such year were not more than 33-1/3 per centum of its average receipts for the other six months of such year. (Reference: Section 13(a)(3), FLSA);

(g) By employing an employee in excess of the applicable workweek specified in OAR 839-020-0030 when the employee is employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacean, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee. (Reference: Sec. 13(a)(5), FLSA)

(h) By employing an employee who is compensated at a rate of not less than the equivalent of $27.63 per hour for each hour worked and who is a computer systems analyst, computer programmer, software engineer, or other similarly skilled worker, whose primary duty consists of the following:

(A) The application of systems analysis techniques and procedures, including consulting with users, to determine hardware, software, or system functional specifications;

(B) The design, development, documentation, analysis, creation, testing, or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications;

(C) The design, documentation, testing, creation, or modification of computer programs related to machine operating systems; or

(D) A combination of duties described in paragraphs (A), (B), and (C) of this paragraph the performance of which requires the same level of skills. (Reference: Sec. 13 (a) (17), FLSA)

(3) The provisions of OAR 839-020-0030 do not apply when the provisions of Section 13(b), of the Fair Labor Standards Act apply to employees as follows:

(a) Any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of Section 204 of the Motor Carrier Act, 1935; or

(b) Any employee of an employer engaged in the operation of a common carrier by rail and subject to the provisions of Part I of the Interstate Commerce Act; or

(c) Any employee of a carrier by air subject to the provisions of Title II of the Railway Labor Act; or

(d) Any individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state; or

(e) Any employee employed as a seaman; or

(f) Any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located in a city or town of 100,000 population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census, except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of 100,000, or is located in a city of 25,000 population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area; or

(g) Any sales person, parts person or mechanic primarily engaged in selling or servicing automobiles, trucks, or farm implements, if the employee is employed by a non-manufacturing establishment primarily engaged in the business of selling such vehicles or implements to ultimate purchasers; or

(h) Any sales person primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a non-manufacturing establishment primarily engaged in the business of selling trailers, boats or aircraft to ultimate purchasers; or

(i) Any employee employed as a driver or driver's helper making local deliveries, who is compensated for such employment on the basis of trip rates, or other delivery payment plan, if the Commissioner shall find that such plan has the general purpose and effect of reducing hours worked by such employees to, or below, the maximum workweek applicable to them under OAR 839-020-0030; or

(j) Any employee employed in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, or operated on a sharecrop basis, and which are used exclusively for supply and storing of water for agricultural purposes; or

(k) Any employee with respect to the employee's employment in agriculture by a farmer, notwithstanding other employment of such employee in connection with livestock auction operations in which such farmer is engaged as an adjunct to the raising of livestock, either on the farmer's own account or in conjunction with other farmers, if such employee is primarily employed during the employee's workweek in agriculture by such farmer, and if such employee is paid for the operations at a wage rate not less than that prescribed by ORS 653.025; or

(l) Any employee employed within the area of production (as defined by the Commissioner) by an establishment commonly recognized as a

country elevator, including such an establishment which sells products and services used in the operation of a farm, if no more than five employees are employed in the establishment in such operation; or

(m) Any employee engaged in the transportation and preparation for transportation of fruits and vegetables, whether or not performed by the farmer, from the farm to a place of first processing or first marketing within the State of Oregon, or any employee engaged in transportation, whether or not performed by the farmer, between the farm and any point within the State of Oregon of persons employed or to be employed in the harvesting of fruits or vegetables; or

(n) Any employee employed by an establishment which is a motion picture theater; or

(o) Any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by the employee's employer in such forestry or lumbering operations does not exceed eight; or

(p) Any employee of an amusement or recreational establishment located in a national park or national forest or on land in the National Wildlife Refuge System if such employee is an employee of a private entity engaged in providing services or facilities in a national park or national forest, or on land in the National Wildlife Refuge System, under a contract with the Secretary of the Interior or the Secretary of Agriculture, and receives compensation for employment in excess of 56 hours in any workweek at a rate not less than one and one-half times the regular rate at which the employee is employed. (Reference: Sec. 13(b), (1), (2), (3), (5), (6), (9), (10), (11), (12), (13), (14), (16), (21), (27), (28), and (29), FLSA)

(4) The provisions of OAR 839-020-0030 shall not apply with respect to any employee engaged in the delivery of newspapers to the consumer or to any homeworker engaged in the making of wreaths composed principally of natural holly, pine, cedar or other evergreens (including the harvesting of the evergreens or other forest products used in making such wreaths). (Reference: Sec. 13(d), FLSA)

Stat. Auth.: ORS 653.040 & 653.261, OL Ch. 457, 2015
Stats. Implemented: ORS 653.261, OL Ch. 457, 2015
Hist.: BL 5-1989(Temp), f. 8-18-89, cert. ef. 9-1-89, (and corrected by BL 10-1989(Temp), f. 12-4-89, cert. ef. 9-1-89); BL 1-1990, f. 2-27-90, cert. ef. 2-28-90; BL 10-1990, f. & cert. ef. 7-26-90; BL 5-1992, f. 4-24-92, cert. ef. 4-29-92; BL 6-1992(Temp), f. & cert. ef. 6-5-92; BL 14-1992, f. & cert. ef. 12-14-92; BL 9-1996, f. & cert. ef. 10-8-96; BLI 7-2003, f. 12-31-03, cert. ef. 1-1-04; BLI 15-2010, f. 5-25-10, cert. ef. 6-1-10; BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

839-020-1010
Violations for Which a Civil Penalty May Be Assessed

(1) The commissioner may assess a civil penalty for any of the following willful violations:

(a) Failure to pay the applicable minimum wage for all hours worked in violation of ORS 653.025 and OAR 839-020-0010.

(b) Failure to pay overtime for all hours worked over forty (40) in a week in violation of OAR 839-020-0030 or, for domestic workers, failure to pay overtime in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0030.

(c) Payment to persons with mental or physical disabilities less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and OAR 839-020-0015;

(d) Payment to student-learners less than a fixed minimum hourly wage rate which has been approved by the commissioner in violation of ORS 653.030 and 839-020-0015;

(e) Failure to make required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, 839-020-0080, and 839-020-0082;

(f) Failure to keep available required payroll and other records in violation of ORS 653.045, OAR 839-020-0050, 839-020-0080, 839-020-0082, and 839-020-0083;

(g) Failure to supply each of the employer's employees with itemized statements of amounts and purposes of deductions in the manner provided in ORS 652.610 in violation of 653.045, OAR 839-020-0012 and 839-020-0080;

(h) Failure to keep summaries of ORS 653.010 to 653.261 and rules promulgated thereto by the commissioner posted in a conspicuous and accessible place in or about the premises where such employees are employed in violation of ORS 653.050;

(i) Discharging or discriminating in any other manner against any employee in violation of ORS 653.060:

(A) Because the employee has made complaint that the employee has not been paid wages in accordance with ORS 653.010 to 653.261;

(B) Because the employee has caused to be instituted or is about to cause to be instituted any proceedings under or relating to ORS 653.010 to 653.261; or

(C) Because the employee has testified or is about to testify in any such proceedings.

(j) Failure to provide to each employee appropriate meal periods in violation of OAR 839-020-0050;

(k) Coercing an employee into waiving a meal period in violation of ORS 653.261(5)(b);

(l) Failure to provide to each employee appropriate rest periods in violation of OAR 839-020-0050;

(m) Intentional failure to provide a reasonable rest period to accommodate an employee who needs to express breast milk in violation of ORS 653.077 and OAR 839-020-0051;

(n) Requiring any employee to lift excessive weights in violation of OAR 839-020-0060; [or]

(o) Employing any employee to work under any conditions in violation of OAR 839-020-0065[.];

(p) Failure to provide a domestic worker who resides in the home of the employer with an uninterrupted rest period of at least eight consecutive hours within each 24-hour period in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0042(4);

(q) Failure to provide a domestic worker with a rest period of at least 24 consecutive hours in each work week in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(1);

(r) Failure to provide a domestic worker not less than three paid personal days off in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(2); or,

(s) Failure to pay a domestic worker for personal days off in violation of OL Ch. 457, sec. 1, 2015 and OAR 839-020-0052(2).

(2) Except as provided in ORS 653.261(5)(c), the civil penalty for any one violation will not exceed $1000. The actual amount of the civil penalty will depend on all the facts and circumstances referred to in OAR 839-020-1020.

(3) The civil penalties set out in this rule will be in addition to any other penalty assessed or imposed by law or rule.

Stat. Auth.: ORS 651.060(4) & 653.040
Stats. Implemented: ORS 653, OL Ch. 457, 2015
Hist.: BL 9-1997, f. & cert. ef. 11-13-97; BLI 1-2002, f. & cert. ef. 1-9-02; BLI 15-2002, f. 10-17-02, cert. ef. 10-18-02; BLI 41-2007, f. 12-28-07, cert. ef. 1-1-08; BLI 8-2013, f. 12-18-13, cert. ef. 1-1-14; BLI 19-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: Amends rules relating to insurance benefits and OFLA leave.
Adm. Order No.: BLI 20-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 839-009-0270
Subject: Makes changes to 839-009-0270 relating to job protection under the Oregon Family Leave Act, Under OL Ch. 323, 2015 and these rules an employer is prohibited from canceling and employee's insurance while the employee was out on OFLA protected leave.
Rules Coordinator: Marcia Ohlemiller—(971) 673-0784

839-009-0270
Job Protection

(1) An employer must restore an employee returning from OFLA leave, including intermittent and alternative duty leave, to the employee's former position if the job still exists, even if it has been filled during the employee's OFLA leave. The former position is the position held by the employee at the time OFLA leave began, regardless of whether the job has been renamed or reclassified. (For example, a delivery driver must be returned to the same route, at the same rate of pay and benefits, driving the same truck, delivering the same goods, on the same shift and working from the same location as when the driver started OFLA leave.)

(2) Any worker hired during an eligible employee's leave to perform the same work that the eligible employee performed before the leave was taken is a replacement worker. When the eligible employee notifies the employer that the employee is ready to return to work, the employer must give that employee the opportunity to work any hours that the replacement worker would otherwise have been scheduled to work.

(3) The employee is not entitled to return to the former position if the employee would have been bumped if OFLA leave had not been taken.

(4) If the position held by the employee at the time OFLA leave began has in fact been eliminated and not merely renamed or reclassified, the employer must restore the employee to any available, equivalent position.

(a) An available position is a position that is vacant or not permanently filled.

(b) An equivalent position is a position that is the same as the former position in as many aspects as possible. If an equivalent position is not available at the employee's former job site, the employee may be restored to an equivalent position within 20 miles of the former job site.

(5) Unless the terms of a collective bargaining agreement, other agreement or the employer's policy provide otherwise:

(a) An employee on OFLA leave does not accrue seniority, production bonuses or other non-health-related benefits that would accrue while the employee is working;

(b) Benefits an employee was entitled to prior to starting OFLA leave must be restored in full upon the employee's return to work. The benefits do not have to be restored, however, if such benefits have been eliminated or changed for similarly situated employees;

(c) An employee has no greater right to a job or other employment benefits than if the employee had not taken OFLA leave; and

(d) An employee is subject to layoff the same as similarly situated employees not taking OFLA leave.

(6) During any OFLA leave, an employer must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

(a) An employer continuing health or other insurance coverage for an employee on OFLA leave may require that the employee pay only the same share of health or other insurance premium during the leave that the employee paid prior to the leave.

(b) If an employee cannot or will not pay such costs, the employer may elect to discontinue benefit coverage, unless to do so would render the employer unable to restore the employee to full benefit coverage. If coverage lapses because an employee has not made required premium payments, upon the employee's return from OFLA leave the employer must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed, including family or dependent coverage. In such case, an employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage. If an employer terminates an employee's insurance in accordance with this section and fails to restore the employee's health insurance as required by this section upon the employee's return, the employer may be liable for benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result of the violation, and for appropriate equitable relief tailored to the harm suffered.

(c) If the employer pays (directly or indirectly, voluntarily or as required by state or federal statute) any part of the employee's share of health or other insurance premium while an employee is on OFLA leave, the employer may deduct up to 10 percent of the employee's gross pay each pay period after the employee returns to work until the amount is repaid.

(d) If an employee fails to return to work — unless the failure to return to work is because of a serious health condition for which the employee would be entitled to OFLA leave or another circumstance beyond the employee's control — the employer may recover the employee's share of benefits paid by the employer. The employer may use any legal means to collect the amount owed for the employee's share of benefits paid by the employer, including deducting the amount from the employee's final paycheck.

(7) An employer may require an employee to follow the employer's established leave policy regarding periodic reporting to the employer of the employee's current status. Before restoring the employee to work after taking OFLA leave for the employee's own serious health condition, the employer may require the employee to present verification from the employee's health care provider that the employee is able to resume work, provided such requirement is applied pursuant to a uniformly applied practice or policy of the employer.

(a) Pursuant to ORS 659A.168(1), the employer is responsible for any co-pay or other out-of-pocket costs incurred by the employee in providing the verification.

(b) The employer may not require the employee to obtain a second opinion.

(8)(a) If an employee gives unequivocal notice of intent not to return to work from OFLA leave:

(b) The employee is entitled to complete the approved OFLA leave, providing that the original need for OFLA leave still exists. The employee remains entitled to all the rights and protections under OFLA, including but not limited to, the use of vacation, sick leave and health benefits pursuant to OAR 839-009-0270 and 839-009-0280, except that:

(A) The employer's obligations under OFLA to restore the employee's position and to restore benefits upon the completion of leave cease, except as required by federal COBRA law, 29 USC 1161 et seq.; and

(B) The employer is not required to hold a position vacant or available for the employee who gives unequivocal notice of intent not to return.

(9) An employer may not use the provisions of this section as a subterfuge to avoid the employer's responsibilities under OFLA.

Stat. Auth.: ORS 659A.805, OL Ch. 323, 2015
Stats. Implemented: ORS 659A.150 - 659A.186, OL Ch. 323, 2015
Hist.: BL 2-1995, f. 9-8-95, cert. ef. 9-9-95; BLI 5-2000, f. & cert. ef. 2-1-00; BLI 10-2002, f. & cert. ef. 5-17-02; BLI 10-2010, f. & cert. ef. 2-24-10; BLI 16-2013, f. & cert. ef. 12-31-13; BLI 20-2015, f. 12-22-15, cert. ef. 1-1-16

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Department of Administrative Services
Chapter 125

Rule Caption: Adopts and Amends Department of Administrative Services Public Contracting Rules
Adm. Order No.: DAS 4-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 125-246-0135, 125-247-0185
Rules Amended: 125-055-0040, 125-246-0100, 125-246-0110, 125-246-0330, 125-246-0500, 125-247-0100, 125-247-0260, 125-247-0270, 125-247-0500, 125-247-0640, 125-248-0100, 125-248-0220, 125-249-0100, 125-249-0120, 125-249-0370, 125-249-0390, 125-249-0440
Subject: In 1977, the Oregon legislature passed the "Products of Disabled Individuals" act or Qualified Rehabilitation Facility (QRF) law. The QRF law obliges all state and local governments, school districts and other tax supported political bodies in Oregon, to purchase goods and services from QRFs when the product or service meets their requirements. ORS 279.845 requires the Department of Administrative Services (DAS) to make rules to carry out the purposes of the QRF law, ORS 279.835 to 279.855. The Rules interpreting these statutes were revised in 2003, and again in 2010. In 2015, the Legislature made changes to select sections of the QRF law. Now, in response to the legislative changes, DAS needs to amend the select Rule listed in this filing.

Since 2005, the Department of Administrative Services (DAS) has developed and amended rules (Rules) to put into practice the Public Contracting Code, ORS 279ABC (Code). The Rules apply to state agencies subject to DAS procurement authority (Agencies). In 2015, the Legislature made changes to select sections of the Code and to ORS 279. In addition to the legislative changes to the Code, the Department of Justice and Agencies requested select Rule changes to streamline or reduce duplications. Now, in response to the legislative changes and requests for change from stakeholders, DAS needs to amend the select Rules listed in this filing.
Rules Coordinator: Janet Chambers—(503) 378-5522

125-055-0040
General Provisions

(1) Contracting Authority. The Department and other Agencies must contract directly with a QRF for a contract to qualify for the exception from the competitive procurement requirement in ORS 279A.025 for contracts under the QRF Program. Contracts between multiple Agencies and a QRF satisfy this requirement that the Agencies must contract directly with a QRF.

(2) Contract Disputes. Contract performance issues and disputes arising out of contracts entered into under the QRF Program, such as disputes concerning timely delivery of products or performance of services or compliance with specifications, must be resolved exclusively between the QRF and the Agency that is a party to the contract, and will not be resolved by the Department (except where the Department is a party to the contract with the QRF).

(3) Temporary Services for State Agencies. In each contract for the provision of temporary services entered into by a state agency under the QRF Program, the QRF must monitor the prior and current work assignments of its employees who work under the contract to ensure that no employee performs services for the state in excess of a total of 1,040 hours in a 12-month period. A QRF temporary service provider must obtain a written statement from the employee attesting to the total hours worked as a temporary employee for any state agency during the last 12 months. A state agency filling behind an employee on approved leave may continue beyond 1,040 hours in a 12-month period only when the temporary employee replaces a single employee on approved leave. The temporary appointment may not exceed the period of the approved leave.

(4) Competitive Public Contract Bidding by a QRF. If a QRF submits, to any Agency, a competitive bid, proposal, quote or other offer in a competitive procurement for a public contract that is not subject to ORS 279.850(1)(c), then regardless of whether the offer was accepted, that QRF may not, at any time during the initial term of the contract for which the QRF submitted a competitive offer, make any claim to the Agency that instituted the procurement for the contract that the product or service that was the subject of the offer should have been subject to the requirements of the QRF Program.

(5) An Agency may conduct a competitive procurement for a product or service between or among two or more QRFs under ORS 279.850(1)(c). In the procurement, the Agency may give a preference to a QRF that best demonstrates that the QRF:

(a) Complies with all applicable local ordinances and resolutions that govern labor standards; and

(b) Provides wages, health care benefits, alternative dispute resolution services, and pension or other retirement arrangements that are better, in the aggregate, than the average wages, health care benefits, alternative dispute resolution services, and pension or other retirement arrangements that private employers provide to employees performing the same or similar job duties in the relevant industry in the county in which the selected QRF will deliver the products or perform the services.

(c) The Agency may grant the preference authorized by ORS 279.850(1)(c) by using the factors described in subsections (a) and (b) of this section as criteria for which the Agency may award comparative evaluation points, percentages, or values in conducting the substantial equivalent of a request-for-proposals competition.

(d) In no event, however, may the amount or percentage preference given to a QRF proposer exceed 15 percent of the maximum number or percentage of evaluation points or values the Agency prescribes in the Agency's solicitation of offers in the competition.

(6) When an Agency terminates a QRF contract for services (as defined in OAR 125-246-0110) and enters into a new contract with a successor QRF to replace or substantially replace the terminated contract, the Agency must provide in the new contract that the successor QRF must, throughout a period that ends no fewer than 90 days after the effective date of the new contract, offer employment to those individuals with disabilities who were working under the terminated contract at the time of termination. The new contract must require the offer of employment:

(a) At wages at least as favorable as those afforded the individuals with disabilities under the terminated services contract; and

(b) For individuals with disabilities who work 28 hours per week or more, with health benefits at least as favorable as those afforded the individuals with disabilities under the terminated services contract.

(c) The successor QRF must offer employment to the individuals with disabilities who worked under the terminated services contract in good faith and without subterfuge or artificial impediments that obstruct the hiring of the individuals. However, the successor QRF may subject those individuals to its established hiring procedures and may require the individuals to complete a probationary period to demonstrate that they meet the qualifications the successor QRF applies even handedly to new hires.

(d) This section does not apply to a contract to replace a QRF contract that an Agency did not terminate, but which expired or otherwise ceased to be effective in accordance with its terms.

(7) An Agency may, under ORS 279.850(2)(b), disqualify a QRF from entering into a QRF agreement with the Agency after providing the QRF notice and a reasonable opportunity to be heard in accordance with subsections (a) and (b) of this section.

(a) The Agency must provide the QRF written notice of a proposed disqualification. The Agency shall deliver the notice by personal service or by registered or certified mail, return receipt requested. The notice must:

(A) State that the Agency intends to disqualify or suspend the QRF under ORS 279.850;

(B) State the reasons for the proposed disqualification;

(C) Include a statement of the QRF's right to a hearing if requested in writing within the time stated in the notice and that if the Agency does not receive the QRF's written request for a hearing within the time stated, the QRF will have waived its right to a hearing;

(D) Include a statement of the authority under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes, rules, and contract provisions involved;

(F) State the proposed disqualification period; and

(G) State that the QRF may be represented by legal counsel.

(b) Hearing. The Agency shall schedule a hearing in response to the Agency's receipt of the QRF's timely hearing request. Within a reasonable time prior to the hearing, the Agency must notify the QRF of the time and place of the hearing and provide information on the procedures, right of representation, and other rights related to the conduct of the hearing.

(c) Notice of Decision. The Agency must provide written notice of the disqualification determination to the QRF. The Agency shall deliver the notice by personal service or by registered or certified mail, return receipt requested. The notice must contain:

(A) The effective date and period of the disqualification;

(B) The grounds for the disqualification; and

(C) A statement of any QRF appeal rights and applicable appeal deadlines.

(8) For the purposes of ORS 279.850, a record of "repeatedly violating" local ordinances or resolutions that govern labor standards means reliable documentation, supported by substantial evidence, that the QRF violated applicable ordinances or resolutions more than two times within the requisite period. The requisite period under this section either is: (i) within the then-current term of the QRF's agreement with Agency; or (ii) within the previous three years.

(9) For the purposes of ORS 279.850, local ordinances or resolutions that govern labor standards means ordinances or resolutions, duly adopted by a local government body (as defined in ORS 174.116), that regulate employee working conditions. Working conditions consist of employee:

(a) Wage rates or salaries;

(b) Hours of labor, work days, leave, and workplace safety conditions;

(c) Health insurance or health care benefits;

(d) Retirement or pension benefits; and

(e) Dispute resolution procedures.

(10) A QRF must not enter into a public contract with an Agency under the QRF Program unless the contract complies with OAR 125-055-0005 to 125-055-0040 and the products or services that are the subject of the contract are listed on the Procurement List. Any liabilities or expenses that may arise from the establishment of a contract that violates this subsection will be those exclusively of the QRF and Agency.

(11) The Department reserves the right to extend any deadline or time within which a QRF or a party to any proceedings under OAR 125-055-0015 to 125-055-0040 must take any action under those rules if the affected party applies in writing for relief to the Department and demonstrates in writing that special circumstances warrant the grant of such relief. For the purpose of this subsection, special circumstances that warrant the grant of relief include emergencies that reasonably can be regarded as imposing an obstacle to the QRF's or party's ability to meet the deadline or achieve the correction of a violation of rules. Special circumstances are circumstances beyond the reasonable control of the individual or organization including, but not limited to, the illness or other incapacity of key officers of the organization seeking relief, emergency reorganizations or replacements of the corporate structure, board of directors or executive officers of the organization, acts of God and comparable practical impediments to an individual's or organization's ability to meet a deadline or achieve the correction of a violation of rules. The grant or denial of relief under this subsection must be determined by the Department official specifically delegated that task. The Department also reserves the right to waive or to permit the correction of minor or technical violations of OAR 125-055-0015 to 125-055-0040.

Stat. Auth.: ORS 279.845(1) & 184.340
Stats. Implemented: ORS 279A.025(4) & 279.835 - 279.855
Hist.: DAS 4-2003, f. & cert. ef. 9-8-03; DAS 6-2004(Temp), f. & cert. ef. 12-28-04 thru 6-24-05; DAS 8-2005, f. & cert. ef. 6-21-05; DAS 3-2010, f. & cert. ef. 10-8-10; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-246-0100
Application; Commentary; Federal Law Prevails

(1) These Rules of the Department of Administrative Services (Department) are policy and procedure for the Public Contracting of Agencies subject to these Rules and all state agencies that are subject to the

DAS rules adopted under ORS 279A.140(2)(h) to regulate personal services contracts (see OAR 125-246-0335 through 125-246-0353). According to ORS 279A.065(5), the Department adopts these Rules, including but not limited to selected and adapted Public Contract Model Rules. Except for those Public Contract Model Rules expressly adopted by the Department in OAR 125-246-0100, 125-247-0100, 125-248-0100 and 125-249-0100, the Public Contract Model Rules adopted by the Attorney General do not apply to the Department or the Agencies. These Department Public Contracting Rules implement the Oregon Public Contracting Code and consist of the following four Divisions:

(a) Division 246, which applies to all Public Contracting;

(b) Division 247, which applies only to Public Contracting for Supplies and Services, and not to construction services or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services;

(c) Division 248, which applies only to Public Contracting for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and

(d) Division 249, which applies only to Public Contracting for construction services.

(2) If a conflict arises between these Division 246 Rules and Rules in Division 247, 248 or 249, the Rules in Divisions 247, 248 or 249 take precedence over these Division 246 Rules.

(3) Commentary on these Rules may be published by the Department to assist the Agencies by providing: examples, options, references, background, and other commentary. The Department's commentary is not a Rule or interpretation of any Rule and has no legally-binding effect.

(4) Federal statutes and regulations prevail and govern, except as otherwise expressly provided in ORS 279C.800 through 279C.870 (Prevailing Wage Rate) and despite other provisions of the Public Contracting Code, under the following conditions:

(a) Federal funds are involved; and

(b) The federal statutes or regulations either:

(A) Conflict with any provision of ORS Chapters 279A, 279B, or 279C.005 through 279C.670; or

(B) Require additional conditions in Public Contracts not authorized by ORS Chapters 279A, 279B, or ORS 279C.005 through 279C.670.

(5) Adaptation of Model Rules for Agency Use. The following words found in those Model Rules expressly adopted by the Department are replaced by the words as defined in OAR 125-246-0110:

(a) "Contracting agency(ies)" is replaced by "Authorized Agency(ies)."

(b) "Goods or services" is replaced by "Supplies and Services."

(c) "Agreements to agree" and "price agreement" are replaced by "Price Agreement."

(6) Capitalization of Defined Terms. Uncapitalized terms in those Model Rules expressly adopted by the Department have the same meaning as the same terms that are capitalized and defined in OAR 125-246-0110.

(7) Department Policy. Agencies must comply with Department policies, if applicable.

(8) For purposes of these Division 246 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016: OAR 137-046-(0130 to 0199) [to align with DOJ Model Rule number, not yet determined], 137-046-0300, 137-046-0330, 137-046-0400, 137-046-0410, 137-046-0420, 137-046-0430, 137-046-0440, 137-046-0450, 137-046-0460, 137-046-0470, 137-046-0480.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.020, 279A.030 & 279A.065

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 4-2005, f. 4-13-05, cert. ef. 6-6-05; DAS 7-2005, f. & cert. ef. 6-6-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-246-0110
Definitions

The following terms are a compilation of definitions, including those found in the Public Contracting Code, in other statutes referenced by the Public Contracting Code, and elsewhere in these Rules. Partial definitions of the Public Contracting Code are for the use of the Agencies only. The following terms, when capitalized in these Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Adequate" is defined in ORS 279C.305 and means sufficient to control the performance of the Work and to ensure satisfactory quality of construction by the contracting agency personnel.

(3) "Advantageous" means a judgmental assessment by the Agency of the Agency's best interests.

(4) An "Administrator" or "Administering Contracting Agency" is defined in OAR 125-246-0400.

(5) "Affected Person" or "Affected Offeror" means a Person whose ability to participate in a Procurement is adversely affected by an Agency decision.

(6) "Affirmative Action" is defined in ORS 279A.100 and means a program designed to ensure equal opportunity in employment and business for persons otherwise disadvantaged by reason of race, color, religion, sex, national origin, age or physical or mental disability.

(7) "Agency" means those agencies of the State of Oregon that are subject to the procurement authority of the Director of the Department according to ORS 279A.050 and 279A.140. This term includes the Department when the Department is engaged in Public Contracting. Under these Rules, an Agency is authorized only through a delegation of authority according to OAR 125-246-0170.

(8) "Agreement to Agree" means a Price Agreement as defined in Subsection (109).

(9) "Amendment" means a Written modification to the terms and conditions of a Public Contract, other than Changes to the Work as defined in OAR 125-249-0910, that meets the requirements of 125-247-0805, 125-248-0340, 125-249-0160, and 125-249-0910. For the purposes of these Rules, Amendments are included within the definitions of "Procurements" and "Contract Administration."

(10) "Architect" is defined in ORS 279C.100 and means a person who is registered and holds a valid certificate in the practice of architecture in the State of Oregon, as provided under ORS 671.010 to 671.220, and includes without limitation the terms "architect," "licensed architect" and "registered architect.

(11) "Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services" is defined in ORS 279C.100(2).

(12) "As-Is, Where-Is" applies to the sale of Goods and means that the Goods are of the kind, quality, and locale represented, even though they may be in a damaged condition. It implies that the buyer takes the entire risk as to the quality of the Goods involved, based upon the buyer's own inspection. Implied and express warranties are excluded in sales of Goods "As-Is, Where-Is."

(13) "Authorized Agency" means any Person authorized according to OAR 125-246-0170 to conduct a Procurement or take other actions on an Agency's behalf. This term, including its use in the Rules, does not convey authority to an Agency. For the authority of Agencies under the Code and these Rules, see OAR 125-246-0170 only.

(14) "Award" means the Agency's identification of the Person(s) with whom the Agency intends to enter into a Contract.

(15) "Bid" means a Written response to an Invitation to Bid.

(16) "Bidder" means a Person who submits a Bid in response to an Invitation to Bid.

(17) "Brand Name or Equal Specification" is defined in ORS 279B.200(1) and means a Specification that uses one or more manufacturers' names, makes, catalog numbers or similar identifying characteristics to describe the standard of quality, performance, functionality or other characteristics needed to meet the Agency's requirements and that authorizes Offerors to offer Supplies and Services that are equivalent or superior to those named or described in the Specification.

(18) "Brand Name Specification" is defined in ORS 279B.200(2) and means a Specification limited to one or more products, brand names, makes, manufacturer's names, catalog numbers or similar identifying characteristics.

(19) "Business Day" means 8:00 a.m. to 5:00 p.m., Pacific time, Monday through Friday, excluding State of Oregon holidays.

(20) " Certification Office for Business Inclusion and Diversity (COBID), formerly the Office of Minority, Women, and Emerging Small Business" or "OMWESB" is defined in ORS 200.025 and 200.055 and means the office that administers the certification process for the Disadvantaged Business Enterprise (DBE), Minority Business Enterprise/Women Business Enterprise (MBE/WBE), and Emerging Small Business (ESB) Programs. Certification Office for Business Inclusion and Diversity (COBID), formerly OMWESB, is the sole authority providing certification in Oregon for disadvantaged, minority, and woman-owned businesses, and emerging small businesses.

(21) "Chief Procurement Officer" means the individual designated and authorized by the Director of the Department to perform certain procurement functions described in these Rules, or the Chief Procurement Officer's delegate.

(22) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Goods or Services.

(23) "Client" means any individual, family or Provider:

(a) For whom an Agency must provide Services and incidental or specialized Goods, in any combination thereof ("Services and Incidental Supplies"), according to state, federal law, rule, and policy. Those Services and Incidental Supplies include but are not limited to treatment, care, protection, and support without regard to the proximity of the services being provided;

(b) Who in fact receives and utilizes services provided by an Agency primarily for that individual's or family's benefit;

(c) Who is under the custody, care, or both of the Agency; or

(d) Who provides direct care or Services and is a proxy or representative of the non-Provider Client.

(24) "Client Services" means any Services that directly or primarily support a Client, whether the Client is the recipient through the provision of voluntary or mandatory Services. Client Services also means any Goods that are incidental or specialized in relation to any Services defined in this Subsection. Client Services may include but are not limited to (where these terms are used in another statute, they must have that meaning):

(a) Housing, including utilities, rent or mortgage or assistance to pay rent, mortgage or utilities;

(b) Sustenance, including clothing;

(c) Employment training or Skills training to improve employability;

(d) Services for people with disabilities;

(e) Foster care or foster care facilities;

(f) Residential care or residential care facilities;

(g) Community housing;

(h) In-home care including home delivered meals;

(i) Medical care, services and treatment, including but not limited to:

(A) Medical, Dental, Hospital, Psychological, Psychiatric, Therapy, Vision;

(B) Alcohol and drug treatment;

(C) Smoking cessation;

(D) Drugs, prescriptions and non-prescription;

(E) Nursing services and facilities;

(j) Transportation or relocation;

(k) Quality of life, living skills training; or

(l) Personal care; or

(m) Legal services and expert witnesses services;

(n) Religious practices, traditions and services, separately or in any combination thereof; and

(o) Educational services.

The term "Client Services" does not include benefits or services provided as a condition of employment with an Agency.

(25) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(26) "Code" is the "Public Contracting Code," defined in ORS 279A.010(1)(bb), and "Code" means ORS Chapters 279A, 279B and 279C.

(27) "Competitive Quotes" means the sourcing method according to OAR 125-249-0160.

(28) "Competitive Range" means the Proposers with whom the Agency will conduct Discussions or Negotiations if the Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-247-0260 or 125-249-0650.

(29) "Competitive Sealed Bidding" means the sourcing method according to ORS 279B.055.

(30) "Competitive Sealed Proposals" means the sourcing method according to ORS 279B.060.

(31) "Consultant" means the Person with whom an Agency enters into a Contract for the purposes of consulting, conferring, or deliberating on one or more subjects, and this Person provides advice or opinion; e.g., Consultants for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services as defined in ORS 279C.115 and information technology Consultants.

(32) "Contract" means an agreement between two or more Persons which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. For the purposes of these Rules, "Contract" means Public Contract.

(33) "Contract Administration" means all functions related to a given Contract, including Amendments, between an Agency and a Contractor from:

(a) The time the Contract is signed by all parties until;

(b) The Work is completed and accepted or the Contract is terminated, final payment has been made, and any disputes have been resolved.

(34) "Contract Administrator" means the officer, employee, or other individual designated in Writing by an Authorized Agency, by name or position description, to conduct the Contract Administration of a Contract or class of Contracts.

(35) "Contractor" means the Person with whom an Agency enters into a Contract and has the same meaning as "Consultant" or "Provider."

(36) "Contract Price" means, as the context requires, the maximum monetary obligation that an Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(37) "Contract Review Authority" means the Director of the Department and the Director's delegatee, unless specified by statute as the Director of the Oregon Department of Transportation.

(38) "Contract-Specific Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related Contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(39) "Contracting Agency."

(a) "Contracting Agency" is defined in ORS 279A.010(1)(b) and, for Agencies operating under these Rules and the Code, means the Director of the Oregon Department of Administrative Services, authorized to act on their behalf according to ORS 279A.140.

(b) The definition of "Contracting Agency" in ORS 279A.010(1)(b) does not give Agencies procurement authority. For procurement authority of Agencies, see OAR 125-246-0170.

(40) "Cooperative Procurement" is defined in OAR 125-246-0400.

(41) "Cooperative Procurement Group" is defined in OAR 125-246-0400.

(42) "Days" means calendar days.

(43) "Department" means the Oregon Department of Administrative Services. The procurement authority of the Department is described in OAR 125-246-0170. When a Rule refers to any action of the Department, any individual acting on behalf of the Department must be authorized to take such action in accordance with OAR 125-246-0170.

(44) "Department Price Agreement" means a Price Agreement issued by the Department on behalf of all Agencies. Such Agreements may be mandatory for use by Agencies or voluntary for use by Agencies. Such Agreements may result from a Cooperative Procurement. According to OAR 125-246-0360 (Purchases through Federal Programs), an Authorized Agency may not purchase Supplies and Services through Federal Programs if a mandatory Department Price Agreement for those authorized Supplies and Services exists.

(45) "Designated Procurement Officer" means the individual designated and authorized by the head of an Authorized Agency to perform certain Procurement functions described in these Rules. If any head of an Authorized Agency does not designate and authorize an individual as a Designated Procurement Officer, "Designated Procurement Officer" also means that head of the Authorized Agency, who then acts in the place of the Designated Procurement Officer.

(46) "Descriptive Literature" means Written information submitted with the Offer that addresses the Supplies and Services included in the Offer.

(47) "Director" is defined in ORS 279A.010(1)(e) and means the Director of the Department or a person designated by the Director to carry out the authority of the Director under the Public Contracting Code and these Rules.

(48) "Discussions" means to exchange information, compare views, take counsel, and communicate with another for the purposes of achieving clarification and mutual understanding of an Offer.

(49) "Disqualification" means a disqualification, suspension or debarment of a Person according to ORS 200.065, 200.075, and 279A.110 and OAR 125-246-0210(4).

(50) "Donee" is defined in ORS 279A.250(1) and means an entity eligible to acquire federal donation property based upon federal regulations or eligible to acquire Surplus Property in accordance with rules adopted by the

Department. Entities eligible to acquire federal donation property may also acquire Surplus Property other than federal donation property.

(51) "Electronic Advertisement" means an Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Agency's Procurements made available over the Internet via:

(a) The World Wide Web;

(b) ORPIN; or

(c) An Electronic Procurement System other than ORPIN approved by the Chief Procurement Officer. An Electronic Advertisement may or may not include a Solicitation Document.

(52) "Electronic Offer" means a response to an Agency's Solicitation Document or request for Quotes submitted to an Agency via

(a) The World Wide Web or some other Internet protocol; or

(b) ORPIN.

(53) "Electronic Procurement System" means ORPIN or other system approved by the Chief Procurement Officer, constituting an information system that Persons may access through the Internet, using the World Wide Web or some other Internet protocol, or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and an Agency to post Electronic Advertisements, receive Electronic Offers, and conduct any activities related to a Procurement.

(54) "Electronic Goods" means Goods which are dependent on electric currents or electromagnetic fields in order to Work properly and Goods for the generation, transfer and measurement of such currents and fields.

(55) "Emergency" means circumstances that:

(a) Could not have been reasonably foreseen;

(b) Create a substantial risk of loss, damage or interruption of services or a substantial threat to property, public health, welfare or safety; and

(c) Require prompt execution of a Contract to remedy the condition. An "Emergency Procurement" means a sourcing method according to ORS 279B.080, 279C.335(5), 125-248-0200, or related Rules.

(56) "Energy Savings Performance Contract" means a Public Contract between an Agency and a qualified energy service company for the identification, evaluation, recommendation, design and construction of energy conservation measures, including a design-build contract, that guarantee energy savings or performance.

(57) "Engineer" is defined in ORS 279C.100 and means a Person who is registered and holds a valid certificate in the practice of engineering in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(2).

(58) "Enterprise Information Technology and Telecommunications" is defined in ORS (Chapter 807, 2015 Laws) and means:

(a) Technologies, resources, systems and services that state agencies use to generate, process, store and secure information for governmental purposes, including geographic information;

(b) Technologies, resources, systems and services that state agencies use to send, receive, process or otherwise facilitate telecommunications for governmental purposes; and

(c) Technologies, resources, systems and services that state agencies use to install, maintain, repair, update, replace, remove or otherwise support the technologies, resources, systems or services described in paragraphs (a) and (b) of this subsection.

(59) "Established Catalog Price" means the price included in a catalog, price list, schedule or other form that:

(a) Is regularly maintained by a manufacturer or Contractor;

(b) Is either published or otherwise available for inspection by customers; and

(c) States prices at which sales are currently or were last made to a significant number of any category of buyers or to buyers constituting the general market, including public bodies, for the Supplies and Services involved.

(60) "Executive Department" is defined in ORS 174.112.

(a) Subject to ORS 174.108, "Executive Department" means: all statewide elected officers other than judges, and all boards, commissions, departments, divisions and other entities, without regard to the designation given to those entities, that are within the Executive Department of government as described in Section 1, Article III of the Oregon Constitution, and that are not:

(A) In the judicial department or the legislative department;

(B) Local governments; or

(C) Special government bodies.

(b) Subject to ORS 174.108, as used in the statutes of this State, "Executive Department" includes:

(A) An entity created by statute for the purpose of giving advice only to the Executive Department and that does not have members who are officers or employees of the judicial department or Legislative Department;

(B) An entity created by the Executive Department for the purpose of giving advice to the Executive Department, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by the Executive Department other than an entity described in Subsection (B), unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Executive Department.

(61) "Findings" is defined in ORS 279C.330 and means the justification for an Agency's conclusion that includes, but is not limited to, information regarding:

(a) Operational, budget and financial data;

(b) Public benefits;

(c) Value engineering;

(d) Specialized expertise required;

(e) Public safety;

(f) Market conditions;

(g) Technical complexity; and

(h) Funding sources.

(62) "Fire Protection Equipment" is defined in ORS 476.005 and means any apparatus, machinery or appliance intended for use by a fire service unit in fire prevention or suppression activities, excepting forest fire protection equipment.

(63) "Flagger" means a person who controls the movement of vehicular traffic through construction projects using sign, hand or flag signals.

(64) "Formal Selection Procedure" means the procedure according to OAR 125-248-0220.

(65) "Fringe Benefits" is defined in ORS 279C.800 and means the amount of:

(a) The rate of contribution irrevocably made by a Contractor or subcontractor to a trustee or to a third person under a plan, fund or program; and

(b) The rate of costs to the Contractor or subcontractor that may be reasonably anticipated in providing benefits to Workers according to an enforceable commitment to carry out a financially responsible plan or program that is committed in Writing to the Workers affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs or for other bona fide fringe benefits, but only when the Contractor or subcontractor is not required by other federal, state or local law to provide any of these benefits.

(66) "Good Cause" is defined in ORS 279C.585, and the Oregon Construction Contractors Board must define "Good Cause" by rule. "Good Cause" includes, but is not limited to, the financial instability of a subcontractor. The definition of "Good Cause" must reflect the least-cost policy for Public Improvements established in ORS 279C.305. This definition does not apply to OAR 125-247-0255 and 125-247-0260.

(67) "Good Faith Dispute" is defined in ORS 279C.580(5)(b) and means a documented dispute concerning:

(a) Unsatisfactory job progress;

(b) Defective work not remedied;

(c) Third-party claims filed or reasonable evidence that claims will be filed;

(d) Failure to make timely payments for labor, equipment and materials;

(e) Damage to the prime Contractor or subcontractor; or

(f) Reasonable evidence that the subcontract cannot be completed for the unpaid balance of the subcontract sum.

(68) "Goods" means supplies, equipment, or materials, and any personal property, including any tangible, intangible and intellectual property and rights and licenses in relation thereto, that an Agency is authorized by law to procure.

(69) "Goods and Services" or "Goods or Services" is defined in ORS 279A.010 and for purposes of these Rules falls within the meaning of "Supplies and Services" (see the definition of "Supplies and Services" in this Rule). "Goods and Services" or "Goods or Services" does not include Personal Services. "Supplies and Services" includes Personal Services.

(70) "Governor's Policy Advisor for Economic and Business Equity, formerly the Advocate for Minority, Women and Emerging Small Business", (also known as the Director of Economic & Business Equity),

means the individual appointed by the Governor to advise the Governor, Legislature and Director's Office on issues related to the integration of minority, women and emerging small business into the mainstream of the Oregon economy and business sector. The Governor's Policy Advisor for Economic and Business Equity, formerly the Advocate oversees the resolution of business concerns with Agencies impacting certified disadvantaged, minority, women and emerging small businesses (DMWESB). The Governor's Policy Advisor for Economic and Business Equity, formerly the Advocate is also charged with maintaining the Oregon Opportunity Register and Clearinghouse to facilitate the timely notice of business and contract opportunities to DMWESB firms certified by the Certification Office for Business Inclusion and Diversity (COBID), formerly the Office of Minority, Women and Emerging Small Businesses, (also known as the Office of Economic & Business Equity), according to ORS 200.025.

(71) "Grant" is defined in ORS 279A.010(1)(k)(A) and means:

(a) An agreement under which an Agency receives money, property or other assistance, including but not limited to federal assistance that is characterized as a Grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, from a grantor for the purpose of supporting or stimulating a program or activity of the Agency and in which no substantial involvement by the grantor is anticipated in the program or activity other than involvement associated with monitoring compliance with the Grant conditions; or

(b) An agreement under which an Agency provides money, property or other assistance, including but not limited to federal assistance that is characterized as a grant by federal law or regulations, loans, loan guarantees, credit enhancements, gifts, bequests, commodities or other assets, to a recipient for the purpose of supporting or stimulating a program or activity of the recipient and in which no substantial involvement by the Agency is anticipated in the program or activity other than involvement associated with monitoring compliance with the grant conditions.

(c) "Grant" does not include a Public Contract:

(A) For a Public Improvement for Public Works, as defined in ORS 279C.800; or

(B) For emergency Work, minor alterations or ordinary repair or maintenance necessary to preserve a Public Improvement, when under the Public Contract:

(i) An Agency pays moneys that the Agency has received under a Grant; and

(ii) Such payment is made in consideration for Contract performance intended to realize or to support the realization of the purposes for which Grant funds were provided to the Agency.

(72) "Industrial Oil" means any compressor, turbine or bearing oil, hydraulic oil, metal-working oil or refrigeration oil.

(73) "Informal Selection" means the procedure according to OAR 125-248-0210.

(74) Information Technology (IT) means:

(a) Any equipment or interconnected system or subsystem of equipment used in the acquisition, storage, manipulation, management, movement, control, security, display, switching, interchange, transmission, communication, or reception of data or information electronically;

(b) Any development, implementation, and maintenance of computer equipment, ancillary equipment, software, firmware, and related procedures and services, including support services, consulting services, software development and related resources; or

(c) Any computer programs, routines, or subroutines, including operating software, programming aids, application programs, and software products.

(75) "Intermediate Procurement" means a sourcing method according to ORS 279B.070 or OAR 125-249-0160.

(76) "Interstate Cooperative Procurement" is defined in OAR 125-246-0400.

(77) "Invitation to Bid" or "ITB" is defined in ORS 279B.005 and 279C.400 and means all documents, whether attached or incorporated by reference, used for soliciting Bids in accordance with ORS 279B.055, 279B.070 or 279C.335.

(78) "Joint Cooperative Procurement" is defined in OAR 125-246-0400.

(79) "Judicial Department" is defined in ORS 174.113 and means the Supreme Court, the Court of Appeals, the Oregon Tax Court, the circuit courts and all administrative divisions of those courts, whether denominated as boards, commissions, committees or departments or by any other designation. The Judicial Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Judicial Department and that does not have members who are officers or employees of the Executive Department or Legislative Department;

(b) An entity created by the Judicial Department for the purpose of giving advice to the judicial department, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Judicial Department other than an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Judicial Department.

(80) "Labor Dispute" is defined in ORS 662.010 and includes any controversy concerning terms or conditions of employment, or concerning the association or representation of Persons in negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(81) "Land Surveyor" is defined in ORS 279C.100(4) and means a Person who is registered and holds a valid certificate in the practice of land surveying in the State of Oregon, as provided under ORS 672.002 to 672.325, and includes all terms listed in ORS 672.002(5).

(82) "Legally Flawed" is defined in ORS 279B.405(1)(b) and means that a Solicitation Document contains terms or conditions that are contrary to law.

(83) "Legislative Department" is defined in ORS 174.114 and, subject to ORS 174.108, means the Legislative Assembly, the committees of the Legislative Assembly and all administrative divisions of the Legislative Assembly and its committees, whether denominated as boards, commissions or departments or by any other designation. The Legislative Department includes:

(a) An entity created by statute for the purpose of giving advice only to the Legislative Department and that does not have members who are officers or employees of the executive department or judicial department;

(b) An entity created by the Legislative Department for the purpose of giving advice to the legislative department, but that is not created by statute, if the document creating the entity indicates that the entity is a public body; and

(c) Any entity created by the Legislative Department by a document other than a statute and that is not an entity described in paragraph (b) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Legislative Department.

(84) "Locality" is defined in ORS 279C.800(3) and means the following district in which the Public Works, or the major portion thereof, is to be performed:

(a) District 1, composed of Clatsop, Columbia and Tillamook Counties;

(b) District 2, composed of Clackamas, Multnomah and Washington Counties;

(c) District 3, composed of Marion, Polk and Yamhill Counties;

(d) District 4, composed of Benton, Lincoln and Linn Counties;

(e) District 5, composed of Lane County;

(f) District 6, composed of Douglas County;

(g) District 7, composed of Coos and Curry Counties;

(h) District 8, composed of Jackson and Josephine Counties;

(i) District 9, composed of Hood River, Sherman and Wasco Counties;

(j) District 10, composed of Crook, Deschutes and Jefferson Counties;

(k) District 11, composed of Klamath and Lake Counties;

(l) District 12, composed of Gilliam, Grant, Morrow, Umatilla and Wheeler Counties;

(m) District 13, composed of Baker, Union and Wallowa Counties; and

(n) District 14, composed of Harney and Malheur Counties.

(85) "Lowest Responsible Bidder" is defined in ORS 279A.010(1)(r) and means the lowest Bidder who:

(a) Has substantially complied with all prescribed Public Contracting procedures and requirements;

(b) Has met the standards of responsibility set forth in ORS 279B.110(2) or 279C.375;

(c) Has not been debarred or disqualified by the Agency under ORS 279B.130 or 279C.440; and

(d) Is not on the list created by the Oregon Construction Contractors Board under ORS 701.227, if the advertised contract is a Public Improvement Contract.

(86) "Lubricating Oil" means any oil intended for use in an internal combustion crankcase, transmission, gearbox or differential or an automobile, bus, truck, vessel, plane, train, heavy equipment or machinery powered by an internal combustion engine.

(87) "Mandatory Use Contract" means a Public Contract, Department Price Agreement, or other agreement that an Agency is required to use for the Procurement of Supplies and Services.

(88) "Multistepped" means more than one step, phase, tier, or round in a process used in Competitive Sealed Bidding or Competitive Sealed Proposals according to ORS 279B and OAR Division 247.

(89) "Negotiations" means to compare views, take counsel, and communicate with another so as to arrive at a voluntary, mutual agreement about a matter.

(90) "Nonprofit Organization" is defined in ORS 279C.810 and means an organization or group of organizations described in Section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under Section 501(a) of the Internal Revenue Code.

(91) "Nonresident Offeror" means an Offeror who is not a resident Offeror. For the meaning of residency, see the definition of "Resident Offeror."

(92) "Not-for-Profit Organization" means a Nonprofit Corporation as defined in ORS 307.130(1)(c).

(93) "OAR" means the Oregon Administrative Rules.

(94) "Offer" means a response to a Solicitation, including: a Bid, Proposal, Quote or similar response to a Solicitation.

(95) "Offeror" means a Person who submits an Offer

(96) "Offering" means a Bid, Proposal, or Quote.

(97) "OPB Certified Professional" means an individual holding an active Oregon Procurement Basic Certification, issued by the Chief Procurement Officer.

(98) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Written sealed Offers.

(99) "Ordering Instrument" or "Order" means a document used by an Authorized Agency in compliance with the Public Contracting Code, these Rules, and Department policies, for the general purpose of ordering Supplies and Services from one or more Providers.

(a) An Ordering Instrument or Order may also be known as a Purchase Order, Work Order, or other name assigned by an Agency.

(b) A Price Agreement may specify the use of Ordering Instruments.

(c) Absent a Price Agreement and subject to the Public Contracting Code, Rules, and Department policies, an Authorized Agency's appropriate use of an Ordering Instrument is an Offer to purchase Supplies and Services from one or more Providers, and a Provider's responsive and appropriate acceptance of the Offer creates a Public Contract.

(100) "Ordinary Construction Services" means those services that are not Public Improvements, are procured under ORS Chapter 279B, and are otherwise under ORS Chapter 279C, in accordance with OAR 125-249-0100(1) and 125-249-0140.

(101) "Original Contract" means the initial Contract or Price Agreement of the Department or an Authorized Agency. See OAR 125-246-0400 for the definition of "Original Contract" that the Public Contracting Code and Rules use for Cooperative Procurements only.

(102) "ORPIN" means the on-line electronic Oregon Procurement Information Network administered by the Department, as further described in OAR 125-246-0500.

(103) "ORS" means the Oregon Revised Statutes.

(104) "Participant" is defined in OAR 125-246-0400.

(105) "Permissive Cooperative Procurement" is defined in OAR 125-246-0400.

(106) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity. "Person" is also defined in ORS 279C.500 and means the State Accident Insurance Fund Corporation and the Department of Revenue. "Person" is defined in ORS 279C.815 and means any employer, labor organization or any official representative of an employee or employer association.

(107) "Personal Services" under ORS 279B means services that require specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, the services of an accountant, physician or dentist, educator, information technology professional, Consultant, broadcaster, or artist (including a photographer, filmmaker, painter, weaver or sculptor). "Personal Services" under ORS 279C includes the services of an Architect, Engineer, Photogrammetrist, Transportation Planner, Land Surveyor or Provider of Related Services as defined in ORS 279C.100, and that definition applies only to ORS 279C.100 to 279C.125, for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services.

(108) "Personal Services Contract" means a Contract or a member of a class of Contracts for Personal Services. Contracts for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services are a special class of Personal Services Contracts, defined in ORS 279C.100(5), and Providers under such Contracts are Consultants, as defined in OAR 125-248-0110(1).

(109) "Prevailing Rate of Wage" is defined in ORS 279C.800 and means the rate of hourly wage, including all fringe benefits, paid in the Locality to the majority of Workers employed on projects of similar character in the same trade or occupation, as determined by the Commissioner of the Bureau of Labor and Industries.

(110) "Price Agreement."

(a) "Price Agreement" is defined in ORS 279A.010(1)(v) and means a Public Contract for the Procurement of Supplies and Services at a set price with:

(A) No guarantee of a minimum or maximum purchase; or

(B) An initial order or minimum purchase combined with a continuing Contractor obligation to provide Supplies and Services in which the Authorized Agency does not guarantee a minimum or maximum additional purchase.

(b) The set price may exist at the outset or be determined later by an Ordering Instrument.

(c) A "Price Agreement" as a Public Contract may collectively consist of an initial agreement, together with later Ordering Instruments, if any.

(A) The initial agreement may be known as an agreement to agree, a master agreement, a Price Agreement for any Supplies and Services, a services agreement, or a retainer agreement, if such agreement meets the requirements of this Rule's definition.

(B) The Ordering Instrument may be known as a work order, purchase order, or task order, or by another name for ordering purposes and related to the initial agreement.

(111) "Procurement" means the act of purchasing, leasing, renting or otherwise acquiring or selling: Supplies and Services; Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services; and Public Improvements. Procurement includes each function and procedure undertaken or required to be undertaken by an Authorized Agency to enter into a Public Contract, administer a Public Contract and obtain the performance of a Public Contract under the Public Contracting Code and these Rules. Procurement includes Contract Administration, and Contract Administration includes Amendments.

(112) "Procurement Document" collectively means the inclusive Solicitation Document and all documents either attached or incorporated by reference, and any changes thereto, used for any of the methods according to ORS 279A.200 through 279A.220, 279B.055 through 279B.085, 279C.100 through 279C.125, or 279C.300 through 2729C.450.

(113) "Procurement File" means any of the following files maintained by an Authorized Agency: a solicitation, Contract, Amendment, Work Order, or contract administration file, separately or collectively.

(114) "Procurement Process" means the process related to these acts, functions, and procedures of Procurement.

(115) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(116) "Property" is defined in ORS 279A.250 and means personal property.

(117) "Proposal" means a Written response to a Request for Proposals.

(118) "Proposer" means a Person who submits a proposal in response to a Request for Proposals, except for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services and Related Services according to OAR 125-248-0110, whereby "Proposer" means a Consultant who submits a proposal to an Authorized Agency in response to a Request for Proposals.

(119) "Provider" means collectively or in the alternative: the supplier, Contractor or Consultant, providing Supplies and Services or Public Improvements.

(120) "Post-consumer Waste" means a finished material that would normally be disposed of as solid waste, having completed its life cycle as a

consumer item. "Post-consumer waste" does not include manufacturing waste.

(121) "Public Agency" is defined in ORS 279C.800 and means the State of Oregon or any political subdivision thereof or any county, city, district, authority, public corporation or entity and any of their instrumentalities organized and existing under law or charter.

(122) "Public Body" is defined in ORS 174.109, subject to ORS 174.108, and means state government bodies, local government bodies and special government bodies.

(123) "Public Contract" is defined in ORS 279A.010(1)(z) and means a sale or other disposal, or a purchase, lease, rental or other acquisition, by an Authorized Agency of Supplies and Services, Public Improvements, Public Works, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement. "Public Contract" does not include Grants. For the purposes of these Rules, "Public Contract" means Contract.

(124) "Public Contracting" is defined in ORS 279A.010(1)(aa) and means Procurement activities described in the Public Contracting Code relating to obtaining, modifying or administering Public Contracts or Price Agreements.

(125) "Public Contracting Code" or "Code" is defined in ORS 279A.010(1)(bb) and means 279A, 279B and 279C.

(126) "Public Improvement Contract" means a Public Contract for a Public Improvement. "Public Improvement Contract" does not include a Public Contract for emergency Work, minor alterations, or ordinary repair or maintenance necessary to preserve a Public Improvement.

(127) "Public Improvement" is defined in ORS 279A.010(1)(cc) and means a project for construction, reconstruction or major renovation on real property by or for an Authorized Agency. "Public Improvement" does not include:

(a) Projects for which no funds of an Authorized Agency are directly or indirectly used, except for participation that is incidental or related primarily to project design or inspection; or

(b) Emergency Work, minor alteration, ordinary repair or maintenance necessary to preserve a Public Improvement.

(128) "Public Works" is defined in ORS 279C.800 and includes, but is not limited to: roads, highways, buildings, structures and improvements of all types, the construction, reconstruction, major renovation or painting of which is carried on or contracted for or by any public agency, to serve the public interest, but does not include the reconstruction or renovation of privately owned property that is leased by a Public Agency.

(129) "Purchase Order" means an Ordering Instrument or Order, as defined in this Rule.

(130) "Qualifications Based Selection (QBS)" means the qualifications based selection process mandated by ORS 279C.110 for Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services Contracts.

(131) "Quote" means a verbal or Written Offer obtained through an Intermediate Procurement according to either OAR 125-247-0270 or 125-249-0160.

(132) "Recycled Material" means any material that would otherwise be a useless, unwanted or discarded material except for the fact that the material still has useful physical or chemical properties after serving a specific purpose and can, therefore, be reused or recycled.

(133) "Recycled Oil" means used oil that has been prepared for reuse as a petroleum product by refining, re-refining, reclaiming, reprocessing or other means, provided that the preparation or use is operationally safe, environmentally sound and complies with all laws and regulations.

(134) "Recycled Paper" means a paper product with not less than:

(a) Fifty percent of its fiber weight consisting of secondary waste materials; or

(b) Twenty-five percent of its fiber weight consisting of post-consumer waste.

(135) "Recycled PETE" means post-consumer polyethylene terephthalate material.

(136) "Recycled Product" means all materials, goods and supplies, not less than 50 percent of the total weight of which consists of secondary and post-consumer waste with not less than 10 percent of its total weight consisting of post-consumer waste. "Recycled Product" includes any product that could have been disposed of as solid waste, having completed its life cycle as a consumer item, but otherwise is refurbished for reuse without substantial alteration of the product's form.

(137) "Related Services" is defined in ORS 279C.100(8).

(138) "Request for Proposals" or "RFP" is defined in ORS 279B.005 and means all documents, either attached or incorporated by reference, and any Addenda thereto, used for soliciting Proposals in accordance with ORS.279B.060, 279B.070 or 279C.405 and related rules.

(139) "Request for Qualifications" or "RFQ" means a Written document issued by an Authorized Agency and describing: the Authorized Agency's circumstances; the type of service(s) or Work desired; significant evaluation factors; their relative importance; if appropriate, price; and competitive qualifications. Contractors respond in Writing to the Authorized Agency by describing their experience and qualifications. The RFQ will not result in a Contract. It establishes a list of qualified Contractors in accordance with OAR 125-247-0550, 125-248-0220 or 125-249-0645.

(140) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Supplies and Services or Public Improvements described in the request.

(141) "Resident Bidder" is defined in ORS 279A.120 and means a Bidder that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Bid, has a business address in this State, and has stated in the Bid whether the Bidder is a "Resident Bidder."

(142) "Resident Offeror" means an Offeror that has paid unemployment taxes or income taxes in this state during the 12 calendar months immediately preceding submission of the Offer, has a business address in this State, and has stated in the Offer whether the Offeror is a "resident Offeror."

(143) "Responsible" means meeting the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and not debarred or disqualified by the Authorized Agency under OAR 125-247-0575 or 125-249-0370.

(144) "Responsible Bidder" or "Responsible Proposer" is defined in ORS 279A.105 and 279B.005 and means a person who meets the standards of responsibility as described in ORS 279B.110.

(145) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 125-247-0640 or 125-249-0390(2), and who has not been debarred or disqualified by the Agency under OAR 125-247-0575 or 125-249-0370, respectively.

(146) "Responsible Proposer" or "Responsible Bidder" is defined in ORS 279B.005 and means a Person who meets the standards of responsibility described in ORS 279B.110.

(147) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(148) "Responsive Bid" or "Responsive Proposal" is defined in ORS 279B.005 and means a Bid or Proposal that substantially complies with the Invitation to Bid or Request for Proposals, respectively, and all prescribed Procurement procedures and requirements.

(149) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable Solicitation requirements.

(150) "Responsive Proposal" or "Responsive Bid" is defined in ORS 279B.005 and means a bid or proposal that substantially complies with the Invitation to Bid or Request for Proposals and all prescribed procurement procedures and requirements.

(151) "Retainage" is defined in ORS 279C.550 and means the difference between the amount earned by a Contractor on a Public Contract and the amount paid on the contract by the Authorized Agency.

(152) "Rules" means these Public Contracting Rules of the Department including Divisions 246 through 249, unless otherwise indicated.

(153) "Scope" means the extent or range of view, outlook, application, operation, or effectiveness. Scope does not include the dollar amount of the Contract.

(154) "Secondary Waste Materials" means fragments of products or finished products of a manufacturing process that has converted a virgin resource into a commodity of real economic value. "Secondary Waste Materials" includes post-consumer waste. "Secondary Waste Materials" does not include excess virgin resources of the manufacturing process. For paper, "Secondary Waste Materials" does not include fibrous waste generated during the manufacturing process such as fibers recovered from waste water or trimmings of paper machine rolls, mill broke, wood slabs, chips, sawdust or other wood residue from a manufacturing process.

(155) "Serial Negotiation" means a Negotiation that is sequential, ongoing, consecutive, alternating, or repetitive.

(156) "Services" or "services," for the purpose of these Rules only, means Trade Services, Personal Services, or any combination thereof.

(157) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached

to or logically associated with a Written document to which the Person intends to be bound.

(158) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(159) "Small Procurement" means a sourcing method according to ORS 279B.065.

(160) "Sole-Source Procurement" means a sourcing method by which an Authorized Agency awards a Contract without competition to a single source for Supplies and Services, when Written justification demonstrates no other source is available, in accordance with ORS 279B.075 and OAR 125-247-0275.

(161) "Solicitation" means:

(a) A request by an Authorized Agency for the purpose of soliciting Offers. This request may take the form of an Invitation for Bid, a Request for Proposal, a Request for Quotation, a Request for Qualifications or a similar document; or

(b) The process of notifying prospective Offerors that the Authorized Agency requests such Offers; or

(c) The Solicitation Document itself.

(162) "Solicitation Document" means an Invitation to Bid; a Request for Proposals; a Writing for a Small, Intermediate, Informal Selection, Competitive Quote, or Emergency Procurement; a Special Procurement Solicitation; or other document issued to invite Offers from prospective Contractors in accordance with ORS 279B or 279C. "Solicitation Document" includes related documents, either attached or incorporated by reference, and any changes thereto, issued by an Authorized Agency to establish an Original Contract that forms the basis for an Agency's participation in a Procurement. The following examples are not Solicitation Documents because they do not invite offers from prospective Contractors: Request for Qualifications, a prequalification of Bidders, a request for information, and a request for product prequalification.

(163) "Special Government Body" is defined in ORS 174.117 and

(a) Means any of the following:

(A) A public corporation created under a statute of this State and specifically designated as a public corporation.

(B) A school district.

(C) A public charter school established under ORS Chapter 338.

(D) An education service district.

(E) A community college district or community college service district established under ORS Chapter 341.

(F) An intergovernmental body formed by two or more public bodies.

(G) Any entity that is created by statute, ordinance or resolution that is not part of state government or local government.

(H) Any entity that is not otherwise described in this Section that is:

(i) Not part of state government or local government;

(ii) Created according to authority granted by a statute, ordinance or resolution, but not directly created by that statute, ordinance or resolution; and

(iii) Identified as a governmental entity by the statute, ordinance or resolution authorizing the creation of the entity, without regard to the specific terms used by the statute, ordinance or resolution.

(b) Subject to ORS 174.117, "Special Government Body" includes:

(A) An entity created by statute for the purpose of giving advice only to a special government body;

(B) An entity created by a Special Government Body for the purpose of giving advice to the special government body, if the document creating the entity indicates that the entity is a public body; and

(C) Any entity created by a Special Government Body described in Subsection (a) of this

Section, other than an entity described in paragraph (B) of this Subsection, unless the document creating the entity indicates that the entity is not a governmental entity or the entity is not subject to any substantial control by the Special Government Body.

(164) "Special Procurement" means a sourcing method may be a class Special Procurement, a contract-specific Special Procurement or both, unless the context requires otherwise in accordance with ORS 279B.085 and OAR 125-247-0287.

(a) "Class Special Procurement" is defined in ORS 279B.085 and means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a series of Contracts over time for the acquisition of a specified class of Supplies and Services.

(b) "Contract-specific Special Procurement" means a contracting procedure that differs from the procedures described in ORS 279B.055, 279B.060, 279B.065 and 279B.070 and is for the purpose of entering into a single Contract or a number of related contracts for the acquisition of specified Supplies and Services on a one-time basis or for a single project.

(165) "Specification" is defined in ORS 279B.200(3) and means any description of the physical or functional characteristics, or of the nature of the Supplies and Services to be procured by an Agency. "Specification" includes: any requirement for inspecting, testing, or preparing the Supplies and Services for delivery and the quantities or qualities of Supplies and Services to be furnished under the Contract. Specifications generally will state the result to be obtained and occasionally may describe the method and manner of performance.

(166) "State" means the State of Oregon.

(167) "State Government," subject to ORS 174.108, means the Executive Department, the Judicial Department and the Legislative Department.

(168) "Substantial Completion" is defined in ORS 12.135 and means the date when the contractee accepts in Writing the construction, alteration or repair of the improvement to real property or any designated portion thereof as having reached that state of completion when it may be used or occupied for its intended purpose or, if there is no such Written acceptance, the date of acceptance of the completed construction, alteration or repair of such improvement by the contractee.

(169) "Supplies and Services" includes "Supplies or Services" and collectively means Goods, Trade Services, Personal Services, and Ordinary Construction Services separately or in any combination of these terms thereof as appropriate within the context of the Rule. "Supplies and Services" includes the terms "goods and services," "goods or services," and "personal services" contained in ORS 279A and 279B. This term does not include Public Improvements or Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, and Related Services, governed under ORS 279C.

(170) "Surplus Property" means all personal property, vehicles and titled equipment property received by the Department as surplus from federal government units, state agencies, local governments, and special government bodies for sale to state agencies, political subdivisions of the State, and private not-for-profit organizations or the general public or any combination thereof. See OAR 125-050.

(171) "Sustainability" is defined in ORS 184.421 and means using, developing and protecting resources in a manner that enables people to meet current needs and provides that future generations can also meet future needs, from the joint perspective of environmental, economic and community objectives.

(172) "Threshold" means a specific monetary limitation that distinguishes one Procurement method from another, triggers a requirement, or marks a point of reference or change in Rule. For example, the Thresholds of $10,000 to $150,000 distinguish Intermediate Procurements under ORS 279B from other methods.

(173) "Trade Services" means all remaining services that do not meet the definition for Personal Services.

(174) "Unnecessarily Restrictive" is defined in ORS 279B.405(1)(c) and means that Specifications limit competition arbitrarily, without reasonably promoting the fulfillment of the Procurement needs of an Agency.

(175) "Used Oil" is defined in ORS 459A.555 and means a petroleum-based oil which through use, storage or handling has become unsuitable for its original purpose due to the presence of impurities or loss of original properties.

(176) "Virgin Oil" means oil that has been refined from crude oil and that has not been used or contaminated with impurities.

(177) "Work" means the furnishing of all services, materials, equipment, labor, and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

(178) "Work Order" means an Ordering Instrument related to Services, including any incidental Supplies.

(179) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intend to represent or convey particular ideas or meanings. "Writing" when required or permitted by law, or required or permitted in a Solicitation Document, also means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(180) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070

Stats. Implemented: ORS 279A.065, 279A.200, 279B.005 & 279C.110

Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert.

ef. 1-1-14; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-246-0135
Solicitation Templates; Contract Forms and Templates

See OAR 137-046-0140.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: 2015 OL, Ch. 646 (HB 2375)
Hist.: DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-246-0330
Supplier Requirements

(1) Tax Compliance.

(a) No Contract or other agreement for more than $1,000 may be entered into, renewed or extended with any Person unless the Person certifies in Writing, under penalty of perjury, that the Person is not in violation of any tax laws in accordance with ORS 305.380(4), and 305.385(6) and (7).

(b) Agency must determine that a Bidder or Proposer is responsible under ORS 279B.110, OAR 125-247-0500 and 125-247-0640. In order to make this determination, a Bidder or Proposer must demonstrate to the Agency that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws. The Bidder or Proposer must demonstrate compliance by attesting in Writing, that the Bidder or Proposer has complied with the tax laws of this state or a political subdivision of this state, including ORS 305.620 and ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws. (Attestation).

(A) Agency may determine which Bidder or Proposer must submit an Attestation and the timing and manner of the submittal.

(B) Agency may allow the Bidder or Proposer to electronically transmit the Attestation, and Agency may maintain the electronically transmitted Attestation in lieu of the original Attestation.

(C) A Contracting Agency may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is "credible and convenient" under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, a Contracting Agency may find acceptable forms of attestation that range from a notarized statement to a less formal document that records the Offeror's attestation. However, State Contracting Agencies may not accept the certificate of compliance with tax laws required by ORS 305.385 unless that certificate embraces, in addition to the tax laws described in ORS 305.380, the tax laws of political subdivisions.

(D) An Attestation attests to the Bidder or Proposer's current compliance with tax laws. During the period Bidder or Proposer is in compliance, a Bidder or Proposer may submit a copy of the same Attestation to multiple Agencies or for multiple Invitations to Bid or Requests for Proposals, and an Agency is not required to obtain a new original Attestation from a Bidder or Proposer for each Procurement.

(E) The Bidder or Proposer is responsible for determining whether the Bidder or Proposer is in compliance with tax laws. If applicable, compliance with tax laws may not require payment of taxes.

(2) Requirements to Transact Business in Oregon.

(a) A Contractor who is a corporation, partnership, or who has an assumed business name must be registered with the Secretary of State Office in accordance with ORS Chapters 58, 60, 62, 63, 65, 67, 70, and 648. This registration is the obligation of the Contractor, not the Agency.

(b) In addition, for Contracts requiring the services of one or more architects, engineers, and land surveyors, these Consultants must be registered with the appropriate licensing boards under the provisions of ORS 671.020, 672.020, and 672.025.

(c) The statutory requirements for contracting firms to register with the Secretary of State's Office may be subject to a limited number of exceptions under federal law. For example, national banks, when they contract with Authorized Agencies, are not subject to the registration requirement.

(d) The Contractor or Consultant must be registered at the time of the execution of the Contract and thereafter.

(3) Pay Equity Certificate. A Bidder or Proposer in any State Contracting Agency procurements must demonstrate to the Agency that the Bidder or Proposer possesses an unexpired certificate, issued by the Oregon Department of Administrative Services under 2015 Oregon Laws, chapter 454, section 2, if the Offeror employs 50 or more full-time workers at the time of the Closing and the estimated contract price exceeds $500,000.

(a) Unless the certificate provides otherwise, the certificate shall be unexpired for a period of three years from the date issued.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.140, 279B.110(1) & 279C.105(1)
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-15; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-246-0500
Oregon Procurement Information Network (ORPIN)

(1) The Oregon Procurement Information Network, known as ORPIN, an Internet-based, on-line system, is the official publication forum for state Procurement notices and advertisements, as functionality allows, by the Department and all Agencies.

(2) All state Agencies must use ORPIN to comply with the reporting requirements for:

(a) Personal Services Contracts in accordance with OAR 125-246-0353;

(b) Agreements under ORS 190 in accordance with OAR 125-246-0365; and

(c) Special Procurements in accordance with OAR 125-247-0287(12).

(3) Authorized Agencies must use ORPIN in accordance with the Department's ORPIN Policy no. 107-009-020, the Department's COBID (formerly MWESB) Procurement Policy no. 107-009-030, and the Governor's Executive Order No. 12-03.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065, 279A.070 & 279A.140
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0100
Applicability

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this Division 247 apply to Public Contracting for Supplies and Services. In the event of conflict or ambiguity, the more specific requirements of the Rules in this Division 247 take precedence over the more general requirements of the Rules in Division 246.

(2) The Rules implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this Division 247 of the Rules specifically addresses matters covered in ORS Chapter 279B.

(3) For purposes of these Division 247 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016:

OAR 137-047-0255, 137-047-0257, 137-047-0260, 137-047-0261, 137-047-0265, 137-047-0270, 137-047-0310, 137-047-0320, 137-047-0400, 137-047-0410, 137-047-0420, 137-047-0440, 137-047-0450, 137-047-0460, 137-047-0470, 137-047-0480, 137-047-0490, 137-047-0525, 137-047-0575, 137-047-0620, 137-047-0640, 137-047-0650, 137-047-0660, 137-047-0670, 137-047-0700, 137-047-0710, 137-047-0720, 137-047-0745, 137-047-0740, 137-047-0750, 137-047-0760, 137-047-0800, 137-047-0810.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.015
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0185
Approval of Information Technology or Telecommunications Procurements

For any Procurement of Information Technology or Telecommunications with an anticipated Contract Price of $1,000,000.00 or more, a State Contracting Agency must obtain prior Written approval from the State Chief Information Officer. In addition, and regardless of the anticipated Contract Price, an Authorized Agency must obtain any review or approval the State Chief Information Officer may require under 2015 Oregon Laws, Chapter 807 (HB 3099).

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: 2015 Oregon Laws, Chapter 807 (HB 3099)
Hist.: DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0260
Competitive Sealed Proposals

(1) See OAR 137-047-0260 and 137-047-0261.

(2) Regardless of OAR 137-047-0260 and 137-047-0261, Authorized Agencies must comply with the following provisions:

(a) An Authorized Agency may use one or more or any combination of the procedures described in ORS 279B.060 and this Rule.

(b) In addition to the requirements in ORS 279B.060(2), the Request for Proposals must include the following:

(A) The form and instructions for submission of Proposals;

(B) A description of the procurement process, including but not limited to: optional process, evaluation, selection, and protest process.

(C) Mandatory preferences, if applicable, and any discretionary preferences, if elected; and

(D) All applicable certifications of compliance with tax laws.

(c) Interviews. If the evaluation committee conducts interviews, it must award weights, points or other classifications indicated in the Request for Proposals for the anticipated interview.

(d) Competitive Range. The Authorized Agency may decrease the number of Proposers in the initial Competitive Range if the excluded Proposers have no reasonable chance to be the most Advantageous Proposer.

(e) The Authorized Agency may continue serial or simultaneous Negotiations until the Agency has determined:

(A) To award the Contract to the eligible Proposer with whom it is currently discussing or negotiating;

(B) To conduct Revised Rounds of Negotiations; or

(C) To cancel the Procurement under ORS 279B.100.

(f) Revised Rounds of Negotiations.

(A) Process and Revisions. After publication of the original Request for Proposals, the Authorized Agency may conduct successive rounds of Proposals achieved through Negotiations to gain the best Proposal for purposes of Award. These Negotiations may concern the price, Specifications, and final terms and conditions, separately or in any combination. The Agency must treat all Proposers fairly. Before the start of each round of Negotiations, the Agency must disclose the parameters of that round of Negotiations. At that time, the Agency may revise the Solicitation's Specifications, terms and conditions, evaluation criteria and weight, and pricing structure in order to best meet the State's interests (Revisions). At each successive round, the Agency may disregard its scoring of prior Proposals and commence new scoring for the new Proposals. The Agency may eliminate any Proposal after a round because the Proposal did not meet a minimum score, or the Proposal was not susceptible to award, and then proceed with a subsequent round that requires additional Proposals based on the Revision(s). If any Revision is made by the Agency in any subsequent round, the Agency reserves the right, in its sole discretion, to permit any Proposer whose Proposal was previously eliminated to submit a new Proposal, if the reason(s) for the elimination of the prior Proposal no longer applies.

(B) Disclosures. The initial Solicitation Document must disclose that a Revised Rounds of Negotiation process will or may be used. The Agency must give notice to all initial Proposers of any Revision(s) in the Specifications, terms and conditions, pricing structure, scoring model, and award criteria, separately or in any combination. If the Agency discloses any prices, terms or conditions offered by other Proposers, the Agency must give notice of these disclosures to the initial Proposers.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.060
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0270
Intermediate Procurements

(1) See OAR 137-047-0270.

(2) Regardless of OAR 137-047-0270, Authorized Agencies must comply with the following provisions:

(a) Amendments. If the cumulative value of the original Contract Price and all Amendments exceeds $150,000.00, or one hundred twenty-five percent (125%) of the original Contract Price, whichever is greater, then the Authorized Agency must request and obtain prior approval of a Special Procurement in accordance with OAR 125-247-0287.

(b) Written Solicitation. Authorized Agencies are not required to use a Written Solicitation, unless an Agency's Designated Procurement Officer requires a Written Solicitation. This Written Solicitation may allow revisions to the Solicitation and opportunity for protests, at the discretion of the Agency.

(c) Documentation. Authorized Agencies must document:

(A) The method used by the Agency; and

(B) Communications between the Agency and prospective Offerors.

(d) Borderline Procurements. If an Authorized Agency's Designated Procurement Officer in good faith estimated that the Procurement would be equal to or less than $150,000, and learned thereafter that all of the Offers were minimally exceeding $150,000, this Procurement complies with ORS 279B.070 and this Rule upon the following conditions:

(A) The Designated Procurement Officer must document in the Procurement File the basis for the original estimate under $150,000 and the process used; and

(B) The Agency must comply with the remainder of ORS 279B.070 and this Rule.

(e) Notice on ORPIN. The Agency must post on ORPIN a notice that it is seeking at least three Offers.

(A) The Notice must provide:

(i) A general description of the Supplies and Services to be acquired;

(ii) Contact information;

(iii) An adequate time period in accordance with the DAS COBID (formerly MWESB) Policy; and

(iv) For Intermediate Procurements exceeding $100,000, the Time Period must be a reasonable interval of at least seven (7) calendar Days. Despite this Time Period, Authorized Agencies may determine that a shorter Time Period is in the public's interest and that a shorter Time Period will not substantially affect competition. The Authorized Agency must document the specific reason for the shorter Time Period in the Procurement File in accordance with OAR 125-246-0556.

(B) OAR 125-247-0305 (Public Notice of Solicitation Documents) does not apply to Intermediate Procurements.

(f) Negotiations. An Authorized Agency may negotiate with an Offeror.

(g) Nothing in this Rule waives the Department of Justice legal sufficiency review if applicable under ORS 291.047.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.070
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 9-2005, f. & cert. ef. 8-3-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 4-2013, f. 12-17-13, cert. ef. 1-1-14; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0500
Responsibility of Offerors

(1) Determination. Before awarding a Contract, the Authorized Agency must determine that the Offeror submitting the lowest Bid or Proposal or most Advantageous Offer is Responsible. The Authorized Agency must use the standards set forth in ORS 279B.110 and OAR 125-247-0640 to determine if an Offeror is Responsible. In the event an Authorized Agency determines an Offeror is not Responsible, it must prepare a Written determination of non-Responsibility as required by ORS 279B.110 and must reject the Offer.

(2) Independent Contractor Status, Tax Compliance, Pay Equity Certificate and Requirements to Transact Business in Oregon. For these responsibilities of Offerors, see OAR 125-246-0330.

(3) Life Cycle Costing. See OAR 125-247-0170.

(4) Record of Performance and Integrity. Authorized Agencies must comply with ORS 279B.110.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-247-0640
Rejection of an Offer

See 137-047-0640.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279B.050-279B.090
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16
2; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-248-0100
Application

(1) In addition to the general requirements set forth in division 246 of these Rules, the Rules in this division 248 apply to:

(a) The screening and selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors, and Providers of Related Services under Contracts, and set forth the procedures through which Authorized Agencies select Consultants to perform Architectural, Engineering, Photogrammetric Mapping, Transportation Planning and Land Surveying Services or Related Services; and

(b) Two-tiered procedures for selection of Architects, Engineers, Photogrammetrists, Transportation Planners, Land Surveyors and Providers

of Related Services for certain Public Improvements owned and maintained by a Local Government.

(2) In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 248 take precedence over the more general requirements of the Rules in Division 246.

(3) The Rules as a whole implement the Oregon Public Contracting Code, as defined in ORS 279A.010, and this division 248 of the Rules specifically addresses matters covered in ORS Chapter 279C.110 through 279C.125.

(4) Delegation of authority for these contracts must be according to OAR 125-246-0170.

(5) The dollar Threshold amounts that are applicable to the Direct Appointment Procedure, OAR 125-248-0200, the Informal Selection Procedure, 125-248-0210, and the Formal Selection Procedure, 125-248-220, are independent from and have no effect on the dollar Threshold amounts that trigger the legal sufficiency review requirement for Agencies under ORS 291.047.

(6) For purposes of these Division 248 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016: OAR 137-048-0110, OAR 137-048-0120, OAR 137-048-0130, OAR 137-048-0200, OAR 137-048-0210, OAR 137-048-0220, OAR 137-048-0230, OAR 137-048-0240, OAR 137-048-0250, OAR 137-048-0260, OAR 137-048-0270, OAR 137-048-0300, OAR 137-048-0310, OAR 137-048-0320.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 3-2012, f. 11-29-12, cert. ef. 12-1-12; DAS 3-2014, f. 12-29-14, cert. ef. 1-1-152; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-248-0220
Formal Selection Procedure

See OAR 137-048-0220.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279C.110
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-249-0100
Application; Federal Override; Effective Date

See OAR 137-049-0100.

(1) In addition to the general requirements set forth in Division 246 of these Rules, the Rules in this division 249 apply to Public Improvement Contracts. Only specific Rules in this division 249 apply to Public Contracts for Ordinary Construction Services as described in OAR 125-249-0140. In the event of conflict or ambiguity, the more specific requirements of the Rules in this division 249 take precedence over the more general requirements of the Rules in division 246.

(2) The Rules as a whole implement the Oregon Public Contracting Code (Code), as defined in ORS 279A.010. This division 249 of the Rules specifically addresses matters covered in ORS Chapter 279C.005, 279C.010, 279C.300 through 279C.870. Rules related to Architectural, Engineering, Land Surveying, and Related Services are found in division 248.

(3) According to OAR 125-246-0100 and except as otherwise expressly provided in ORS 279C.800 through 279C.870, applicable federal statutes and regulations govern when federal funds are involved and the federal statutes or regulations require additional conditions or conflict with the Code or with these Rules.

(4) For purposes of these division 249 Rules, the Department adopts the following Model Public Contract Rules, as revised and effective January 1, 2016: OAR 137-049-0130, 137-049-0140, 137-049-0150, 137-049-0160, 137-049-0200, 137-049-0210, 137-049-0220, 137-049-0230, 137-049-0240, 137-049-0250, 137-049-0260, 137-049-0270, 137-049-0280, 137-049-0290, 137-049-0300, 137-049-0310, 137-049-0320, 137-049-0330, 137-049-0340, 137-049-0350, 137-049-0360, 137-049-0370, 137-049-0380, 137-049-0390, 137-049-0395, 137-049-0400, 137-049-0410, 137-049-0420, 137-049-0430, 137-049-0440, 137-049-0450, 137-049-0460, 137-049-0470, 137-049-0490, 137-049-0600, 137-049-0610, 137-049-0620, 137-049-0640, 137-049-0645, 137-049-0650, 137-049-0660, 137-049-0670, 137-049-0680, 137-049-0690, 137-049-0800, 137-049-0810, 137-049-0815, 137-049-0820, 137-049-0830, 137-049-0840, 137-049-0850, 137-049-0860, 137-049-0870, 137-049-0880, 137-049-0890, 137-049-0900, 137-049-0910.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-249-0120
Definitions

The definitions for this Division 249 are found in OAR 125-246-0110, except the following Rule and definitions apply only to this division 249: Capitalized terms used in this division 249 of the Rules must have the meaning set forth below or within the Sections in which they appear (such as the Section on Alternative Contracting Methods beginning at OAR 125-249-0600, and if not defined there, then the meaning set forth in division 246 of the Rules, and if not defined there, then the meaning set forth in the Code at ORS 279A.010 (general definitions) or 279C.330 (for the term Findings).

(1) "Competitive Range" means the number of Proposers with whom the Authorized Agency will conduct Discussions or Negotiations if the Authorized Agency intends to conduct Discussions or Negotiations in accordance with OAR 125-249-0390. The size of the Competitive Range must be stated in the Solicitation Document, but will be decreased if the number of Proposers that submit Proposals is less than the specified number, or may be increased by the Authorized Agency in accordance with OAR 125-249-0390.

(2) "Conduct Disqualification" means a Disqualification according to ORS 279C.440.

(3) "Disqualification" means the preclusion of a Person from contracting with an Authorized Agency for a period of time in accordance with OAR 125-249-0370. An Authorized Agency is authorized to disqualify a Person in accordance with OAR 125-249-0370.

(4) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 125-249-0490.

(5) "Notice" means any of the alternative forms of public announcement of Procurements, as described OAR 125-249-0210.

(6) "Responsible Offeror" (also, Responsible Bidder or Responsible Proposer, as applicable) means a Person that has submitted an Offer and meets the standards set forth in OAR 125-249-0390(2) and that has not been disqualified by the Authorized Agency under OAR 125-249-0370. When used alone, "Responsible" means meeting the aforementioned standards.

(7) "Responsive Offer" (also, Responsive Bid or Responsive Proposal, as applicable) means an Offer that substantially complies in all material respects with applicable Solicitation procedures and requirements and the Solicitation Document. When used alone, "Responsive" means having the characteristic of substantially complying in all material respects with applicable Solicitation procedure and requirements and the Solicitation Document.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.065
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-249-0370
Disqualification of Persons

See OAR 137-049-0370.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445 & 279C.450
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-249-0390
Offer Evaluation and Award; Determination of Responsibility

See OAR 137-049-0390.

Stat. Auth.: ORS 279A.065(5)(a), 279A.070, OL 2005, Ch. 413
Stats. Implemented:ORS 279C.335, 279C.365, 279C.375, 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 6-2008, f. & cert. ef. 7-2-08; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-249-0440
Rejection of Offers

See OAR 137-049-0440.

Stat. Auth.: ORS 279A.065(5)(a) & 279A.070
Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380 & 279C.395
Hist.: DAS 4-2004, f. 11-23-04, cert. ef. 3-1-05; DAS 5-2006, f. & cert. ef. 5-31-06; DAS 11-2009, f. 12-30-09, cert. ef. 1-1-10; DAS 3-2011, f. 12-22-11, cert. ef. 1-1-12; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

Rule Caption: Amends and repeals rules to streamline criminal records requirements statewide
Adm. Order No.: DAS 5-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-4-16
Notice Publication Date: 12-1-2015
Rules Amended: 125-007-0200, 125-007-0210, 125-007-0220, 125-007-0250, 125-007-0260, 125-007-0270, 125-007-0300, 125-007-0310, 125-007-0330
Rules Repealed: 125-007-0230, 125-007-0240, 125-007-0280, 125-007-0290, 125-007-0320
Subject: Enrolled HB 3168, from the 2013 legislative session provided the Department of Administrative services designated authority to develop state-wide criminal records administrative rules. Enrolled HB 2250, from the 2015 legislative session introduced additional streamlining efforts and added requirement for establishing state-wide administrative rules. The administrative rules are being amended and repealed in compliance with these laws.

Section 6, of Enrolled HB 3168 from the 2013 legislative session states: "...rules adopted by an authorized agency, as defined in ORS 181.533, 181.534 and the Department of Human Services or the Oregon Health Authority under ORS 181.533, 181.534, 181.537 and 418.016 that are in effect on the effect date of this 2013 Act continue in effect until superseded or repealed by rules adopted by the Oregon Department of Administrative Services....."

Therefore, agencies described in this section, must repeal all criminal records related administrative rules upon adoption of these rules.

These rules provide direction on when a criminal records check shall be conducted and streamlines the process state-wide.

Statutory Authority and Statutes Implemented have been updated from proposed filing due to reorganization and renumbering of ORS, Chapter 181.
Rules Coordinator: Janet Chambers—(503) 378-5522

125-007-0200
Statement of Purpose

The purpose of these rules is to provide uniform administrative rules to streamline criminal records check processes state-wide, unless otherwise provided by law.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0210
Definitions

(1) "Authorized Agency" as defined in ORS 181A.215 or described in these rules.

(2) "Conviction" means that a court of law has entered a final judgment on a verdict or finding of guilty, a plea of guilty, a plea of nolo contendere (no contest) or any determination of guilt entered by a court of law against a subject individual (SI) in a criminal case, unless that judgment has been reversed or set aside by a subsequent court decision.

(3) "Credentials" means activities defined in ORS 181A.215(4)(f).

(4) "Criminal Offender Information" means records, including fingerprints and photographs, received, compiled and disseminated by the Oregon Department of State Police (OSP), or by other states, for purposes of identifying criminal offenders and alleged offenders, and maintained as part of an individual's records of arrests, the nature and disposition of criminal charges, sentencing, confinement, but does not include the retention by OSP or records of transfer of inmates between penal institutions or other correctional facilities, and release. It also includes the OSP Computerized Criminal History System (see OAR 257-010-0015).

(5) "Criminal Records Check" means obtaining and reviewing criminal records as required or permitted by these rules and includes any or all of the following;

(a) A check of criminal offender information and driving records conducted through use of the Law Enforcement Data System (LEDS) maintained by OSP, in accordance with the rules adopted and procedures established by OSP;

(b) A check of Oregon or other state criminal offender information, including through fingerprint identification or other means, conducted by OSP at the authorized agency or district's request; or

(c) A nationwide check of federal criminal offender information, including through fingerprint identification, conducted by OSP through the Federal Bureau of Investigation (FBI).

(6) "Districts" as defined in ORS 267.237.

(7) "Final Fitness Determination" means a determination made by an authorized agency or district pursuant to the process established in OAR 125-007-0260, that the SI is or is not fit to hold a position, paid or not paid, obtain or retain credentials, have direct access, or otherwise provide services as defined in this rule.

(8) "Provides Services" means any provision of what is necessary for the health, welfare, maintenance or protection of an individual.

(9) "Qualified Entity" as defined in an authorized agency's enabling statute.

(10) "Subject Individual" or "SI" means an individual from whom the authorized agency, districts and qualified entities may conduct a criminal records check pursuant to ORS 181A.190, 181A.195, 181A.200, 181A.215, 267.237 and any required enabling legislation or executive order. SI may include, but is not limited to the following;

(a) Any individual applying for credentials,

(b) Any individual with direct access to a vulnerable population,

(c) Any individual who provides services to a vulnerable population, and

(d) An individual subject under ORS 181A.190(1)(c), 181A.195(1)(b), 181A.200(2), 267.237(1)(c) and any required enabling legislation or executive order.

(11) "Vulnerable Population" means any of the following categories;

(a) A child, an unmarried person who is under eighteen (18) years of age.

(b) The elderly, a person sixty-five (65) years of age or older.

(c) Persons with disabilities, a person with a physical or mental impairment that substantially limited one or more major life activities,

(d) Persons with mental illness, a person with a condition that impacts their thinking, mood or behavior affecting his or her ability to relate to others and function on a daily basis.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0220
Information Required

(1) An SI may be required to provide identification and information to have a criminal records check completed including, but not limited to;

(a) Legal name and aliases;

(b) Date of birth;

(c) Address and recent residency information;

(d) Driver license or identification card information;

(e) Type of work or service being performed;

(f) Disclosure of criminal history; all arrests, charges, convictions and offenses.

(g) Social Security number, optional only, used solely for the purpose of positively identifying the SI during the criminal records check process.

(2) Identification shall be determined by using methods which include but are not limited to;

(a) Asking the SI for current and valid government-issued photo identification;

(b) Confirming the information on the photo identification with the SI;

(c) Fingerprint capture

(3) The authorized agency, district or qualified entity shall not request a fingerprint card from an SI under the age of eighteen (18) years unless the SI is emancipated pursuant to ORS 419B.550 et seq, or unless the authorized agency, district or qualified entity also requests the written consent of a parent or guardian. In such case, such parent or guardian and youth must be informed that they are not required to consent. Notwithstanding, failure to consent may be construed as a refusal to consent under OAR 125-007-0260.

(4) The authorized agency, district or qualified entity may require additional information from the SI as necessary to complete the criminal records check and fitness determination, such as, but not limited to, proof of identity; or additional criminal, judicial, or other background information.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0250
Hiring or Appointing on a Preliminary Basis

(1) An authorized agency or district may conduct a preliminary fitness determination if the agency, district or qualified entity is hiring or appointing an SI on a preliminary basis, pending a final fitness determination.

(2) The authorized agency or district shall make a preliminary fitness determination about an SI based on information disclosed by the SI and a LEDS criminal records check pursuant to each authorized agency, district or qualified entity's governing statutes.

(3) An SI hired or appointed on a preliminary basis under this rule may participate in training, orientation, or work activities as assigned by the authorized agency, district or qualified entity.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0260
Final Fitness Determination

(1) Unless otherwise provided by law, the authorized agency or district shall consider factors pursuant to ORS 181A.195(10)(d) in relation to information provided by the SI, including any criminal offender information, as defined in OAR 125-007-0210, obtained through a criminal records check and other information known by the agency or district.

(2) Upon completion of the fitness determination, one of the following outcomes shall be made and written notification shall be provided to the SI indicating the outcome when appeal rights are afforded or when a fitness determination is not completed;

(a) Approval.

(A) The SI is approved to work, obtain or retain credentials, have direct access, or otherwise provide services to individuals defined in OAR 125-007-0210.

(B) An approved outcome does not guarantee employment, obtaining or retaining credentials, or the ability to have direct access, or otherwise provide services, to individuals defined in OAR 125-007-0210.

(b) Restricted or Conditional Approval.

(A) The authorized agency or district may restrict the approval to specific activities, clients or locations.

(B) The authorized agency or district may complete a new criminal records check and fitness determination on the SI prior to removing a restriction.

(c) Denial.

(A) The authorized agency or district denies an SI if the agency determines, through a fitness determination, that the SI is not fit to work, obtain or retain credentials, have direct access, or otherwise provide services to individuals defined in OAR 125-007-0210.

(B) If an SI is denied, then the SI shall not work, receive or retain credentials, have direct access, or otherwise provide services to individuals described in OAR 125-007-0210.

(d) Incomplete Fitness Determination.

(A) The SI discontinues the criminal records process for any reason or refuses to be fingerprinted or respond to written correspondence from the agency or district.

(B) The SI is determined to be ineligible for reasons other than a criminal records check.

(C) The SI is determined to be ineligible pursuant to an authorized agency's enabling statute, or otherwise provided by law.

(D) The SI shall not be allowed to work, receive credentials, have direct access, or otherwise provide services to individuals described in OAR 125-007-0210.

(E) Appeal rights, if any, are dependent on the authorized agency's or district's obligations to provide such rights when a final fitness determination was not completed.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-066; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0270
Crimes Considered

(1) A conviction of any of the following crimes or offenses is potentially disqualifying, unless otherwise provided by law.

(a) All felonies.

(b) All misdemeanors.

(c) Any U.S. military crime or international crime.

(2) The authorized agency or district shall evaluate a crime or offense on the basis of the law of the jurisdiction in which the crime or offense occurred.

(3) The following are examples of crimes likely to result in denial unless there are significant mitigating circumstances;

(a) ORS 163.095, Aggravated murder;

(b) ORS 163.115, Murder;

(c) ORS 163.375, Rape I;

(d) ORS 163.405, Sodomy I;

(e) ORS 163.411, Unlawful sexual penetration I;

(f) ORS 163.427, Sexual abuse I

(4) Under no circumstances shall an SI be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 to 419A.262.

(5) Under no circumstances shall an SI be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

(6) Examples of other criminal offender information that may be potentially disqualifying may include;

(a) Sex offender registration,

(b) Conditions of parole, probation, or diversion program, or

(c) Unresolved arrest, charge, pending indictment or outstanding warrant

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 5-2015, f. 12-29-15, cert. ef. 1-4-16

125-007-0300
Appealing a Fitness Determination

(1) An SI may contest a final fitness determination outcome of a denied or restricted approval.

(2) Process for authorized agencies using Office of Administrative Hearings (OAH): To request a contested case hearing, the SI or the SI's legal representative shall submit a written request for a contested case hearing to the address specified in the notice provided under OAR 125-007-0260, within the time required by law or a reasonable time period.

(3) Confidentiality. The Department or the administrative law judge may protect information made confidential by ORS 181A.195(11) or other applicable law as provided in OAR 137-003-0570(7) or (8).

(4) No Public Attendance. Unless otherwise provided by law, contested case hearings on fitness determinations are closed to non-participants.

(5) Authorized agencies and districts that are not obligated by law to use the OAH must adopt procedural rules providing for SIs to contest fitness determinations or may elect to use the process outlined in this rule.

(6) Alternative Process. An SI currently employed by the authorized agency district or qualified entity may choose to appeal a fitness determination either under the process made available by this rule or through the process made available by applicable personnel rules, policies and collective bargaining provisions. An SI's decision to appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process made available by this rule.

(7) Challenging Criminal Offender Information. An SI may not use the appeals process established by this rule to challenge the accuracy or completeness of information provided by OSP, the FBI, or agencies reporting information to OSP or the FBI. To challenge information, an SI may use any process made available by the providing agency.

(8) Remedy. When the fitness determination is performed as part of an authorized agency's hiring process or employment decision, the only remedy that may be awarded is a determination the SI is fit or not fit. Under no circumstances shall the authorized agency be required to place an SI in any position, nor shall the agency be required to accept services or enter into a contractual agreement with an SI.

(9) No delay in hiring. Appealing a final fitness determination, challenging criminal offender information with the agency that provided the information, or requesting a new criminal records check may not delay or postpone the authorized agency's hiring process or employment decisions.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-007-0310
Recordkeeping and Confidentiality

(1) Criminal offender information obtained in the criminal records check is confidential. The authorized agency, district or qualified entity must restrict the dissemination of information obtained in the criminal records check. Only those persons, as identified by the authorized agency, with a demonstrated and legitimate need to know the information, may have access to criminal records check records.

(2) Sharing information. Final fitness determination results may be shared pursuant to ORS 181A.195(10)(c)(A).

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

125-007-0330
Fees

Authorized agencies or districts shall develop policies or administrative rules, based on statutory authority, to charge fees for criminal records checks.

Stat. Auth.: ORS 181A.170, 181A.195, 181A.215, 184.340, 184.365
Stats. Implemented: ORS 181A.170, 181A.195, 181A.215
Hist.: DAS 6-2006(Temp), f. & cert. ef. 9-12-06 thru 2-11-07; DAS 9-2006, f. & cert. ef. 12-28-06; DAS 4-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Amending rules governing disposition and acquisition of real property interests.
Adm. Order No.: DAS 1-2016
Filed with Sec. of State: 1-7-2016
Certified to be Effective: 1-7-16
Notice Publication Date: 12-1-2015
Rules Amended: 125-045-0200, 125-045-0205, 125-045-0225, 125-045-0235, 125-045-0245
Subject: Oregon law requires the Department of State Lands, the Oregon Department of Transportation and the Department of Administrative Services to sell surplus real property. Agencies routinely review properties to make this determination and if parcels are not needed, they are offered for sale, first to other state agencies, then to local government entities, then to the public. Properties that will be needed in the future are leased until such times they are needed. The sale and lease of these lands generates revenues that fund a variety of things such as schools and state highway investments, depending on the agency that sells the land.

House Bill 3524 directs state agencies to Offer Certain lands first to nonprofit organizations and federally recognized Indian tribes for affordable housing development. The subject property must be within an urban growth boundary, an urban reserve, a rural community, or an urban unincorporated community; not being used for a public purpose, and not needed for public use within five years.

SB224 exempts Oregon Health Authority (OHA) and Department of Human Services (DHS) from certain provisions relating to acquiring, holding or disposing of real property or equitable interest in real property or in mineral or geothermal resource right; operative January 1, 2016. Federal and state law require the Oregon Health Authority (OHA) and the Department of Human Services (DHS) to have Estate Recovery Programs for public programs such as Medicaid for long-term care recipients. DHS and OHA are required to seek reimbursement from the assets of the deceased individual, with certain exceptions, for some or all of the benefits the individual received. As part of the estate recovery process, DHS will acquire the title to residential real property, pursuant to the authority granted under ORS 410.075 and ORS 411.340. Due to the fact that the process to sell state-owned real property is time consuming and expensive, the Department of Veterans' Affairs and the Housing and Community Services Department have been granted exemptions from these requirements. SB224 grants OHA and DHS the same exemptions for the real property that the Estate Recovery Program acquires.
Rules Coordinator: Janet Chambers—(503) 378-5522

125-045-0200
Purpose

These rules are adopted under the authority of ORS 184.340, 270.015 and 270.100 to 270.190 and establish the process for agencies to acquire and to sell, transfer, exchange or otherwise dispose of interests in real property. These rules also establish procedures for the operation of the Public Lands Advisory Committee (PLAC); collection of funds for the support of the Statewide Lands Inventory System (SLIS) and PLAC; and the management and operation of the Statewide Lands Inventory System (SLIS).

Stat. Auth.: ORS 184.340, 270.015 & 270.100 – 270.190
Stats. Implemented: ORS 244.010 & 270.010
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 1-2016, f. & cert ef. 1-7-16

125-045-0205
Definitions

The following definitions apply to the rules in this Division 045:

(1) "Acquiring Agency" means an Agency that proposes to acquire a Real Property Interest and is not an Exempt Acquiring Agency.

(2) "Acquisition" means obtaining rights of ownership in a Real Property Interest by an Agency through a purchase, exchange, conveyance or other transfer of that Real Property Interest.

(3) "Administrator" means the Administrator of the Department's Enterprise Asset Management Division.

(4) "Agency" means any board, commission, department or agency of the State of Oregon, whose costs are paid from funds held in the State Treasury and that are authorized to acquire or dispose of Real Property Interests.

(5) "Appraisal" means a written report by a licensed and experienced real estate appraiser estimating the fair market value of a Real Property Interest prepared in accordance with OAR 125-045-0215.

(6) "Appraised Fair Market Value" means the fair market value of a Real Property Interest as determined by an Appraisal.

(7) "Clearing House Process" means the notification process whereby agencies notify the Department of terminal dispositions or acquisitions of State Real Property Interests and Department notifies other state agencies, Nonprofit Organizations, Indian Tribes, and political subdivisions under OAR 125-045-0220 and 125-045-0225.

(8) "Department" means the Oregon Department of Administrative Services.

(9) "Directed Appraisal" means a written report by a licensed and experienced real estate appraiser estimating the fair market value of a Real Property Interest with restrictions or for a particular use, zone or conditional use in accordance with OAR 125-045-0215.

(10) "Director" means the Director of the Department.

(11) "Disposing Agency" means an Agency that proposes to dispose of a Real Property Interest.

(12) "Division" means the Enterprise Asset Management Division of the Department.

(13) "Exempt Acquiring Agency" means an Agency that is not required by law to report to the Department its intentions to acquire a Real Property Interest. At the time of the adoption of these rules the Exempt Acquiring Agencies are:

(a) The Department of Transportation, if acquiring a highway right of way;

(b) The Higher Education Coordination Commission and any public university with a governing board listed in ORS 352.054, if acquiring real property within the approved projected campus boundaries of institutions subject to its authority;

(c) The Oregon Parks and Recreation Department, if acquiring park properties;

(d) Oregon Health Authority (OHA) and Department of Human Services (DHS) if acquiring residential real property under the Estate Recovery Program authorized by ORS 410.075, 411.620 and 416.340 including mineral and geothermal rights according to ORS 273.785;

(e) The Department of Housing and Community Services for residential real property acquired under ORS 465.515 to 456.725 or ORS chapter 458: and

(f) The Department of Veterans' Affairs for a home or farm acquired under ORS 88.720, 406.050, 407.135, 407.145, 407.375 or 407.377.

(14) "Exempt Disposing Agency" means an Agency that is exempt by law from the requirement that it obtain Department approval prior to the Terminal Disposition of a Real Property Interest, unless the Terminal Disposition will be for less than the Appraised Fair Market Value. At the time of the adoption of these rules, the Exempt Disposing Agencies are:

(a) The Department of Fish and Wildlife;

(b) The Department of Forestry, if disposing of State forestlands;

(c) The Department of State Lands;

(d) The Department of Transportation;

(e) The Higher Education Coordination Commission and any public university with a governing board listed in ORS 352.054;

(f) The Oregon Parks and Recreation Department;

(g) Any legislative or judicial branch of the State;

(h) The Oregon Health Authority (OHA) and Department of Human Services (DHS) for residential real property acquired or sold under the Estate Recovery Program authorized by ORS 410.075, 411.620 and 416.340 including mineral and geothermal rights according to ORS 273.785;

(i) The Department of Housing and Community Services Department for residential real property sold under the provisions of ORS 456.515 to 456.725 or ORS chapter 458; and

(j) The Department of Veterans' Affairs for a home or farm sold under ORS 88.720, 406.050, 407.135, 407.145, 407.375 or 407.377.

(15) "Governing Body" means a board or commission with constitutional or statutory governing authority to approve the Acquisition or Terminal Disposition of a Real Property Interest. The term "Governing Body" includes but is not limited to the following bodies:

(a) The Oregon Board of Forestry;

(b) The Higher Education Coordination Commission and any public university with a governing board listed in ORS 352.054;

(c) The Oregon Fish and Wildlife Commission;

(d) The Oregon Parks and Recreation Commission;

(e) The Oregon Transportation Commission; and

(f) The State Land Board.

(16) "Improvements" means any and all structures on or attachments to Real Property Interests but excluding public improvements as defined in ORS 279A.010.

(17) "In Reserve" as used in the Statewide Lands Inventory means an Agency-owned Real Property Interest that is not currently being used by the Agency, but that the Agency intends to use to fulfill an anticipated future requirement, need or benefit related to the mission of the Agency.

(18) "In Use" as used in the Statewide Lands Inventory means a State Real Property Interest that is actively being used to serve the mission of the Agency.

(19) "Indian Tribe" means Indian Tribes as defined in ORS 97.740.

(20) "Long Term Lease" means any lease, which the State does not have the right of termination for convenience, to another Agency, Political Subdivision, private or public party, having a term, including options of twenty years or more.

(21) "Nonprofit Organization" means nonprofit housing developers that develop real property that will be occupied by families and individuals with an income no greater than 80 percent of the median family income for the county in which the real property is located

(22) "Office Quarters" means office space, office buildings and associated services, storage and parking facilities for Agencies. Office space may include factory-built modular or portable units but excludes standalone storage and parking facilities.

(23) "Political Subdivision" means a local governmental unit, including a county, city, town, port, dock, commission or district, that exists under the laws of Oregon and that has the power to levy and collect taxes as defined in ORS 271.005.

(24) "Property Restrictions" means any restrictions placed on a Real Property Interest or on the sale proceeds from the Terminal Disposition of the Real Property Interest including deed reversion clauses or constitutional or statutory requirements to deposit all or a portion of the sale proceeds into specified funds other than the general fund.

(25) "Proposal" means a written offer to purchase a State Real Property Interest submitted in response to a Request for Proposals.

(26) "Proposer" means an individual or entity that submits a Proposal in response to a Request for Proposals.

(27) "Public Lands Advisory Committee" (PLAC) means the advisory committee established under ORS 270.120.

(28) "Real Property Interest" means any legal or equitable interest in land, or an option to acquire, or a leasehold interest with a term, including options to renew or extension provisions that contemplate a total period of occupancy of more than 20 years, together with all Improvements. For the purposes of these rules, a Real Property Interest does not include:

(a) An Office Quarters lease, regardless of the term;

(b) An easement, unless the easement has an Appraised Fair Market Value of $100,000 or greater; or

(c) Mineral or geothermal resources, as defined in ORS 273.755, the sale or other disposition of which is governed by ORS 273.775 to 273.790 or other provisions of law governing these resources.

(29) "Request for Proposals" means a solicitation of offers to acquire a State Real Property Interest made pursuant to OAR 125-045-0235.

(30) "Right of First Refusal" means a conditional privilege that the Disposing Agency, in the exercise of its discretion, may grant to a qualified Proposer by OAR 125-045-0230 to match the best Proposal for the purchase of a State Real Property Interest.

(31) "Rural community" means an unincorporated community that consists primarily of permanent residential dwellings but also has at least two other land uses that provide commercial, industrial or public uses to the community, the surrounding rural area or persons traveling through the area.

(32) "State" means the State of Oregon.

(33) "State Real Property Interest" means any Real Property Interest that is owned in the name of the State of Oregon.

(34) "Statewide Lands Inventory" means the inventory of State Real by Property Interests maintained on a computer database.

(35) "Surplus" as used in the Statewide Lands Inventory means a State Real Property Interest that is not currently used or is not needed or desirable to support a future need, use or function of the Agency.

(36) "Surplus real property" means all state-owned real property and improvements surplus to agency and state need.

(37) "Terminal Disposition" means the alienation of a State Real Property Interest through a sale, exchange, conveyance, donation, lease or other transfer of that interest.

(38) "Urban growth boundary" has the meaning given that term in ORS 195.060.

(39) "Urban reserve" means any land designated as an urban reserve under ORS 195.145.

(40) "Urban unincorporated community" has the meaning given that term in ORS 197.015.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d), 271.005

Stats. Implemented: ORS 244.010, 270.005, 270.010, 270.100, 270.105, 270.110, 270.120, 270.130, 270.135 & Ch. 572, OL 2015 (HB3524)

Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 1-2016, f. & cert ef. 1-7-16

125-045-0225

Terminal Disposition of State Real Property Interests (Notices — Clearing House Process)

(1) Prior to the Terminal Disposition by an Agency of a State Real Property Interest, the Agency must first declare in writing to the Division its intent to dispose of the Interest. The written declaration must include the following:

(a) A detailed description of the State Real Property Interest to be transferred, including its approximate size in square feet or acreage and its legal description;

(b) A map showing the location of the State Real Property Interest;

(c) An explanation of the reason for disposal;

(d) A completed notice using a form provided by the Division; and

(e) Any other information the Division may request.

(2) To ensure that the Terminal Disposition best serves the interests of the State and the Disposing Agency, the Disposing Agency is encouraged to create a disposition strategy for the property. The Disposing Agency's disposition strategy should consider:

(a) The highest and best use of the Real Property Interest, consistent with the local planning goals;

(b) How the Real Property Interest might be marketed most effectively, given the nature of the Interest and likely potential purchasers; and

(c) How the economic return to the State might be maximized.

(d) How to promote the public purpose of increasing housing options for low-income individuals and families in this state as provided in ORS 458.445.

(3) Whenever any agency possesses or controls real property not needed for public use, or whenever the public interest may be furthered, the agency may sell, exchange, convey or lease for any period not exceeding 99 years all or any part of the interest in the property. Except for the Department of State Lands and the Department of Transportation and where real property is set apart by deed, will or otherwise for a burial ground or cemetery or the use is restricted by dedication, agencies must offer for sale any real property in its possession or control, if the property:

(a) Is within the urban growth boundary of any city, is within an urban reserve, is within a rural community, or is within an urban unincorporated community;

(b) Is not being used for public purposes;

(c) Is not needed for public use within five years of the last date the property was used for public purposes.

(4) After receipt of a declaration to dispose of a State Real Property Interest, and before a Disposing Agency may unconditionally offer to dispose of the State Real Property Interest, the Division must provide notice of the intended Terminal Disposition to all Agencies authorized by law to acquire Real Property Interests. Written notice to agencies must include the following:

(a) A request that any Agency with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) The deadline for the Agency to provide written notice to the Division of its interest in acquiring the State Real Property Interest, which may not be less than 30 days from the date the Division issues the notice, unless the Administrator determines that a shorter period is in the State's interest; and

(d) Any other information the Division or the Disposing Agency elects to include in the notice.

(5) Notification by the Clearing House Process, will be given to agencies by at least one of the following methods:

(a) Mailed notice;

(b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(6) The Division may dispense with notice to Agencies if the Administrator adopts written findings that in the reasoned judgment of the Division it is unlikely that transfer of the State Real Property Interest to another Agency could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(7) If one or more Agencies responds timely to the written notice described in this rule, the responding Agency or Agencies must negotiate with the Disposing Agency to determine if a sale, assignment, lease or other transfer can be completed. The Disposing Agency may not reject another Agency's bona fide offer to acquire the State Real Property Interest without Division approval.

(8) If two or more Agencies make bona fide offers to acquire the State Real Property Interest, the Disposing Agency must determine, in its reasonable discretion, which, if any, offer is most advantageous to the State and the Disposing Agency. Prior to making this determination, the Division may solicit the advice of the PLAC. A Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to another Agency.

(9) Before a Disposing Agency may dispose of a State Real Property Interest to other than another Agency, the Division must provide notice of the intended Terminal Disposition to Nonprofit Organizations, Indian Tribes and Political Subdivisions on the condition that the entities will develop housing on the real property that will be occupied by families and individuals with an income no greater than 80 percent of the median family income for the county in which the real property is located by at least one of the following methods:

(a) Mailed notice;

(b) Electronic mail notice;

(c) Posting notice of the intended Terminal Disposition on the Division's website; or

(d) Newspaper publication meeting the requirements defined in OAR 125-045-0235(3).

(10) The Division may provide notice to Nonprofit Organizations, Indian Tribes and Political Subdivisions at the same time as it provides notice to Agencies. The Division may dispense with notice to Nonprofit Organizations, Indian Tribes and Political Subdivisions if the Administrator adopts written findings that in its reasoned judgment it is unlikely that transfer of the State Real Property Interest to a Nonprofit Organization, Indian Tribe or Political Subdivision could satisfy the Disposing Agency's needs and that as a result, notice would be a futile act.

(11) All notices to Nonprofit Organizations, Indian Tribes and Political Subdivisions must include the following:

(a) A request that any Nonprofit Organizations, Indian Tribe and Political Subdivision with an interest in acquiring the State Real Property Interest notify the Division in writing of its interest;

(b) The information required to be provided under OAR 125-045-0225(1);

(c) Agencies, Nonprofit Organizations, Indian Tribes and Political Subdivisions must provide written notice of interest in acquiring the property by the deadline indicated on the notice;

(d) A reservation of the right of the Disposing Agency to reject any offers;

(e) Notice that a Nonprofit Organization, Indian Tribe and Political Subdivision's right to acquire the State Real Property Interest is subject and subordinate to the right of Agencies to acquire the State Real Property Interest (required only if notice to Nonprofit Organization, Indian Tribe and Political Subdivisions is made concurrently with notice to Agencies); and

(f) Any other information the Division or the Disposing Agency elects to include in the notice.

(12) If no Agency indicates an interest in acquiring the State Real Property Interest, or if a sale or other transfer to another Agency cannot be finalized, any Nonprofit Organization, Indian Tribe or Political Subdivision that has made a timely response to the notice may negotiate with the Disposing Agency to determine if a sale or other transfer can be completed.

(13) A written notice of interest in acquiring the property must be received by the deadline indicated on the public notice and reference the file number and county in which the property is located for identification. Negotiations between the selling agency and respondents will take place in the following order:

(a) State agencies in the order in which they are received;

(b) Nonprofit Organizations in the order in which they are received;

(c) Indian Tribes in the order in which they are received,

(d) Political subdivisions in the order in which they were received.

(14) A responding entity is expected to enter into a pre-purchase agreement or memorandum of understanding with the offering entity within 60 days of responding to the notice.

(15) The Disposing Agency must consider any bona fide offer submitted by a Nonprofit Organization, Indian Tribe or Political Subdivision but is not obliged to sell or otherwise transfer the State Real Property Interest to the Nonprofit Organization, Indian Tribe or Political Subdivision.

(16) No Terminal Disposition of a State Real Property Interest to a Nonprofit Organization, Indian Tribe or Political Subdivision for less than the Appraised Fair Market Value may occur without the written approval of the Administrator or Director according to OAR 125-045-0245.

(17) If two or more Nonprofit Organizations, Indian Tribes or Political Subdivisions make bona fide offers to acquire the State Real Property Interest, the Disposing Agency must determine, in its reasonable discretion, which, if any, offer is acceptable to the State.

(18) The Disposing Agency may place any conditions on the transfer of a State Real Property Interest to a Nonprofit Organization, Indian Tribe and Political Subdivision it deems advisable, including but not limited to requirements that:

(a) Any State Real Property Interest sold or transferred to a Nonprofit Organization, Indian Tribe or Political Subdivision be subject to a deed restriction that the property be used solely for a public purpose or benefit; and

(b) Such State Real Property Interest not be resold to a private purchaser without the consent of the Division.

(c) Nonprofit Organizations and Indian Tribes must use the property to develop housing that will be occupied by families and individuals with an income no greater than 80 percent of the median family income for the county in which the real property is located.

(19) The Disposing Agency need not use a competitive bidding process in connection with the Terminal Disposition of a State Real Property Interest to a Nonprofit Organization, Indian Tribe or Political Subdivision.

Stat. Auth.: ORS 270.015(2), 270.100(1)
Stat. Implemented: ORS 270.100, 270.110, 270.120, Ch. 572, OL 2015 (HB3524), Ch. 285, OL 2015 (SB224)
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 10-2009, f. & cert. ef. 11-19-09; DAS 1-2016, f. & cert ef. 1-7-16

125-045-0235
Terminal Dispositions of State Real Property Interests (Offers to Other Individuals or Entities)

(1) This rule applies to sales and leases of State Real Property Interests only.

(2) If a Disposing Agency does not sell or transfer a State Real Property Interest to either an Agency, Nonprofit Organization, Indian Tribe, Political Subdivision or to a party that has been granted a Right of First Refusal, then the Disposing Agency may dispose of the State Real Property Interest to any other party.

(3) The Disposing Agency must publish notice of the proposed Terminal Disposition of the State Real Property Interest. The notice must be published not less than once a week for three successive weeks in one or more newspapers of general circulation in the county or counties in which the State Real Property Interest is located. In addition, the Disposing Agency may provide notice on its website. The published notice must include the following:

(a) A general description of the State Real Property Interest, including a legal description, if any;

(b) The asking price;

(c) The name and address of the person to contact to obtain any additional information concerning the State Real Property Interest;

(d) A Request for Proposals, including the address to which the Proposal must be delivered and the date and time the Proposal is due, which may not be less than 30 days from the date of the first notice;

(e) If applicable, a notice that the Terminal Disposition of the State Real Property Interest may be subject to a Right of First Refusal;

(f) If not previously published, an invitation for public comment on the State Real Property Interest values defined in OAR 125 045-0215(7) if the Appraised Fair Market Value is more than $100,000;

(g) A reservation of the right of the Disposing Agency or the Division to accept or reject any Proposal; and

(h) Any other information the Disposing Agency elects to include.

(4) The Disposing Agency must use sound real estate industry methods to negotiate the best value for the state.

(5) The Division may post the current status of Surplus State Real Property Interests available for Terminal Disposition on its website.

(6) All Proposals submitted in response to the published notice described in this rule must be in writing and signed by a person authorized to enter into a real estate transaction on behalf of the purchaser and be received by the close of the proposal period. A proposing entity is expected to enter into a Pre-purchase Agreement or Memorandum of Understanding within 60 days of acceptance of proposal.

(7) Each Proposal must clearly identify the amount offered for the purchase of the State Real Property Interest, and must include the following additional information:

(a) Any conditions upon the Proposer's offer to acquire the State Real Property Interest;

(b) A detailed statement explaining the Proposer's proposed use for the State Real Property Interest; and

(c) Any other information the Proposer believes is relevant to its Proposal.

(8) After the date and time for submitting Proposals has passed, the Disposing Agency must open all Proposals that have been timely delivered. The Disposing Agency must evaluate all responsive Proposals to determine the Proposal most advantageous to the State. The determination of the most advantageous Proposal will be final and conclusive and is not subject to review by any court.

(9) The Disposing Agency must notify the apparent successful Proposer and negotiate to determine if the transfer can be consummated and a final agreement reached. If negotiations are unsuccessful, the Disposing Agency may:

(a) Notify the next highest ranking acceptable Proposal and must similarly attempt to negotiate the Terminal Disposition of the State Real Property Interest; and

(b) Continue the negotiation process until the Disposing Agency has exhausted the field of all Proposers; or

(c) Reject remaining Proposals.

(10) If the Disposing Agency and a Proposer reach a final agreement on the Terminal Disposition of the State Real Property Interest and this agreement, where required, is approved by the Attorney General pursuant to ORS 291.047, the Disposing Agency must transfer the State Real Property Interest to the successful Proposer in accordance with the terms of the agreement.

(11) The Disposing Agency, in its sole discretion, may reject any or all Proposals.

(12) If all Proposals are rejected, the Disposing Agency may market and sell the Real Property Interest in any manner the Disposing Agency deems appropriate, including but not limited to auction, direct negotiation with potential buyers, announcing a new RFQ or RFP process, and acting through a real estate licensee, provided that:

(a) If required by ORS 291.047, any resulting agreement of sale must be approved by the Attorney General;

(b) If no agreement of sale is executed within 18 months of the publication of the first public notice of sale described in this rule, no agreement of sale may be accepted without the Division again issuing a 30-day notice following the Clearing House Process as described in 125-045-0225.

Stat. Auth.: ORS 270.015(2), 270.100(1)(d)
Stats. Implemented: ORS 270.010, 270.110, 270.130, 270.135, 270.140, and Ch. 572, OL 2015 (HB3524)
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 2-2009(Temp), f. & cert. ef. 1-23-09 thru 7-17-09; DAS 8-2009, f. & cert. ef. 7-21-09; DAS 5-2013, f. 12-24-13, cert. ef. 1-1-14; DAS 1-2016, f. & cert ef. 1-7-16

125-045-0245
Department Approval

(1) Prior to any Terminal Disposition of a State Real Property Interest at or above the Appraised Fair Market Value, all Disposing Agencies, other than Exempt Disposing Agencies, as listed in 125-045-0205(14), must obtain the written consent of:

(a) The Administrator if the Appraised Fair Market Value is less than $1,000,000; or

(b) The Director if the Appraised Fair Market Value is $1,000,000 or more.

(2) Prior to any Terminal Disposition of a State Real Property Interest for less than the Appraised Fair Market Value, all Disposing Agencies, other than Exempt Disposing Agencies as listed in 125-045-0205(14), must obtain the written consent of the Administrator:

(3) Any Terminal Disposition of real property with an appraised fair market value exceeding $100,000, to other than another state agency, requires the invitation of public comment. The Disposing Agency, other than Exempt Disposing Agencies as listed in 125-045-0205(14), must consider all values of the property including value of fish and wildlife habitat and public access to other property according to ORS 270.105.

(4) Upon the sale, acquisition or exchange of any real property belonging to the state, the Disposing Agency must forward an electronic copy of the instrument that conveys the property to the Department of State Lands according to ORS 273.099, and provide the following information to the Division:

(a) The identity of the State Real Property Interest disposed of;

(b) The Appraised Fair Market Value of the Interest;

(c) The value received for the Interest; and

(d) Any other information requested by the Administrator.

Stat. Auth.: ORS 270.100(1)(d)
Stats. Implemented: ORS 270.100, 270.105, and 270.120(6)
Hist.: DAS 4-2006, f. 5-12-06, cert. ef. 6-1-06; DAS 1-2016, f. & cert ef. 1-7-16

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Department of Consumer and Business Services, Director's Office
Chapter 440

Rule Caption: Changes references to Division of Finance and Corporate Securities and Insurance Division to new Division.
Adm. Order No.: DO 2-2015(Temp)
Filed with Sec. of State: 12-24-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 440-001-9000
Subject: This rule is necessary in order to maintain continuity between the actions the divisions have taken before and after the merger. This rule is necessary to avoid serious prejudice to the public and the various regulated entities that would occur if the previous authority, responsibilities, and actions taken by the current divisions were divorced from their future form as a single entity.
Rules Coordinator: Jenny Craig—(503) 947-7866

440-001-9000
Name Substitution

Effective January 1, 2016, whenever any rule, order, document, record or proceeding refers to the Oregon Insurance Division or the Division of Finance and Corporate Securities, the reference is considered to be a reference to the Division of Financial Regulation. The substitution of the Division of Financial Regulation for the Oregon Insurance Division and the Division of Finance and Corporate Securities does not affect any legal rights, responsibilities, or obligations of the Director, Divisions, any licensee or registrant, or prospective licensees or registrants.

Stat. Auth.: 705.135
Stat. Implemented: 705.115
Hist.: DO 2-2015(Temp), f. 12-24-15, cert. ef. 1-1-16 thru 6-28-16

Department of Consumer and Business Services,
Division of Finance and Corporate Securities
Chapter 441

Rule Caption: Adopts conditions for credit unions paying compensation to boards of directors and supervisory committee members.
Adm. Order No.: FCS 11-2015
Filed with Sec. of State: 12-16-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 441-710-0305
Subject: Until recently, Oregon law prohibited credit unions from paying their boards of directors and supervisory committee members compensation. In the 2015 legislative session, the Assembly enacted Senate Bill 582. Among other things, SB 582 permitted the payment of "reasonable compensation." The Act did not specify what was reasonable, what would be considered (or not considered) compensation, or how to involve credit union membership in any decisions on whether to pay compensation. This rulemaking activity - undertaken under the department's general grant of authority to implement the Credit Union Act - provides definition to the inexact terms in the Act, sets up processes for bylaw change, adopting policies and procedures on compensation, and implements a public process of disclosure to keep the membership informed.
Rules Coordinator: Shelley Greiner—(503) 947-7484

441-710-0305
Compensation of Boards of Directors and Supervisory Committee Members

(1) For purposes of this rule, unless the context requires otherwise:

(a) "Compensation" includes anything of value given in exchange for service as a member of the credit union's board of directors or a member of the credit union's supervisory committee. Compensation does not include:

(A) Reasonable life, health, accident and similar insurance protection for a director or committee member, or indemnification and related insurance; or

(B) Reimbursement for actual expenses incurred in carrying out duties as a director or committee member.

(b) "Reasonable" means compensation that is:

(A) Proportional to the size and complexity of the credit union;

(B) Consistent with the credit union's mission, needs and goals, to the extent the mission, needs and goals of the credit union are congruent with safety and soundness, and applicable law;

(C) Proportional to the market conditions in which the credit union operates; and

(D) Related to the financial strength of the credit union.

(2) A credit union may pay compensation to its board of directors and members of the supervisory committee that is reasonable, if the credit union;

(a) Operates in a safe and sound manner;

(b) Authorizes through its bylaws the payment of compensation to its board of directors or supervisory committee members. The bylaws must include provisions for adopting policies on the payment of compensation;

(c) Adopts policies and procedures, consistent with its bylaws and this rule, for the payment of compensation that is reasonable. Policies and procedures adopted under this subsection must address, but need not be limited to:

(A) The types and amount of compensation that is reasonable for its board of directors and supervisory committee members;

(B) Due diligence activities, including considering comparative studies on the compensation structures of other organizations of like size, location, complexity and mission;

(C) Why, when and how compensation may be suspended by the credit union's board of directors;

(D) Review criteria and frequency of review to ascertain whether compensation remains reasonable; and

(E) Documenting how the credit union followed its policies and procedures on compensation;

(d) Makes the required disclosures to membership under section (3) of this rule; and

(e) Notifies the Director of the Department of Consumer and Business Services prior to any final decision to pay compensation.

(3)(a) A credit union electing to pay reasonable compensation to its boards of directors or supervisory committee members must disclose the following information to all members, prior to or during the next scheduled annual meeting before compensation is adopted:

(A) A description of the compensation in detail, including compensation paid last year and compensation scheduled to be paid;

(B) A description of the duties of the board of directors/supervisory committee that demonstrate the need for compensation sought and how compensation comports with the needs and goals of the credit union;

(C) Information on the financial performance of the credit union, as it relates to whether the compensation paid is reasonable; and

(D) The process the credit union followed to complete its due diligence in comparing compensation to other like organizations.

(b) A copy of the information submitted to the credit union members under this section shall also be submitted to the director. Any member may request a copy of the information in an accessible form and format the credit union maintains.

(4) The director may override payments of compensation if the compensation does not appear reasonable following a review during a regularly scheduled examination.

Stat. Auth.: ORS 723.108
Stat. Implemented: 723.266.
Hist.: FCS 11-2015, f. 12-16-15, cert. ef. 1-1-16

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Department of Consumer and Business Services,
Insurance Division
Chapter 836

Rule Caption: Temporary Rules to Adopt 2017 the base benchmark health benefit plan and essential health benefits
Adm. Order No.: ID 14-2015(Temp)
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 12-17-15 thru 5-1-16
Notice Publication Date:
Rules Adopted: 836-053-0004, 836-053-0012, 836-053-0013
Rules Amended: 836-053-0002, 836-053-0008, 836-053-0009, 836-053-1020, 836-053-1404, 836-053-1405
Subject: These temporary new and amended rules establish the Oregon benchmark health benefit plan and standard plans for plan years beginning on and after January 1, 2017. Because the plan selected is a 2014 plan, the plan alone does not reflect current state and federal minimum requirements. Therefore, the proposed rules also include provisions to supplement the selected plan so that the plan complies with state and federal law. The proposed rules clarify existing state and federal requirements adopted since 2014 and make conforming amendments to rules related to coverage of mental or nervous conditions.
Rules Coordinator: Karen Winkel—(503) 947-7694

836-053-0002
Modification of a Health Benefit Plan Subject to Levels of Coverage Requirements

(1) A modification of a health benefit plan subject to the levels of coverage defined in 42 U.S.C. 18022(d) is defined in this rule for the purposes of:

(a) ORS 743.737, regarding small employer health benefit plans; and

(b) ORS 743.766, regarding individual health benefit plans.

(2) At the time of coverage renewal insurers may modify the coverage for a product offered to a group health benefit plan or an individual health benefit plan.

(a) The modification must be consistent with state law and if effective uniformly with that product.

(b) Modifications made uniformly and solely pursuant to applicable federal or state requirements are considered a uniform modification of coverage if:

(A) The modification is made within a reasonable time period after the imposition or modification of the federal or state requirement; and

(B) The modification is directly related to the imposition or modification of the federal or state requirement.

(c) Other types of modification made uniformly are considered a uniform modification of coverage if the coverage for the product in the individual or small group market meets all of the following criteria:

(A) The product is offered by the same health insurer;

(B) The product is offered has the same product network type;

(C) The product is continues to cover at least a majority of the same service area;

(D) Within the product, each plan has the same cost sharing structure as before the modification, except for any variation in cost sharing solely related to changes in cost and utilization of medical care, or to maintain the same metal tier level described in 42 U.S.C. 18022(d); and

(E) The product provides the same covered benefits, except for any changes in benefits that cumulatively impact the plan-adjusted index rate for any plan within the product within an allowable variation of the +/- 2 percentage points (not including changes pursuant to applicable federal or state requirements).

(3) Insurers must use the standardized notice of modification or discontinuance as set forth on website for the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov.

Stat. Auth.: ORS 731.244, 743.566 & 743.773
Stats Implemented: ORS 743.737, 743.754 & 743.766
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-0004
Compliance with Federal and State Law

Upon contract issuance or renewal, any insurer offering a health benefit plan must update the plans of the insurer as necessary to comply with state and federal law.

Stat. Auth.: ORS 731.244
Stats Implemented: ORS 742.005
Hist.: ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-0008
Essential Health Benefits for Plan Years 2014, 2015 and 2016

(1) This rule applies to plan years beginning January 1, 2014 through December 31, 2016.

(2) As used in the Insurance Code:

(a) "Base benchmark health benefit plan" means the PacificSource Health Plans Preferred CoDeduct Value 3000 35 70 small group health benefit plan, including prescription drug benefits, as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(b) "Essential health benefits" means the following coverage provided in compliance with 45 CFR 156:

(A) The base-benchmark health benefit plan, excluding the 24-month waiting period for transplant benefits;

(B) Pediatric dental benefits;

(C) Pediatric vision benefits; and

(D) Habilitative services.

(c) "Habilitative benefits" means the rehabilitative services provisions of the base benchmark when the services are medically necessary for the maintenance, learning or improving skills and function for daily living.

(d) "Pediatric dental benefits" means the benefits described in the children's dental provisions of the State Children's Health Insurance Plan as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric dental benefits are payable to persons under 19 years of age.

(e) "Pediatric vision benefits" means the benefits described in the vision provisions of the Federal Employee Dental and Vision Insurance Plan Blue Vision High Option as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric vision benefits are payable to persons under 19 years of age.

(3) An insurer that issues a health benefit plan offering essential health benefits may not include as an essential health benefit:

(a) Routine non-pediatric dental services;

(b) Routine non-pediatric eye exam services;

(c) Long-term care or custodial nursing home care benefits; or

(d) Non-medically necessary orthodontia services.

Stat. Auth.: Sec. 2, Ch. 681, OL 2013
Stats. Implemented: Sec. 2, Ch. 681, OL 2013
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-0009
Oregon Standard Bronze and Silver Health Benefit Plans for Plan Years 2014, 2015 and 2016

(1) This rule applies to plan years beginning January 1, 2014 through December 31, 2016.

(2) As used in this rule, "coverage" includes medically necessary benefits, services, prescription drugs and medical devices. "Coverage" does not include coinsurance, copayments, deductibles, other cost sharing, provider networks, out-of-network coverage, wigs or administrative functions related to the provision of coverage, such as eligibility and medical necessity determinations.

(3) For purposes of coverage required under this rule:

(a) "Inpatient" includes but is not limited to:

(A) Surgery;

(B) Intensive care unit, neonatal intensive care unit, maternity and skilled nursing facility services; and

(C) Mental health and substance abuse treatment.

(b) "Outpatient" includes but is not limited to services received from ambulatory surgery centers and physician and anesthesia services and benefits when applicable.

(c) "Habilitative benefits" means services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). Examples include therapy for a child who is not walking or talking at the expected age. These services and devices may include physical and occupational therapy, speech-language pathology and other services and devices for people with disabilities in a variety of inpatient or outpatient settings.

(d) A reference to a specific version of a code or manual, including but not limited to references to ICD-9, CPT, "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition", (DSM-IV-TR); place of service and diagnosis includes a reference to a code with equivalent coverage under the most recent version of the code or manual.

(4) When offering a plan required under ORS 743.822, an issuer must use the following naming convention: "[Name of Issuer] Oregon Standard [Bronze/Silver] Plan". For example, "Acme Oregon Standard Bronze Plan".

(5) Coverage required under ORS 743.822 must be provided in accordance with the requirements of sections (6) to (11) of this rule.

(6) Coverage must be provided in a manner consistent with the requirements of:

(a) 45 CFR 156, except that actuarial substitution of coverage within an essential health benefits category is prohibited;

(b) OAR 836-053-1404 and 836-053-1405; and

(c) The federal Mental Health Parity and Addiction Equity Act of 2008;

(7) Coverage must provide essential health benefits as defined in OAR 836-053-0008.

(8) Except when a specific benefit exclusion applies, or a claim fails to satisfy the issuer's definition of medical necessity or fails to meet other issuer requirements the following coverage must be provided:

(a) Ambulatory services based on the following Place of Service Codes:

(A) 11 — Office;

(B) 12 — Patient's home;

(C) 20 — Urgent care facility;

(D) 22 — Outpatient hospital;

(E) 24 — Ambulatory surgical center;

(F) 25 — Birthing center;

(G) 49 — Independent clinic;

(H) 50 — Federally qualified health center;

(I) 71 — State or local public health clinic;

(J) 72 — Rural health clinic;

(b) Emergency services based on Place of Service Code 23 — Emergency;

(c) Hospitalization services based on Place of Service Code 21 — Hospital;

(d) Maternity and newborn services based on the following ICD-9 codes:

(A) V20 to V20.2;

(B) V22 to V39; and

(C) 630-677;

(e) Rehabilitation and habilitation services based the following ICD-9 or CPT codes:

(A) Physical Therapy/Professional: 97001-97002, 97010-97036, 97039, 97110, 97112, 97113-97116, 97122, 97128, 97139, 97140-97530, 97535, 97542, 97703, 97750, 97760, 97761-97762, 97799, and S9090;

(B) Occupational Therapy/Professional: 97003-97004 and G0129 in addition to all physical therapy codes if performed by an occupational therapist;

(C) Speech Therapy/Professional: 92507-92508, 92526, 92609-92610, and 97532 except ICD-9 784.49;

(f) Laboratory services in the CPT code range 8XXXX;

(g) All grade A and B United States Preventive Services Task Force preventive services, Bright Futures recommended medical screenings for

children, Institute of Medicine recommended women's guidelines, and Advisory Committee on Immunization Practices recommended immunizations for children coverage must be provided without cost share; and

(h) Prescription drug coverage at the greater of:

(A) At least one drug in every United States Pharmacopeia (USP) category and class as the prescription drug coverage of the plan described in OAR 836-053-0000(1)(a); or

(B) The same number of prescription drugs in each category and class as the prescription drug coverage of the plan described in OAR 836-053-0000(1)(a).

(9) Copays and coinsurance for coverage required under ORS 743.822 must comply with the following:

(a) Non-specialist copays apply to physical therapy, speech therapy, occupational therapy and vision services when these services are provided in connection with an office visit.

(b) Subject to the federal Mental Health Parity and Addiction Equity Act of 2008, specialist copays apply to specialty providers including, mental health and substance abuse providers, if and when such providers act in a specialist capacity as determined under the terms of the health benefit plan.

(c) Coinsurance for emergency room coverage must be waived if a patient is admitted, at which time the inpatient coinsurance applies.

(10) Deductibles for coverage required under ORS 743.822 must comply with the following:

(a) For a bronze plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a bronze plan set forth in Exhibit 1 to this rule. The bronze plan deductible must be integrated applicable to prescription drugs and all services except preventive services.

(b) For a silver plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a silver plan set forth in Exhibit 1 to this rule. The silver plan deductible applies to all services except preventive services, office visits, urgent care, and prescription drugs.

(c) The individual deductible applies to all enrollees, and the family deductible applies when multiple family members incur claims.

(11) Dollar limits for coverage required under ORS 743.822 must comply with the following:

(a) Annual dollar limits must be converted to a non-dollar actuarial equivalent.

(b) Lifetime dollar limits must be converted to a non-dollar actuarial equivalent.

Stat. Auth.: ORS 743.822
Stats. Implemented: ORS 743.822
Hist.: ID 12-2013, f. 12-31-13, cert. ef. 1-1-14; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-0012
Essential Health Benefits for Plan Years Beginning on and after January 1, 2017

(1) This rule applies to plan years beginning on and after January 1, 2017.

(2) As used in the Insurance Code and OAR Chapter 836:

(a) "Base benchmark health benefit plan" means the PacificSource Health Plans Preferred CoDeduct Value 3000 35 70 small group health benefit plan, including prescription drug benefits, as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov;

(b) "Essential health benefits" means the following coverage provided in compliance with 45 CFR 156:

(A) The base-benchmark health benefit plan with the exclusions and modifications of provisions of that plan as set forth in section (3) to (7) of this rule.

(B) Pediatric dental benefits;

(C) Pediatric vision benefits; and

(D) Habilitative services and devices.

(3) The following exclusions and modifications are required supplementation to the base-benchmark health benefit plan:

(a) The following treatment limitations and exclusions of coverage currently included in the base-benchmark health benefit plan are excluded:

(A) The 24-month waiting period for transplant benefits;

(B) Visit limits for inpatient and outpatient mental health services, including services provided for the treatment of mental health conditions including but not limited to habilitative and rehabilitative benefits;

(C) Age limits on treatments that would otherwise be appropriate for individuals outside of the limited age, including but not limited to speech, physical and occupational therapy used in the treatment of mental or nervous conditions as defined in OAR 836-053-1404;

(D) Exclusions for the treatment of erectile dysfunction or sexual dysfunction as defined in the "Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition" (DSM-5);

(E) Exclusions for surgeries and procedures related to sex transformations and gender identity disorder or gender dysphoria;

(F) Any blanket exclusion for a diagnosis made using the diagnostic criteria of the DSM-5;

(G) Exclusions for court-order screening interviews or drug or alcohol treatment programs;

(H) Any limitations or waiting periods for pre-existing conditions;

(I) Time limits for treatment of jaw or teeth or orthognathic surgery;

(J) Dollar limits for coverage of durable medical equipment must comply with the following:

(i) Annual dollar limits must be converted to a non-dollar actuarial equivalent.

(ii) Lifetime dollar limits must be converted to a non-dollar actuarial equivalent.

(b) The following provisions of the base-benchmark plan must be modified:

(A) Any waiting periods must be consistent with limitations imposed by state or federal law;

(B) Wigs following chemotherapy or radiation therapy must be covered up to the actuarial equivalent of $150 per calendar year;

(C) The coverage of diabetes self-management under ORS 743A.184 must be an additional benefit to what must be supplied under the USPSTF A and B list;

(D) The limitation on cosmetic or reconstructive surgery to one attempt within 18 months of injury or defect must be modified to remove these limitations in cases of medical necessity because this limitation violates prohibitions on discriminatory benefit designs under 45 CFR 156.125(a) and discrimination based on health factors under 45 CFR 146.121;

(E) Contraceptive coverage must comply with CMS guidance and requirements related to contraception issued by the United States Department of Labor, Employee Benefits Security Administration on May 11, 2015;

(F) Provisions related to telemedical health services must reflect changes made to ORS 743A.058 by chapter 340, Oregon Laws 2015 (Enrolled Senate Bill 144); and

(G) Housing and travel expenses for transplant services are not considered essential health benefits;

(4) An insurer that issues a health benefit plan offering essential health benefits may not include as an essential health benefit:

(a) Routine non-pediatric dental services;

(b) Routine non-pediatric eye exam services;

(c) Long-term care or custodial nursing home care benefits; or

(d) Non-medically necessary orthodontia services.

(5) In the administration of essential health benefits and the EHB base benchmark health benefit plan an insurer may not discriminate against a provider acting within the scope of the provider's license.

(6) In the administration of essential health benefits and the EHB base benchmark health benefit plan an insurer may not exclude services provided by a naturopathic physician if the services are otherwise covered under the plan and the naturopathic physician is acting within the scope of the provider's license.

(7) In the administration of essential health benefits and the EHB base benchmark health benefit plan an insurer may not exclude services provided by a doctor of chiropractic medicine if the services are otherwise covered under the plan and the doctor of chiropractic medicine is acting within the scope of the provider's license.

(8) As used in the Insurance Code and OAR Chapter 836:

(a) "Applied behavior analysis" has the meaning given in Section 2, chapter 771, Oregon Laws 2013 as amended by Section 9, chapter 674, Oregon Laws 2015.

(b) "Habilitative services and devices" means services and devices that help a person keep, learn, or improve skills and functioning for daily living (habilitative services). Examples include therapy for a child who is not walking or talking at the expected age. These services and devices may include physical and occupational therapy, speech-language pathology and other services and devices for people with disabilities in a variety of inpatient or outpatient settings.

(c) "Mental or nervous condition" has the meaning given in OAR 836-053-1404.

(d) "Pediatric dental benefits" means the benefits described in the Dental Plan of the Oregon Health Plan Children's' Health Insurance Plan as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric dental benefits are payable to persons under 19 years of age.

(e) "Pediatric vision benefits" means the benefits described in the vision provisions of the Federal Employee Dental and Vision Insurance Plan Blue Vision High Option as set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. Pediatric vision benefits are payable to persons under 19 years of age.

(f) "Treatment of a mental health condition" includes medical treatments and prescription drugs used to treat a mental or nervous condition.

Stat. Auth.: Sec. 2, Ch. 681, OL 2013
Stats. Implemented: Sec. 2, Ch. 681, OL 2013
Hist.: ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-0013
Oregon Standard Bronze and Silver Health Benefit Plans for Plan Years Beginning on and after January 1, 2017

(1) This rule applies to plan years beginning on and after January 1, 2017.

(2) As used in this rule, "coverage" includes medically necessary benefits, services, prescription drugs and medical devices. "Coverage" does not include coinsurance, copayments, deductibles, other cost sharing, provider networks, out-of-network coverage, wigs or administrative functions related to the provision of coverage, such as eligibility and medical necessity determinations.

(3) For purposes of coverage required under this rule:

(a) "Inpatient" includes but is not limited to:

(A) Surgery;

(B) Intensive care unit, neonatal intensive care unit, maternity and skilled nursing facility services; and

(C) Mental health and substance abuse treatment.

(b) "Outpatient" includes but is not limited to services received from ambulatory surgery centers and physician and anesthesia services and benefits when applicable.

(c) A reference to a specific version of a code or manual, including but not limited to references to ICD-10, CPT, "Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition" (DSM-5); place of service and diagnosis includes a reference to a code with equivalent coverage under the most recent version of the code or manual.

(4) When offering a plan required under ORS 743.822, an insurer must:

(a) Use the following naming convention: "[Name of Insurer] Standard [Bronze/ Silver] Plan". The name of insurer may be shortened to an easily identifiable acronym that is commonly used by the insurer in consumer facing publications. For example, "Acme Standard Bronze Plan".

(b) Include a service area or network identifier in the plan name if the plan is not offered on a statewide basis with a statewide network.

(5) Coverage required under ORS 743.822 must be provided in accordance with the requirements of sections (6) to (11) of this rule.

(6) Coverage must be provided in a manner consistent with the requirements of:

(a) 45 CFR 156, except that actuarial substitution of coverage within an essential health benefits category is prohibited;

(b) OAR 836-053-1404, 836-053-1405, 836-053-1407 and 836-053-1408; and

(c) The federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, 29 U.S.C. 1185a (MHPAEA) and implementing regulations at 45 CFR 146.136 and 147.160;

(7) Coverage must provide essential health benefits as defined in OAR 836-053-0012.

(8) Except when a specific benefit exclusion applies, or a claim fails to satisfy the insurer's definition of medical necessity or fails to meet other issuer requirements the following coverage must be provided:

(a) Ambulatory services;

(b) Emergency services;

(c) Hospitalization services;

(d) Maternity and newborn services;

(e) Rehabilitation and habilitation services including

(A) Professional Physical Therapy services;

(B) Professional Occupational Therapy;

(C) Physical therapy performed by an occupational therapist; and

(D) Professional Speech Therapy;

(f) Laboratory services;

(g) All grade A and B United States Preventive Services Task Force preventive services, Bright Futures recommended medical screenings for children, Institute of Medicine recommended women's guidelines, and Advisory Committee on Immunization Practices recommended immunizations for children coverage must be provided without cost share; and

(h)(A) Prescription drug coverage at the greater of:

(i) At least one drug in every United States Pharmacopeia (USP) category and class as the prescription drug coverage of the plan described in OAR 836-053-0012(2); or

(ii) The same number of prescription drugs in each category and class as the prescription drug coverage of the plan described in OAR 836-053-0012(2).

(B) Insurers must submit the formulary drug list for review and approval.

(C) For plan years beginning on or after January 1, 2017 insurers must use a pharmacy and therapeutics committee that complies with the standards set forth in 45 CFR 156.122.

(9) Copays and coinsurance for coverage required under ORS 743.822 must comply with the following:

(a) Non-specialist copays apply to physical therapy, speech therapy, occupational therapy and vision services when these services are provided in connection with an office visit.

(b) Subject to the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, 29 U.S.C. 1185a, specialist copays apply to specialty providers including mental health and substance abuse providers, if and when such providers act in a specialist capacity as determined under the terms of the health benefit plan.

(c) Coinsurance for emergency room coverage must be waived if a patient is admitted, at which time the inpatient coinsurance applies.

(10) Deductibles for coverage required under ORS 743.822 must comply with the following:

(a) For a bronze plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a bronze plan set forth in the cost-sharing matrix set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. The bronze plan deductible must be integrated applicable to prescription drugs and all services except preventive services.

(b) For a silver plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a silver plan set forth in the cost-sharing matrix set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. The silver plan deductible applies to all services except preventive services, office visits, urgent care, and prescription drugs.

(c) The individual deductible applies to all enrollees, and the family deductible applies when multiple family members incur claims.

(11) Dollar limits for coverage required under ORS 743.822 must comply with the following:

(a) Annual dollar limits must be converted to a non-dollar actuarial equivalent.

(b) Lifetime dollar limits must be converted to a non-dollar actuarial equivalent.

Stat. Auth.: ORS 743.822
Stats. Implemented: ORS 743.822
Hist.: ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-1020
Drug Formularies

(1) For purposes of OAR 836-053-0000 to 836-053-1200:

(a) "Open formulary" means a method used by an insurer to provide prescription drug benefits in which all prescribed FDA approved prescription drug products are covered except for any drug product that is excluded by the insurer pursuant to the insurer's policy regarding medical appropriateness or by the terms of a specific health benefit plan, or except for an entire class of drug product that is excluded by the insurer.

(b) "Closed formulary" means a method used by an insurer to provide prescription drug benefits in which only specified FDA approved prescription drug products are covered, as determined by the insurer, but in which medical exceptions are allowed. Maximum benefits or coverage may be limited to formulary drugs in a health benefit plan with a closed formulary.

(c) "Mandatory closed formulary" means a method used by an insurer to provide prescription drug benefits in which only specified FDA approved prescription drug products are covered, as determined by the insurer, and in which no exceptions are allowed.

(2) An insurer that uses an open formulary must have a written procedure that includes the written criteria or explains the review process established by the insurer for determining when an item will be limited or

excluded pursuant to the insurer's policy regarding medical appropriateness.

(3) An insurer that uses a closed formulary must have a written procedure stating that FDA approved prescription drug products are covered only if they are listed in the formulary. The procedure must also describe how the insurer determines the content of the closed formulary and how the insurer determines the application of a medical exception. The procedure must describe how a provider may request inclusion of a new item in the closed formulary and must ensure that the insurer will issue a timely written response to a provider making such a request.

(4) An insurer that uses a mandatory closed formulary must have a written procedure stating that FDA approved prescription drug products are covered only if they are listed in the formulary and that no exception is allowed. The procedure must describe how the insurer determines the content of the mandatory closed formulary. The procedure must also describe how a provider may request inclusion of a new item in the formulary and must ensure that the insurer will issue a timely written response to a provider making such a request.

(5) An insurer must furnish a copy of the procedures it has adopted under section (2), (3) or (4) of this rule to a provider with authority to prescribe drugs and medications, upon the request of the provider.

(6) Except as provided in section (7) of this rule, a formulary must comply with the requirements of 45 CFR 156.122 and include the greater of:

(a) At least one drug in every United States Pharmacopeia therapeutic category and class; or

(b) The same number of drugs in each United States Pharmacopeia category and class as the prescription drug benefit of the plan described in OAR 836-053-0008(1)(a).

(7) An insurer that issues a small group or individual health benefit plan formulary that does not comply with the requirements of section (6) of this rule must file with the Director of the Department of Consumer and Business Services the form entitled "Formulary-Inadequate Category/Class Count Justification" as set forth on the website of the Insurance Division of the Department of Consumer and Business Services at www.insurance.oregon.gov. The director, in the director's discretion, may consider approval of a formulary that does not meet the requirements of section (5) [(6)] of this rule if:

(a) Drugs in a category or class have been discontinued by the manufacturer;

(b) Drugs in a category or class have been deemed unsafe by the Food and Drug Administration or removed from market by the manufacturer due to safety concerns;

(c) Drugs in a category of class have a Drug Efficacy Study Implementation classification;

(d) Drugs in a category or class have become available as generics; or

(e) Drugs in a category or class are provided in a medical setting and are covered under the medical provisions of the plan.

(8) An insurer that issues a small group or individual health benefit plan formulary does not comply with the nondiscrimination requirements of OAR 836-053-0012 if most or all drugs to treat a specific condition are placed on the highest cost tiers.

(9) A health benefit plan providing essential health benefits must have procedures in place that allow an enrollee to request and gain access to clinically appropriate drugs not covered by the health plan.

Stat. Auth.: ORS 731.244 & sec. 2, ch.681, OL 2013
Stats. Implemented: ORS 743.804 & sec. 2, ch. 681, OL 2013
Hist.: ID 1-1998, f. & cert. ef. 1-15-98; ID 12-2013, f. 12-31-13, cert. ef. 1-1-14; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-1404
Definitions; Noncontracting Providers; Co-Morbidity Disorders

(1) As used in ORS 743A.168 and OAR Chapter 836:

(a) "Mental or nervous conditions" means any mental disorder covered by diagnostic categories listed in the "Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition" (DSM-IV-TR) or the "Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition" (DSM-5).

(b) "Chemical dependency" means an addictive relationship with any drug or alcohol characterized by a physical or psychological relationship, or both, that interferes on a recurring basis with an individual's social, psychological or physical adjustment to common problems.

(c) "Chemical dependency" does not mean an addiction to or dependency on:

(A) Tobacco;

(B) Tobacco products; or

(C) Foods.

(2) A non-contracting provider must cooperate with a group health insurer's requirements for review of treatment in ORS 743A.168(10) and (11) to the same extent as a contracting provider in order to be eligible for reimbursement.

(3) The exception of a disorder in the definition of "mental or nervous conditions" or "chemical dependency" in section (1) of this rule does not include or extend to a co-morbidity disorder accompanying the excepted disorder.

Stat. Auth.: ORS 731.244 & 743A.168
Stats. Implemented: ORS 743A.168
Hist.: ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 19-2012(Temp), f. & cert. ef. 12-20-12 thru 6-17-13; ID 3-2013, f. 6-10-13, cert. ef. 6-17-13; ID 19-2014(Temp), f. & cert. ef. 11-14-14 thru 5-12-15; ID 3-2015, f. & cert. ef. 5-12-15; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

836-053-1405
General Requirements for Coverage of Mental or Nervous Conditions and Chemical Dependency

(1) A group health insurance policy issued or renewed in this state shall provide coverage or reimbursement for medically necessary treatment of mental or nervous conditions and chemical dependency, including alcoholism, at the same level as, and subject to limitations no more restrictive than those imposed on coverage or reimbursement for medically necessary treatment for other medical conditions.

(2) For the purposes of ORS 743A.168, the following standards apply in determining whether coverage for expenses arising from treatment for chemical dependency, including alcoholism, and for mental or nervous conditions is provided at the same level as, and subject to limitations no more restrictive than, those imposed on coverage or reimbursement of expenses arising from treatment for other medical conditions:

(a) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles for mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing, including, but not limited to, deductibles for medical and surgical services otherwise provided under the health insurance policy.

(b) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles for wellness and preventive services for mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing, including, but not limited to, deductibles for wellness and preventive services otherwise provided under the health insurance policy.

(c) If annual or lifetime limits for treatment of mental or nervous conditions and chemical dependency, including alcoholism, the limits must comply with the "predominately equal" to and "substantially all" tests the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, 29 U.S.C. 1185a and implementing regulations at 45 CFR 146.136 and 147.160.

(d) The co-payment, coinsurance, reimbursement, or other cost sharing, including, but not limited to, deductibles expenses for prescription drugs intended to treat mental or nervous conditions and chemical dependency, including alcoholism, may be no more than the co-payment or coinsurance, or other cost sharing expenses for prescription drugs prescribed for other medical services provided under the health insurance policy.

(e) Classification of prescription drugs into open, closed, or tiered drug benefit formularies, for drugs intended to treat mental or nervous conditions and chemical dependency, including alcoholism, must be by the same process as drug selection for formulary status applied for drugs intended to treat other medical conditions, regardless of whether such drugs are intended to treat mental or nervous conditions, chemical dependency, including alcoholism, or other medical conditions.

(3) A group health insurance policy issued or renewed in this state must contain a single definition of medical necessity that applies uniformly to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

(4) A group health insurer that issues or renews a group health insurance policy in this state shall have policies and procedures in place to ensure uniform application of the policy's definition of medical necessity to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

(5) Coverage for expenses arising from treatment for mental or nervous conditions and chemical dependency, including alcoholism, may be managed through common methods designed to limit eligible expenses to treatment that is medically necessary only if similar limitations or requirements are imposed on coverage for expenses arising from other medical

condition. Common methods include, but are not limited to, selectively contracted panels, health policy benefit differential designs, preadmission screening, prior authorization of services, case management, utilization review, or other mechanisms designed to limit eligible expenses to treatment that is medically necessary.

(6) Nothing in this rule prevents a group health insurance policy from providing coverage for conditions or disorder excepted under the definition of "mental or nervous condition" in OAR 836-053-1400.

(7) The Director shall review OAR 836-053-1400 and this rule and any other materials every two years to determine whether the requirements set forth in the rules are uniformly applied to all medical, mental or nervous conditions, and chemical dependency, including alcoholism.

Stat. Auth.: ORS 731.244 & 743A.168
Stats. Implemented: ORS 743A.168
Hist.: ID 13-2006, f. 7-14-06 cert. ef. 1-1-07; ID 19-2012(Temp), f. & cert. ef. 12-20-12 thru 6-17-13; ID 3-2013, f. 6-10-13, cert. ef. 6-17-13; ID 14-2015(Temp), f. & cert. ef. 12-17-15 thru 5-1-16

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Rule Caption: Election of Lower Limits for Uninsured Motorist Coverage
Adm. Order No.: ID 15-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 836-054-0020
Rules Amended: 836-054-0000
Rules Repealed: 836-054-0000(T)
Subject: These rules make two changes related to automobile insurance necessary as a result of passage of Senate Bill 411 (2015 Legislative Session) (SB 411). First, the amendment to OAR 836-054-000(2) changes a reference to a specific exhibit that does not correctly explain the law as it will apply to automobile policies that will be issued or renewed after January 1, 2016. The changes to the rule remove the reference to a specific exhibit and direct the reader to the website for a sample form that has been approved by the Insurance Division of the Department of Consumer and Business Services. The changes to the rule will allow the Insurance Division to respond more quickly to changes that may be necessary to the form by eliminating the need to conduct rulemaking to change the form.

Second, SB 411 changed the language related to the notice of denial of charges that an insurer must provide to medical providers when the insurer denies charges. Prior to SB 411, the statute required the insurers to give notice of denial not more than 60 days after the insurer receives from the provider notice of a claim for services for Personal Injury Protection (PIP) benefits. SB 411 changed this to a requirement that the provider must receive the notice of denial within 60 days after the insurer received the claim for services. The new rule clarifies how to prove "receipt" of the denial by using language similar to language used in the Oregon Rules of Civil Procedure that establishes a presumption of receipt through service by mail with three days added to the prescribed period.
Rules Coordinator: Karen Winkel—(503) 947-7694

836-054-0000
Election of Lower Limits for Uninsured Motorist Coverage

(1) This rule is adopted under the authority of ORS 731.244 for the purpose of implementing ORS 742.502.

(2) This rule establishes in Exhibit 1 an example of the form of statement electing lower limits for uninsured motorist coverage in a motor vehicle liability insurance policy that may be used to comply with the requirement in ORS 742.502 for a statement of election. A form used by an insurer or insurance producer that is in substantial compliance with this rule is considered to be approved by the Department. A form is in substantial compliance if the for contains all of the following elements in any order: An example of a form that may be used by an insurer or insurance producer to comply with this rule is posted on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. If an insurer or insurance producer uses this form, or any other selection form that has been approved by the Department, the form is considered to be approved by the Department. Any other form electing lower limits for uninsured motorist coverage in a motor vehicle liability insurance policy must be approved by the Department and must contain all of the following elements in any order:

(a) An acknowledgement by the named insured that the named insured was offered uninsured motorist coverage with the limits equal to those for bodily injury liability;

(b) A brief summary, which is not part of the insurance contract, of uninsured and underinsured motorist coverages;

(c) A statement of the price for coverage per insured vehicle with limits equal to the named insured's bodily injury liability limits and the price for coverage per insured vehicle with the lower limits requested by the named insured;

(d) A statement to the effect that the statement shall remain in force until rescinded in writing by a named insured or until such time as motor vehicle bodily injury liability limits are changed; and

(e) Provision for signature of a named insured, to be made within 60 days of the time the named insured makes the election, and for the date of signature.

(3) Regarding the summary required in subsection (2)(b) of this rule, if an insurer issuing a policy that refers only to uninsured motorist coverage because uninsured motorist coverage under the policy includes underinsured motorist coverage meeting statutory requirements, the insurer need not use the term "underinsured motorist coverage."

(4) The statement required under subsection (2)(c) of this rule may state the term of coverage to which the prices relate.

(5) The form may include one or both of the following statements in addition to the items required under section (2) of this rule:

(a) A statement to the effect that the form is required by Oregon law or specifically by ORS 742.502; and

(b) A statement to the effect that limits for uninsured motorist coverage cannot be less than the amounts required to comply with financial responsibility requirements under ORS 806.070.

Stat. Auth.: ORS 731.244 & 742.502
Stats. Implemented: ORS 742.502(2) & 742.504
Hist.: ID 5-1994, f. & cert. ef. 5-9-94; ID 8-2005, f. 5-18-05, cert. ef. 8-1-05; ID 19-2006, f. & cert. ef. 9-26-06; ID 7-2015(Temp), f. & cert. ef. 9-14-15 thru 12-31-15; ID 15-2015, f. 12-29-15, cert. ef. 1-1-16

836-054-0020
Timely Notice of Denial of Charges to Provider

(1) This rule is adopted under the authority of ORS 731.244 for the purpose of implementing ORS 742.524.

(2) When an insurer is required to provide notice of a denial of charges within 60 days of receipt, it shall be presumed that the provider has received the denial within three days after it is served by mail.

(3) If an insurer serves the denial electronically or by fax, it shall be presumed that the provider has received it on the day it is transmitted.

Stat. Auth.: ORS 731.244
Stats. Implemented: ORS 742.524
Hist.: ID 15-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Implementing Requirements of House Bill 2758 Related to Oregon Confidential Communications Request Form
Adm. Order No.: ID 16-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 836-053-0600, 836-053-0605, 836-053-0610, 836-053-0615
Rules Repealed: 836-053-0600(T), 836-053-0605(T), 836-053-0610(T), 836-053-0615(T)
Subject: These rules implement the provisions of House Bill 2758 (2015 Legislative Session). The rules set forth the requirements imposed on carriers and third party administrators related to the use of the uniform "Oregon Confidential Communication Request Form" developed as specified in the legislation. The rules also set forth carrier reporting requirements related to confidential communication requests and the use of the new form.
Rules Coordinator: Karen Winkel—(503) 947-7694

836-053-0600
Purpose; Statutory Authority; Applicability

(1) OAR 836-053-0600 to 836-053-0615 are adopted for the purpose of implementing sections 2, 3 and 12, chapter 470, Oregon Laws 2015.

(2) The requirements set forth in OAR 836-053-0600 to 836-053-0615 apply to carriers and third party administrators for health benefit plans issued or renewed on or after January 1, 2016.

Stat. Auth: ORS 731.244 & OL 2015, Ch 470 Sections 2 & 3
Stats. Implemented: Ch 470, OL 2015 Ch 470 Sections 2, 3 & 12

Hist.: ID 8-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 16-2015, f. 12-29-15, cert. ef. 1-1-16

836-053-0605
Definitions for OAR 836-053-0600 to 836-053-0615

As used in OAR 836-053-0600 to 836-053-0615:

(1) The definitions set forth in Section 2, chapter 470; Oregon Laws 2015 apply to the use of those terms in these rules.

(2) "Enrollee" includes a person covered under a health benefit plan and a dependent of a person covered under a health benefit plan.

Stat. Auth: ORS 731.244 & OL 2015, Ch 470 Sections 2 & 3
Stats. Implemented: Ch 470, OL 2015 Ch 470 Sections 2, 3 & 12
Hist.: ID 8-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 16-2015, f. 12-29-15, cert. ef. 1-1-16

836-053-0610
Carrier Response to Request for Confidentiality

(1) A carrier or third party administrator must do all of the following:

(a) Allow enrollees to submit the standardized form entitled "Oregon Confidential Communication Request" set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov.

(b) Acknowledge receipt of the enrollee's form and respond to an enrollee's confidential communications request.

(c) Include with the acknowledgement any information the enrollee needs about the effect of the request and the process for changing the status of the request.

(2) A carrier or third party administrator must communicate with providers about the protections afforded to enrollees under chapter 470, Oregon Laws 2015 and at a minimum provide information about how to access the "Oregon Confidential Communication Request Form." A carrier or third party administrator is not limited to providing information about the form.

Stat. Auth: ORS 731.244 & OL 2015, Ch 470 Sections 2 & 3
Stats. Implemented: Ch 470, OL 2015 Ch 470 Sections 2, 3 & 12
Hist.: ID 8-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 16-2015, f. 12-29-15, cert. ef. 1-1-16

836-053-0615
Carrier Reporting Requirements

(1) In order to comply with the requirements of section 3, chapter 470, Oregon Laws 2015, not later than December 1, 2015, carriers and third party administrators shall submit the following to the Department of Consumer and Business Services:

(a) Information about internal and external education and outreach activities that the carrier or third party administrator will conduct to inform Oregonians about their right to have protected health information redirected. The information reported shall include mechanisms the carrier or third party administrator proposes to use to assess the effectiveness of the education and outreach activities.

(b) Baseline data for the period of October 1, 2014 through September 30, 2015 that explains:

(A) The total number of requests to redirect confidential information received by the carrier or third party administrator and of these, the number of requests to redirect confidential information that are received via:

(i) Telephone;

(ii) Email; and

(iii) Hard copy.

(B) The timeliness of processing the redirection requests segregated by method of request.

(C) The number of complaints and grievances received related to confidential communications. This number must also include the applicable grievances tracked in accordance with OAR 836-053-1080.

(D) Total number of enrolled members.

(E) Total number of policyholders or certificate holders.

(F) Total number of dependent members.

(2) Not later than September 1, 2016, carriers and third party administrators shall submit to the department the following data for the period of January 1, 2016 through June 30, 2016:

(a)(A) The total number of requests to redirect confidential information received by the carrier or third party administrator and of these, the number of requests to redirect confidential information that are received via:

(i) Telephone;

(ii) Email;

(iii) Hard copy.

(B) The timeliness of processing the redirection requests segregated by method of request.

(C) The number of complaints and grievances received related to confidential communications.

(D) Total number of enrolled members.

(E) Total number of policyholders or certificate holders.

(F) Total number of dependent members.

(b) The following information to assist the department in determining the extent and effectiveness of the education and outreach activities conducted by the carrier or third party administrator:

(A) Explanation of how and when the process was presented to members; and

(B) Copies of outreach and education materials used over the period of January 1, 2016 through June 30, 2016.

Stat. Auth: ORS 731.244 & OL 2015, Ch 470 Sections 2 & 3
Stats. Implemented: Ch 470, OL 2015 Ch 470 Sections 2, 3 & 12
Hist.: ID 8-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 16-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Limiting surrender charges that an insurer imposes for withdrawal from an individual deferred annuity.
Adm. Order No.: ID 17-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 836-051-0150, 836-051-0153, 836-051-0156
Subject: The new rules are necessary to address the calculation of surrender charges on payment made for withdrawal of funds from individual deferred annuity insurance contracts. The rules direct that withdrawals demonstrate minimum value compliance. If an insurer subjects funds withdrawn to surrender charges the funds withdrawn must be treated on a first in first out basis to ensure fairness to the contract holder, unless an alternative more beneficial method is available.
Rules Coordinator: Karen Winkel—(503) 947-7694

836-051-0150
Individual Deferred Annuities Surrender Charge

Statutory Authority; Purpose; Applicability

(1) OAR 836-051-0150 to 836-051-0156 are adopted pursuant to the authority granted to the Director of the Department of Consumer and Business Services in section 2, chapter 85, Oregon Laws 2015 to adopt rules to regulate the penalties, fees or other charges that an insurer imposes for a withdrawal, before maturity or after the owner or annuitant dies, from an individual deferred annuity policy.

(2) OAR 836-051-0150 to 836-051-0156 apply to individual deferred non-variable annuity policies and to the fixed accounts of individual deferred variable annuity policies.

(3) OAR 836-051-0150 to 836-051-0156 apply to contracts entered into on and after July 1, 2017. New contracts submitted for approval to the Department of Consumer and Business Services for effective dates on or after January 1, 2016 must comply with section 2, chapter 85, Oregon Laws 2015.

Stat. Auth.: Sec. 2, Ch. 85 OL 2015
Stats. Implemented: Sec. 2, Ch. 85 OL 2015
Hist.: ID 17-2015, f. 12-29-15, cert. ef. 1-1-16

836-051-0153
Limitations on Surrender Charge Scales

(1) For contracts where surrender charge scales are measured from the date of each premium payment an insurer must demonstrate compliance with minimum value either by:

(a) Treating each premium payment as a separate single premium contract, in which case the maturity date for each single premium shall be the later of the tenth anniversary of the payment, or the annuitant's 70th birthday; or

(b) Treating the entire contract as a single contract providing for flexible premiums.

(2) If minimum value compliance is demonstrated as described in section (1)(a) of this rule, the retrospective test minimum values must be the greater of those based on the contract being treated either as:

(a) Each premium considered as a single premium contract, in which case the values for all such "contracts" will be summed; or

(b) A single contract providing for flexible premiums.

(3) An insurer may not impose a surrender charge on or after annuitization or on or after the maturity date.

Stat. Auth.: Sec. 2, Ch. 85 OL 2015
Stats. Implemented: Sec. 2, Ch. 85 OL 2015

Hist.: ID 17-2015, f. 12-29-15, cert. ef. 1-1-16

836-051-0156
Fair Surrender Charges

An insurer shall treat funds withdrawn from a contract, when such funds are subject to surrender charges, as withdrawn on a first-in-first-out basis unless the insurer allows an alternative method that is more beneficial to the contract holder.

Stat. Auth.: Sec. 2, Ch. 85 OL 2015
Stats. Implemented: Sec. 2, Ch. 85 OL 2015
Hist.: ID 17-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Rulemaking to address issues with Medicare Supplement Guaranteed Issue
Adm. Order No.: ID 18-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 836-052-0142
Subject: The rules amend the division's Medicare Supplement insurance guarantee issue rule to specify that the standardized Medicare Supplement products to which eligible persons are entitled include Plans D, G, M, and N and to exclude any 1990 standardized Medicare Supplement products no longer sold after June 1, 2010. These plans were inadvertently omitted in a prior amendment of the rule.
Rules Coordinator: Karen Winkel—(503) 947-7694

836-052-0142
Guaranteed Issue for Eligible Persons

(1) Guaranteed issue:

(a) Eligible persons are those individuals described in section (2) of this rule who seek to enroll under the policy during the period specified in section (3) of this rule and who submit evidence of the date of termination, disenrollment or Medicare Part D enrollment with the application for a Medicare supplement policy.

(b) With respect to eligible persons, an issuer shall not deny or condition the issuance or effectiveness of a Medicare supplement policy described in section (5) of this rule that is offered and is available for issuance to new enrollees by the issuer, shall not discriminate in the pricing of such a Medicare supplement policy because of health status, claims experience, receipt of health care or medical condition, and shall not impose an exclusion of benefits based on a preexisting condition under such a Medicare supplement policy.

(2) Eligible persons. An eligible person is an individual described in any of the following paragraphs:

(a) The individual is enrolled under an employee welfare benefit plan, an individual, conversion or portability health benefit plan, or a state Medicaid plan as described in Title XIX of the Social Security Act that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual; or the individual is enrolled under an employee welfare benefit plan that is primary to Medicare and the plan terminates or the plan ceases to provide all health benefits to the individual.

(b) The individual is enrolled with a Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, and any of the following circumstances apply, or the individual is 65 years of age or older and is enrolled with a Program of All Inclusive Care for the Elderly (PACE) provider under section 1894 of the Social Security Act, and there are circumstances similar to those described in this subsection that would permit discontinuance of the individual's enrollment with the provider if the individual were enrolled in a Medicare Advantage plan:

(A) The certification of the organization or plan has been terminated;

(B) The organization has terminated or otherwise discontinued providing the plan in the area in which the individual resides;

(C) The individual is no longer eligible to elect the plan because of a change in the individual's place of residence or other change in circumstances specified by the Secretary, but not including termination of the individual's enrollment on the basis described in section 1851(g)(3)(B) of the federal Social Security Act (where the individual has not paid premiums on a timely basis or has engaged in disruptive behavior as specified in standards under section 1856), or the plan is terminated for all individuals within a residence area;

(D) The individual demonstrates, in accordance with guidelines established by the Secretary, that:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this part in relation to the individual, including the failure to provide an enrollee on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide such covered care in accordance with applicable quality standards; or

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual; or

(E) The individual meets such other exceptional conditions as the Secretary may provide.

(c)(A) The individual is enrolled with:

(i) An eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost);

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999;

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the Social Security Act (health care prepayment plan); or

(iv) An organization under a Medicare Select policy; and

(B) The enrollment ceases under the same circumstances that would permit discontinuance of an individual's election of coverage under section (2)(b) of this rule.

(d) The individual is enrolled under a Medicare supplement policy and the enrollment ceases because:

(A)(i) Of the insolvency of the issuer or bankruptcy of the non-issuer organization; or

(ii) Of other involuntary termination of coverage or enrollment under the policy.

(B) The issuer of the policy substantially violated a material provision of the policy; or

(C) The issuer, or an agent or other entity acting on the issuer's behalf, materially misrepresented the policy's provisions in marketing the policy to the individual.

(e)(A) The individual was enrolled under a Medicare supplement policy and terminates enrollment and subsequently enrolls, for the first time, with any Medicare Advantage organization under a Medicare Advantage plan under part C of Medicare, any eligible organization under a contract under Section 1876 of the Social Security Act (Medicare cost), any similar organization operating under demonstration project authority, any PACE provider under Section 1894 of the Social Security Act or a Medicare Select policy; and

(B) The subsequent enrollment under paragraph (A) of this subsection is terminated by the enrollee during any period within the first 12 months of such subsequent enrollment (during which the enrollee is permitted to terminate such subsequent enrollment under section 1851 (e) of the federal Social Security Act); or

(f) The individual, upon first becoming enrolled for benefits under Medicare part A, enrolls in a Medicare Advantage plan under part C of Medicare, or with a PACE provider under Section 1894 of the Social Security Act, and dis-enrolls from the plan or program by not later than 12 months after the effective date of enrollment.

(g) The individual enrolls in a Medicare Part D plan during the initial enrollment period and, at the time of enrollment in Part D, was enrolled under a Medicare supplement policy that covers outpatient prescription drugs and the individual terminates enrollment in the Medicare supplement policy and submits evidence of enrollment in Medicare Part D along with the application for a policy described in section (5)(d) of this rule.

(3) Guaranteed Issue Time Periods.

(a) In the case of an individual described in section (2)(a) of this rule, the guaranteed issue period begins on the later of:

(A) The date the individual receives a notice of termination or cessation of all supplemental health benefits (or, if a notice is not received, notice that a claim has been denied because of a termination or cessation); or

(B) The date that the applicable coverage terminates or ceases; and ends 63 days thereafter.

(b) In the case of an individual described in section (2)(b), (c), (e) or (f) of this rule whose enrollment is terminated involuntarily, the guaranteed issue period begins on the date that the individual receives a notice of termination and ends 63 days after the date the applicable coverage is terminated;

(c) In the case of an individual described in section (2)(d)(A), the guaranteed issue period begins on the earlier of:

(A) The date that the individual receives a notice of termination, a notice of the issuer's bankruptcy or insolvency, or other such similar notice if any; and

(B) The date that the applicable coverage is terminated, and ends on the date that is 63 days after the date the coverage is terminated.

(d) In the case of an individual described in section (2)(b), (d)(B), (d)(C), (e) or (f) of this rule, who disenrolls voluntarily, the guaranteed issue period begins on the date that is 60 days before the effective date of the disenrollment and ends on the date that is 63 days after the effective date; and

(e) In the case of an individual described in section (2)(g) of this rule, the guaranteed issue period begins on the date the individual receives notice pursuant to Section 1882(v)(2)(B) of the Social Security Act from the Medicare supplement issuer during the 60-day period immediately preceding the initial Part D enrollment period and ends on the date that is 63 days after the effective date of the individual's coverage under Medicare Part D; and

(f) In the case of an individual described in section (2) of this rule but not described in the preceding provisions of this subsection, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date.

(4) Extended Medigap access for interrupted trial periods.

(a) In the case of an individual described in section (2)(e) of this rule (or deemed to be so described, pursuant to this paragraph) whose enrollment with an organization or provider described in section (2)(e)(A) is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(e) of this rule.

(b) In the case of an individual described in section (2)(f) of this section (or deemed to be so described, pursuant to this paragraph) whose enrollment with a plan or in a program described in section (2)(f) of this rule is involuntarily terminated within the first 12 months of enrollment, and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in section (2)(f) of this rule; and

(c) For purposes of sections (2)(e) and (f) of this rule, no enrollment of an individual with an organization or provider described in section (2)(e)(A) of this rule, or with a plan or in a program described in section (2)(f) of this rule, may be deemed to be an initial enrollment under this paragraph after the two year period beginning on the date on which the individual first enrolled with such an organization provider, plan or program.

(5) Products to which eligible persons are entitled. The Medicare supplement policy to which eligible persons are entitled under:

(a) Section (2)(a), (b), (c) (except for coverage described in subparagraph (c)(A)(iv)) and (d) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, D, F (including F with a high deductible), G, K, L, M or N offered by any issuer;

(b) Section (2)(c)(A)(iv) and (f) of this rule is any Medicare supplement policy described in OAR 836-052-0132 offered by any issuer;

(c)(A) Subject to paragraph (B) of this subsection, section (2)(e) of this rule is the same Medicare supplement policy in which the individual was most recently previously enrolled, if available from the same issuer, or, if not so available, a policy described in subsection (a) of this section.

(B) After December 31, 2005, if the individual was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit, a Medicare supplement policy described in this paragraph is:

(i) The policy available from the same issuer but modified to remove prescription drug coverage; or

(ii) At the election of the policyholder, an A, B, C, F (including F with a high deductible), K or L policy that is offered by any issuer.

(d) Section (2)(g) of this rule is a Medicare supplement policy that has a benefit package classified as Plan A, B, C, D, F (including F with a high deductible), G, K, or L, M & N and that is offered and is available for issuance to new enrollees by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(6) Notification provisions:

(a) At the time of an event described in section (2) of this rule because of which an individual loses coverage or benefits due to the termination of a contract or agreement, policy or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated contemporaneously with the notification of termination.

(b) At the time of an event described in section (2) of this rule because of which an individual ceases enrollment under a contract or agreement, policy or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of the individual's rights under this rule, and of the obligations of issuers of Medicare supplement policies under section (1) of this rule. Such notice shall be communicated within ten working days of the issuer's receiving notification of disenrollment.

Stat. Auth.: ORS 743.684
Stats. Implemented: ORS 743.010 & 743.684
Hist.: ID 21-1998(Temp), f. 12-8-98, cert. ef. 1-1-99 thru 6-25-99; ID 4-1999, f. & cert. ef. 4-29-99; ID 6-2001, f. & cert. ef. 5-22-01; ID 24-2002, f. & cert. ef. 12-13-02; ID 10-2005, f. & cert. ef. 7-26-05; ID 3-2009, f. 6-30-09, cert. ef. 7-1-09; ID 6-2013(Temp), f. & cert. ef. 12-5-13 thru 5-20-14; ID 9-2014, f. & cert. ef. 5-19-14; ID 18-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Extension of limited license to designated agent of rental Car Company.
Adm. Order No.: ID 19-2015
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 836-071-0354
Rules Amended: 836-071-0355, 836-071-0370, 836-071-0380
Subject: Existing rules of the Insurance Division establish the steps that a rental company with a limited license to sell rental insurance must take to educate and monitor employees selling insurance under the limited license. Enrolled House Bill 2958 (2015 Legislative Session) allows a rental company to identify a "designated agent" to sell rental insurance under the limited license of the rental company, beginning January 1, 2016.

The new rule defines "designated agent." The amended rules require that the rental company must provide the same training and oversight to a designated agent as the rental company provides for employees."
Rules Coordinator: Karen Winkel—(503) 947-7694

836-071-0354
Designated Agent

As used in OAR 836-071-0355 to 836-071-0400, "designated agent" means any named individual who is under contract with a vehicle rental company and who is authorized by the vehicle rental company to sell insurance under the authority of the limited license of the vehicle rental company.

Stat. Auth.: ORS 731.244, 744.852 & 744.858
Stats. Implemented: ORS 744.852, 744.856 & 744.858
Hist.: ID 19-2015, f. 12-30-15, cert. ef. 1-1-16

836-071-0355
Limited License Application, Rental Companies; Required Information

(1) On and after October 1, 2000, a rental company must hold a limited license in order to transact insurance as authorized by ORS 744.854. An applicant for a limited license as a rental company as authorized by 744.854 shall apply for a limited license to the Director of the Department of Consumer and Business Services electronically on a form established by the Director in accordance with directions set forth on the Insurance Division website of the Department of Consumer and Business Services at www.insurance.oregon.gov. The applicant shall include the following information in the application:

(a) The applicant's corporate, firm or other business entity name, the business address and telephone number of the principal place of business and the business address and telephone number of each additional location at which the applicant will transact business under the license;

(b) All assumed business names and other names under which the applicant will engage in business under the license;

(c) The names of all officers and directors or partners, or the sole proprietor or the owners if the applicant is other than a corporation or a partnership, and the name of the executive designated as the statewide filing officer as required by ORS 744.856;

(d) Whether any of the following has occurred with respect to an officer or director of the applicant, or a partner, or the sole proprietor or any of the owners if the applicant is other than a corporation or a partnership:

(A) Conviction of or indictment for a crime, including a felony involving dishonesty or a breach of trust to which 18 U.S.C. sec. 1033 applies;

(B) A judgment entered against the officer, director, partner, sole proprietor or owner if the applicant is other than a corporation or a partnership, for fraud;

(C) A claim of indebtedness by an insurer or agent, and the details of any such indebtedness; or

(D) Refusal, revocation or suspension of any license to act in any occupational or professional capacity in this or any other state;

(e) All states and provinces of Canada in which the applicant or an officer, director or partner of the applicant, or a sole proprietor or owner if the applicant is other than a corporation or a partnership, currently holds a license to engage in the transaction of insurance, or has held such a license within ten years prior to the date of the application;

(f) Whether any firm or corporation of which an officer, director or partner of the applicant, or the sole proprietor or an owner if the applicant is other than a corporation or a partnership, is or has been an officer, director, partner, sole proprietor or owner has ever filed for bankruptcy or been adjudged a bankrupt; and

(g) Any other information requested by the Director in the license application form.

(2) The applicant shall include with the application the following:

(a) The course of study to be used by the applicant for the training program for employees and designated agents concerning the kinds of coverage offered under the license;

(b) A certification by the applicant that all employees and designated agents to be involved in the sale or offer of coverage to members of the public have completed or will complete the training program prior to conducting the sales or offers; and

(c) A certification by the applicant that all employees and designated agents to be involved in the sale or offer of coverage to members of the public will receive continuing education on a regular basis concerning the topics covered in the training program.

(d) A copy of the insurance sales material to be made available to renters of vehicles through the licensee.

(3) Each application shall be accompanied by a $200 fee.

(4) During the review of an application, the Director may require any other information that the Director determines will assist consideration of the application.

Stat. Auth.: ORS 731.244, 731.804, 744.852 & 744.858
Stats. Implemented: ORS 744.852, 744.856 & 744.858
Hist.: ID 8-2000, f. & cert. ef. 7-24-00; ID 12-2012(Temp), f. 6-19-12, cert. ef. 8-1-12 thru 1-25-12; ID 18-2012, f. & cert. ef. 11-7-12; ID 9-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 19-2015, f. 12-30-15, cert. ef. 1-1-16

836-071-0370
List of Employees and Designated Agents Selling Coverage; Continuing Education

(1) A limited licensee shall maintain at all times a current list of all employees and designated agents who are authorized by the limited licensee to offer and sell the insurance coverage for the limited licensee. The limited licensee must provide the list to the Director upon request and the list must otherwise be available and accessible to the Director at all reasonable hours at the principal place of business of the licensee in this state.

(2) For the purpose of complying with the education filing and certification requirements of ORS 744.856, not later than March 1 of each year, a limited licensee shall:

(a) File the syllabus for the training program with the Director; and

(b) Certify to the Director that all employees and designated agents involved in the sale or offer of coverage to members of the public have completed or will complete the training program prior to conducting such sales or offers and will receive continuing education on a regular basis concerning the topics covered in the training program.

(3) For the purpose of the requirement in ORS 744.856 that employees and designated agents of a limited licensee shall receive continuing education on a regular basis, a "regular basis" is at least once every 12 months.

Stat. Auth.: ORS 744.852 & 744.858
Stats. Implemented: ORS 744.856
Hist.: ID 8-2000, f. & cert. ef. 7-24-00; ID 9-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 19-2015, f. 12-30-15, cert. ef. 1-1-16

836-071-0380
Course of Training for Training Program and for Continuing Education

A limited licensee must include at least the following information in the training program for new employees and designated agents who will be offering the insurance coverage and in the continuing education program for current employees and designated agents offering the insurance coverage, as required by ORS 744.856:

(1) Materials for the purpose of facilitating employee and designated agents understanding of the insurance coverages offered by the licensee.

(2) That renters of vehicles through the licensee are not required to purchase the coverage offered through the licensee as a condition of renting a vehicle.

(3) That renters must be informed that coverage offered by the licensee may duplicate existing coverage of the renter and that the renter should consult with the renter's insurance agent if the renter has any question about existing coverage.

(4) Claims procedures.

(5) The identity of the insurer of the coverage offered by the licensee.

(6) That employees and designated agents of the licensee are not authorized to evaluate a renter's existing coverages.

Stat. Auth.: ORS 744.856 & 744.858
Stats. Implemented: ORS 744.856
Hist.: ID 8-2000, f. & cert. ef. 7-24-00; ID 9-2015(Temp), f. & cert. ef. 9-15-15 thru 3-4-16; ID 19-2015, f. 12-30-15, cert. ef. 1-1-16

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Department of Consumer and Business Services, Workers' Compensation Board
Chapter 438

Rule Caption: Amends OAR 438-005-0035(1) and Division 015 rules to apply HB 2764 amendments regarding attorney fees
Adm. Order No.: WCB 1-2015
Filed with Sec. of State: 12-16-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Adopted: 438-015-0033, 438-015-0048
Rules Amended: 438-005-0035, 438-015-0010, 438-015-0019, 438-015-0025, 438-015-0045, 438-015-0055, 438-015-0065, 438-015-0070, 438-015-0110
Subject: Amends OAR 438-005-0035(1) and adopts and amends Division 015 rules to implement HB 2764 (2015), which amended statutes concerning attorney fees under the Workers' Compensation Law. Those changes: (1) amend OAR 438-005-0035(1) to add the phrase "while providing for access to adequate representation for injured workers" to the Board's policy statement; (2) amend OAR 438-015-0010(2) to reference the new statute providing for assessed attorney fees for obtaining temporary disability benefits (HB 2764 § § 9, 10); (3) add OAR 438-015-0019(6) to provide for assessed attorney fees for prevailing over a dispute involving a claim for costs; (4) amend OAR 438-015-0025 to delete references to OAR 438-015-0045 (attorney fees when the claimant requests a hearing regarding temporary disability and prevails) and OAR 438-015-0055(1) (attorney fees when the claimant requests Board review regarding temporary disability and prevails); (5) add OAR 438-015-0033 to establish procedures concerning an attorney fee under ORS 656.262(14)(a), providing for a reasonable hourly rate of $275 for an attorney's actual time spent during an interview or deposition; (6) amend OAR 438-015-0045 to delete provisions regarding approved attorney fees when the claimant requests a hearing and an Administrative Law Judge (ALJ) awards additional temporary disability benefits and to add provision for award of assessed attorney fee under such circumstances; (7) add OAR 438-015-0048 to provide for assessed attorney fees when the claimant requests a hearing and prevails over a claim reclassification order from the Workers' Compensation Division (WCD); (8) amend OAR 438-015-0055(1) to delete provisions regarding approved attorney fees when the claimant requests Board review and the Board awards additional temporary disability benefits and to add provision for award of assessed attorney fees under such circumstances; (9) add OAR 438-015-0055(6) to provide for assessed attorney fees when the claimant requests Board review and prevails over an ALJ's order regarding a WCD's claim reclassification order; (10) amend OAR 438-015-0065(1) and (3) to include assessed attorney fees when the carrier requests a hearing and the ALJ finds "all or part of" compensation awarded or compensation awarded by the reconsideration order, respectively,

should not be disallowed or reduced; (11) add OAR 438-015-0065(2) to provide for assessed attorney fees when the carrier requests a hearing and raises attorney fees, penalties, or costs and the ALJ does not disallow or reduce such awards; (12) amend OAR 438-015-0070(1) and (3) to include assessed attorney fees when the carrier requests Board review and the Board finds "all or part of" compensation awarded or compensation awarded by the reconsideration order, respectively, should not be disallowed or reduced; (13) add OAR 438-015-0070(2) to provide for assessed attorney fees when the carrier requests Board review and raises attorney fees, penalties, or costs and the Board does not disallow or reduce such awards; (14) add OAR 438-015-0070(3) to provide for assessed attorney fees for the claimant's attorney's efforts in briefing the matter when the carrier requests Board review of an ALJ's order and the matter is briefed, but the carrier withdraws the appeal before a decision from the Board; (15) amend OAR 438-015-0110, regarding cases involving ORS 656.262(11)(a), to include "attorney fees or costs" in the list of items eligible for assessed attorney fees for unreasonable delay or refusal to pay; (16) amend OAR 438-015-0110(1) to provide: "Considers the proportionate benefit to the claimant"; and (17) amend OAR 438-015-0110(3) to raise the maximum assessed attorney fees under ORS 656.262(11)(a), absent a showing of extraordinary circumstances, from $3,000 to $4,000.

These amendments are effective January 1, 2016 and apply as follows. Amendments to OAR 438-005-0035, 438-015-0010, 438-015-0019, 438-015-0025, 438-015-0033, 438-015-0045, 438-015-0048, 438-015-0055, 438-015-0065, 438-015-0070, and 438-015-0110 apply to all claims for which an order is issued and attorney fees are incurred on or after January 1, 2016, regardless of the date on which the claim was filed.

Rules Coordinator: Karen Burton—(503) 934-0123

438-005-0035
Board Policy

(1) It is the policy of the Board to expedite claim adjudication and amicably dispose of controversies, while providing for access to adequate representation for injured workers. In accordance with ORS 656.012(3), these rules shall be interpreted in an impartial and balanced manner. The overriding principle is substantial justice.

(2) With respect to postponement or continuance of hearings under OAR 438-006-0081 and 438-006-0091, substantial justice requires consideration of the relative financial hardship of the parties.

(3) The unrepresented party shall not be held strictly accountable for failure to comply with these rules. Any individual who undertakes to represent a party in proceedings under these rules shall be required to comply with these rules.

(4) It is the policy of the Board to promote the full and complete disclosure of a party's specific position concerning the issues raised and relief requested in a specification of issues under OAR 438-006-0031 and in a response under 438-006-0036. However, it is not the intent of this policy to create binding admissions on behalf of any party, but to clarify the scope of the matters to be litigated.

(5) The Board recognizes the complexity of disputed claims and the time limitations concerning the scheduling and litigation process for such claims. Consistent with this recognition, as factual, medical, and legal aspects of disputed issues evolve, the amendment of issues, relief requested, theories, and defenses may be allowed as prescribed in OAR 438-006-0031(2) and 438-006-0036(2).

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.012
Hist.: WCB 1-1984, f. 4-5-84, ef. 5-1-84; WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1995, f. 11-13-95, cert. ef. 1-1-96; WCB 2-2013, f. 12-10-13, cert. ef. 4-1-14; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0010
General Principles

(1) Attorney fees for an attorney representing a claimant before the Board or its Hearings Division shall be authorized only if an executed attorney retainer agreement has been filed with the Administrative Law Judge or Board.

(2) Attorney fees for an attorney representing a claimant shall be paid out of the claimant's compensation award except as provided by ORS 656.307, 656.382, 656.386, and House Bill 2764 (2015), sections 9 and 10.

(3) An approved fee awarded or allowed to an attorney representing a claimant shall be a lien upon the claimant's compensation.

(4) In any case where an Administrative Law Judge or the Board is required to determine a reasonable attorney fee, the following factors shall be considered:

(a) The time devoted to the case;
(b) The complexity of the issue(s) involved;
(c) The value of the interest involved;
(d) The skill of the attorneys;
(e) The nature of the proceedings;
(f) The benefit secured for the represented party;
(g) The risk in a particular case that an attorney's efforts may go uncompensated; and
(h) The assertion of frivolous issues or defenses.

(5) Percentage limitations on fees established by these rules apply to the amount of compensation paid the claimant exclusive of medical, hospital or other expenses of treatment.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.388(3)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 3-2001, f. 11-14-01, cert. ef. 1-1-02; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0019
Cost Bill Procedures; Assessed Attorney Fees When the Claimant Prevails in a Cost Bill Dispute

(1) If a claimant finally prevails against a denial under ORS 656.386(1), the Administrative Law Judge or the Board may order payment of the claimant's reasonable expenses and costs for records, expert opinions, and witness fees incurred in the litigation of the denied claim(s).

(2) In ordering payment under section (1), an Administrative Law Judge or the Board may award reasonable expenses and costs that the claimant incurred as a result of the litigation of the denied claim(s) under ORS 656.386(1). If the parties stipulate to the specific amount of the reasonable expenses and costs, the Administrative Law Judge's or the Board's award of expenses and costs shall be included in the order finding that the claimant finally prevails against a denied claim(s) under 656.386(1). In the absence of the parties' stipulation, the Administrative Law Judge or the Board may award reasonable expenses and costs as described in section (1), which the claimant may claim by submitting a cost bill under section (3) to the insurer or the self-insured employer, not to exceed $1,500, unless the claimant demonstrates extraordinary circumstances justifying payment of a greater amount.

(3) If an order under section (2) does not specify the amount of a reasonable award for expenses and costs, the claimant shall submit, within 30 days after the order under section (2) becomes final, a cost bill to the insurer or self-insured employer. The cost bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the incurred expenses and costs for records, expert opinions, and witness fees that are due to the denied claim(s); and
(b) The claimant's signature confirming that the claimed expenses and costs were incurred in the litigation of the denied claim(s).

(4) If the parties disagree whether a claimed fee, expense, or cost is reasonable, a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless a hearing is requested by the insurer or self-insured employer under section (4), payments for witness fees, expenses, and costs shall be made by the insurer or self-insured employer within 30 days of its receipt of the cost bill submitted in accordance with section (3) or within 30 days after the order under section (2) becomes final, whichever is later, and are in addition to compensation payable to the claimant and in addition to attorney fees.

(6) In disputes involving a claim for costs, if the claimant prevails on the claim for any increase of costs, the Administrative Law Judge or the Board shall award a reasonable assessed attorney fee to the claimant's attorney.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.386(2), (4)
Hist.: WCB 2-2007, f. 12-11-07, cert. ef. 1-1-08; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0025
Maximum Attorney Fees Out of Compensation

Except in situations where a claimant's attorney fee is an assessed fee, in settlement of disputed claims or claim disposition agreements and in cases under the third-party law, unless there is a finding in a particular case

by an Administrative Law Judge or the Board that extraordinary circumstances justify a higher fee, the established fees for attorneys representing claimants are as set forth in OAR 438-015-0040, 438-015-0055(2), (3), and 438-015-0080.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.236(4), 656.289(4), 656.307, 656.308(2), 656.382, 656.386, 656.388(3), 656.593(1)(a)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 7-1990(Temp), f. 6-14-90, cert. ef. 7-1-90; WCB 11-1990, f. 12-13-90, cert. ef. 12-31-90; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0033
Attorney Fee Award Under ORS 656.262(14)(a)

(1) In accordance with ORS 656.262(14)(a), a reasonable hourly rate for an attorney's actual time spent during a personal or telephonic interview or deposition conducted under that statute is $275.

(2) If the claimant is represented by an attorney, the insurer or self-insured employer shall pay a reasonable attorney fee award, which is based upon the hourly rate prescribed in section (1) multiplied by the actual time spent by the attorney during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a).

(3) To obtain the attorney fee described in section (2), the claimant's attorney shall submit a bill to the insurer or self-insured employer within 30 days of completion of the personal or telephonic interview or deposition. The bill, which may be submitted on a form prescribed by the Board, shall contain, but is not limited to, the following information:

(a) An itemization of the actual time spent by the claimant's attorney during the personal or telephonic interview or deposition;

(b) The claimant's attorney's signature confirming that the claimed time was actually spent during the personal or telephonic interview or deposition conducted under ORS 656.262(14)(a); and

(c) A copy of the executed retainer agreement, unless previously provided.

(4) If the parties disagree regarding the attorney's bill under section (3), a party may request a hearing seeking resolution of that dispute. The resolution of disputes under this section shall be made by a final, appealable order.

(5) Unless it files a request for hearing, the insurer or self-insured employer must pay the attorney fee described in section (3) as an award under this rule within 30 days of its receipt of the bill.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.262(14)(a)
Hist.: WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0045
Attorney Fees When a Claimant Requests a Hearing on Extent of Temporary Disability

If the Administrative Law Judge awards additional compensation for temporary disability benefits, the Administrative Law Judge shall award a reasonable assessed attorney fee.

Stat. Auth.: ORS 656.307, 656.388, 656.593 & 656.726(4)
Stats. Implemented: ORS 656.386(2) & 656.388(3)
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 2-1989, f. 3-3-89, ef. 4-1-89; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0048
Attorney Fees When a Claimant Requests a Hearing on a Claim Reclassification

If a claimant requests a hearing regarding a claim reclassification order from the Workers' Compensation Division, and the Administrative Law Judge finally determines that the claim should be classified as disabling, the Administrative Law Judge may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.386(3)
Hist.: WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0055
Attorney Fees When a Claimant Requests Review by the Board

(1) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for temporary disability and the Board awards additional compensation, the Board shall award a reasonable assessed attorney fee.

(2) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed $6,000.

(3) If a claimant requests review of an Administrative Law Judge's order on the issue of compensation for permanent total disability and the Board awards additional compensation, the Board shall approve a fee of 25 percent of the increased compensation, provided that the total of fees approved by the Administrative Law Judge and the Board shall not exceed $16,300.

(4) If a claimant requests review of an Administrative Law Judge's order that upheld a denial of compensability for a claim and the Board orders the claim accepted, the Board shall assess a reasonable attorney fee to be paid by the insurer or self-insured employer to the claimant's attorney.

(5) If a claimant requests review of an Administrative Law Judge's order that upheld a responsibility denial issued under ORS 656.308(2) and the claimant's attorney actively and meaningfully participates in finally prevailing against the responsibility denial, the Board shall award a reasonable assessed fee to be paid by the insurer or self-insured employer who issued the responsibility denial. Absent a showing of extraordinary circumstances, the assessed attorney fee for prevailing over the responsibility denial shall not exceed $2,500. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

(6) If a claimant requests review of an Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.307, 656.308(2), 656.382, 656.386, 656.388, HB 2764 (2015) §§ 9, 10
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-1998, f. 11-20-98, cert. ef. 2-1-99; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0065
Attorney Fees When Insurer or Self-Insured Employer Requests a Hearing

(1) If an insurer or self-insured employer requests a hearing or otherwise seeks a reduction in compensation and the Administrative Law Judge finds that all or part of the compensation awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(2) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for hearing, and the Administrative Law Judge finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Administrative Law Judge shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

(3) If an insurer or self-insured employer requests a hearing regarding a reconsideration order rescinding a notice of closure, and the Administrative Law Judge finds that the reconsideration order should not be reversed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(4) If an insurer or self-insured employer requests a hearing regarding a reconsideration order, and the ALJ finds that all or part of the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Administrative Law Judge shall award a reasonable assessed fee to the claimant's attorney.

(5) If an insurer or self-insured employer requests a hearing regarding a claim reclassification order from the Workers' Compensation Division, and the Administrative Law Judge finally determines that the claim should be classified as disabling, the Administrative Law Judge may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.382, 656.386, 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0070
Attorney Fees When Insurer or Self-Insured Employer Requests or Cross-Requests Review by the Board

(1) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order and the Board finds that all or part of the compensation awarded to the claimant should not be disallowed or reduced, the Board shall award a reasonable assessed fee to the claimant's attorney.

(2) If an employer or insurer raises attorney fees, penalties or costs as a separate issue in a request for review, and the Board finds that the attorney fees, penalties or costs awarded to the claimant should not be disallowed or reduced, the Board shall award reasonable additional attorney fees to the attorney for the claimant for efforts in defending the fee, penalty or costs.

(3)(a) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order and the matter is briefed, but the insurer or self-insured employer withdraws the appeal prior to a decision by the Board, resulting in the claimant's prevailing in the matter, the Board shall award a reasonable assessed fee for the claimant's attorney's efforts in briefing the matter to the Board.

(b) A matter is considered "briefed" when the insurer or self-insured employer has filed its initial brief.

(4) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a reconsideration order rescinding a notice of closure, and the Board finds that the reconsideration order should not be reversed, the Board shall award a reasonable assessed fee to the claimant's attorney.

(5) If an insurer or self-insured employer requests or cross-requests review of the Administrative Judge's order regarding a reconsideration order, and the Board finds that all or part of the compensation awarded by the reconsideration order issued under ORS 656.268 should not be reduced or disallowed, the Board shall award a reasonable assessed fee to the claimant's attorney.

(6) If an insurer or self-insured employer requests or cross-requests review of the Administrative Law Judge's order regarding a claim reclassification order from the Workers' Compensation Division, and the Board finally determines that the claim should be classified as disabling, the Board may award a reasonable assessed fee.

Stat. Auth.: ORS 656.726(5)
Stats. Implemented: ORS 656.382, 656.386, 656.388
Hist.: WCB 5-1987, f. 12-18-87, ef. 1-1-88; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

438-015-0110
Attorney Fees in Cases Involving ORS 656.262(11)(a)

If the Director, an Administrative Law Judge, the Board, or the Court find that the insurer or self-insured employer unreasonably delayed or unreasonably refused to pay compensation, attorney fees or costs, or unreasonably delayed acceptance or denial of a claim an assessed attorney fee shall be awarded in a reasonable amount that:

(1) Considers the proportionate benefit to the claimant;

(2) Takes into consideration the factors set forth in OAR 438-015-0010(4), giving primary consideration to the results achieved and to the time devoted to the case; and

(3) Does not exceed $4,000, absent a showing of extraordinary circumstances. The maximum attorney fee awarded under this section is subject to an annual adjustment on July 1 as calculated by the Workers' Compensation Division (on behalf of the Director) by the same percentage increase as made to the average weekly wage defined in ORS 656.211, if any. Before July 1 of each year, the Board, by bulletin, will publish the maximum fee, after adjusting the fee by the same percentage increase, if any, to the average weekly wage. Dollar amounts will be rounded to the nearest whole number.

Stat. Auth.: ORS 656.283, 656.388 & 656.726(5)
Stats. Implemented: ORS 656.262(11)(a)
Hist.: WCB 3-2003, f. 12-12-03 cert. ef. 1-1-04; WCB 1-2009, f. 10-7-09, cert. ef. 1-1-10; WCB 2-2012, f. 11-13-12, cert. ef. 1-1-13; WCB 1-2015, f. 12-16-15, cert. ef. 1-1-16

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Department of Consumer and Business Services, Workers' Compensation Division
Chapter 436

Rule Caption: Threshold (split point) for reporting individual claims by self-insured employers
Adm. Order No.: WCD 10-2015
Filed with Sec. of State: 12-24-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 436-050-0003, 436-050-0175
Subject: The agency has amended OAR 436-050, Employer/Insurer Coverage Responsibility, to index the threshold for reporting individual claims by self-insured employers to the National Council on Compensation Insurance (NCCI) split point as published in agency Bulletin 209, and to remove the NCCI split point dollar amount from the rules. The split point will increase from $15,500 to $16,000 effective Jan. 1, 2016.
Rules Coordinator: Fred Bruyns—(503) 947-7717

436-050-0003
Applicability of Rules

(1) These rules are effective Jan. 1, 2016, to carry out the provisions of:

(a) ORS 656.017 — Employer required to pay compensation and perform other duties.

(b) ORS 656.029 — Independent contractor status.

(c) ORS 656.126 — Coverage while temporarily in or out of state.

(d) ORS 656.407 — Qualifications of insured employers.

(e) ORS 656.419 — Workers' compensation insurance policies.

(f) ORS 656.423 — Cancellation of coverage by employer.

(g) ORS 656.427 — Cancellation of workers' compensation insurance policy or surety bond liability by insurer.

(h) ORS 656.430 — Certification of self-insured employer.

(i) ORS 656.434 — Certification effective until canceled or revoked; revocation of certificate.

(j) ORS 656.443 — Procedure upon default by employer.

(k) ORS 656.447 — Sanctions against insurer for failure to comply with orders, rules, or obligations under workers' compensation insurance policies.

(l) ORS 656.455 — Records location and inspection.

(m) ORS 656.745 — Civil penalties.

(n) ORS 656.850 and 656.855 — Worker leasing companies.

(o) ORS 731.475 — Insurer's in-state location.

(2) The director may waive procedural rules as justice requires, unless otherwise obligated by statute.

Stat. Auth: ORS 656.704 & 656.726(4)
Stats. Implemented: ORS 656.017, 656.029, 656.126, 656.407, 656.419, 656.423, 656.427, 656.430, 656.434, 656.443, 656.447, 656.455, 656.745, 656.850, 656.855, and 731.475
Hist.: WCD 3-1980(Admin), f. & ef. 4-2-80; WCD 4-1982(Admin), f. 2-10-82, ef. 2-15-82; WCD 10-1982(Admin), f. 9-30-82, ef. 10-1-82; WCD 7-1983(Admin), f. 12-22-83, ef. 12-27-83; Renumbered from 436-051-0003, 1-1-86; WCD 9-1985(Admin), f. 12-12-85, ef. 1-1-86; WCD 9-1987, f. 12-18-87, ef. 1-1-88; WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 2-1994, f. 4-1-94, cert. ef. 5-1-94; WCD 9-1996, f. 3-11-96, cert. ef. 4-1-96; WCD 1-1998, f. 1-9-98, cert. ef. 1-23-98; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 10-2003, f. 8-29-03, cert. ef. 9-15-03; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 5-2005, f. 5-26-05, cert. ef. 6-1-05; WCD 8-2005, f. 12-6-05, cert. ef. 1-1-06; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 4-2008, f. 9-17-08, cert. ef. 7-1-09; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 1-2013(Temp), f. & cert. ef. 1-23-13 thru 7-21-13; WCD 5-2013, f. 7-3-13, cert. ef. 7-22-13; WCD 8-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 10-2014, f. 8-15-14, cert. ef. 9-15-14; WCD 13-2014, f. 11-26-14, cert. ef. 1-1-15; WCD 10-2015, f. 12-24-15, cert. ef. 1-1-16

436-050-0175
Annual Reporting Requirements

(1) To determine the financial status of a self-insured employer and to evaluate the employer's continuity of operation, a self-insured employer must file annually with the director an audited financial statement or annual report with audited financial statement, including SEC Form 10K if issued, for the just completed fiscal year. A self-insured employer that is not a municipality must make the filing within 120 days of the fiscal year end and a self-insured employer that is a municipality must make the filing within 180 days of the fiscal year end. All financial statements and annual financial reports filed, as required by this section, will be retained by the director for a period of at least three years. In lieu of an audited financial statement or annual report, a self-insured employer may file a financial statement certified by the employer that the financial statement is true and accurate and presents the employer's financial condition and results of operations as of the date of the statement.

(2) Notwithstanding section (l) of this rule, the director may require an employer to submit an audited financial statement if the certified financial statement submitted is insufficient to evaluate the employer's financial status.

(3) The financial statements and reports filed by a self-insured employer group must demonstrate the group's acceptable financial viability based on criteria under OAR 436-050-0260 including, but not limited to, satisfactory financial ratios and net worth.

(4) By March 1 of each year, self-insured employer groups must file with the director:

(a) A statement certifying the amount of the group's combined net worth under OAR 436-050-0260(3)(a), as of the date of the statement; and

(b) A copy of the fidelity bond furnished to the group by the administrator or a copy of the comprehensive crime policy obtained by the group, in an amount sufficient to protect the group against the misappropriation or

misuse of any moneys or securities. If the fidelity bond or policy covers more than one year, is still in effect, and a copy was provided to the director in the prior year, the group's annual filing may state that fact in lieu of providing an additional copy.

(5) By March 1 of each year, self-insured employer groups consisting of private employer members must file with the director:

(a) A statement certifying that each employer member of the group meets the individual net worth requirement under OAR 436-050-0260(3)(b), as of the employer member's most recent fiscal year end; and

(b) A list of the group's current board members and their professional affiliations.

(6) The self-insured employer must report claim loss data described in Bulletin 209 by March 1 of each year for the purposes of experience rating modification, retrospective rating calculations, and determining deposits.

(a) The report must be certified to be true and accurate by an authorized representative of the self-insured employer, and must include:

(A) A report of losses for each year in the experience rating period. The report must cover all claims incurred during the reporting period and must be valued as of January 1 of the current year. Reports must include:

(i) Contract medical expenses;

(ii) Total maximum medical reimbursement amount;

(iii) Number of claims for which the maximum medical reimbursement amount is claimed;

(iv) For claims with incurred losses at or below the National Council on Compensation Insurance (NCCI) split point published in Bulletin 209, total paid, outstanding reserves, and total incurred losses;

(v) Number of claims with incurred losses at or below the NCCI split point; and

(vi) For each claim with incurred losses exceeding the NCCI split point, worker's name, date of injury, claim number, total paid, outstanding reserves, and total incurred losses. Claims must be listed in alphabetical order.

(B) A report of losses covering the self-insured period prior to the experience rating period. The report must list all open claims and must be valued as of January 1 of the current year. The report must include:

(i) The worker's name, listed in alphabetical order;

(ii) Date of injury;

(iii) Claim number;

(iv) Total paid;

(v) Outstanding reserves; and

(vi) Total incurred losses.

(C) Identification of claims involving catastrophes, Workers with Disabilities Program, permanent total disability or fatal benefits, third party recoveries, and claims where the total incurred has or is expected to exceed the self-insured retention of the self-insured employer's excess insurance policy.

(D) The total annual paid losses for the previous four fiscal years valued as of January 1 of the current year.

(b) Bulletin 209 provides guidelines for self-insured employers and their authorized representatives to use in submitting the required data. Bulletin 209 is available on the Workers' Compensation Division's website.

(c) Each self-insured city, county, or qualified self-insured employer group that is exempted from the security deposit requirements under ORS 656.407(3) and OAR 436-050-0185 must, in addition to the above, provide the director by March 1 of each year, the procedures, methods, and criteria used in the process of determining the amount of their actuarially sound workers' compensation loss fund, including procedures for determining the amount for injuries incurred but not reported. The director may require a qualified self-insured employer group exempted from the security deposit requirements to provide an actuarial study that demonstrates its loss reserve account is actuarially sound and adequately funded under OAR 436-050-0185(2)(d).

(7) Notwithstanding sections (1) through (5) of this rule, the director may require a self-insured employer group to submit financial statements, reports, or information more frequently for reasons including, but not limited to, changes in the group's financial status or viability, private employer members' individual net worth, group membership, private employer groups' board membership, or incurred claims costs.

(8) Notwithstanding section (6) of this rule, the director may require a self-insured employer to submit claim loss data more frequently if the nature of the self-insured employer's business has changed since the last annual loss report for reasons including, but not limited to, mergers or acquisitions, changes in employment level, nature of employment, or incurred claims costs.

(9) If a self-insured employer fails to comply with the requirements of sections (1) through (8) of this rule, the director may impose any or all of the following sanctions:

(a) Require the self-insured employer to increase its deposit and premium assessments by 25%;

(b) Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;

(c) Assess civil penalties of up to $250 per day that the information is not provided beyond the deadline; or

(d) Revoke the employer's certification for self-insurance.

(10) To ensure each self-insured employer's claims are valued appropriately for use in deposit, experience rating, and retrospective rating calculations, the director will perform routine test audits. If a self-insured employer's total claims values are found to be 10 percent or more below the director's determined values, the current experience rating will be recalculated using the director's determined values and will be used in the security deposit and retrospective rating calculations. In addition, penalties may be assessed.

Stat. Auth: ORS 656.407, 656.430, 656.704 & 656.726(4)
Stats. Implemented: ORS 656.407 & 656.430
Hist.: WCD 7-1989, f. 12-22-89, cert. ef. 1-1-90; WCD 25-1990, f. 11-29-90, cert. ef. 12-26-90; WCD 7-1991(Temp), f. 10-4-91, cert. ef. 10-7-91; WCD 3-1992, f. 1-10-92, cert. ef. 2-1-92; WCD 5-2001, f. 6-22-01, cert. ef. 7-1-01; WCD 12-2003, f. 12-4-03, cert. ef. 1-1-04; WCD 7-2007, f. 11-1-07, cert. ef. 11-28-07; WCD 1-2008, f. 6-13-08, cert. ef. 7-1-08; WCD 6-2012, f. 10-4-12, cert. ef. 1-1-13; WCD 9-2012, f. 12-7-12, cert. ef. 1-1-13; WCD 8-2013, f. 11-12-13, cert. ef. 1-1-14; WCD 10-2014, f. 8-15-14, cert. ef. 9-15-14; WCD 13-2014, f. 11-26-14, cert. ef. 1-1-15; WCD 10-2015, f. 12-24-15, cert. ef. 1-1-16

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Department of Corrections
Chapter 291

Rule Caption: Earned discharge for offenders on probation or local control post-prison supervision
Adm. Order No.: DOC 18-2015(Temp)
Filed with Sec. of State: 12-28-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 291-209-0010, 291-209-0020, 291-209-0030, 291-209-0040, 291-209-0070
Rules Suspended: 291-209-0050, 291-209-0060
Subject: These rule amendments are necessary to implement 2015 legislation (HB 3070). This revision clarifies that earned discharge applies to probation as well as local control post-prison supervision. The process for determining an offender's eligibility for earned discharge has been modified. Now earned discharge is determined by a one-time review of an offender's compliance with conditions of supervision. Previously time credits were used to calculate when an offender could be discharged.
Rules Coordinator: Janet R. Worley—(503) 945-0933

291-209-0010
Authority, Purpose, and Policy

(1) Authority: The authority for this rule is granted to the Director of the Department of Corrections in accordance with ORS 137.633, 179.040, 423.020, 423.030, and 423.075.

(2) Purpose: The purpose of these rules is to describe the manner in which an offender sentenced to felony probation or to the legal and physical custody of the supervisory authority under ORS 137.124(2) may receive a reduction in the period of probation or local control post-prison supervision in accordance with the provisions of ORS 137.633.

(3) Policy:

(a) It is the policy of the Department of Corrections that eligible offenders be considered by the supervisory authority for a reduction in the period of probation or local control post-prison supervision for complying with their terms of supervision, including the payment of restitution and participation in recidivism reduction programs, as provided in these rules.

(b) Offenders whose supervision has been transferred to Oregon under the Interstate Compact for Adult Offender Supervision are ineligible for earned discharge under these rules.

(c) These rules apply to offenders convicted of a felony and sentenced on or after August 1, 2013, to probation or to the legal and physical custody of the supervisory authority under ORS 137.124(2).

(d) These rules do not apply to persons who:

(A) Were originally sentenced before August 1, 2013, and who are subsequently resentenced on or after August 1, 2013, as the result of an

appellate decision or a post-conviction relief proceeding or for any other reason; or

(B) Were sentenced on or after August 1, 2013, to probation or to the legal and physical custody of the supervisory authority but the supervision is under the jurisdiction of the Board of Parole and Post-Prison Supervision.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0020
Definitions for OAR 291-209-0020 to 291-209-0070

(1) Administrative Sanctions: Local structured, intermediate sanctions, as those terms are used in ORS 137.592, 137.593, 137.595, 144.106 and 144.346 and in Criminal Justice Commission and Board of Parole and Post-Prison Supervision administrative rules, imposed by the Department of Corrections or a county community corrections agency for violation of conditions of supervision. Administrative sanctions are less than a revocation action and include, but are not limited to local confinement in jails, restitution centers, work release centers, treatment facilities, or similar facilities or community services work, work crew and house arrest.

(2) Compensatory Fines: A court-imposed penalty for the commission of a crime resulting in injury for which the person injured by the act constituting a crime has a remedy by civil action (unless the issue of punitive damages has been previously decided on a civil case arising out of the same act and transaction).

(3) Compliance with the Conditions of Supervision and the Supervision Case Plan: For purposes of these rules, the supervisory authority shall deem an eligible offender to be in compliance with the conditions of supervision and any applicable supervision case plan if the offender:

(a) Has fully paid any restitution or compensatory fines ordered by the court;

(b) Has not been administratively sanctioned, excluding interventions, or found in violation by the court in the immediate six months prior to consideration for discharge on the eligible case(s) under review; and

(c) Is actively participating in his/her supervision case plan.

(4) Earned Discharge: A discharge from probation or local control post-prison supervision prior to the scheduled supervision expiration date.

(5) Interventions: Interventions imposed by the Department of Corrections or a county community corrections agency for violations of one or more conditions of supervision. Interventions include, but are not limited to, verbal reprimand, written reprimand, job search programming, increased reporting requirements, curfew, day reporting, modification of conditions, and outpatient treatment. Intervention responses are not counted as custody units and may be imposed along with sanctions.

(6) Offender: Any person under the supervision of local community corrections who is on probation, parole, or post-prison supervision status

(7) Restitution: Full, partial or nominal payment of economic damages to a victim.

(8) Supervising Officer: The parole and probation officer assigned to supervise the offender.

(9) Supervision: Supervision requiring the supervising officer's regular contact with and monitoring of the offender to assure continued compliance with the general and special conditions of supervision.

(10) Supervisory Authority: The state or local corrections agency or official designated in each county by that county's Board of County Commissioners or county court to operate correction supervision services, custodial facilities, or both per ORS 144.087(1).

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0030
Period of Supervision

(1) All persons convicted of a felony and sentenced on or after August 1, 2013, to probation or to the legal and physical custody of the supervisory authority under ORS 137.124(2) shall serve a minimum period of supervision before consideration for earned discharge under these rules.

(2) The maximum reduction earned under this rule may not exceed 50 percent of the period of supervision imposed.

(3) A reduction may not be used to shorten the period of supervision to less than six months.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0040
Earned Discharge

(1) At 60 days prior to completion of the minimum period of supervision as authorized in OAR 291-209-0030, the supervising officer or designee shall review the offender's file and determine if the offender is in compliance with the offender's conditions and any applicable supervision case plan as defined in these rules.

(a) If the supervising officer or designee determines that the offender is in compliance, the supervising officer shall recommend to the supervisory authority that it grant earned discharge to the offender.

(b) Upon receiving a request from the supervising officer, the supervisory authority shall grant the offender earned discharge if the supervisory authority determines that the offender is in compliance with his or her conditions of supervision and any applicable supervision case plan as defined in these rules.

(c) If the supervising officer or designee determines that the offender is not in compliance, earned discharge shall not be granted; however, the supervising officer may conduct a subsequent earned discharge review at any point thereafter until the offender is approved for earned discharge or the case under consideration reaches its sentence expiration date.

(d) If the offender has been convicted of a new felony or misdemeanor crime that occurred while on supervision for the case under consideration, the offender is not eligible for earned discharge.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0050
Retraction of Time Credits

(1) Time credits previously applied will be retracted in accordance with the Earned Discharge Review Grid (Attachment A) when the offender has absconded supervision, been sanctioned while on supervision for the case under review, or has violated a no contact order.

(2) If an offender has been arrested for a person-to-person crime while on supervision for the case under review, all time credits previously applied will be retracted.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; Suspended by DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0060
Restoration of Time Credits

(1) For good cause shown, time credits that have been retracted may be restored upon recommendation by the supervising officer or designee and upon approval by the supervisory authority.

(2) If time credits were retracted in accordance with OAR 291-209-0050(2), those time credits, excluding any credits retracted in accordance with OAR 291-209-0050(1), shall be restored if the charges are dismissed, no complainted, or acquitted.

(3) Restored time credits may not exceed those previously retracted or exceed those credits remaining on the case under review.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; Suspended by DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

291-209-0070
Appeals

Appeals will be processed through the supervisory authority's grievance policy.

Stat Auth: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Stats. Implemented: ORS 137.633, 179.040, 423.020, 423.030, 423.075
Hist.: DOC 13-2014(Temp), f. 5-7-14, cert. ef. 5-13-14 thru 11-9-14; DOC 21-2014, f. & cert. ef. 11-4-14; DOC 18-2015(Temp), f. 12-28-15, cert. ef. 1-1-16 thru 6-28-16

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Department of Energy
Chapter 330

Rule Caption: Updates accountant guidelines and cost recovery provisions for self-direction of public purpose charge program.
Adm. Order No.: DOE 7-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 12-23-15
Notice Publication Date: 11-1-2015

Rules Amended: 330-140-0020, 330-140-0060, 330-140-0070, 330-140-0140

Subject: The rule amendments update the administrative rules for the Self-direction of Public Purpose Charges by Large Retail Electricity Customers (LECPPP) program to align with current Oregon Board of Accountancy guidelines and current agency practices. The amendments change the rules to require that a certified public accountant "attest" that project costs are accurate, rather than creating a "statement of compilation." The amendments also update the requirements for providing proof of qualified expenditures. With regard to cost recovery, the amendments eliminate a reference to the fixed annual deposit of $1,200 to be paid by LECPPP participants, while retaining the per-project deposit of up to four percent of project costs. As program costs have declined over time, the department no longer requires participants to pay an annual deposit. The amendments also modify the process for comparing deposits received with the department's cost of services, eliminating the current true-up process in favor of an annual review to assure that costs of operating the program are recovered. The rules are effective upon filing.

Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-140-0020

Definitions as Used in This Division

(1) "Above-market costs of new renewable energy resources" means the portion of the net present value cost of producing power (including fixed and operating costs, delivery, overhead and profit) from a new renewable energy resource that exceeds the market value of an equivalent quantity and distribution (across peak and off-peak periods and seasonality) of power from a nondifferentiated source with the same term of contract.

(2) "Attest" means attestation services as defined in ORS 673.010(1).

(3) "Certification of Qualified Expenditure for New Energy Conservation" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the cost of an installed energy conservation project is eligible to be claimed as a credit against public purposes charges owed by the large electricity consumer under these rules.

(4) "Certification of Qualified Expenditure for New Renewable Resources" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies the contracted cost of new renewable resource purchases is eligible to be claimed as a credit against public purpose charges owed by the large electricity consumer under these rules.

(5) "Commission" means the Public Utility Commission of Oregon.

(6) "Consumer-owned utility" means a municipal electric utility, a people's utility district or an electric cooperative.

(7) "Declaration of Intent to Self-Direct Public Purposes Charges" means a request in writing from a large electricity consumer that requests the Oregon Department of Energy recognize the large electricity consumer as eligible to self-direct public purpose charges under these rules.

(8) "Direct access" means the ability of a retail electricity consumer to purchase electricity and certain ancillary services, as determined by the Commission for an electric company or the governing body of a consumer-owned utility, directly from an entity other than the distribution utility.

(9) "Direct service industrial consumer" means an end-user of electricity that obtains electricity directly from the transmission grid and not through a distribution utility.

(10) "Distribution" means the delivery of electricity to retail electricity consumers through a distribution system consisting of local area power poles, transformers, conductors, meters, substations and other equipment.

(11) "Distribution utility" means an electric utility that owns and operates a distribution system connecting the transmission grid to the retail electricity consumer.

(12) "Electric company" means an entity engaged in the business of distributing electricity to retail electricity consumers in this state but does not include a consumer-owned utility.

(13) "Electric cooperative" means an electric cooperative corporation organized under ORS Chapter 62 or under the laws of another state if the service territory of the electric cooperative includes a portion of this state.

(14) "Electric utility" means an electric company or consumer-owned utility that is engaged in the business of distributing electricity to retail electricity consumers in this state.

(15) "Electricity" means electric energy measured in kilowatt-hours, or electric capacity measured in kilowatts, or both.

(16) "Electricity services" means electricity distribution, transmission, generation or generation-related services.

(17) "Electricity service supplier" or "ESS" means a person or entity that offers to sell electricity services available pursuant to direct access to more than one retail electricity consumer. "Electricity service supplier" does not include an electric utility selling electricity to retail electricity consumers in its own service territory. An ESS can also be an aggregator.

(18) "Energy Conservation Project" means a capital investment in equipment that reduces the electric energy use or improves electric energy efficiency at a large electricity consumer's site or system at that site which has a simple payback of greater than one year and less than ten years. The simple payback shall be determined by using the eligible capital cost of the project divided by the first year electric energy cost savings.

(19) "Energy conservation project cost" means the costs of necessary features of an energy conservation project that include but are not limited to capital costs, administrative costs, general expenses, facility energy audits resulting in capital investment in an energy conservation project, design and engineering, shipping, materials, permits, installation, performance evaluation, and equipment operations training. The cost of a new energy conservation project may include large electricity consumer's cost of an energy analysis or study conducted by any public or private party, and any administrative costs paid.

(20) "Independent Energy Audit" means an evaluation by an independent auditor of all potential electricity using systems at an electric consumer's site that identifies in a written report the characteristics of electric energy use of those systems and all energy conservation projects for each of the electric energy using systems at the site.

(21) "Independent Energy Auditor" means a provider of energy systems audits that identify potential energy conservation projects for large electricity consumers that is not in the employ of the retail electricity consumer's company or any of its subsidiary or affiliate organizations except under contract as an independent service provider that is selected to provide independent audit service under these rules. An independent auditor may include a consumer-owned utility.

(22) "Independent certified public accountant" means a certified public accountant recognized by the State of Oregon and is independent as defined by the ethics rules implemented under ORS 673.010–673/480.

(23) "Large electricity consumer" means a nonresidential consumer that is a retail electricity consumer that has used more than one average megawatt of electricity (8,760,000 kWh/year) at any one site in the prior calendar year.

(24) "Market transformation" means a lasting structural or behavioral change in the marketplace that increases the adoption of energy efficient technologies and practices.

(25) "Municipal electric utility" means an electric distribution utility owned and operated by or on behalf of a city.

(26) "New" as it refers to energy conservation, market transformation and low-income weatherization means measures, projects or programs that are installed or implemented after the date direct access is offered by an electric company, with the exception that "new energy conservation" also includes expenditures by large electricity consumers eligible for self-directing public purpose charges that meet the following conditions:

(a) Self-directing consumers may not claim a public purpose credit for energy conservation measures that were started prior to July 23, 1999. For energy conservation measures that were started on or after July 23, 1999, but prior to the implementation of direct access, a self-directing consumer may claim a public purpose credit if either of the following conditions is met:

(A) The energy conservation measure did not receive funding from an electric company conservation program and was certified by the Oregon Department of Energy after July 23, 1999; or

(B) the energy conservation measure did receive funding from an electric company conservation program and the self-directing consumer repaid the amount of such funding (cost of audit and incentives plus interest) no later than 90 days following the implementation of direct access or the date they request preliminary certification under these rules. A self-directing consumer shall not be required to repay the amount of any energy conservation audit related to a conservation measure if the audit was completed prior to January 1, 2000. The cost of an audit that identifies multiple energy conservation measures shall be prorated among such measures.

(b) For purposes of this subsection, "started" means that a contract has been executed to install or implement an energy conservation measure.

(27) "New renewable energy resource" means a renewable energy resource project or a new addition to an existing renewable energy resource project, or the electricity produced by the project, that was not in operation

on or before January 1, 2000. "New renewable energy resource" does not include any portion of a renewable energy resource project under contract to the Bonneville Power Administration on or before January 1, 2000.

(28) "Nonresidential consumer" means a retail electricity consumer that is not a residential consumer.

(29) "Oregon Department of Energy" means the Oregon Department of Energy, an agency of the State of Oregon, created under Oregon Revised Statute (ORS) 469.030.

(30) "One average megawatt" means 8,760,000 kilowatt-hours of electricity per year.

(31) "People's utility district" has the meaning given that term in ORS 261.010.

(32) "Precertification of new energy conservation projects" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed energy conservation project will be eligible for a certificate of qualified expenditure if it is installed as described in the retail electricity consumer's application for precertification.

(33) "Precertification of new renewable resource purchases" means written notification from the Oregon Department of Energy to a large electricity consumer that certifies that a proposed renewable resource purchase will be eligible for a certificate of qualified expenditure, if contracts of commitment to purchase are established as described in the retail electricity consumer's application for precertification.

(34) "Public purpose charge" is an amount equal to 3 percent of the total revenues billed to large consumers for electricity services, distribution, ancillary services, metering, billing, transition charges and other types of costs that were included in electric rates on or after March 1, 2002 by electric utilities offering direct access to their large electricity consumers, except for an aluminum plant that is a retail electricity consumer where the amount is equal to 1 percent of the total revenues billed.

(35) "Qualifying expenditures" means those expenditures for new energy conservation measures that have a simple payback period of not less than one year and not more than 10 years and expenditures for the above-market costs of new renewable energy resources.

(36) "Renewable energy resources" means:

(a) Electricity-generation facilities fueled by wind, waste, solar or geothermal power or by low-emission nontoxic biomass based on solid organic fuels from wood, forest and field residues;

(b) Dedicated energy crops available on a renewable basis;

(c) Landfill gas and digester gas; or

(d) Hydroelectric facilities located outside protected areas as defined by federal law in effect on July 23, 1999.

(37) "Retail electricity consumer" means the end user of electricity for specific purposes such as heating, lighting or operating equipment and includes all end users of electricity served through the distribution system of an electric utility on or after January 1, 2000, whether or not each end user purchases the electricity from the electric utility. Retail electricity consumers include any direct service industrial consumer that purchases electricity without distribution services from the electric utility.

(38) "Self-directing consumer" means a retail electricity consumer using more than one average megawatt of electricity at any one site for the twelve billing months preceding January 15 of each year or an aluminum plant using more than 100 average megawatts of electricity for the twelve billing months preceding January 15 of each year. Consumers in electric utility service territories qualify as self-directing if they have a certification of qualified expenditure from the Oregon Department of Energy for new energy conservation or new renewable energy resources.

(39) "Site" means:

(a) Buildings and related structures that are interconnected by facilities owned by a single retail electricity consumer and that are served through a single electric meter; or

(b) a single contiguous area of land containing buildings or other structures that are separated by not more than 1,000 feet, such that:

(A) Each building or structure included in the site is no more than 1,000 feet from at least one other building or structure in the site;

(B) Each building or structure included in the site, and land containing and connecting buildings and structures in the site, are owned by a single retail electricity consumer who is billed for electricity use at the buildings or structures; and

(C) Land shall be considered contiguous even if there is an intervening public or railroad right of way, provided that rights of way land on which municipal infrastructure facilities exist (such as street lighting, sewerage transmission, and roadway controls) shall not be considered contiguous.

(40) "Statement of Eligibility" means a written declaration by an authorized officer of a large electricity consumer's firm that it meets the definition of a large electricity consumer under these rules and that it intends to comply with the requirements contained in these rules for self-direction and reporting of public purpose charges for a given site.

(41) "System" means any individual process or series of equipment contributing to energy end use in a large electricity consumer's site. A system may include heating, ventilating and air conditioning, domestic hot water, lighting, or a specific industrial process such as air compression, refrigeration, shredding, forging, or other such specific process described by the large electricity consumer.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687
Stats. Implemented: ORS 756.040 & 757.600 - 757.687
Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0060
Certification of Qualifying Expenditure for New Energy Conservation Projects

(1) Once the costs, or portion of the costs identified in the precertification as a component eligible for certification as an individual expense for a project, are expended, the retail electricity consumer may apply to the Oregon Department of Energy for a certificate of qualified expenditure on a form provided by the Office of Energy.

(2) Proof of amount paid must accompany the application for certificate of qualified expenditure.

(a) Proof of purchase for projects costing less than $50,000 may include canceled checks, credit card statements, and binding contracts or agreements.

(b) Projects costing $50,000 and more shall have an independent certified public accountant attest to the cost of the project.

(3) A certificate of qualified expenditure for all or part of the cost of precertified new energy conservation project(s) shall be approved or denied by the Oregon Department of Energy in writing within 30 days of the receipt of a complete application. A certificate of qualified expenditure may be issued for a portion of the cost of a new energy conservation project(s) that is an individual cost component or project phase defined in the preliminary certificate application and approved in the preliminary certificate.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687
Stats. Implemented: ORS 756.040 & 757.600 - 757.687
Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0070
Certification of Qualifying Expenditure for New Renewable Resources

(1) Retail electricity consumers whose new renewable resource purchases have received precertification from the Oregon Department of Energy may apply for a certificate of qualified expenditure on a form provided by the Oregon Department of Energy.

(2) A signed contract to purchase or receipt(s) for purchase of renewable resource certificates for new renewable energy describing the amount to be paid and the length of the agreement must accompany the application for certificate of qualified expenditure.

(3) Proof of amount paid must accompany the application for certificate of qualified expenditure for constructed new renewable resource projects.

(4) Proof of purchase for constructed projects costing less than $50,000 may include canceled checks, credit card statements, and binding contracts or agreements.

(5) Constructed project costs of $50,000 and more shall have an independent certified public accountant attest to the cost of the project.

(6) Certificate of qualified expenditure shall be approved or denied by the Oregon Department of Energy within 30 days of the receipt of a complete application.

(7) The certificate of qualified expenditure shall describe the term for which a contracted new renewable resource purchase is eligible for credit against public purposes charges owed.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687
Stats. Implemented: ORS 756.040 & 757.600 - 757.687
Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

330-140-0140
Administrative Cost Recovery

(1) Large electricity consumers applying to be eligible as self-directing consumers shall pay actual cost of service incurred by the Oregon Department of Energy for services provided for establishing a self-direction

account, reviewing request for self direction, and the electricity consumer's portion of the cost for any services or supplies for such administration.

(2) At the request for services by the self-directing consumer, the Oregon Department of Energy may estimate and request payment for the cost of service for self direction services provided. The estimated cost of service provided shall not exceed 4 percent of proposed project costs. The self-directing consumer shall submit payment of the estimated cost of certification services with all applications for precertification. An application for preliminary certification will not be considered complete without payment. The Oregon Department of Energy shall review the actual cost of service annually to assure costs of operation are recovered.

Stat. Auth.: ORS 469.040, 469.165, 756.040 & 757.600 - 757.687
Stats. Implemented: ORS 756.040 & 757.600 - 757.687
Hist.: DOE 3-2001, f. 10-25-01, cert. ef. 10-29-01; DOE 6-2004, f. 10-14-04, cert. ef. 12-1-04; DOE 7-2015, f. & cert. ef. 12-23-15

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Rule Caption: Amends requirements for including green energy technology in new construction and renovation of public buildings.
Adm. Order No.: DOE 8-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Amended: 330-135-0055
Subject: The rule amendments make the rules consistent with statutory amendments adopted through House Bill 2987, passed by the 2015 Oregon Legislative Assembly, which revised the requirements for public bodies to spend 1.5 percent of the total contract price for the construction, renovation or major remodel of a public building. When a public body finds that green energy technology is not appropriate for a current project, the amount that would have been spent is deferred and must be added to the 1.5 percent on a future project. The bill amendments removed a requirement to deposit the deferred funds into a separate account, while preserving the requirement for contracting agencies to report to the department on the amount and eventual use of deferred funds. Therefore, the amended rules remove the requirement for public entities to report to the Oregon Department of Energy information about the account or fund where the deferred funds would be held. The bill also added a requirement for public bodies to report to the Oregon Department of Energy on the aggregate amount of funds that have been deferred for green energy technology. The rules are effective January 1, 2016.
Rules Coordinator: Elizabeth Ross—(503) 378-8534

330-135-0055
Requirement to Report on Green Energy Technology

(1) A contracting agency must enter information about its public building project into the green energy technology database after it makes its final determination about whether green energy technology is appropriate and before the construction/renovation of the building(s) commences.

(2) The contracting agency will enter the information into the green energy technology database using an online form provided by the department and accessible from the department website.

(3) Information entered in the green energy technology database must include, but not be limited to:

(a) Project name;

(b) Address of public building;

(c) Name of contracting agency;

(d) Contact information for reporting person;

(e) Utility companies serving the building;

(f) Date the contracting agency first advertised or otherwise solicited a contract for the construction, reconstruction or major renovation of the public building;

(g) Total contract price;

(h) Total insured building value (renovation projects);

(i) Whether the project includes previously deferred funds, the name of the previous project(s), the amount of the deferred funds, and the aggregate amount of funds to be spent on the current project;

(j) Projected start of construction and occupation date of building;

(k) Description of the proposed green energy technology;

(l) Location details of the green energy technology installation;

(m) Disclosure of non-public funds used in financing the green energy technology;

(n) Estimated annual energy production or savings of the green energy system;

(o) Contracting agency determination of whether green energy technology is appropriate at the public building site or away from the public building site, or contracting agency decision to defer the expenditure;

(p) Technical review panel recommendation;

(q) Future project to which funds will be deferred and projected start of construction of the future building, if applicable and future project is known;

(r) The aggregate amount of funds the contracting agency has deferred but not yet used for green energy technology in another project;

(s) Cost-effectiveness comparison between green energy technology away-from-the-site of the public building compared to green energy technology at the site of public building under construction or renovation, if applicable; and

(t) Evidence of additional new renewable energy generation from green energy technology installed at the away-from-the-site location, if applicable.

(4) Upon completion of construction of the new building or major renovation and at the request of the department, the contracting agency must provide to the department the actual amount spent for green energy technology and, if significant changes were made to the green energy technology system design, an updated project description and updated estimated annual energy generation or savings.

Stat. Auth.: Stat. Auth.: ORS 469.040, 297C.528, OL 2013, Ch. 612 (HB 3169)
Stats. Implemented: ORS 279C.527, 279C.528, OL 2013, Ch. 612
Hist.: DOE 6-2007, f. 12-31-07, cert. ef. 1-2-08; DOE 15-2012, f. 12-27-12, cert. ef. 1-1-13; DOE 7-2013, f. & cert. ef. 12-23-13; DOE 8-2015, f. 12-23-15, cert. ef. 1-1-16

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Department of Fish and Wildlife
Chapter 635

Rule Caption: Commercial Dungeness Crab Season Opens in the Pacific Ocean and Columbia River.
Adm. Order No.: DFW 166-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 635-005-0465
Rules Suspended: 635-005-0465(T)
Subject: This amended rule sets the opening of the 2016 commercial Dungeness crab season in the Pacific Ocean and Columbia River as January 4, 2016. Previously, the season opening was delayed beyond the December 1 start date set in permanent rule due to elevated levels of the biotoxin domoic acid detected in crab samples during preseason testing. Three recent consecutive rounds of testing by the Oregon Department of Agriculture have shown domoic acid levels below U.S. Food and Drug Administration alert levels. This rule also establishes regulations preventing vessels choosing to participate in Oregon's fishery from participating in California's fishery until 30 days after those areas open. California fisheries remain closed at this time due to Domoic Acid in that area. Finally, rule modifications suspend the provision in permanent rule that suspends crab permit transfers during split-area openings within the Tri-State area (WA/OR/CA) due to the indeterminate nature of the closures in California.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-005-0465
Closed Season in Pacific Ocean and Columbia River

(1) It is *unlawful* to take, land or possess Dungeness crab for commercial purposes from the Pacific Ocean or Columbia River from August 15, 2015 through January 4, 2016, 08:59 AM.

(2) The season opening for the commercial Ocean Dungeness crab fishery may be delayed in one or more fishing zones based on the results of crab quality or biotoxin testing. The Pre-season Testing Protocol for the Tri-State Coastal Dungeness crab Commercial Fishery (hereafter, "Tri-State Protocol") specifies the process for establishing fishing zones (section VI) and coordinating the opening of the fishery in Washington, Oregon, and California north of Point Arena (sections IV and V). Therefore, the following sections of the Tri-State Protocol (Revised July 2014) are hereby incorporated into Oregon Administrative Rule by reference:

(a) Section IV – Season Opening Criteria.

(b) Section V – Test Fishing and Process for Setting the Season Opening Date.

(c) Section VI – Procedure for Establishing Fishing Zones. In the event that crab quality tests do not meet the criteria for opening the season on December 1, the Director shall adopt temporary rules delaying the season in accordance with the Tri-State Protocol. In the event areas within the Tri-State area are delayed for elevated levels of biotoxins, a vessel used for fishing crab in an open zone may not be used for fishing crab in a delayed zone until 30 days after the delayed zone has opened. The fisher must declare on the pre-season hold inspection certificate the zone in which the vessel will start fishing.

(3) It is unlawful to land, receive or buy, Dungeness crab in the first thirty days of the ocean Dungeness crab fishery from a vessel that has not been certified by officials of the State of Oregon, Washington, or California to have been free of Dungeness crab before fishing in the ocean Dungeness crab fishery. In the event the area between Gray's Harbor, Washington and Point Arena, California is divided into zones with different season opening dates, the ocean Dungeness crab fishery refers to the fishery in that zone for the purposes of this rule.

(4) Upon a determination by the Department that catch in Oregon's ocean Dungeness crab fishery after May 31 is greater than ten percent of the catch in the previous December 1 through May 31 period, the Director shall adopt a temporary rule closing the commercial season until the following December 1.

Stat. Auth.: ORS 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 506.109, 506.129 & 506.306
Hist.: FC 246, f. 5-5-72, ef. 5-15-72; FC 285(74-20), f. 11-27-74, ef. 12-25-74; FC 293(75-6), f. 6-23-75, ef. 7-11-75; FWC 30, f. & ef. 11-28-75; FWC 132, f. & ef. 8-4-77; FWC 30-1985, f. 6-27-1985, ef. 7-1-85, Renumbered from 625-010-0155, Renumbered from 635-036-0125; FWC 56-1982, f. & ef. 8-27-82; FWC 13-1983, f. & ef. 3-24-83; FWC 39-1983(Temp), f. & ef. 8-31-83; FWC 11-1984, f. 3-30-84, ef. 9-16-84, except section (1) per FWC 45-1984, f. & ef. 8-30-84; FWC 30-1985, f. 6-27-85, ef. 7-1-85; FWC 78-1986(Temp), f. & ef. 12-1-86; FWC 36-1987, f. & ef. 7-1-87; FWC 97-1987(Temp), f. & ef. 11-17-87; FWC 102-1988, f. 11-29-88, cert. ef. 12-29-88; FWC 119-1989(Temp), f. 11-29-89, cert. ef. 12-1-89; FWC 135-1991(Temp), f. 12-10-91, cert. ef. 12-11-91; FWC 136-1991(Temp), f. & cert. ef. 12-19-91; FWC 112-1992, f. 10-26-92, cert. ef. 11-1-92; FWC 70-1993, f. 11-9-93, cert. ef. 11-11-93; FWC 88-1994(Temp), f. 11-30-94, cert. ef. 12-1-94; FWC 89-1994(Temp), f. & cert. ef. 12-1-94; FWC 89-1995(Temp), f. 11-28-95, cert. ef. 12-1-95; FWC 1-1996(Temp), f. 1-11-96, cert. ef. 1-13-96; DFW 51-1998(Temp), f. 6-29-98, cert. ef. 7-1-98 thru 9-15-98; DFW 54-1998(Temp), f. & cert. ef. 7-24-98 thru 9-15-98; DFW 40-1999, f. & cert. ef. 5-26-99; DFW 70-2000, f. & cert. ef. 10-23-00; DFW 77-2000(Temp), f. 11-27-00, cert. ef. 12-1-00 thru 12-14-00; DFW 39-2002, f. & cert. ef. 4-26-02; DFW 128-2002(Temp), f. & cert. ef. 11-15-02 thru 1-31-03; DFW 129-2002(Temp), f. & cert. ef. 11-20-02 thru 1-31-03; DFW 132-2002(Temp), f. & cert. ef. 11-25-02 thru 1-31-03 (Suspended by DFW 133-2002(Temp)); DFW 133-2002(Temp), f. & cert. ef. 12-6-02 thru 1-31-03; DFW 117-2003(Temp), f. 11-25-03, cert. ef. 12-1-03 thru 2-29-04; Administrative correction 10-26-04; DFW 113-2004(Temp), f. 11-23-04, cert. ef. 12-1-04 thru 3-1-05; DFW 116-2004(Temp), f. & cert. ef. 12-8-04 thru 3-1-05; DFW 126-2004(Temp), f. & cert. ef. 12-21-04 thru 3-1-05; DFW 132-2004(Temp), f. & cert ef. 12-30-04 thru 3-1-05; Administrative correction, 3-18-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 140-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 5-31-06; Administrative correction 7-20-06; DFW 142-2008, f. & cert. ef. 11-21-08; DFW 161-2010(Temp), f. 12-9-10, cert. ef. 12-10-10 thru 2-16-11; Administrative correction, 3-29-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; Administrative correction 4-24-12; DFW 37-2012, f. 4-24-12, cert. ef. 5-1-12; Renumbered from 635-005-0045, DFW 76-2012, f. 6-28-12, cert. ef. 7-1-12; DFW 145-2012(Temp), f. 11-14-12, cert. ef. 12-1-12 thru 12-31-12; DFW 146-2012(Temp), f. 12-11-12, cert. ef. 12-12-12 thru 6-9-13; Administrative correction, 6-27-13; DFW 118-2013, f. 10-11-13, cert. ef. 10-15-13; DFW 129-2013(Temp), f. 11-25-13, cert. ef. 12-1-13 thru 12-31-13; Administrative correction, 2-5-14; DFW 113-2014, f. 8-5-14, cert. ef. 8-15-14; DFW 157-2014(Temp), f. 11-24-14, cert. ef. 11-25-14 thru 5-23-15; Administrative correction, 6-23-15; DFW 150-2015, f. & cert. ef. 10-29-15; DFW 157-2015(Temp), f. & cert. ef. 11-20-15 thru 1-31-16; DFW 166-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amend Rules Related to 2016 Oregon Sport Fishing Regulations.
Adm. Order No.: DFW 167-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 8-1-2015
Rules Amended: 635-011-0100, 635-013-0004, 635-014-0080, 635-014-0090, 635-016-0080, 635-016-0090, 635-017-0080, 635-017-0090, 635-017-0095, 635-018-0080, 635-018-0090, 635-019-0080, 635-019-0090, 635-021-0080, 635-021-0090, 635-023-0080, 635-023-0090, 635-023-0095, 635-023-0125, 635-023-0128, 635-023-0130, 635-023-0134, 635-023-0140, 635-039-0080, 635-039-0090
Subject: The amended rules include modifications to sport fishing regulations for finfish, shellfish, and marine invertebrates that were adopted by the Oregon Fish and Wildlife Commission for 2016. Housekeeping and technical corrections were made to ensure rule consistency.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-011-0100
General Rule

It is *unlawful* to take any fish, shellfish, or marine invertebrates for personal use except as provided in these rules which include and incorporate the **2016 Oregon Sport Fishing Regulations** by reference. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 11-1982, f. & ef. 2-9-82; FWC 2-1984, f. & ef. 1-10-84; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 153-2011(Temp), f. 11-7-11, cert. ef. 11-15-11 thru 5-12-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 142-2012(Temp), f. 11-6-12, cert. ef. 11-15-12 thru 5-12-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 130-2013(Temp), f. 12-9-13, cert. ef. 12-10-13 thru 6-8-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-013-0004
Inclusions and Modifications

(1) OAR 635-013-0005 through 635-013-0009 modify or are in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subparts A and H, and the 2016 Oregon Sport Fishing Regulations.

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subparts A and H, and the 2016 Oregon Sport Fishing Regulations contain requirements for sport salmon angling in the Pacific Ocean off the Oregon coast. However, additional regulations may be adopted from time to time, and, to the extent of any inconsistency, they supersede the published federal regulations and the **2016 Oregon Sport Fishing Regulations**. This means that persons must consult not only the federal regulations and the published sport fishing regulations but also the Department's web page to determine all applicable sport fishing regulations.

(3) This rule contains requirements that modify sport salmon angling regulations off the Oregon coast. The following modifications are organized in sections that apply to the ocean sport salmon fishery in general and within management zones established by the Pacific Fishery Management Council and enacted by Federal Regulations (CFR, Title 50, Part 660, Subparts A and H).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 29-1989, f. 4-28-89, cert. ef. 5-1-89; FWC 31-1992, f. 4-29-92, cert. ef. 5-1-92; FWC 25-1994, f. & cert. ef. 5-2-94; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 72-1996, f. 12-21-96, cert. ef. 1-1-97; FWC 19-1997(Temp), f. 3-17-97, cert. ef. 4-15-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 43-1997(Temp), f. 8-8-97, cert. ef. 8-10-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 59-1998(Temp), f. & cert. ef. 8-10-98 thru 8-21-98; DFW 66-1998(Temp), f. & cert. ef. 8-21-98 thru 9-24-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 20-1999(Temp), f. 3-29-99, cert. ef. 4-1-99 thru 4-30-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 61-1999(Temp), f. 8-31-99, cert. ef. 9-3-99 thru 9-17-99; DFW 66-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; Administrative correction 11-17-99; DFW 16-2000(Temp), f. 3-31-00, cert. ef. 4-1-00 thru 4-30-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 47-2000(Temp), f. 8-10-00, cert. ef. 8-13-00 thru 9-30-00; DFW 83-2000(Temp), f 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 16-2001(Temp), f. 3-28-01, cert. ef. 4-1-01 thru 4-30-01; Administrative correction 6-20-01; DFW 59-2001(Temp), f. 7-18-01, cert. ef. 7-19-01 thru 10-31-01; DFW 20-2002(Temp), f. 3-19-02, cert. ef. 4-1-01 thru 4-30-02; DFW 75-2002(Temp), f. 7-19-02, cert. ef. 7-21-02 thru 12-31-02; DFW 80-2002(Temp), f. 7-31-02, cert. ef. 8-1-02 thru 12-31-02; DFW 85-2002(Temp), f. 8-8-02, cert. ef. 8-11-02 thru 12-31-02; DFW 99-2002(Temp) f. 8-30-02, cert. ef. 9-2-02 thru 12-31-02; DFW 100-2002(Temp), f. & cert. ef. 9-6-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 69-2003(Temp), f. 7-21-03, cert. ef. 7-25-03 thru 12-31-03; DFW 78-2003(Temp), f. 8-14-03, cert .ef. 8-20-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 75-2004(Temp), f. 7-20-04, cert. ef. 7-23-04 thru 12-31-04; DFW 80-2004(Temp), f. 8-12-04, cert. ef. 8-13-04 thru 12-31-04; DFW 93-2004(Temp), f. 9-2-04, cert. ef. 9-4-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 81-2005(Temp), f. 7-25-05, cert. ef. 7-29-05 thru 12-31-05; DFW 103-2005(Temp), f. 9-7-05, cert. ef. 9-9-05 thru 12-31-05; DFW 106-2005(Temp), f. 9-14-05, cert. ef. 9-17-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 67-2006(Temp), f. 7-25-06, cert. ef. 8-11-06 thru 12-31-06; DFW 87-2006(Temp), f. 8-18-06, cert. ef. 8-19-06 thru 12-31-06; DFW 90-2006(Temp), f. 8-25-06, cert. ef. 8-26-06 thru 12-31-06; Administrative correction 1-16-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 80-2007(Temp), f. 8-23-07, cert. ef. 8-25-07 thru 12-31-07; DFW 81-2007(Temp), f. 8-31-07, cert. ef. 9-2-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 66-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 10-31-08; DFW 96-2008(Temp), f. & cert. ef. 8-15-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-014-0080
Purpose and Scope

(1) The purpose of Division 014 is to provide for management of sport fisheries in the Northwest Zone over which the State has jurisdiction.

(2) Division 014 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 014 to determine all applicable sport fishing requirements for the Northwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-014-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Northwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations** pamphlet.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 21-1994(Temp), f. 4-22-94, cert. ef. 4-25-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 28-1995(Temp), f. 3-31-95, cert. ef. 5-1-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 39-1995, f. 5-10-95, cert. ef. 5-12-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 19-1996, f. & cert. ef. 5-16-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 29-1996, f. & cert. ef. 5-31-96; FWC 46-1996, f. & cert. ef. 8-23-96; FWC 55-1996(Temp), f. 9-25-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 30-1997, f. & cert. ef. 5-5-97; FWC 58-1997, f. 9-8-97, cert. ef. 10-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 69-1998, f. 8-28-98, cert. ef. 9-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 81-2001, f. & cert. ef. 8-29-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 118-2002(Temp), f, 10-22-02, cert. ef. 12-1-02 thru 3-31-03; DFW 120-2002(Temp), f. 10-24-02, cert. ef. 10-26-02 thru 3-31-03; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 18-2003(Temp) f. 2-28-03, cert. ef. 3-1-03 thru 4-30-03; DFW 38-2003(Temp), f. 5-7-03, cert. ef. 5-10-03 thru 10-31-03; DFW 51-2003(Temp), f. & cert. ef. 6-13-03 thru 10-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 108-2003(Temp), f. 10-28-03, cert. ef. 12-1-03 thru 3-31-04; DFW 123-2003(Temp), f. 12-10-03, cert. ef. 12-11-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 126-2003(Temp), f. 12-11-03, cert. ef. 1-1-04 thru 3-31-04; DFW 60-2004(Temp), f. 6-29-04, cert. ef 7-1-04 thru 7-15-04; DFW 90-2004(Temp), f. 8-30-04, cert. ef. 10-1-04 thru 12-31-04; DFW 103-2004(Temp), f. & cert, ef, 10-4-04 thru 12-31-04; DFW 108-2004(Temp), f. & cert. ef. 10-18-04 thru 12-31-04; DFW 111-2004(Temp), f. 11-16-04, cert. ef. 11-20-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 62-2005(Temp), f. 6-29-05, cert. ef. 7-1-05 thru 7-10-05; Administrative correction 7-20-05; DFW 105-2005(Temp), f. 9-12-05, cert. ef. 10-1-05 thru 12-15-05; DFW 127-2005(Temp), f. & cert. ef. 11-23-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 53-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 7-9-06; Administrative correction 7-20-06; DFW 64-2006(Temp), f. 7-17-06, cert. ef. 8-1-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 104-2006(Temp), f. 9-19-06, cert. ef. 10-1-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 63-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 25-2008(Temp), f. 3-13-08, cert. ef. 3-15-08 thru 9-10-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 43-2009(Temp), f. 5-5-09, cert. ef. 5-22-09 thru 10-31-09; DFW 67-2009(Temp), f. 6-9-09, cert. ef. 6-15-09 thru 10-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 99-2009(Temp), f. 8-26-09, cert. ef. 9-1-09 thru 12-31-09; DFW 115-2009(Temp), f. & cert. ef. 9-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 44-2010(Temp), f. 4-20-10, cert. ef. 4-21-10 thru 9-30-10; DFW 73-2010(Temp), f. 5-27-10, cert. ef. 6-1-10 thru 9-30-10; DFW 76-2010, f. 6-8-10, cert. ef. 8-1-10; DFW 89-2010(Temp), f. 6-28-10, cert. ef. 7-1-10 thru 9-30-10; Administrative correction 10-26-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 57-2011(Temp), f. 5-27-11, cert. ef. 6-1-11 thru 6-30-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 139-2011(Temp), f. 10-3-11, cert. ef. 10-6-11 thru 12-31-11; DFW 141-2011(Temp), f. 10-6-11, cert. ef. 10-10-11 thru 12-31-11; DFW 143-2011(Temp), f. 10-10-11, cert. ef. 10-11-11 thru 12-31-11; DFW 148-2011(Temp), f. 10-20-11, cert. ef. 10-21-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 53-2012(Temp), f. 5-29-12, cert. ef. 6-1-12 thru 10-31-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 63-2012(Temp), f. & cert. ef. 6-12-12 thru 10-31-12; DFW 71-2012(Temp), f. 6-27-12, cert. ef. 7-1-12 thru 11-30-12; DFW130-2012(Temp), f. 10-10-12, cert. ef. 10-13-12 thru 12-31-12; DFW 135-2012(Temp), f. 10-22-12, cert. ef. 10-24-12 thru 12-31-12; DFW 139-2012(Temp), f. 10-30-12, cert. ef. 10-31-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 43-2013(Temp), f. 5-29-13, cert. ef. 6-1-13 thru 10-31-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 60-2013(Temp), f. 6-24-13, cert. ef. 6-30-13 thru 9-30-13; Administrative correction 11-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 74-2014(Temp), f. 6-23-14, cert. ef. 6-30-14 thru 9-30-14; DFW 110-2014, f. & cert. ef. 8-4-14; DFW 111-2014(Temp), f. & cert. ef. 8-4-14 thru 9-30-14; DFW 133-2014(Temp), f. 9-16-14 & cert. ef. 9-17-14 thru 12-31-14; DFW 148-2014(Temp), f. 10-13-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 23-2015(Temp), f. & cert. ef. 4-1-15 thru 7-31-15; DFW 73-2015, f. 6-22-15, cert. ef. 6-23-15; DFW 75-2015(Temp), f. 6-23-15, cert. ef. 6-24-15 thru 7-31-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 94-2015(Temp), f. 7-27-15, cert. ef. 8-1-15 thru 12-31-15; DFW 118-2015(Temp), f. 8-28-15, cert. ef. 9-1-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 142-2015(Temp), f. & cert. ef. 10-16-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-016-0080
Purpose and Scope

(1) The purpose of Division 016 is to provide for management of sport fisheries in the Southwest Zone over which the State has jurisdiction.

(2) Division 016 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 016 to determine all applicable sport fishing requirements for the Southwest Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-014-0105 - 635-014-0460; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-016-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Southwest Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations** pamphlet.

Stat. Auth.: ORS 496.138, 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 80-1993(Temp), f. 12-21-93, cert. ef. 1-1-94; FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 79-1994(Temp), f. 10-21-94, cert. ef. 7-22-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 57-1995(Temp), f. 7-3-95, cert. ef. 7-4-95; FWC 59-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 82-1995(Temp), f. 9-29-95, cert. ef. 10-1-95; FWC 90-1995(Temp), f. 11-29-95, cert. ef. 1-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 52-1996, f. & cert. ef. 9-11-96; FWC 61-1996, f. & cert. ef. 10-9-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 73-1996(Temp), f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 32-1997(Temp), f. & cert. ef. 5-23-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 24-1998(Temp), f. & cert. ef. 3-25-98 thru 9-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 52-1998(Temp), f. 7-10-98, cert. ef. 7-11-98 thru 7-24-98; DFW 55-1998(Temp), f. & cert. ef. 7-24-98 thru 12-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 36-1999, f. & cert. ef. 5-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 48-2000(Temp), f. 8-14-00, cert. ef. 8-15-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 8-2001, f. & cert. ef. 3-5-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 42-2001(Temp), f. 5-25-01, cert. ef. 5-29-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 97-2001(Temp), f. 10-4-01, cert. ef. 11-1-01 thru 12-31-01; DFW 105-2001(Temp), f. 10-26-01, cert. ef. 11-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 55-2002(Temp), f. 5-28-02, cert. ef. 7-1-02 thru 11-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 124-2002(Temp), f. & cert. ef. 10-30-02 thru 12-31-02 (Suspended by DFW 125-2002(Temp), f. 11-8-02, certe. ef. 11-9-2002); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 127-2004, f. 12-22-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 24-2006(Temp), f. 4-25-06, cert. ef. 5-13-06 thru 10-31-06; DFW 37-2006(Temp), f. 6-2-06, cert. ef. 6-5-06 thru 12-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 47-2007(Temp), f. 6-18-07, cert. ef. 6-21-07 thru 10-31-07; DFW 56-2007(Temp), 7-6-07, cert. ef. 8-1-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 137-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 54-2008(Temp), f. 5-28-08, cert. ef. 6-1-08 thru 7-31-08; DFW 67-2008(Temp), f. 6-20-08, cert. ef. 8-1-08 thru 12-31-08; DFW 138-2008(Temp), f. 10-28-08, cert. ef. 11-1-08 thru 11-30-08; DFW 140-2008(Temp), f. 11-4-08, cert. ef. 11-5-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 57-2009(Temp), f. 5-27-09, cert. ef. 6-1-09 thru 7-31-09; DFW 77-2009(Temp), f. 6-29-09, cert. ef. 7-1-09 thru 7-31-09; DFW 87-2009(Temp), f. 7-31-09, cert. ef. 8-1-09 thru 12-31-09; DFW 113-2009(Temp), f. & cert. ef. 9-18-09 thru 12-31-09; DFW 141-2009(Temp), f. 11-4-09, cert. ef. 11-7-09 thru 12-21-09; DFW 143-2009(Temp), f. 11-17-09, cert. ef. 11-19-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 65-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 5-31-10; DFW 76-2010,

f. 6-8-10, cert. ef. 8-1-10; DFW 143-2010(Temp), f. 10-8-10, cert. ef. 10-10-10 thru 12-31-10; DFW 152-2010(Temp), f. 10-27-10, cert. ef. 10-30-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 31-2011(Temp), f. 4-18-11, cert. ef. 5-1-11 thru 10-27-11; DFW 83-2011, f. 6-30-11, cert. ef. 7-1-11; DFW 137-2011(Temp), 9-30-11, cert. ef. 10-1-11 thru 12-31-11; DFW 145-2011(Temp), f. 10-11-11, cert. ef. 10-12-11 thru 12-31-11; DFW 149-2011(Temp), f. 10-20-11, cert. ef. 10-22-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 62-2012, f. 6-12-12, cert. ef. 7-1-12; DFW 138-2012(Temp), f. 10-29-12, cert. ef. 10-31-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 50-2013, f. 6-10-13, cert. ef. 7-1-13; DFW 124-2013(Temp), f. 10-29-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 110-2014, f. & cert. ef. 8-4-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 73-2015, f. 6-22-15, cert. ef. 6-23-15; DFW 74-2015(Temp), f. & cert. ef. 6-23-15 thru 12-19-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 106-2015(Temp), f. & cert. ef. 8-13-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-017-0080
Purpose and Scope

(1) The purpose of Division 017 is to provide for management of sport fisheries in the Willamette Zone over which the State has jurisdiction.

(2) Division 017 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 017 to determine all applicable sport fishing requirements for the Willamette Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138 & 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-017-0105 - 635-017-0465; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-017-0090
Inclusions and Modifications

(1) The **2016 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the 2016 Oregon Sport Fishing Regulations.

(2) Pacific Lamprey Harvest:

(a) Pursuant to OAR 635-044-0130(1)(b), authorization from the Oregon Fish and Wildlife Commission must be in possession by individuals collecting or possessing Pacific lamprey for personal use. Permits are available from ODFW, 17330 SE Evelyn Street, Clackamas, OR 97015;

(b) Open fishing period is June 1 through July 31 from 7:00 A.M. to 6:00 P.M.; personal use harvest is permitted Friday through Monday each week. All harvest is prohibited Tuesday through Thursday;

(c) Open fishing area is the Willamette River at Willamette Falls on the east side of the falls only, excluding Horseshoe Area at the peak of the falls;

(d) Gear is restricted to hand or hand-powered tools only;

(e) Catch must be recorded daily on a harvest record card prior to leaving the open fishing area. Harvest record cards will be provided by ODFW. All harvest record cards must be returned to the ODFW Clackamas office by August 31 to report catch. Permit holders who do not return the harvest record cards by August 31 will be ineligible to receive a permit in the following year.

(f) Harvesters must allow sampling or enumeration of catches by ODFW personnel.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 3-1994, f. 1-25-94, cert. ef. 1-26-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 86-1994(Temp), f. 10-31-94, cert. ef. 11-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 32-1995, f. & cert. ef. 4-24-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 20-1996, f. & cert. ef. 4-29-96; FWC 22-1996(Temp), f. 5-9-96 & cert. ef. 5-10-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 5-1997, f. & cert. ef. 2-4-97; FWC 13-1997, f. 3-5-97, cert. ef. 3-11-97; FWC 17-1997(Temp), f. 3-19-97, cert. ef. 4-1-97; FWC 24-1997(Temp), f. & cert. ef. 4-10-97; FWC 31-1997(Temp), f. 5-14-97, cert. ef. 5-15-97; FWC 39-1997(Temp), f. 6-17-97, cert. ef. 6-18-97; FWC 69-1997, f. & cert. ef. 11-6-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 19-1998, f. & cert. ef. 3-12-98; DFW 28-1998(Temp), f. & cert. ef. 4-9-98 thru 4-24-98; DFW 31-1998(Temp), f. & cert. ef. 4-24-98 thru 7-31-98; DFW 33-1998(Temp), f. & cert. ef. 4-30-98 thru 5-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 35-1998(Temp), f. & cert. ef. 5-10-98 thru 5-15-98; DFW 37-1998(Temp), f. & cert. ef. 5-15-98 thru 7-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 15-1999, f. & cert. ef. 3-9-99; DFW 16-1999(Temp), f. & cert. ef. 3-10-99 thru 3-19-99; DFW 19-1999(Temp), f. & ef. 3-19-99 thru 4-15-99; DFW 27-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 30-1999(Temp), f. & cert. ef. 4-27-99 thru 5-12-99; DFW 35-1999(Temp), f. & cert. ef. 5-13-99 thru 7-31-99; DFW 39-1999(Temp), f. 5-26-99, cert. ef. 5-27-99 thru 7-31-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 88-1999(Temp), f. 11-5-99, cert. ef. 11-6-99 thru 11-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 22-2000, f. 4-14-00, cert. ef. 4-16-00 thru 7-31-00; DFW 23-2000(Temp), f. 4-19-00, cert. ef. 4-22-00 thru 7-31-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 6-2001, f. & cert. ef. 3-1-01; DFW 23-2001(Temp), f. & cert. ef. 4-23-01 thru 10-19-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 46-2001(Temp) f. 6-8-01, cert. ef. 6-16-01 thru 12-13-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 72-2001(Temp), f. 8-10-01, cert. ef. 8-16-01 thru 12-31-01; DFW 90-2001(Temp), f. 9-14-01, cert. ef. 9-15-01 thru 12-31-01; DFW 95-2001(Temp), f. 9-27-01, cert. ef. 10-20-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 37-2002, f. & cert. ef. 4-23-02; DFW 42-2002, f. & cert. ef. 5-3-02; DFW 44-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 11-3-02; DFW 70-2002(Temp), f. 7-10-02 cert ef. 7-12-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 42-2003, f. & cert. ef. 5-16-03; DFW 53-2003(Temp), f. 6-17-03, cert. ef. 6-18-03 thru 12-14-03; DFW 57-2003(Temp), f. & cert. ef. 7-8-03 thru 12-31-03; DFW 59-2003(Temp), f. & cert. ef. 7-11-03 thru 12-31-03; DFW 70-2003(Temp), f. & cert. ef. 7-23-03 thru 12-31-03; DFW 71-2003(Temp), f. 7-24-03, cert. ef. 7-25-03 thru 12-31-03; DFW 90-2003(Temp), f. 9-12-03 cert. ef. 9-13-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 33-2004, f. 4-22-04, cert ef. 5-1-04; DFW 48-2004(Temp), f. 5-26-04, cert. ef. 5-28-04 thru 11-23-04; DFW 69-2004(Temp), f. & cert. ef. 7-12-04 thru 11-23-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 24-2005, f. 4-15-05, cert. ef. 5-1-05; DFW 78-2005(Temp), f. 7-19-05, cert. ef. 7-21-05 thru 7-22-05; Administrative correction 8-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 36-2006(Temp), f. & cert. ef. 6-1-06 thru 9-30-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 121-2006(Temp), f. & cert. ef. 10-20-06 thru 12-31-06; DFW 32-2007, f. 5-14-07, cert. ef. 6-1-07; DFW 65-2007(Temp), f. & cert. ef. 8-6-07 thru 10-31-07; DFW 105-2007(Temp), f. 10-4-07, cert. ef. 10-6-07 thru 11-30-07; Administrative correction 12-20-07; DFW 134-2007, f. 12-26-07, cert. ef. 1-1-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 1-2008(Temp), f. & cert. ef. 1-9-08 thru 7-6-08; DFW 5-2008(Temp), f. 1-25-08, cert. ef. 2-1-08 thru 7-6-08; DFW 15-2008(Temp), f. 2-26-08, cert. ef. 3-1-08 thru 7-29-08; DFW 46-2008(Temp), f. 5-9-08, cert. ef. 5-12-08 thru 7-29-08; DFW 55-2008(Temp), f. 5-30-08, cert. ef. 6-2-08 thru 10-31-08; DFW 82-2008(Temp), f. 7-21-08, cert. ef. 7-29-08 thru 12-31-08; DFW 110-2008(Temp), f. 9-15-08, cert. ef. 9-17-08 thru 12-31-08; DFW 124-2008(Temp), f. 10-1-08, cert. ef. 10-2-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 9-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 8-15-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 74-2009(Temp), f. 6-25-09, cert. ef. 6-30-09 thru 7-2-09; Administrative correction 7-21-09; DFW 103-2009(Temp), f. 8-27-09, cert. ef. 9-1-09 thru 12-31-09; DFW 118-2009(Temp), f. & cert. ef. 9-28-09 thru 12-31-09; DFW 123-2009(Temp), f. & cert. ef. 10-5-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 61-2010, f. & cert. ef. 5-14-10; DFW 62-2010(Temp), f. 5-14-10, cert. ef. 5-22-10 thru 11-17-10; DFW 84-2010(Temp), f. 6-17-10, cert. ef. 6-18-10 thru 10-31-10; DFW 94-2010(Temp), f. & cert. ef. 7-1-10 thru 10-31-10; DFW 96-2010(Temp), f. 7-7-10, cert. ef. 7-8-10 thru 10-31-10; DFW 123-2010(Temp), f. 8-26-10, cert. ef. 9-1-10 thru 12-31-10; DFW 134-2010(Temp), f. 9-22-10, cert. ef. 9-23-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 158-2011(Temp), f. 12-14-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 89-2012(Temp), f. 7-17-12, cert. ef. 7-26-12 thru 8-31-12; DFW 99-2012(Temp). f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 67-2013(Temp), f. 7-3-13, cert. ef. 7-11-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 62-2014(Temp), f. & cert. ef. 6-10-14 thru 10-31-14; DFW 70-2014(Temp), f. & cert. ef. 6-13-14 thru 6-30-14; DFW 73-2014(Temp), f. 6-20-14, cert. ef. 6-23-14 thru 10-31-14; DFW 141-2014(Temp), f. 9-25-14, cert. ef. 9-26-14 thru 12-31-14; DFW 150-2014(Temp), f. 10-14-14, cert. ef. 10-15-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 49-2015(Temp), f. & cert. ef. 5-27-15 thru 11-22-15: DFW 66-2015(Temp), f. 6-10-15, cert. ef. 6-12-15 thru 11-22-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 154-2015(Temp), f. 11-12-15, cert. ef. 11-23-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-017-0095
Sturgeon Season

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Willamette Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183.325, 506.109, 506.119
Stats. Implemented: ORS 506.129, 507.030
Hist.: DFW 2-2005(Temp), f. & cert. ef. 1-21-05 thru 7-19-05; DFW 55-2005, f. & cert. ef. 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 74-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 7-2008, f. & cert. ef. 2-11-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 15-2009, f. & cert. ef. 2-25-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 90-2010(Temp), f. 6-29-10, cert. ef. 7-5-10 thru 12-31-10; DFW 154-2010(Temp), f. & cert. ef. 11-8-10 thru 12-31-10; DFW 163-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 10-2011(Temp), f. 2-10-11, cert. ef. 2-17-11 thru 6-29-11; DFW 22-2011(Temp), f. 3-16-11, cert. ef. 3-17-11 thru 6-29-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 9-2012(Temp), f. 2-6-12, cert. ef. 2-17-12 thru 4-30-12; DFW 17-2012(Temp), f. 2-22-12, cert. ef. 2-23-12 thru 4-30-12; Administrative correction, 5-25-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 13-2013(Temp), f. 2-13-13, cert. ef. 2-14-13 thru 7-31-13; DFW 17-2013(Temp), f. 2-27-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 79-2013(Temp), f. 7-23-13, cert. ef. 7-25-13 thru 12-31-13; DFW 103-

2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; Temporary suspended by DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-018-0080
Purpose and Scope

(1) The purpose of Division 018 is to provide for management of sport fisheries in the Central Zone over which the State has jurisdiction.

(2) Division 018 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 018 to determine all applicable sport fishing requirements for the Central Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-018-0105 - 635-018-0310; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-018-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Central Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 20-1994(Temp), f. & cert. ef. 4-11-94; FWC 24-1994(Temp), f. 4-29-94, cert. ef. 4-30-94; FWC 34-1994(Temp), f. 6-14-94, cert. ef. 6-16-94; FWC 54-1994, f. 8-25-94, cert. ef. 9-1-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 67-1994(Temp), f. & cert. ef. 9-26-94; FWC 70-1994, f. 10-4-95, cert. ef. 11-1-94; FWC 18-1995, f. 3-2-95, cert. ef. 4-1-95; FWC 60-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 11-1996(Temp), f. 3-8-96, cert. ef. 4-1-96; FWC 32-1996(Temp), f. 6-7-96, cert. ef. 6-16-96, FWC 38-1996(Temp), f. 6-14-96, cert. ef. 7-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 20-1997, f. & cert. ef. 3-24-97; FWC 21-1997, f. & cert. ef. 4-1-97; FWC 27-1997(Temp) f. 5-2-97, cert. ef. 5-9-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 25-1998(Temp), f. & cert. ef. 3-25-98 thru 8-31-98; DFW 56-1998(Temp), f. 7-24-98, cert. ef. 8-1-98 thru 10-31-98; DFW 70-1998, f. & cert. ef. 8-28-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 78-1999, f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 12-2000(Temp), f. 3-20-00, cert. ef. 4-15-00 thru 7-31-00; DFW 27-2000(Temp), f. 5-15-00, cert. ef. 8-1-00 thru 10-31-00; DFW 28-2000, f. 5-23-00, cert. ef. 5-24-00 thru 7-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 13-2001(Temp), f. 3-12-01, cert. ef. 4-7-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 44-2001(Temp), f. 5-25-01, cert. ef. 6-1-01 thru 7-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 5-2002(Temp) f. 1-11-02 cert. ef. 1-12-02 thru 7-11-02; DFW 23-2002(Temp), f. 3-21-02, cert. ef. 4-6-02 thru 7-31-02; DFW 25-2002(Temp), f. 3-22-02, cert. ef. 4-6-02 thru 7-31-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 62-2002, f. 6-14-02, cert. ef. 7-11-02; DFW 74-2002(Temp), f. 7-18-02, cert. ef. 8-1-02 thru 10-31-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 97-2002(Temp), f. & cert. ef. 8-29-02 thru 10-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 26-2003(Temp), f. 3-28-03, cert. ef. 4-15-03 thru 7-31-03; DFW 66-2003(Temp), f. 7-17-03, cert. ef. 8-1-03 thru 10-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 23-2004(Temp), f. 3-22-04, cert. ef. 4-1-04 thru 7-31-04; DFW 77-2004(Temp), f. 7-28-04, cert. ef. 8-1-04 thru 10-31-04, Administrative correction 11-22-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 19-2005(Temp), f. 3-16-05, cert. ef. 4-15-05 thru 7-31-05; DFW 41-2005(Temp), f. 5-13-05, cert. ef. 5-15-05 thru 7-31-05; DFW 83-2005(Temp), f. 7-29-05, cert. ef. 8-1-05 thru 10-31-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 59-2006(Temp), f. 7-10-06, cert. ef. 8-1-06 thru 10-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 18-2007(Temp), f. 3-22-07, cert. ef. 4-15-07 thru 7-31-07; DFW 55-2007(Temp), f. 7-6-07, cert. ef. 8-1-07 thru 10-31-07; Administrative correction 11-17-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 26-2008(Temp), f. 3-17-08, cert. ef. 4-15-08 thru 7-31-08; DFW 27-2008(Temp), f. 3-24-08, cert. ef. 5-1-08 thru 10-27-08; Administrative correction 11-18-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 16-2009(Temp), f. 2-25-09, cert. ef. 4-15-09 thru 6-30-09; DFW 61-2009(Temp), f. 6-1-09, cert. ef. 8-1-09 thru 10-31-09; DFW 104-2009(Temp), f. 8-28-09, cert. ef. 9-1-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 7-2010(Temp), f. 1-25-10, cert. ef. 4-1-10 thru 7-31-10; DFW 27-2010(Temp), f. 3-8-10, cert. ef. 4-15-10 thru 7-31-10; DFW 66-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 10-31-10; DFW 86-2010(Temp), f. 6-23-10, cert. ef. 7-1-10 thru 10-31-10; DFW 106-2010(Temp), f. 7-26-10, cert. ef. 8-1-10 thru 12-31-10; DFW 164-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 16-2011(Temp), f. 2-16-11, cert. ef. 4-15-11 thru 7-31-11; DFW 17-2011(Temp), f. 2-17-11, cert. ef. 4-15-11 thru 7-31-11; DFW 42-2011(Temp), f. & cert. ef. 5-10-11 thru 10-31-11; DFW 93-2011(Temp), f. 7-13-11, cert. ef. 8-1-11 thru 10-31-11; DFW 123-2011(Temp), f. 9-2-11, cert. ef. 9-3-11 thru 12-31-11; DFW 160-2011(Temp), f. 12-20-11, cert. ef. 1-1-12 thru 4-30-12; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 21-2012, f. & cert. ef. 3-12-12; DFW 34-2012(Temp), f. 4-13-12, cert. ef. 4-15-12 thru 7-31-12; DFW 55-2012(Temp), f. & cert. 6-4-12 thru 6-30-12; Administrative correction, 8-1-12; DFW 88-2012(Temp), f. 7-16-12, cert. ef. 8-1-12 thru 10-31-12; Administrative correction 11-23-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 16-2013(Temp), f. 2-25-13, cert. ef. 4-15-13 thru 6-30-13; DFW 75-2013(Temp), f. 7-15-13, cert. ef. 8-1-13 thru 10-31-13; Administrative correction, 11-22-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 13-2014(Temp), f. 2-18-14, cert. ef. 4-15-14 thru 7-31-14; DFW 83-2014(Temp), f. 7-1-14, cert. ef. 8-1-14 thru 10-31-14; Administrative correction 11-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 27-2015(Temp), f. 4-9-15, cert. ef. 4-15-15 thru 6-30-15; Administrative correction, 7-24-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 99-2015(Temp), f. & cert. ef. 8-3-15 thru 12-31-15; Temporary suspended by DFW 120-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 128-2015(Temp), f. 9-14-15, cert. ef. 9-18-15 thru 12-31-15; DFW 141-2015(Temp), f. 10-15-15, cert. ef. 10-16-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-019-0080
Purpose and Scope

(1) The purpose of Division 019 is to provide for management of sport fisheries in the Northeast Zone over which the State has jurisdiction.

(2) Division 019 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 019 to determine all applicable sport fishing requirements for the Northeast Zone.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119

Stats. Implemented: 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-019-0105 - 635-019-0240 - See those rules for prior history; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-019-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Northeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146, 506.119

Stats. Implemented: ORS 496.162, 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 57-1994(Temp), f. 8-30-94, cert. ef. 10-1-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 70-1995, f. 8-29-95, cert. ef. 9-1-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 27-1996(Temp), f. 5-24-96, cert. ef. 5-25-96; FWC 57-1996(Temp), f. 9-27-96, cert. ef. 10-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 26-1997(Temp), f. 4-23-97, cert. ef. 5-17-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 13-1998(Temp), f. & cert. ef. 2-26-98 thru 4-15-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 5-1999(Temp), f. 2-5-99, cert. ef. 2-6-99 thru 2-19-99; DFW 8-1999(Temp), f. & cert. ef. 2-23-99 thru 4-15-99; DFW 37-1999(Temp), f. 5-24-99, cert. ef. 5-29-99 thru 6-5-99; DFW 43-1999(Temp), f. & cert. ef. 6-10-99 thru 6-13-99; DFW 45-1999(Temp), f. & cert. ef. 6-14-99 thru 6-20-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 17-2000(Temp), f. 4-10-00, cert. ef. 4-16-00 thru 6-30-00; DFW 64-2000(Temp), f. 9-21-00, cert. ef. 9-22-00 thru 3-20-01; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 5-2001(Temp), f. 2-22-01, cert. ef. 2-24-01 thru 4-15-01; DFW 39-2001(Temp) f. 5-23-01, cert. ef. 5-26-01 thru 7-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 45-2001(Temp), f. 6-1-01, cert. ef. 6-2-01 thru 7-31-01; DFW 49-2001(Temp), f. 6-19-01, cert. ef. 6-22-01 thru 7-31-01; DFW 70-2001, f. & cert. ef. 8-10-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 96-2001(Temp), f. 10-4-01, cert. ef. 12-1-01 thru 12-31-01; DFW 122-2001(Temp), f. & cert. ef. 12-31-01 thru 5-31-02; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 52-2002(Temp), f. 5-22-02, cert. ef. 5-26-02 thru 7-1-02; DFW 53-2002(Temp), f. 5-24-02, cert. ef. 5-26-02 thru 7-1-02; DFW 57-2002(Temp), f. & cert. ef. 5-30-02 thru 7-1-02; DFW 91-2002(Temp) f. 8-19-02, cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 44-2003(Temp), f. 5-23-03, cert. ef. 5-28-03 thru 7-1-03; DFW 48-2003(Temp), f. & cert. ef. 6-5-03 thru 7-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 40-2004(Temp), f. 5-7-04, cert. ef. 5-13-04 thru 7-1-04; DFW 46-2004(Temp), f. 5-21-04, cert. ef. 5-22-04 thru 7-1-04; DFW 55-2004(Temp), f. 6-16-04, cert. ef. 6-19-04 thru 7-5-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 42-2005(Temp), f. & cert. ef. 5-13-05 thru 9-1-05; DFW 61-2005(Temp), f. 6-22-05, cert. ef. 6-25-05 thru 7-4-05; Administrative correction 7-20-05; DFW 99-2005(Temp), f. 8-24-05, cert. ef. 8-26-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 28-2006(Temp), f. & cert. ef. 5-15-06 thru 6-30-06; DFW 33-2006(Temp), f. 5-24-06, cert. ef. 5-25-06 thru 6-30-06; Administrative correction 7-21-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 12-2007(Temp), f. 2-28-07, cert. ef. 3-1-07 thru 8-27-07; DFW 30-2007(Temp), f. 5-9-07, cert. ef. 5-10-07 thru 9-30-07; DFW 34-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 56-2008(Temp), f. 5-30-08, cert. ef. 5-31-08 thru 6-30-08; DFW 76-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 131-2009(Temp), f. 10-14-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 54-2010(Temp), f. 5-6-10, cert. ef. 5-22-10 thru 9-1-10; DFW 95-2010(Temp), f. 7-1-10, cert. ef. 7-11-10 thru 9-1-10; DFW 102-2010(Temp), f. 7-20-10, cert. ef 7-25-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 49-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; DFW 64-2011(Temp), f. 6-10-11, cert. ef. 6-13-11 thru 9-1-11; DFW 90-2011(Temp), f. & cert. ef. 7-11-11 thru 9-1-11; DFW 92-2011(Temp), f. 7-12-11, cert. ef. 7-16-11 thru 10-31-11; DFW 99-2011(Temp), f. 7-21-11, cert. ef. 7-23-11 thru 9-1-11; DFW 104-2011(Temp), f. 8-1-11, cert. ef. 8-7-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 48-2012(Temp), f. 5-18-12, cert. ef. 5-23-12 thru 9-1-12; DFW 50-

2012(Temp), f. 5-22-12, cert. ef. 5-24-12 thru 9-1-12; DFW 61-2012(Temp), f. & cert. ef. 6-11-12 thru 8-31-12; DFW 69-2012(Temp), f. 6-20-12, cert. ef. 6-22-12 thru 9-1-12; DFW 70-2012(Temp), f. 6-26-12, cert. ef. 6-27-12 thru 9-1-12; DFW 72-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 86-2012(Temp), f. 7-10-12, cert. ef. 7-15-12 thru 9-1-12; Administrative correction 9-20-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 153-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 4-30-13; DFW 31-2013(Temp), f. 5-14-13, cert. ef. 5-16-13 thru 6-30-13; DFW 39-2013(Temp), f. 5-22-13, cert. ef. 5-24-13 thru 11-19-13; DFW 46-2013(Temp), f. 5-30-13, cert. ef. 6-1-13 thru 11-26-13; DFW 62-2013(Temp), f. 6-26-13, cert. ef. 7-5-13 thru 12-31-13; DFW 74-2013(Temp), f. 7-15-13, cert. ef. 7-19-13 thru 9-1-13; Administrative correction 11-1-13; DFW 121-2013(Temp), f. 10-24-13, cert. ef. 11-1-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 42-2014(Temp), f. 5-12-14, cert. ef. 5-17-14 thru 6-1-14; DFW 47-2014(Temp), f. 5-27-14, cert. ef. 5-31-14 thru 7-31-14; DFW 53-2014(Temp), f. 5-28-14, cert. ef. 6-1-14 thru 7-31-14; DFW 58-2014(Temp), f. 6-9-14, cert. ef. 6-21-14 thru 8-31-14; DFW 71-2014(Temp), f. 6-16-14, cert. ef. 6-18-14 thru 9-1-14; DFW 72-2014(Temp), f. & cert. ef. 6-19-14 thru 9-1-14; DFW 75-2014(Temp), f. 6-23-14, cert. ef. 6-27-14 thru 9-1-14; DFW 82-2014(Temp), f. 7-1-14, cert. ef. 7-5-14 thru 9-1-14; DFW 86-2014(Temp), f. 7-2-14, cert. ef. 7-5-14 thru 9-1-14; DFW 97-2014(Temp), f. 7-18-14, cert. ef. 7-21-14 thru 9-30-14; Administrative correction, 10-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 45-2015(Temp), f. 5-15-15, cert. ef. 5-20-15 thru 6-30-15; DFW 53-2015(Temp), f. 5-27-15, cert. ef. 6-6-15 thru 8-31-15; DFW 64-2015(Temp), f. & cert. ef. 6-9-15 thru 8-31-15; DFW 81-2015(Temp), f. 7-1-15, cert. ef. 7-5-15 thru 8-31-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 99-2015(Temp), f. & cert. ef. 8-3-15 thru 12-31-15; DFW 121-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-021-0080
Purpose and Scope

(1) The purpose of Division 021 is to provide for management of sport fisheries in the Southeast Zone, over which the State has jurisdiction.

(2) Division 021 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 021 to determine all applicable sport fishing requirements for the Southeast Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-021-0105 - 635-021-0290; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-021-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Southeast Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 183.325, 496.138, 496.146
Stats. Implemented: ORS 496.162
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 76-1994(Temp), f. & cert. ef. 10-17-94; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 55-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 56-2001(Temp), f. & cert. ef. 6-29-01 thru 12-26-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 54-2002(Temp), f. 5-24-02, cert. ef. 6-15-02 thru 12-1-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-0 2 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 93-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 80-2003(Temp), f. & cert. ef. 8-22-03 thru 9-30-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 101-2005(Temp), f. 8-31-05, cert. ef. 9-2-05 thru 9-30-05; Administrative correction 10-19-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 36-2007(Temp), f. 5-25-07, cert. ef. 5-26-07 thru 9-30-07; DFW 54-2007(Temp), f. 7-6-07, cert. ef. 7-14-07 thru 9-30-07; DFW 62-2007(Temp), f. 7-31-07, cert. ef. 8-1-07 thru 9-30-07; Administrative correction 10-16-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 51-2008(Temp), f. 5-16-08, cert. ef. 5-31-08 thru 9-1-08; DFW 74-2008(Temp), f. 7-3-08, cert. ef. 7-4-08 thru 9-1-08; DFW 77-2008(Temp), f. & cert. ef. 7-9-08 thru 9-1-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 53-2009(Temp), f. 5-18-09, cert. ef. 5-30-09 thru 9-1-09; DFW 62-2009(Temp), f. 6-2-09, cert. ef. 6-13-09 thru 9-1-09; DFW 79-2009(Temp), f. 6-30-09, cert. ef. 7-5-09 thru 9-1-09; Administrative correction 9-29-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 52-2010(Temp), f. 4-30-10, cert. ef. 5-1-10 thru 9-30-10; DFW 60-2010(Temp), f. 5-13-10, cert. ef. 5-22-10 thru 9-30-10; DFW 67-2010(Temp), f. 5-18-10, cert. ef. 5-22-10 thru 9-30-10; DFW 78-2010(Temp), f. 6-10-10, cert. ef. 6-11-10 thru 9-1-10; Administrative correction 9-22-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 50-2011(Temp), f. 5-16-11, cert. ef. 5-28-11 thru 9-1-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 60-2012(Temp), f. 6-11-12, cert. ef. 6-13-12 thru 9-1-12; DFW 114-2012(Temp), f. 8-30-12, cert. ef. 9-1-12 thru 2-27-13; DFW 117-2012(Temp), f. 9-5-12, cert. ef. 9-7-12 thru 2-27-13; DFW 122-2012(Temp), f. 9-21-12, cert. ef. 9-21-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 61-2013(Temp), f. 6-24-13, cert. ef. 7-1-13 thru 12-27-13; DFW 93-2013(Temp), f. 8-22-13, cert. ef. 8-24-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 57-2014(Temp), f. 6-9-14, cert. ef. 6-11-14 thru 9-1-14; DFW 90-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 12-31-14; DFW 116-2014(Temp), f. 8-6-14, cert. ef. 8-9-14 thru 12-31-14; DFW 149-2014(Temp), f. 10-13-14, cert. ef. 11-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 44-2015(Temp), f. 5-15-15, cert. ef. 5-20-15 thru 9-1-15; DFW 85-2015(Temp), f. 7-13-15, cert. ef. 7-18-15 thru 10-31-15; DFW 88-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 12-31-15; DFW 121-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0080
Purpose and Scope

(1) The purpose of Division 023 is to provide for management of sport fisheries in the Columbia River Zone and in the Snake River Zone over which the State has jurisdiction.

(2) Division 023 incorporates by reference the **2016 Oregon Sport Fishing Regulations**. Therefore, persons must consult the **2016 Oregon Sport Fishing Regulations** in addition to division 011 and division 023 to determine all applicable sport fishing requirements for the Columbia River Zone and the Snake River Zone.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119
Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-023-0105 - 635-023-0120; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0090
Inclusions and Modifications

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 19-1994(Temp), f. 3-31-94, cert. ef. 4-1-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 46-1994(Temp), f. 7-29-94, cert. ef. 8-1-94; FWC 52-1994(Temp), f.8-24-94, cert. ef. 8-27-94; FWC 62-1994(Temp), f. 9-12-94, cert. ef. 9-16-94; FWC 65-1994(Temp), f. 9-15-94, cert. ef. 9-17-94; FWC 72-1994(Temp), f. 10-7-94, cert. ef. 10-8-94; FWC 8-1995, f. 2-1-95, cert. ef. 2-6-95; FWC 11-1995, f. & cert. ef. 2-9-95; FWC 14-1995(Temp), f. 2-15-95, cert. ef. 2-16-95; FWC 31-1995(Temp), f. 4-21-95, cert. ef. 4-24-95; FWC 34-1995, f. & cert. ef. 5-1-95; FWC 61-1995(Temp), f. 7-24-95, cert. ef. 8-1-95; FWC 67-1995(Temp), f. 8-25-95, cert. ef. 8-27-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 8-1995, f. 2-28-96, cert. ef. 3-1-96; FWC 12-1996(Temp), f. 3-26-96, cert. ef. 4-1-96; FWC 14-1996, f. 3-29-96, cert. ef. 4-1-96; FWC 49-1996(Temp), f. & cert. ef. 8-30-96; FWC 72-1996 f. 12-31-96, cert. ef. 1-1-97; FWC 7-1997(Temp), f. 2-6-97, cert. ef. 3-11-97; FWC 10-1997, f. & cert. ef. 2-28-97; FWC 11-1997(Temp), f. 2-27-97, cert. ef. 3-1-97; FWC 22-1997(Temp), f. 4-2-97, cert. ef. 4-5-97; FWC 28-1997(Temp), f. 5-2-97, cert. ef. 5-5-97; FWC 50-1997(Temp), f. 8-26-97, cert. ef. 9-2-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 12-1998(Temp), f. & cert. ef. 2-24-98 thru 4-24-98; DFW 29-1998(Temp), f. 4-16-98, cert. ef. 4-20-98 thru 4-24-98; DFW 32-1998(Temp), f. & cert. ef. 4-24-98 thru 10-15-98; DFW 34-1998, f. & cert. ef. 5-4-98; DFW 46-1998, f. & cert. ef. 6-9-98; DFW 78-1998(Temp), f. 9-18-98, cert. ef. 9-21-98 thru 9-25-98; DFW 81-1998(Temp), f. 10-6-98, cert. ef. 10-7-98 thru 10-23-98; DFW 85-1998(Temp), f. & cert. ef. 10-26-98 thru 12-31-98; DFW 88-1998(Temp), f. & cert. ef. 11-23-98 thru 12-31-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 13-1999(Temp), f. 3-2-99, cert. ef. 3-11-99 thru 6-15-99; DFW 23-1999(Temp), f. 4-9-99, cert. ef. 4-17-99 thru 4-23-99; DFW 25-1999, f. & cert. ef. 4-16-99 thru 4-23-99; DFW 29-1999(Temp), f. & cert. ef. 4-23-99 thru 10-20-99; DFW 31-1999, f. & cert. ef. 5-3-99; DFW 42-1999(Temp), f. 6-9-99, cert. ef. 6-12-99 thru 10-20-99; DFW 50-1999(Temp), f. & cert. ef. 7-16-99 thru 12-9-99; DFW 60-1999(Temp), f. 8-27-99, cert. ef. 8-30-99 thru 9-17-99; DFW 64-1999(Temp), f. 9-13-99, cert. ef. 9-14-99 thru 9-17-99; DFW 67-1999(Temp), f. & cert. ef. 9-17-99 thru 12-31-99; DFW 73-1999(Temp), f. 9-28-99 & cert. ef. 9-29-99 thru 10-22-99; DFW 77-1999(Temp), f. & cert. ef. 10-1-99 thru 12-31-99; DFW 78-1999 f. & cert. ef. 10-4-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 11-2000(Temp), f. 3-14-00, cert. ef. 3-16-00 thru 3-31-00; DFW 13-2000, f. & cert. ef. 3-20-00; DFW 18-2000(Temp), f. 4-6-00, cert. ef. 4-8-00 thru 10-5-00; DFW 24-2000, f. 4-28-00, cert. ef. 5-1-00; DFW 32-2000(Temp), f. 6-14-00, cert. ef. 6-19-00 thru 10-5-00; DFW 35-2000(Temp), f. 6-27-27, cert. ef. 6-28-00 thru 7-31-00; DFW 53-2000(Temp), f. 8-25-00, cert. ef. 8-28-00 thru 12-31-00; DFW 57-2000(Temp). f. 8-31-00, cert. ef. 9-1-00 thru 10-5-00; DFW 58-2000(Temp), f. & cert. ef. 9-1-00 thru 12-31-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 7-2001(Temp), f. & cert. ef. 2-26-01 thru 4-30-01; DFW 17-2001(Temp), f. 4-4-01, cert. ef. 4-9-01 thru 10-6-01; DFW 18-2001(Temp) f. & cert. ef. 4-12-01 thru 4-30-01; DFW 19-2001(Temp), f. 4-17-01, cert. ef. 4-21-01 thru 8-5-01; DFW 25-2001(Temp), f. 4-24-01, cert. ef. 4-25-01 thru 4-29-01; DFW 28-2001, f. & cert. ef. 5-1-01; DFW 35-2001(Temp), f. & cert. ef. 5-4-01 thru 5-8-01; DFW 37-2001(Temp), f. & cert. ef. 5-11-01 thru 7-31-01; DFW 40-2001(Temp) f. & cert. ef. 5-24-01 thru 11-20-01; DFW 64-2001(Temp), f. & cert. ef. 7-24-01 thru 12-31-01; DFW 71-2001(Temp), f. 8-10-01, cert. ef. 9-1-01 thru 12-31-01; DFW 82-2001(Temp), f. 8-29-01, cert. ef. 8-30-01 thru 12-31-01; DFW 85-2001(Temp), f. & cert. ef. 8-30-01 thru 12-31-01; DFW 88-2001(Temp), f. 9-15-01 thru 12-31-01; DFW 123-2001, f. 12-31-01, cert. ef. 1-1-02; DFW 15-2002(Temp), f.

& cert. ef. 2-20-02 thru 8-18-02; DFW 16-2002(Temp), f. 3-1-02 thru 8-28-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 29-2002(Temp), f. 4-4-02, cert. ef. 4-6-02 thru 10-3-02; DFW 40-2002(Temp), f. 4-25-02, cert. ef. 4-28-02 thru 10-3-02; DFW 43-2002(Temp), f. & cert. ef. 5-3-02 thru 10-3-02; DFW 45-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 46-2002(Temp), f. 5-7-02, cert. ef. 5-8-02 thru 10-3-02; DFW 64 2002(Temp), f. 6-27-02, cert. ef. 6-28-02 thru 12-20-02; DFW 69-2002(Temp), f. 7-10-02 cert. ef. 7-11-02 thru 12-31-02; DFW 71-2002(Temp), f. 7-10-02 cert. ef. 7-13-02 thru 12-31-02; DFW 79-2002(Temp), f. 7-29-02, cert. ef. 8-5-02 thru 12-31-02; DFW 91-2002(Temp) f. 8-19-02,cert. ef 8-20-02 thru 11-1-02 (Suspended by DFW 101-2002(Temp), f. & cert. ef. 10-3-02 thru 11-1-02); DFW 94-2002(Temp), f. 8-22-02, cert. ef. 8-24-02 thru 12-31-02; DFW 105-2002(Temp), f. 9-20-02, cert. ef. 9-23-02 thru 12-31-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 12-2003, f. & cert. ef. 2-14-03; DFW 16-2003(Temp), f. 2-27-03, cert. ef. 3-1-03 thru 7-1-03; DFW 28-2003(Temp), f. & cert. ef. 4-3-03 thru 7-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 36-2003, f. 4-30-03, cert. ef. 5-1-03 thru 10-1-03; DFW 46-2003(Temp), f. 5-29-03, cert. ef. 5-30-03 thru 10-1-03; DFW 52-2003(Temp), f. 6-13-03, cert. ef. 6-21-03 thru 12-15-03; DFW 54-2003(Temp), f. 6-23-03, cert. ef. 6-28-03 thru 12-24-03; DFW 55-2003(Temp), f. 6-27-03. cert. ef. 6-30-03 thru 12-26-03; DFW 72 2003(Temp), f. 7-25-03, cert. ef. 7-28-03 thru 12-31-03; DFW 99-2003(Temp), f. 9-24-03, cert. ef. 10-1-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 4-2004(Temp), f. 1-22-04, cert. ef. 2-1-04 thru 7-29-04; DFW 35-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 10-26-04; DFW 52-2004(Temp), f. 6-11-04, cert. ef. 6-25-04 thru 12-21-04; DFW 58-2004(Temp), f. 6-24-04, cert. ef. 6-27-04 thru 12-23-04; DFW 64-2004(Temp), f. 6-30-04, cert. ef. 7-3-04 thru 12-30-04; DFW 65-2004(Temp), f. 7-6-04, cert. ef. 7-11-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 118-2004(Temp), f. 12-13-04, cert. ef. 1-1-05 thru 5-31-05; DFW 128-2004(Temp), f. 12-23-04, cert. ef. 1-1-05 thru 5-31-05; Administrative correction 6-17-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 64-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 151-2009(Temp), f. 12-22-09, cert. ef. 1-1-10 thru 3-31-10; DFW 28-2010(Temp), f. 3-9-10, cert. ef. 3-11-10 thru 3-31-10; Administrative correction 4-21-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 10-2014(Temp), f. 2-12-14, cert. ef. 3-1-14 thru 3-31-14; Administrative correction, 4-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0095
Sturgeon Season

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 183.325, 506.109 & 506.119
Stats. Implemented: ORS 506.129 & 507.030
Hist.: DFW 129-2004(Temp), f. 12-23-04, cert. ef 1-1-05 thru 2-28-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 22-2005(Temp), f. 4-1-05, cert. ef. 4-30-05 thru 7-31-05; DFW 50-2005(Temp), f. 6-3-05, cert. ef. 6-11-05 thru 11-30-05; DFW 60-2005(Temp), f. 6-21-05, cert. ef. 6-24-05 thru 12-21-05; DFW 65-2005(Temp), f. 6-30-05, cert. ef. 7-10-05 thru 12-31-05; DFW 76-2005(Temp), f. 7-14-05, cert. ef. 7-18-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 145-2005(Temp), f. 12-21-05, cert. ef. 1-1-06 thru 3-31-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 19-2006(Temp), f. 4-6-06, cert. ef. 4-8-06 thru 7-31-06; DFW 54-2006(Temp), f. 6-29-06, cert. ef. 7-1-06 thru 12-27-06; DFW 62-2006(Temp), f. 7-13-06, cert. ef. 7-24-06 thru 12-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 131-2006(Temp), f. 12-20-06, cert. ef. 1-1-07 thru 6-29-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 20-2007(Temp), f. 3-26-07, cert. ef. 3-28-07 thru 7-30-07; DFW 38-2007(Temp), f. & cert. ef. 5-31-07 thru 11-26-07; DFW 59-2007(Temp), f. 7-18-07, cert .ef. 7-29-07 thru 12-31-07; DFW 75-2007(Temp), f. 8-17-07, cert. ef. 8-18-07 thru 12-31-07; DFW 102-2007(Temp), f. 9-28-07, cert. ef. 10-1-07 thru 12-31-07; DFW 135-2007(Temp), f. 12-28-07, cert. ef. 1-1-08 thru 6-28-08; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 8-2008, f. & cert. ef. 2-11-08; DFW 23-2008(Temp), f. 3-12-08, cert. ef. 3-15-08 thru 9-10-08; DFW 28-2008(Temp), f. 3-24-08, cert. ef. 3-26-08 thru 9-10-08; DFW 72-2008(Temp), f. 6-30-08, cert. ef. 7-10-08 thru 12-31-08; DFW 78-2008(Temp), f. 7-9-08, cert. ef. 7-12-08 thru 12-31-08; DFW 86-2008(Temp), f. & cert. ef. 7-25-08 thru 12-31-08; DFW 148-2008(Temp), f. 12-19-08, cert. ef. 1-1-09 thru 6-29-09; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 33-2009(Temp), f. 4-2-09, cert ef. 4-13-09 thru 10-9-09; DFW 63-2009(Temp), f. 6-3-09, cert. ef. 6-6-09 thru 10-9-09; DFW 83-2009(Temp), f. 7-8-09, cert. ef. 7-9-09 thru 12-31-09; DFW 86-2009(Temp), f. 7-22-09, cert. ef. 7-24-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 13-2010(Temp), f. 2-16-10, cert. ef. 2-21-10 thru 7-31-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 34-2010, f. 3-16-10, cert. ef. 4-1-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 50-2010(Temp), f. 4-29-10, cert. ef. 5-6-10 thru 11-1-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; DFW 91-2010(Temp), f. 6-29-10, cert. ef. 8-1-10 thru 12-31-10; DFW 99-2010(Temp), f. 7-13-10, cert. ef. 7-15-10 thru 12-31-10; DFW 165-2010(Temp), f. 12-28-10, cert. ef. 1-1-11 thru 6-29-11; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 11-2011(Temp), f. 2-10-11, cert. ef. 2-11-1 thru 7-31-11; DFW 23-2011, f. & cert. ef. 3-21-11; DFW 26-2011(Temp), f. 4-5-11, cert. ef. 4-10-11 thru 9-30-11; DFW 74-2011(Temp), f. 6-24-11, cert. ef. 6-27-11 thru 7-31-11; DFW 87-2011(Temp), f. 7-8-11, cert. ef. 7-9-11 thru 7-31-11; DFW 96-2011(Temp), f. 7-20-11, cert. ef. 7-30-11 thru 12-31-11; DFW 129-2011(Temp), f. 9-15-11, cert. ef. 9-30-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 1-2012(Temp), f. & cert. ef. 1-5-12 thru 7-2-12; DFW 10-2012, f. & cert. ef. 2-7-12; DFW 16-2012(Temp), f. 2-14-12, cert. ef. 2-18-12 thru 7-31-12; DFW 44-2012(Temp), f. 5-1-12, cert. ef. 5-20-12 thru 7-31-12; DFW 73-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 8-31-12; DFW 97-2012(Temp), f. 7-30-12, cert. ef. 8-1-12 thru 12-31-12; DFW 129-2012(Temp), f. 10-3-12, cert. ef. 10-20-12 thru 12-31-12; DFW 140-2012(Temp), f. 10-31-12, cert. ef. 11-4-12 thru 12-31-12; DFW 152-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 154-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 2-28-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 47-2013(Temp), f. 5-30-13, cert. ef. 6-14-13 thru 9-30-13; DFW 59-2013(Temp), f. 6-19-13, cert. ef. 6-21-13 thru 10-31-13; DFW 64-2013(Temp), f. 6-27-13, cert. ef. 6-29-13 thru 10-31-13; DFW 104-2013(Temp), f. 9-13-13, cert. ef. 10-19-13 thru 12-31-13; DFW 126-2013(Temp), f. 10-31-13, cert. ef. 11-12-13 thru 12-31-13; DFW 135-2013(Temp), f. 12-12-13, cert. ef. 1-1-14 thru 1-31-14; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 5-2014(Temp), f. 1-30-14, cert. ef. 2-1-14 thru 7-30-14; DFW 14-2014(Temp), f. 2-20-14, cert. ef. 2-24-14 thru 7-31-14; DFW 27-2014(Temp), f. 3-28-14, cert. ef. 5-1-14 thru 7-31-14; DFW 56-2014(Temp), f. 6-9-14, cert. ef. 6-13-14 thru 7-31-14; DFW 87-2014(Temp), f. 7-2-14, cert. ef. 7-11-14 thru 12-31-14; DFW 94-2014(Temp), f. & cert. ef. 7-14-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 166-2014(Temp), f. 12-18-14, cert. ef. 1-1-15 thru 3-1-15; Administrative correction, 3-23-15; DFW 41-2015(Temp), f. & cert. ef. 5-12-15 thru 7-31-15; DFW 54-2015(Temp), f. 5-28-15, cert. ef. 6-3-15 thru 7-31-15; DFW 89-2015(Temp), f. 7-16-15, cert. ef. 7-18-15 thru 9-30-15; Temporary suspended by DFW 122-2015(Temp), f. 8-31-15, cert. ef. 9-1-15 thru 9-30-15; Administrative correction, 10-22-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0125
Spring Sport Fishery

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 11-2004, f. & cert. ef. 2-13-04; DFW 17-2004(Temp), f. & cert. ef. 3-10-04 thru 7-31-04; DFW 29-2004(Temp), f. 4-15-04, cert. ef. 4-22-04 thru 7-31-04; DFW 30-2004(Temp), f. 4-21-04, cert. ef. 4-22-04 thru 7-31-04; DFW 36-2004(Temp), f. 4-29-04, cert. ef. 5-1-04 thru 7-31-04; DFW 39-2004(Temp), f. 5-5-04, cert.ef. 5-6-04 thru 7-31-04; DFW 44-2004(Temp), f. 5-17-04, cert. ef. 5-20-04 thru 7-31-04; DFW 51-2004(Temp), f. 6-9-04, cert. ef. 6-16-04 thru 7-31-04; Administrative correction 8-19-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 6-2005, f. & cert. ef. 2-14-05; DFW 27-2005(Temp), f. & cert. ef. 4-20-05 thru 6-15-05; DFW 35-2005(Temp), f. 5-4-05, cert. ef. 5-5-05 thru 10-16-05; DFW 38-2005(Temp), f. & cert. ef. 5-10-05 thru 10-16-05; DFW 44-2005(Temp), f. 5-17-05, cert. ef. 5-22-05 thru 10-16-05; DFW 51-2005(Temp), f. 6-3-05, cert. ef. 6-4-05 thru 7-31-05; Administrative correction 11-18-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 5-2006, f. & cert. ef. 2-15-06; DFW 21-2006(Temp), f. 4-13-06, cert. ef. 4-14-06 thru 5-15-06; DFW 27-2006(Temp), f. 5-12-06, cert. ef. 5-13-06 thru 6-15-06; DFW 29-2006(Temp), f. & cert. ef. 5-16-06 thru 7-31-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 7-2007(Temp), f. 1-31-07, cert. ef. 2-1-07 thru 7-30-07; DFW 9-2007, f. & cert. ef. 2-14-07; DFW 28-2007(Temp), f. & cert. ef. 4-26-07 thru 7-26-07; DFW 33-2007(Temp), f. 5-15-07, cert. ef. 5-16-07 thru 7-30-07; DFW 37-2007(Temp), f. & cert. ef. 5-31-07 thru 7-30-07; DFW 39-2007(Temp), f. 6-5-07, cert. ef. 6-6-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 13-2008(Temp), f. 2-21-08, cert. ef. 2-25-08 thru 8-22-08; DFW 17-2008(Temp), f. & cert. ef. 2-27-08 thru 8-22-08; DFW 35-2008(Temp), f. 4-17-08, cert. ef. 4-21-08 thru 8-22-08; DFW 49-2008(Temp), f. & cert. ef. 5-13-08 thru 6-15-08; Administrative correction 7-22-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 10-2009(Temp), f. 2-13-09, cert. ef. 3-1-09 thru 6-15-09; DFW 18-2009, f. & cert. ef. 2-26-09; DFW 48-2009(Temp), f. 5-14-09, cert. ef. 5-15-09 thru 6-16-09; DFW 68-2009(Temp), f. 6-11-09, cert. ef. 6-12-09 thru 6-16-09; Administrative correction 7-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 19-2010(Temp), f. 2-26-10, cert. ef. 3-1-10 thru 8-27-10; DFW 23-2010(Temp), f. & cert. ef. 3-2-10 thru 8-27-10; DFW 45-2010(Temp), f. 4-21-10, cert. ef. 4-24-10 thru 7-31-10; DFW 49-2010(Temp), f. 4-27-10, cert. ef. 4-29-10 thru 7-31-10; DFW 55-2010(Temp), f. 5-7-10, cert. ef. 5-8-10 thru 7-31-10; Suspended by DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 13-2011(Temp), f. & cert. ef. 2-14-11 thru 6-15-11; DFW 28-2011(Temp), f. 4-7-11, cert. ef. 4-8-11 thru 6-15-11; DFW 30-2011(Temp), f. 4-15-11, cert. ef. 4-16-11 thru 6-15-11; DFW 33-2011(Temp), f. & cert. ef. 4-21-11 thru 6-15-11; DFW 39-2011(Temp), f. 5-5-11, cert. ef. 5-7-11 thru 6-15-11; DFW 48-2011(Temp), f. 5-13-11, cert. ef. 5-15-11 thru 6-15-11; DFW 55-2011(Temp), f. 5-25-11, cert. ef. 5-27-11 thru 6-15-11; DFW 59-2011(Temp), f. & cert. ef. 6-2-11 thru 6-15-11; Administrative correction 6-28-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 8-2012(Temp), f. 2-6-12, cert. ef. 2-15-12 thru 6-15-12; DFW 31-2012(Temp), f. 4-5-12, cert. ef. 4-6-12 thru 6-15-12; DFW 33-2012(Temp), f. 4-12-12, cert. ef. 4-14-12 thru 6-15-12; DFW 45-2012(Temp), f. 5-1-12, cert. ef. 5-2-12 thru 7-31-12; DFW 47-2012(Temp), f. 5-15-12, cert. ef. 5-16-12 thru 7-31-12; DFW 49-2012(Temp), f. 5-18-12, cert. ef. 5-19-12 thru 7-31-12; DFW 51-2012(Temp), f. 5-23-12, cert. ef. 5-26-12 thru 7-31-12; Suspended by DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 12-2013(Temp), f. 2-12-13, cert. ef. 2-28-13 thru 7-31-13; DFW 26-2013(Temp), f. 4-4-13, cert. ef. 4-5-13 thru 7-1-13; DFW 38-2013(Temp), f. 5-22-13, cert. ef. 5-25-13 thru 7-1-13; DFW 49-2013(Temp), f. 6-7-13, cert. ef. 6-8-13 thru 6-30-13; Administrative correction, 7-18-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 12-2014(Temp), f. 2-13-14, cert. ef. 3-1-14 thru 6-15-14; DFW 29-2014(Temp), f. 4-3-14, cert. ef. 4-4-14 thru 6-15-14; DFW 31-2014(Temp), f. 4-17-14, cert. ef. 4-19-14 thru 7-31-14; DFW 40-2014(Temp), f. 5-7-14, cert. ef. 5-9-14 thru 6-30-14; DFW 44-2014(Temp), f. 5-14-14, cert. ef. 5-15-14 thru 6-15-14; DFW 52-2014(Temp), f. 5-28-14, cert. ef. 5-31-14 thru 6-30-14; Administrative correction, 7-24-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 12-2015(Temp), f. 2-3-15, cert. ef. 3-1-15 thru 6-15-15; DFW 16-2015(Temp), f. & cert. ef. 3-5-15 thru 6-15-15; DFW 26-2015(Temp), f. 4-8-15, cert. ef. 4-10-15 thru 6-15-15; DFW 35-2015(Temp), f. 4-30-15, cert. ef. 5-2-15 thru 6-15-15; DFW 40-2015(Temp), f. & cert. ef. 5-6-15 thru 6-15-15; DFW 52-2015(Temp), f. 5-27-15, cert. ef. 5-28-15 thru 6-15-15; DFW 59-2015(Temp), f. 6-2-15, cert. ef. 6-3-15 thru 6-15-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0128
Summer Sport Fishery

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 52-2005(Temp), f. 6-3-05, cert. ef. 6-16-05 thru 7-31-05; DFW 64-2005(Temp), f. 6-30-05, cert. ef. 7-1-05 thru 7-31-05; Administrative correction 8-17-05; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07;

DFW 51-2007(Temp), f. 6-29-07, cert. ef. 7-2-07 thru 7-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 61-2008(Temp), f. 6-13-08, cert. ef. 6-16-08 thru 7-31-08; DFW 68-2008(Temp), f. 6-20-08, cert. ef. 6-21-08 thru 8-31-08; DFW 71-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 8-31-08; Administrative correction 9-29-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 69-2009(Temp), f. 6-11-09, cert. ef. 6-16-09 thru 7-31-09; Administrative correction 8-21-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10; DFW 88-2010(Temp), f. 6-25-10, cert. ef. 6-26-10 thru 7-31-10; Administrative correction 8-18-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 65-2011(Temp), f. 6-14-11, cert. ef. 6-16-11 thru 7-31-11; DFW 95-2011(Temp), f. 7-15-11, cert. ef. 7-18-11 thru 7-31-11; Administrative correction 9-23-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 64-2012(Temp), f. 6-12-12, cert. ef. 6-16-12 thru 7-31-12; [DFW 85-2012(Temp), f. 7-6-12, cert. ef. 7-9-12 thru 8-31-12; Temporary Suspended by DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12]; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 55-2013(Temp), f. 6-12-13, cert. ef. 6-16-13 thru 7-31-13; DFW 66-2013(Temp), f. & cert. ef. 6-27-13 thru 7-31-13; DFW 70-2013(Temp), f. 7-11-13, cert. ef. 7-13-13 thru 7-31-13; Administrative correction, 8-21-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 68-2014(Temp), f. 6-12-14, cert. ef. 6-16-14 thru 7-31-14; DFW 85-2014(Temp), f. 7-2-14, cert. ef. 7-3-14 thru 7-31-14; DFW 92-2014(Temp), f. 7-10-14, cert. ef. 7-11-14 thru 7-31-14; Administrative correction, 8-28-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 61-2015(Temp), f. 6-8-15, cert. ef. 6-16-15 thru 7-31-15; DFW 79-2015(Temp), f. 6-30-15, cert. ef. 7-3-15 thru 7-31-15; Administrative correction, 8-18-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0130
Fall Sport Fishery

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone and the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162
Hist.: DFW 32-2004, f. 4-22-04, cert. ef. 5-1-04; DFW 92-2004(Temp), f. 9-2-04 cert. ef. 9-6-04 thru 12-31-04; DFW 96-2004(Temp), f. 9-20-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 25-2005, f. & cert. ef. 4-15-05; DFW 84-2005(Temp), f. & cert. ef. 8-1-05 thru 12-31-05; DFW 108-2005(Temp), f. 9-15-05, cert. ef. 9-17-05 thru 12-31-05; DFW 112-2005(Temp), f. 9-28-05, cert. ef. 9-30-05 thru 12-31-05; DFW 123-2005(Temp), f. 10-18-05, cert. ef. 10-20-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 26-2006(Temp), f. 4-20-06, cert. ef. 5-1-06 thru 10-27-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 100-2006(Temp), f. & cert. ef. 9-14-06 thru 12-31-06; DFW 109-2006(Temp), f. 9-29-06, cert. ef. 9-30-06 thru 12-31-06; DFW 113-2006(Temp), f. 10-12-06, cert. ef. 10-13-06 thru 12-31-06; DFW 24-2007, f. 4-16-07, cert. ef. 5-1-07; DFW 92-2007(Temp), f. 9-18-07, cert. ef. 9-19-07 thru 12-31-07; DFW 96-2007(Temp), f. 9-21-07, cert. ef. 9-22-07 thru 12-31-07; DFW 101-2007(Temp), f. 9-28-07, cert. ef. 9-29-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 36-2008, f. 4-21-08, cert. ef. 5-1-08; DFW 99-2008(Temp), f. 8-22-08, cert. ef. 8-25-08 thru 12-31-08; DFW 104-2008(Temp), f. 8-29-08, cert. ef. 8-31-08 thru 12-31-08; DFW 115-2008(Temp), f. & cert. ef. 9-18-08 thru 12-31-08; DFW 118-2008(Temp), f. 9-24-08, cert. ef. 9-25-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 52-2009, f. & cert. ef. 5-18-09; DFW 133-2009(Temp), f. 10-20-09, cert. ef. 10-22-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 77-2010, f. 6-8-10, cert. ef. 6-16-10, DFW 131-2010(Temp), f. 9-21-10, cert. ef. 9-22-10 thru 10-31-10; DFW 145-2010(Temp). f. 10-13-10, cert. ef. 10-15-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 100-2011(Temp), f. 7-27-11, cert. ef. 8-1-11 thru 12-31-11; DFW 127-2011(Temp), f. 9-14-11, cert. ef. 9-16-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 100-2012(Temp), f. 7-31-12, cert. ef. 8-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 81-2013(Temp), f. 7-26-13, cert. ef. 8-1-13 thru 12-31-13; DFW 92-2013(Temp), f. 8-22-13, cert. ef. 8-23-13 thru 12-31-13; DFW 100-2013(Temp), f. 9-12-13, cert. ef. 9-13-13 thru 12-31-13; DFW 107-2013(Temp), f. 9-25-13, cert. ef 9-26-13 thru 12-31-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 96-2014(Temp), f. 7-18-14, cert. ef. 8-1-14 thru 12-31-14; DFW 100-2014(Temp), f. 7-22-14, cert. ef. 8-1-14 thru 12-31-14; DFW 128-2014(Temp), f. 9-3-14, cert. ef. 9-6-14 thru 9-30-14; DFW 143-2014(Temp), f. 10-2-14, cert. ef. 10-3-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 95-2015(Temp), f. 7-29-15, cert. ef. 8-1-15 thru 12-31-15; DFW 113-2015(Temp), f. 8-21-15, cert. ef. 8-23-15 thru 12-31-15; DFW 115-2015(Temp), f. 8-28-15, cert. ef. 8-29-15 thru 12-31-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0134
Snake River Fishery

The **2016 Oregon Sport Fishing Regulations** provide requirements for the Snake River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 47-2005(Temp), f. 5-19-05, cert. ef. 5-21-05 thru 6-20-05; Administrative correction 7-20-05; DFW 31-2006(Temp), f. 5-18-06, cert. ef. 5-20-06 thru 6-19-06; Administrative correction 7-21-06; DFW 31-2007(Temp), f. 5-9-07, cert. ef. 5-11-07 thru 6-18-07; DFW 43-2007(Temp), f. 6-14-07, cert. ef. 6-19-07 thru 7-2-07; Administrative correction 2-8-08; DFW 43-2008(Temp), f. 4-25-08, cert. ef. 4-26-08 thru 7-20-08; DFW 64-2008(Temp), f. 6-18-08, cert. ef. 6-21-08 thru 7-31-08; Administrative correction 8-21-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 58-2009(Temp), f. 5-27-09, cert. ef. 5-30-09 thru 7-12-09; DFW 80-2009(Temp), f. 6-30-09, cert. ef 7-1-09 thru 7-17-09; Administrative correction 7-21-09; DFW 128-2009(Temp), f. 10-12-09, cert. ef. 10-18-09 thru 4-15-10; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 42-2010(Temp), f. 4-13-10, cert. ef. 4-24-10 thru 7-31-10; DFW 107-2010(Temp), f. 7-26-10, cert. ef. 7-31-10 thru 8-4-10; Administrative correction, 8-18-10; DFW 119-2010(Temp), f. 8-18-10, cert. ef. 9-1-10 thru 12-31-10; DFW 171-2010, f. 12-30-10, cert. ef. 1-1-11; DFW 29-2011(Temp), f. 4-12-11, cert. ef. 4-23-11 thru 10-19-11; DFW 118-2011(Temp), f. 8-23-11, cert. ef. 9-1-11 thru 12-31-11; DFW 163-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 35-2012(Temp), f. 4-16-12, cert. ef. 4-22-12 thru 9-30-12; DFW 93-2012(Temp), f. 7-24-12, cert. ef. 8-5-12 thru 9-30-12; DFW 109-2012(Temp), f. 8-21-12, cert. ef. 9-1-12 thru 12-31-12; DFW 149-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 29-2013(Temp), f. 4-25-13, cert. ef. 5-4-13 thru 9-30-13; DFW 76-2013(Temp), f. 7-16-13, cert. ef. 7-21-13 thru 9-30-13; DFW 94-2013(Temp), f. 8-23-13, cert. ef. 9-1-13 thru 11-30-13; Administrative correction, 12-19-13; DFW 137-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 33-2014(Temp), f. 4-21-14, cert. ef. 4-26-14 thru 9-30-14; DFW 98-2014(Temp), f. 7-18-14, cert. ef. 7-21-14 thru 9-30-14; DFW 122-2014(Temp), f. 8-4-14, cert. ef. 9-1-14 thru 12-31-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 32-2015(Temp), f. 4-27-15, cert. ef. 5-2-15 thru 9-30-15; DFW 96-2015(Temp), f. 7-29-15, cert. ef. 8-2-15 thru 9-30-15; DFW 103-2015(Temp), f. 8-12-15, cert. ef. 9-1-15 thru 11-30-15; Administrative correction, 12-22-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-023-0140
Youngs Bay Control Zone

(1) The **2016 Oregon Sport Fishing Regulations** provide requirements for the Columbia River Zone. However, additional regulations may be adopted in this rule division from time to time, and, to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

(2) The Youngs Bay Control Zone is closed to recreational angling from August 1 through September 15.

(a) The Youngs Bay Control Zone is defined as those waters southerly of a line originating on the Oregon shore at the east end of the seawall at the Warrenton Fiber log yard (approximately river mile 10.1) northeasterly through green navigation buoys 29, 31, 33, and 35A to the center of the Astoria-Megler Bridge abutment adjacent to, and north of the ship channel, and continuing southerly in line with the center of the Megler Bridge span to the Oregon shore.

(b) The Youngs Bay Control Zone includes all waters from the line defined in section (2)(a) above south to the Highway 101 Bridge.

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162, 506.129 & SB 830 (2013)
Hist.: DFW 4-2014(Temp), f. 1-23-14, cert. ef. 2-1-14 thru 7-30-14; DFW 9-2014, f. & cert. ef. 2-10-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-039-0080
Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled **2016 Oregon Sport Fishing Regulations**;

(b) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2014 ed.), as amended;

(c) Title 50 of the Code of Federal Regulations, Part 660, Subpart G (October 1, 2014 ed.), as amended;

(d) Federal Register Vol. 80, No. 46, dated March 10, 2015 (80 FR 12567);

(e) Federal Register Vol. 79. No. 48, dated March 12, 2014 (79 FR 3906); and

(f) Federal Register Vol. 79. No. 65, dated April 4, 2014 (79 FR 18827).

(3) Therefore, persons must consult all publications referenced in this rule in addition to division 011 and division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 496.138, 496.146, 506.119
Stats. Implemented: ORS 496.162 & 506.129
Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; Renumbered from 635-39-105 - 635-39-135; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 25-1997, f. 4-22-97, cert. ef. 5-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 91-1998, f. & cert. ef. 11-25-98; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 98-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 81-2000, f. 12-22-00, cert. ef. 1-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 120-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 33-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 54-2005(Temp), f. 6-10-05, cert. ef. 6-12-05 thru 11-30-05; DFW 56-2005, f. 6-21-05, cert. ef. 7-1-05; DFW 71-2005(Temp), f. & cert. ef. 7-7-05 thru 11-30-05; DFW 89-2005(Temp), f. & cert. ef. 8-12-05 thru 12-12-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 79-2006, f. 8-11-06, cert. ef. 1-1-07; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 32-2010, f. & cert. ef. 3-15-10; DFW 37-2010, f. 3-30-10, cert. ef. 4-1-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 39-2012, f. & cert. ef. 4-24-12; DFW 1-2013, f. & cert. ef. 1-3-13; DFW 25-2013(Temp), f. 4-2-13, cert. ef. 5-1-13 thru 5-31-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 36-2014, f. 4-29-14, cert. ef. 5-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 18-2015, f. & cert. ef. 3-10-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

635-039-0090
Inclusions and Modifications

(1) The **2016 Oregon Sport Fishing Regulations** provide requirements for sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches, commonly referred to as the Marine Zone. However, additional regulations may be adopted in this rule division from time to time and to the extent of any inconsistency, they supersede the **2016 Oregon Sport Fishing Regulations**.

(2) For the purposes of this rule, a "sport harvest guideline" is defined as a specified numerical harvest objective that is not a quota. Attainment of a harvest guideline does not automatically close a fishery. Upon attainment of a sport harvest guideline, the Department shall initiate consultation to determine if additional regulatory actions are necessary to achieve management objectives.

(a) The following sport harvest guidelines include the combined landings and other fishery related mortality by the Oregon sport fishery in a single calendar year:

(A) Black rockfish, 440.8 metric tons.

(B) Cabezon, 16.8 metric tons.

(C) Blue rockfish and other nearshore rockfish combined, 26 metric tons.

(b) The following sport harvest guidelines include total landings in the Oregon sport ocean boat fishery in a single calendar year: Greenling, 5.2 metric tons.

(3) For the purposes of this rule, "Other nearshore rockfish" means the following rockfish species: black and yellow (Sebastes chrysolmelas); brown (S. auriculatus); calico (S. dalli); China (S. nebulosus); copper (S. caurinus); gopher (S. carnatus); grass (S. rastrelliger); kelp (S. atrovirens); olive (S. serranoides); quillback (S. maliger); and treefish (S. serriceps).

(4) In addition to the regulations for Marine Fish in the **2016 Oregon Sport Fishing Regulations**, the following apply for the sport fishery in the Marine Zone in 2016:

(a) Lingcod (including green colored lingcod): 2 fish daily bag limit.

(b) All rockfish ("sea bass" "snapper"), greenling ("sea trout"), cabezon, skates, and other marine fish species not listed in the **2016 Oregon Sport Fishing Regulations** in the Marine Zone, located under the category of Species Name, Marine Fish: 7 fish daily bag limit in aggregate (total sum or number), of which no more than three may be a blue rockfish, no more than one may be a canary rockfish, and no more than one may be a cabezon. Retention of the following species is prohibited:

(A) Yelloweye rockfish;

(B) China rockfish;

(C) Copper rockfish;

(D) Quillback rockfish; and

(E) Cabezon from January 1 through June 30.

(c) Flatfish (flounder, sole, sanddabs, turbot, and all halibut species except Pacific halibut): 25 fish daily bag limit in aggregate (total sum or number).

(d) Retention of all marine fish listed under the category of Species Name, Marine Fish, except Pacific cod, sablefish, flatfish, herring, anchovy, smelt, sardine, striped bass, hybrid bass, and offshore pelagic species (excluding leopard shark and soupfin shark), is prohibited when Pacific halibut is retained on the vessel during open days for the all-depth sport fishery for Pacific halibut north of Humbug Mountain. Persons must also consult all publications referenced in OAR 635-039-0080 to determine all rules applicable to the taking of Pacific halibut.

(e) Harvest methods and other specifications for marine fish in subsections (4)(a), (4)(b) and (4)(c) including the following:

(A) Minimum length for lingcod, 22 inches.

(B) Minimum length for cabezon, 16 inches.

(C) Minimum length for greenling, 10 inches.

(D) May be taken by angling, hand, bow and arrow, spear, gaff hook, snag hook and herring jigs.

(E) Mutilating the fish so the size or species cannot be determined prior to landing or transporting mutilated fish across state waters is prohibited.

(f) Sport fisheries for species in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark and soupfin shark are open January 1 through December 31, twenty-four hours per day, except as provided in subsections (4)(a) and (4)(d), and ocean waters are closed for these species during April 1 through September 30, outside of the 30-fathom curve (defined by latitude and longitude) as shown on Title 50 Code of Federal Regulations Part 660 Section 71. A 20-fathom, 25-fathom, or 30-fathom curve, as shown on Title 50 Code of Federal Regulations Part 660 Section 71 may be implemented as the management line as in-season modifications necessitate. In addition, the following management lines may be used to set area specific regulations for inseason action only:

(A) Cape Lookout (45°20'30" N latitude); and

(B) Cape Blanco (42°50'20" N latitude).

(g) The Stonewall Bank Yelloweye Rockfish Conservation Area (YRCA) is defined by coordinates specified in Title 50 Code of Federal Regulations Part 660 Section 70 (October 1, 2014 ed.). Within the YRCA, it is unlawful to fish for, take, or retain species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut using recreational fishing gear. A vessel engaged in recreational fishing within the YRCA is prohibited from possessing any species listed in subsections (4)(a), (4)(b) and (4)(c) of this rule, leopard shark, soupfin shark, and Pacific halibut. Recreational fishing vessels in possession of species listed in subsections (4)(a), (4)(b) and (4)(c) and including leopard shark, soupfin shark, and Pacific halibut may transit the YRCA without fishing gear in the water.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146, 497.121 & 506.119

Stats. Implemented: ORS 496.004, 496.009, 496.162 & 506.129

Hist.: FWC 82-1993, f. 12-22-93, cert. ef. 1-1-94; FWC 22-1994, f. 4-29-94, cert. ef. 5-2-94; FWC 29-1994(Temp), f. 5-20-94, cert. ef. 5-21-94; FWC 31-1994, f. 5-26-94, cert. ef. 6-20-94; FWC 43-1994(Temp), f. & cert. ef. 7-19-94; FWC 83-1994(Temp), f. 10-28-94, cert. ef. 11-1-94; FWC 95-1994, f. 12-28-94, cert. ef. 1-1-95; FWC 22-1995, f. 3-7-95, cert. ef. 3-10-95; FWC 25-1995, f. 3-29-95, cert. ef. 4-1-95; FWC 26-1995, 3-29-95, cert. ef. 4-2-95; FWC 36-1995, f. 5-3-95, cert. ef. 5-5-95; FWC 43-1995(Temp), f. 5-26-95, cert. ef. 5-28-95; FWC 46-1995(Temp), f. & cert. ef. 6-2-95; FWC 58-1995(Temp), f. 7-3-95, cert. ef. 7-5-95; FWC 77-1995, f. 9-13-95, cert. ef. 1-1-96; FWC 28-1996(Temp) , f. 5-24-96, cert. ef. 5-26-96; FWC 30-1996(Temp), f. 5-31-96, cert. ef. 6-2-96; FWC 72-1996, f. 12-31-96, cert. ef. 1-1-97; FWC 75-1997, f. 12-31-97, cert. ef. 1-1-98; DFW 100-1998, f. 12-23-98, cert. ef. 1-1-99; DFW 68-1999(Temp), f. & cert. ef. 9-17-99 thru 9-30-99; administrative correction 11-17-99; DFW 96-1999, f. 12-27-99, cert. ef. 1-1-00; DFW 83-2000(Temp), f. 12-28-00, cert. ef. 1-1-01 thru 1-31-01; DFW 1-2001, f. 1-25-01, cert. ef. 2-1-01; DFW 118-2001, f. 12-24-01, cert. ef. 1-1-02; DFW 26-2002, f. & cert. ef. 3-21-02; DFW 130-2002, f. 11-21-02, cert. ef. 1-1-03; DFW 35-2003, f. 4-30-03, cert. ef. 5-1-03; DFW 114-2003(Temp), f. 11-18-03, cert. ef. 11-21-03 thru 12-31-03; DFW 125-2003, f. 12-11-03, cert. ef. 1-1-04; DFW 128-2003, f. 12-15-03, cert. ef. 1-1-04; DFW 83-2004(Temp), f. 8-17-04, cert. ef. 8-18-04 thru 12-31-04; DFW 91-2004(Temp), f. 8-31-04, cert. ef. 9-2-04 thru 12-31-04; DFW 97-2004(Temp), f. 9-22-04, cert. ef. 9-30-04 thru 12-31-04; DFW 117-2004, f. 12-13-04, cert. ef. 1-1-05; DFW 34-2005(Temp), f. 4-29-05, cert. ef. 5-1-05 thru 10-27-05; DFW 75-2005(Temp), f. 7-13-05, cert. ef. 7-16-05 thru 12-31-05; DFW 87-2005(Temp), f. 8-8-05, cert. ef. 8-11-05 thru 12-31-05; DFW 121-2005(Temp), f. 10-12-05, cert. ef. 10-18-05 thru 12-31-05; DFW 129-2005(Temp), f. & cert. ef. 11-29-05 thru 12-31-05; DFW 136-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 138-2005, f. 12-7-05, cert. ef. 1-1-06; DFW 141-2005(Temp), f. 12-12-05, cert. ef. 12-30-05 thru 12-31-05; Administrative correction 1-19-06; DFW 61-2006, f. 7-13-06, cert. ef. 10-1-06; DFW 65-2006(Temp), f. 7-21-06, cert. ef. 7-24-06 thru 12-31-06; DFW 105-2006(Temp), f. 9-21-06, cert. ef. 9-22-06 thru 12-31-06; DFW 134-2006(Temp), f. 12-21-06, cert. ef. 1-1-07 thru 6-29-07; DFW 3-2007, f. & cert. ef. 1-12-07; DFW 10-2007, f. & cert. ef. 2-14-07; DFW 66-2007(Temp), f. 8-6-07, cert. ef. 8-11-07 thru 12-31-07; DFW 136-2007, f. 12-31-07, cert. ef. 1-1-08; DFW 73-2008(Temp), f. 6-30-08, cert. ef. 7-7-08 thru 12-31-08; DFW 97-2008(Temp), f. 8-18-08, cert. ef. 8-21-08 thru 12-31-08; DFW 105-2008(Temp), f. 9-4-08, cert. ef. 9-7-08 thru 12-31-08; DFW 156-2008, f. 12-31-08, cert. ef. 1-1-09; DFW 7-2009(Temp), f. & cert. ef. 2-2-09 thru 7-31-09; DFW 39-2009, f. & cert. ef. 4-27-09; DFW 110-2009(Temp), f. 9-10-09, cert. ef. 9-13-09 thru 12-31-09; DFW 144-2009, f. 12-8-09, cert. ef. 1-1-10; DFW 103-2010(Temp), f. 7-21-10, cert. ef. 7-23-10 thru 12-31-10; DFW 157-2010, f. 12-6-10, cert. ef. 1-1-11; DFW 24-2011, f. & cert. ef. 3-22-11; DFW 97-2011(Temp), f. & cert. ef. 7-20-11 thru 12-31-11; DFW 135-2011(Temp), f. 9-21-11, cert. ef. 10-1-11 thru 12-31-11; DFW 155-2011(Temp), f. 11-18-11, cert. ef. 12-1-11 thru 12-31-11; DFW 156-2011(Temp), f. 12-9-11, cert. ef. 12-15-11 thru 1-31-12; DFW 164-2011, f. 12-27-11, cert. ef. 1-1-12; DFW 90-2012(Temp), f. 7-17-12, cert. ef. 9-20-12 thru 12-31-12; DFW 151-2012, f. 12-27-12, cert. ef. 1-1-13; DFW 155-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-29-13; DFW 23-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-27-13; DFW 32-2013, f. & cert. ef. 5-14-13; DFW 112-2013(Temp), f. & cert. ef. 9-27-13 thru 12-31-13; DFW 136-2013, f. 12-19-13, cert. ef. 1-1-14; DFW 165-2014, f. 12-18-14, cert. ef. 1-1-15; DFW 4-2015, f. 1-13-15, cert. ef. 1-15-15; DFW 5-2015(Temp), f. 1-13-15, cert. ef. 1-15-15 thru 7-13-15; Temporary suspended by DFW 18-2015, f. & cert. ef. 3-10-15; DFW 34-2015, f. & cert. ef. 4-28-15; DFW 167-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Adopts Attorney General's Model Rules on Confidentiality and Inadmissibility of Mediation Communications
Adm. Order No.: DFW 1-2016
Filed with Sec. of State: 1-6-2016
Certified to be Effective: 1-6-16
Notice Publication Date:
Rules Adopted: 635-001-0341
Subject: Adopts, by reference, the temporary model mediation confidentiality rules filed by the Department of Justice on May 22, 2015, with Secretary of State. Oregon Laws 2015, ch. 114 (SB 189) allows agencies to adopt model rules developed by the Attorney General related to confidentiality and inadmissibility of mediation communications.
Rules Coordinator: Michelle Tate—(503) 947-6044

635-001-0341
Confidentiality and Inadmissibility of Mediation Communications

Pursuant to ORS 36.224, the Oregon Department of Fish and Wildlife hereby adopts OAR 137-005-0052 as promulgated by the Attorney General.

Stat. Auth.: 2015 SB 189
Stats. Implemented: 2015 SB 189
Hist.: DFW 109-2015(Temp), f. & cert. ef. 8-14-15 thru 2-8-16; DFW 1-2016, f. & cert. ef. 1-6-16

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Department of Geology and Mineral Industries
Chapter 632

Rule Caption: Exemption certificates; application requirements and reporting
Adm. Order No.: DGMI 1-2016(Temp)
Filed with Sec. of State: 1-14-2016
Certified to be Effective: 1-14-16 thru 6-30-16
Notice Publication Date:
Rules Amended: 632-030-0016, 632-030-0022
Subject: Rule amendments implement 2015 Oregon Laws, chapter 834 by acknowledging new statutory requirement for exclusion certificates, establishing application deadlines and requirements for certificates, and establishing reporting requirements. Rule amendments establish procedures for DOGAMI review of application.
Rules Coordinator: Richard Riggs—(541) 967-2053

632-030-0016
Exclusion Certificates

(1) Pursuant to 2015 Oregon Laws chapter 834 [enrolled HB 3563], an exclusion certificate is required for a surface mining operation that falls under the thresholds for which an operating permit is required. A person seeking an exclusion certificate must file an application as provided in section (2) of this rule and the application must be accompanied by the fee required under OAR 632-030-022. The application must be filed in accordance with the schedule established in section (3) of this rule.

(a) When a mining operation that is subject to an exclusion certificate loses its eligibility and is required to obtain an operating permit, all areas and operations at the site are subject to the Act and the rules adopted thereunder. When multiple mining areas are located within one parcel or contiguous parcels, the yards produced and disturbed acreage shall be calculated based on the total of all sites within the parcel or contiguous parcels.

(b) Excavation or other land disturbance operations reasonably necessary for farming include only the term "farming" as used in ORS 517.750(15)(b)(B) and means "farm use" as defined in ORS 215.203 but does not include other uses permitted in exclusive farm-use zones under ORS 215.213 or 215.283. Farm excavation or other land disturbance operations are reasonably necessary only if it substantially contributes to the profitability of the farm use and other alternatives to accomplish the same objective are significantly more expensive or otherwise impractical. Farming does not include excavation for ponds intended for recreational or aesthetics purposes or for fish or wildlife habitat.

(2) An application for an exclusion certificate must be made on the form approved by the Department. The application must include the following information:

(a) The name of the operator;

(b) Location of the excavation;

(c) The ownership of the property; if the operator is not the landowner, the operator shall provide written proof of land owner's permission to mine the site on the landowner's property.

(d) Size of the site;

(e) Date of commencement of the excavation;

(f) A detailed summary of the mining activities during the previous 60 months;

(g) An explanation of why the activity is exempt; and

(h) Any other information that the Department determines to be useful to determine whether an operation is properly excluded from permitting and reclamation requirements.

(3) Applications for exclusion certificates for existing aggregate mining operations must be filed no later than March 31, 2016. Applications for existing nonaggregate mineral mining operations (including metal mines) must be filed no later than June 30, 2016. Mining operations that both produce aggregate and recover metals or other non-aggregate minerals are subject to the deadline for aggregate mines. Applications for new mines must be filed within 90 days after excavation commences.

(4) The Department will review an application upon receipt and notify the applicant whether the application is complete. If an application is deemed incomplete it will be returned to the applicant with a description of the missing information.

(5) The holder of an exclusion certificate must file an annual report on the anniversary date of the issuance of the certificate. The annual report must be accompanied by the annual fee establish 2015 Oregon Laws chapter 834, Section 2 [enrolled HB 3563] and must include the following information:

(a) Volume of minerals extracted during the previous year;

(b) Amount of additional lands affected by mining during the previous year; and

(c) Total number of acres affected by the operation.

Stat. Auth.: ORS 517; 2015 HB 3563, § 834
Stats. Implemented: ORS 517.750; 2015 HB 3563
Hist.: GMI 5, f. 12-20-73, ef. 1-11-74; GMI 7, f. 11-7-74, ef. 12-11-74; GMI 1-1980, f. 2-29-80, ef. 3-1-80; GMI 2-1982, f. & ef. 8-13-82; GMI 2-1985, f. 11-19-85, ef. 11-20-85; GMI 2-1986, f. 9-19-86, ef. 9-22-86; GMI 1-1988, f. 3-30-88, cert. ef. 3-11-88; GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 1-2009, f. & cert. ef. 5-15-09; DGMI 1-2016(Temp), f. & cert. ef. 1-14-16 thru 6-30-16

632-030-0022
Fees

(1) The fees applicable to this rule division are the maximum fees allowed by ORS 517.800 and 2015 Oregon Laws chapter 834, Section 2 [enrolled HB 3563] except as provided below.

(2) Annual Fees are due on the anniversary date of the issuance of the operating permit unless a different renewal date is established by the Department. The Department will provide the permittee with 60 days advance notice before establishing a new renewal date. The Department will prorate annual fees at the permittee's request if a new renewal date is established.

(3) A permittee or holder of an exclusion certificate, or a limited exemption certificate must renew the operating permit, exclusion certificate or limited exemption certificate annually, on or before the last day of the month shown on the permit or certificate as the renewal month. Operators that hold both a limited exemption certificate and an operating permit on the same property, or contiguous properties that are operated as a single mining activity, shall pay a single annual renewal fee pursuant to ORS 517.800, based upon the total reported production from all sites within the parcel or contiguous parcels. The annual fee must be paid and the annual report form returned prior to renewal. A permittee or certificate holder must pay all delinquent fees owed to this Department prior to renewal of the permit or certificate;

(4) The Department will impose a late fee equal to five percent of the amount of any annual fee that is more than 60 days past due.

(5) The fees established by this rule also apply to emergency permits issued pursuant to ORS 517. 832 and temporary operating permits issued under ORS 517.834.

(6) The Department may waive the fee for a minor amendment in those situations where significant administrative resources are not needed to process the amendment.

Stat. Auth.: ORS 517; 2015 HB 3563, § 834
Stats. Implemented: ORS 517.800; 2015 HB 3563
Hist.: GMI 2-1997, f. & cert. ef. 10-14-97; DGMI 1-1999, f. & cert. ef. 1-7-99; DGMI 1-2000, f. & cert. ef. 7-20-00; DGMI 2-2003, f. & cert. ef. 8-22-03; DGMI 3-2003, f. 8-29-03, cert. ef. 9-1-03; DGMI 1-2005(Temp), f. & cert. ef. 8-3-05 thru 1-30-06; DGMI 1-2006, f. & cert. ef. 1-10-06; DGMI 1-2009, f. & cert. ef. 5-15-09; DGMI 1-2016(Temp), f. & cert. ef. 1-14-16 thru 6-30-16

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Department of Human Services,
Administrative Services Division and Director's Office
Chapter 407

Rule Caption: Align DHS Provider Background Check Rules with DAS Criminal Records Check Rules
Adm. Order No.: DHSD 1-2016(Temp)
Filed with Sec. of State: 1-14-2016
Certified to be Effective: 1-14-16 thru 7-11-16
Notice Publication Date:
Rules Amended: 407-007-0200, 407-007-0210, 407-007-0220, 407-007-0230, 407-007-0240, 407-007-0250, 407-007-0275, 407-007-0277, 407-007-0290, 407-007-0300, 407-007-0315, 407-007-0320, 407-007-0330, 407-007-0350, 407-007-0370
Rules Suspended: 407-007-0280, 407-007-0325
Subject: ORS 181A.215 (formerly ORS 181.547) shifts the criminal records check rules from Oregon state agencies to the Oregon

Department of Administrative Services. The DAS rules (OAR 125-007-0200 to 125-007-0330) became effective 1/4/2016. The Department of Human Services is modifying its criminal records check rules to align with the DAS rules.

In addition, the statutes governing the criminal records check processes (ORS chapter 181) have been renumbered to ORS 181A. References to these statutes have been corrected.

Temporary rules are available on the Department of Human Services website: http://www.oregon.gov/DHS/POLICIES/Pages/ss-admin-rules.aspx. For hardcopy requests, call: (503) 947-5250.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0200
Purpose and Scope

(1) The purpose of these rules, OAR 407-007-0200 to 407-007-0370, is to supplement OAR 125-008-0200 to 125-007-0330 with guidelines and requirements specific to background checks for Department of Human Services (Department) and Oregon Health Authority (Authority) subject individuals (SIs). These rules provide for the reasonable screening under ORS 181A.195, 181A.200, and 409.027 of SIs to determine if they have a history of criminal or abusive behavior such that they should not be allowed to work, volunteer, be employed, reside, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of an SI when conducting fitness determinations based upon such information. The fact that an SI is approved does not guarantee employment or placement. These rules do not apply to individuals subject to OAR 407-007-0000 to 407-007-0100 or 407-007-0400 to 407-007-0460.

(3) Providers for the Department and the Authority are subject to criminal records and abuse checks. The Authority authorizes the Department to act on its behalf in carrying out criminal and abuse checks associated with programs or activities administered by the Authority. References in these rules to the Department or Authority shall be construed to be references to either or both agencies.

Stat. Auth.: ORS 181A.195, 181A.200, 183.459, 409.025, 409.027, 409.050, 410.020, 411.060, 411.122, 413.036, 418.016, 418.640, 441.055, 443.730, 443.735 & 678.153
Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.025, 409.027, 411.060, 411.122 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; Renumbered from 410-007-0200, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0210
Definitions

In addition to the definitions in 125-007-0210, the following definitions apply, to OAR 407-007-0200 to 407-007-0370:

(1) "Abuse" has the meaning given in the administrative rules promulgated by the Department or Authority corresponding to the setting in which the abuse was alleged or investigated.

(2) "Abuse check" means obtaining and reviewing abuse allegations, abuse investigation reports, and associated exhibits and documents for the purpose of determining whether an SI has a history as a perpetrator of potentially disqualifying abuse (a potentially disqualifying condition) as described in OAR 407-007-0290(11).

(3) "Abuse investigation report" means a written report completed after an investigation into suspected abuse and retained by the Department or the Authority pursuant to ORS 124.085, 419B.030, or 430.757, or a similar report filed in another state agency or by another state.

(4) "Appointing authority" means an individual designated by the qualified entity (QE) who is responsible for appointing QE designees (QEDs). Examples include but are not limited to human resources staff with the authority to offer and terminate employment, a business owner, a member of the board of directors, a director, or a program administrator.

(5) "Authority" means the Oregon Health Authority.

(6) "Background check" means a criminal records check and an abuse check under these rules.

(7) "Background Check Unit (BCU)" means the Background Check Unit conducting background checks for the Department and the Authority.

(8) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation, or support to children, the elderly, or individuals with disabilities (see ORS 181A.200).

(9) "Client" means any individual who receives services, care, or funding for care through the Department, Authority, or qualified entities.

(10) "Criminal Information Management System (CRIMS)" means the electronic records system used to process and maintain background check records under these rules. CRIMS may be accessed only through computers and an online portal.

(11) "Department" means the Department of Human Services.

(12) "Fingerprint capture" means the taking of an SI's fingerprints for a national criminal records check in a manner that meets current Oregon statutes and OSP's capacity for receiving fingerprints.

(13) "Founded or substantiated" has the meaning given in the Department or Authority's administrative rules corresponding to the setting in which the abuse was alleged or investigated.

(14) "Good cause" means a valid and sufficient reason for not complying with established time frames during the background check process or contested case hearing process that includes but is not limited to an explanation of circumstances beyond a SI's reasonable control.

(15) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(16) "Ineligible due to ORS 443.004" means BCU has determined that an SI, subject to ORS 443.004 and either OAR 407-007-0275 or 407-007-0277, has one or more convictions that prohibits the SI from holding the position listed in the background check request.

(17) "Office of Adult Abuse Prevention and Investigations (OAAPI)" means the Office of Adult Abuse Prevention and Investigations, formerly the Office of Investigation and Training, a shared service of the Department and Authority.

(18) "Other criminal records information" means information obtained and used in the criminal records check process that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the background check requests, disclosures by a SI, and any other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(19) "Position" means the position listed in the background check request which determines whether the individual is a SI under these rules, Department program rules, or Authority program rules.

(20) "Qualified entity (QE)" means a community mental health or developmental disability program, local health department, or an individual, business, or organization, whether public, private, for-profit, nonprofit, or voluntary, that provides care, including a business or organization that licenses, certifies, or registers others to provide care (see ORS 181A.200).

(21) "QE designee (QED)" means an individual appointed by the QE's appointing authority to handle background checks on behalf of the QE.

(22) "QE Initiator (QEI)" means an approved SI who BCU has granted access to CRIMS for one QE for the purpose of entering background check request data.

(23) "Subject individual (SI)" means an individual on whom BCU conducts a criminal records check and an abuse check, and from whom BCU may require fingerprints for the purpose of conducting a national criminal records check.

(a) An SI includes any of the following:

(A) An individual who is licensed, certified, registered, or otherwise regulated or authorized for payment by the Department or Authority and who provides care.

(B) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority.

(C) Any individual who is paid directly or indirectly with public funds who has or will have contact with recipients of:

(i) Services within an adult foster home (defined in ORS 443.705); or

(ii) Services within a residential facility (defined in ORS 443.400).

(D) Any individual who works in a facility and provides care or has access to clients, client information, or client funds secured by any residential care or assisted living facility through the services of a personnel services or staffing agency.

(E) Any individual who works in a facility and provides care, or has access to clients, client information, or client funds secured by any nursing facility through the services of a personnel services or staffing agency.

(F) Except as excluded in section (31)(b)(C) and (D) of this rule, an individual who lives in a facility that is licensed, certified, registered, or otherwise regulated by the Department to provide care. The position of this SI includes but is not limited to resident manager, household member, or boarder.

(G) An individual working or volunteering for a private licensed child caring agency; an In-Home Safety and Reunification Services (ISRS) program, a Strengthening, Preserving and Reunifying Families (SPRF) provider, or system of care contractor providing child welfare services pursuant to ORS Chapter 418.

(H) A homecare worker as defined in ORS 410.600, a personal support worker as defined in ORS 410.600, a personal care services provider, or an independent provider employed by a Department or Authority client who provides care to the client if the Department or Authority helps pay for the services.

(I) A child care provider and their employees reimbursed through the Department's child care program and other individuals in child care facilities that are exempt from certification or registration by the Office of Child Care of the Oregon Department of Education. This includes all individuals listed in OAR 461-165-0180(4).

(J) An appointing authority, QED, or QEI associated with any entity or agency licensed, certified, registered, otherwise regulated by the Department, or subject to these rules.

(K) An individual providing on the job certified nursing assistant classes to staff within a long term care facility.

(L) A student enrolled in a Board of Nursing approved nursing assistant training program in which the instruction and training occurs solely in a nursing facility.

(M) Except for those excluded under OAR 407-007-0210(31)(b)(B), a student or intern who provides care or has access to clients, client information, or client funds within or on behalf of a QE.

(N) Any individual serving as an owner, operator, or manager of a room and board facility pursuant to OAR chapter 411, division 68.

(O) An employee providing care to clients of the Department's Aging and People with Disabilities (APD) programs who works for an in-home care agency as defined by ORS 443.305 which has a contract with the Department's APD programs.

(P) Any individual who is required to complete a background check pursuant to Department or Authority program rules or a contract with the Department or Authority, if the requirement is within the Department or Authority's statutory authority. Specific statutory authority or reference to these rules and the positions under the contract subject to a background check must be specified in the contract. The exceptions in section (31)(b) do not apply to these SIs.

(b) An SI does not include:

(A) Any individual under 16 years of age.

(B) A student or intern in a clinical placement at a clinical training setting subject to administrative rules implemented under ORS 413.435.

(C) Department, Authority, or QE clients. The only circumstance in which BCU shall allow a check to be performed on a client pursuant to this paragraph is if the client falls within the definition of "subject individual" as listed in sections (31)(a)(A)–(E) and (31)(a)(G)–(P) of this rule, or if the facility is dually licensed for different populations of vulnerable individuals.

(D) Individuals working in child care facilities certified or registered by OED.

(E) Individuals employed by a private business that provides services to clients and the general public and is not regulated by the Department or Authority.

(F) Individuals employed by a business that provides appliance or structural repair for clients and the general public and who are temporarily providing these services in a licensed or certified QE. The QE shall ensure active supervision of these individuals while on QE property and the QE may not allow unsupervised contact with QE clients or residents. This exclusion does not apply to a business that receives funds from the Department or Authority for care provided by an employee of the business.

(G) Individuals employed by a private business in which a client of the Department or Authority is working as part of a Department- or Authority-sponsored employment service program. This exclusion does not apply to an employee of a business that receives funds from the Department or Authority for care provided by the employee.

(H) Employees, contractors, students, interns, and volunteers working in hospitals, ambulatory surgical centers, outpatient renal dialysis facilities, and freestanding birthing centers, as defined in ORS 442.015, and special inpatient care facilities as defined by the Authority in administrative rule.

(I) Volunteers, who are not under the direction and control of a licensed, certified, registered, or otherwise regulated QE.

(J) Individuals employed or volunteering in a Medicare-certified health care business which is not subject to licensure or certification by the State of Oregon.

(K) Individuals working in restaurants or at public swimming pools.

(L) Hemodialysis technicians.

(M) Employees, contractors, temporary workers, or volunteers who provide care, or have access to clients, client information, or client funds of an alcohol and drug program that is certified, licensed, or approved by the Authority's Addictions and Mental Health Division to provide prevention, evaluation, or treatment services. This exclusion does not apply to programs specifically required by other Authority program rules to conduct criminal records checks in accordance with these rules.

(N) Individuals working for a transit service provider which conducts background checks pursuant to ORS 267.237.

(O) Individuals being certified by the Department as interpreters pursuant to ORS 409.623. This exclusion does not apply to Department-certified interpreters when being considered for a specific position.

(P) Emergency medical technicians and first responders certified by the Authority's Emergency Medical Services and Trauma Systems program.

(Q) Employees, contractors, temporary workers, or volunteers of continuing care retirement communities registered under OAR chapter 411, division 67.

(R) Individuals hired by or on behalf of a resident in a QE to provide care privately to the resident.

(S) An employee, contractor, temporary worker, or volunteer who provides care or has access to clients, client information, or client funds within or on behalf of any entity or agency licensed, certified, registered, or otherwise regulated by the Department or Authority, where the clients served permanently reside in another state.

(24) "Weighing test" means a process in which BCU considers available information to make a fitness determination when an SI has potentially disqualifying convictions or conditions.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0210, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2010(Temp), f. & cert. ef. 8-12-10 thru 2-7-11; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0220
Background Check Required

(1) BCU shall conduct criminal records checks on all SIs through LEDS maintained by OSP in accordance with ORS Chapter 181 and the rules adopted thereto (see OAR chapter 125, division 007; and chapter 257, division 15).

(2) If a national criminal records check is necessary, OSP shall provide BCU results of national criminal records checks conducted pursuant to ORS 181A.195, including fingerprint identification, through the FBI.

(3) BCU shall conduct abuse checks using available abuse investigation reports and associated documents.

(4) Unless an SI meets a criterion under section (7) of this rule, an SI must have a background check in the following circumstances:

(a) An individual who becomes an SI on or after the effective date of these rules.

(b) The SI changes employers to a different QE.

(c) The individual, whether previously considered an SI or not, changes positions under the same QE, and the new position requires a background check.

(d) The individual, whether previously considered an SI or not, changes Department or Authority-issued licenses, certifications, or registrations, and the license, certification, or registration requires a background check under these rules.

(e) For a student enrolled in a long term care facility nursing assistant training program for employment at the facility, a new background check is

required when the student becomes an employee at the facility. A new background check is not required by the Department or the Authority at graduation from the training program or at the granting of certification by the Board of Nursing unless the Department, the Authority, or the QE have reason to believe that a background check is justified.

(f) A background check is required by federal or state laws or regulations, other Department or Authority administrative rules, or by contract with the Department or Authority.

(g) When BCU or the QE has reason to believe that a background check is justified. Examples include but are not limited to:

(A) Any indication of possible criminal or abusive behavior by an SI.

(B) A lapse in working or volunteering in a position under the direction and control of the QE but the SI is still considered in the position. For example, an extended period of leave by an SI. The QE determines the need for a background check.

(C) Quality assurance monitoring by the Department or Authority of a previously conducted criminal records check or abuse check.

(5) If the SI is subject to a background check due to involvement with the foster or adoptive placement of a child and:

(a) Is subject to the Interstate Compact on Placement of Children (ORS 417.200 and OAR 413-040-0200 to 413-040-0330), the background check must comply with Interstate Compact requirements.

(b) Is subject to the Inter-County Adoption Act of 2000 (42 USC 14901 et seq.), the background check must comply with federal requirements and ORS 417.262.

(6) If QEs, Department program rules, or Authority program rules require an SI to report any new arrests, charges, or convictions, the QE may determine if personnel action is required if the SI does not report. Personnel action may include a new background check.

(7) A background check is not required under the following circumstances:

(a) A homecare worker or personal support worker, as defined in ORS 410.600, has a Department background check notice of final fitness determination dated within the recheck period according to Department program rules showing that the homecare worker or personal support worker has been approved or approved with restrictions, and listing a worksite of "various," "various clients," "statewide," or similar wording.

(b) A personal care services provider, Lifespan Respite or other respite care provider, or an independent provider paid with Department or Authority funds who changes or adds clients within the same QE, Department, or Authority district, and the prior, documented criminal records check or abuse check conducted within the previous 24 months through the Department or Authority has been approved without restrictions.

(c) The SI is a child care provider as described in OAR 461-165-0180 who changes or adds clients and who has been approved without restrictions within the required recheck period according to Department program rules.

(d) The SI remains with a QE in the same position listed on the background check request while the QE merges with another QE, is sold to another QE, or changes names. The changes may be noted in documentation attached to the notice of fitness determination but do not warrant a background check.

(e) The SI is on the background check registry maintained under OAR 407-007-0600 to 407-007-0640.

(8) Background checks are completed on SIs who otherwise meet the qualifications of the position listed on the background check request. A background check may not be used to screen applicants for a position.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0220, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0230
Qualified Entity

(1) A QE and its appointing authority must be approved in writing by the Department or Authority pursuant to these rules in order to appoint a QED. Documentation of a current and valid license, certification, contract, or letter of approval from the Department or Authority are considered proof of approval. Unless specifically indicated otherwise in these rules, all QEs and appointing authorities discussed in these rules are considered approved.

(2) A QE shall ensure the completion of background checks for all SIs who are the QE's employees, volunteers, or other SIs under the direction or control of the QE.

(3) BCU may allow a QE's appointing authority or QED to appoint one or more QEIs based on the needs of the QE and the volume of SIs under the QE.

(4) A QE's appointing authority shall appoint QEDs as needed to remain in compliance with these rules and shall communicate any changes regarding QEDs or QEIs to BCU. BCU strongly recommends that the QE have at least one QED at any facility where clients are receiving care in order to handle any immediate responsibilities of a QED, such as removing an SI from work or placement when required.

(5) If for any reason a QE no longer has any QEDs, the QE or appointing authority shall ensure that the confidentiality and security of background check records by immediately providing all background check related documents to BCU or to another QE as determined by BCU.

(6) BCU shall provide QEs with periodic training and on-going technical assistance.

(7) Any decisions made by BCU in regard to these rules are final and may not be overturned by any QE.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 77-2004(Temp), f. & cert. ef. 10-1-04 thru 3-29-05; OMAP 85-2004(Temp), f. & cert. ef. 11-4-04 thru 3-29-05; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0230, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0240
QE Designees and QE Initiators

(1) All requirements in this section must be completed within 90 calendar days. To receive BCU approval, a QED must meet the following requirements:

(a) A QED must be one of the following:

(A) Employed by the agency for which the QED will handle criminal records check information.

(B) Contracted with the QE to perform as a QED.

(C) Employed by another similar QE or a parent QE. For example, an assisted living facility QED may act as QED for another assisted living facility.

(D)The licensee of the QE.

(b) A QED must be an approved SI with a record in CRIMS within the past three years for at least one of the QEs for which the QED will manage background checks.

(c) A QED must have:

(A) Competency in computer skills for accessing CRIMS online, entering data, corresponding via e-mail, and managing background check records in CRIMS;

(B) Work-related access to a desktop or laptop computer and the internet; and

(C) A work-related e-mail account.

(d) A QED must complete a certification program and successfully pass any BCU required testing.

(e) An appointing authority must appoint a QED. The applicant QED must complete and submit required documents and information to BCU for processing and registration.

(2) BCU shall deny the individual's status as a QED if the individual does not meet QED requirements. Once denied, the individual may no longer perform the duties of a QED. There are no exceptions for individuals who fail to meet QED requirements.

(3) An approved QED shall have the following responsibilities:

(a) Demonstrate understanding of and adherence to these rules in all actions pertaining to the background check process.

(b) Act as the Department's designee in any action pursuant to these rules and the background check process. A QED may not advocate for an SI during any part of the background check process, including contesting a fitness determination.

(c) Ensure that adequate measures are taken to protect the confidentiality of the records and documents required by these rules. A QED may not view criminal offender information. A QED may not view abuse inves-

tigation reports and associated abuse investigation exhibits or documents as part of the background check process.

(d) A QED shall verify the SI's identity or ensure that the same verification requirements are understood by each individual responsible for verifying identity. The QE may verify identity at any time during the hiring or placement process up to the submission of the background check request.

(A) If conducting a background check on the SI for the first time or at rehire of the SI, a QED shall verify identity or ensure identity is verified by using methods which include but are not limited to reviewing the SI's current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information included in the background check request, and the information written on the fingerprint card if a national criminal records check is conducted.

(B) If an SI is being rechecked for the same QE without any break in placement, service, or employment, review of government-issued photo identification may not be necessary. The QED shall verify the SI's name, current address, and any aliases or previous names, or ensure this information is verified.

(e) Ensure that an SI is not permitted to work, volunteer, reside, or otherwise hold any position covered by these rules before the submission of the background check request to BCU.

(f) Review the SI's background check request to ensure completeness of the information, verify identity, and to determine if the SI has any disclosed criminal history. If the SI has adverse criminal history within the five year period from the date the SI manually or electronically signed the background check request, the QED may request in writing that BCU make a preliminary fitness determination requiring a weighing test.

(g) Ensure that the result of the preliminary fitness determination granting the QE to hire the SI on a preliminary basis, or prohibiting the QE from hiring the SI on a preliminary basis, is followed.

(h) Ensure that when an SI is hired on a preliminary basis, the need for active supervision is understood by each individual responsible for providing active supervision.

(i) Ensure that if an SI is removed from working on a preliminary basis, the SI is immediately removed from the position and remains removed until BCU reinstates hired on a preliminary basis or the completion of a final fitness determination allowing the SI to resume the position.

(j) Ensure that the SI has directions to complete a fingerprint capture and monitor the SI's process in getting the fingerprints taken.

(k) Notify BCU of any changes regarding an SI who still has a background check in process, including but not limited to address or employment status changes.

(L) Monitor the status of background check applications and investigate any delays in processing.

(m) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(n) Notify BCU immediately if arrested, charged, or convicted of any crime, or if found responsible for abuse by the Department or Authority.

(4) BCU may change QED status in the following circumstances which include but are not limited to:

(a) When the position with the QE ends or when the QE terminates the appointment. The QE shall notify BCU immediately upon the end of the position or termination of the appointment and BCU shall inactivate QED status.

(b) If a QED fails to comply with responsibilities or fails to continue to meet the requirements for QED status, as applicable. After suspending or revoking the appointment, the QE must immediately notify the BCU in writing. If BCU takes the action to suspend or revoke the appointment, it must immediately notify the QE in writing.

(c) If a QED fails to recertify, BCU shall revoke QED status.

(5) Any changes to QED status are not subject to appeal rights unless the denial or termination results in immediate loss of employment or position. A QED losing employment or position has the same hearing rights as other SIs under these rules.

(6) If a QED leaves employment or position with the QE for any reason, BCU shall inactivate QED status. If the individual finds employment with another QE, BCU shall determine the requirement for reactivation of QED status.

(7) BCU shall review and recertify appointments of QEDs, up to and including a new application, background check, and additional training under the following circumstances:

(a) Every three years; or

(b) At any time BCU has reason to believe the individual no longer meets QED requirements including but not limited to indication of criminal or abusive behavior or noncompliance with these rules.

(8) With BCU approval, QEs may appoint QEIs to enter background check request into CRIMS. QEIs must:

(a) Be currently approved SIs for the QE;

(b) Possess competency in computer skills for accessing CRIMS online and entering background check records into CRIMS;

(c) Maintain internet access and working email accounts to access CRIMS; and

(d) Meet other criteria as determined by BCU and the QE.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0240, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0250

Background Check Process

(1) A QE and SI shall use CRIMS to request a background check. In addition to information required in OAR 125-007-0220 the background check request shall include the following information regarding an SI:

(a) Worksite location or locations where the SI will be working;

(b) Disclosure of all criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred. Disclosure includes any juvenile record.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by BCU.

(c) Disclosure of other information to be considered in the event of a weighing test.

(2) The background check request shall include the following notices to the SI:

(a) A notice regarding disclosure of Social Security number indicating that:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting as part of a criminal records check.

(c) A notice that BCU shall conduct an abuse check on the SI. Unless required by program rule, an SI is not required to disclose any history of potentially disqualifying abuse, but may provide BCU with mitigating or other information.

(3) Using identifying information submitted in a background check request, BCU shall conduct an abuse check to determine if the subject individual has potentially disqualifying abuse.

(4) BCU shall conduct an Oregon criminal records check. Using information submitted on the background check request, BCU may obtain criminal offender information from LEDS and may request other criminal records information as needed.

(5) BCU shall handle criminal offender information in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 125, division 007 and chapter 257, division 15).

(6) BCU may conduct a fingerprint-based national criminal records check.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has been outside Oregon:

(i) For 60 or more consecutive days during the previous 18 months and the SI is a child care provider or other individual included in OAR 461-165-0180(4).

(ii) For 60 or more consecutive days during the previous five years for all other SIs.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by BCU indicate there may be criminal records outside of Oregon.

(C) The SI has an out-of-state driver license or out-of-state identification card.

(D) BCU or the QE has reason to question the identity of the SI or the information on the criminal record found in LEDS.

(E) A fingerprint-based criminal records check is required by federal or state laws or regulations, other Department or Authority rules, or by contract with the Department or Authority.

(F) The SI is an employee of an agency the Centers of Medicare and Medicate Services has designated high risk pursuant to 42 CFR 424.518.

(G) Any SI applying to be or renewing the position with regard to child adoption or children in foster care licensed by the Department or private licensed child caring agencies. Renewing SIs do not need a fingerprint-based criminal records check if BCU has a record of a previous fingerprint-based criminal records checks that is within BCU's retention schedule. Applicable SI positions include:

(i) A relative caregiver, foster parent, or adoptive parent in Oregon;

(ii) An adult household member in an adoptive or child foster home 18 years of age and over;

(iii) A household member in an adoptive or child foster home under 18 years of age if there is reason to believe that the household member may pose a risk to children placed in the home; or

(iv) A respite care provider in an adoptive or child foster home.

(H) BCU has reason to believe that fingerprints are needed to make a final fitness determination.

(b) BCU shall request a fingerprint capture for an SI under the age of 18 in accordance with OAR 125-007-0220(3).

(c) The SI shall complete and submit a fingerprint capture when requested by BCU within the time frame indicated in a written notice. BCU shall send the request to the QE and the QED shall notify the SI.

(A) BCU shall give the SI notice regarding the Social Security number as set forth in section (2)(a) of this rule.

(B) BCU may require new fingerprint capture and its submission if previous fingerprint captures results in a rejection by OSP or the FBI.

(7) BCU may also conduct a state-specific criminal records check instead of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When BCU has reason to believe that out-of-state criminal records may exist and a national criminal records check cannot be accomplished.

(b) When BCU has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, BCU has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a background check and fitness determination, BCU may require additional information from the SI including but not limited to additional criminal, judicial, other background information, or proof of identity.

(9) BCU may conduct a background check in situations of imminent danger.

(a) If the Department or Authority determines there is indication of criminal or abusive behavior that could more likely than not pose an immediate risk to vulnerable individuals, BCU shall conduct a new criminal records check on an SI without the completion of a new background check request.

(b) If BCU determines that a fitness determination based on the new background check would be adverse to the SI, BCU shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0300 before completion of the fitness determination.

(10) All criminal records checks conducted under this rule shall be documented.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0250, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0275
Convictions Under ORS 443.004 Resulting in Ineligibility for Aging and People with Disabilities Program and Developmental Disabilities Program SIs

(1) Section (2) of this rule applies to an SI who:

(a) Works with clients of the Department's Office of Developmental Disabilities (DD) program.

(b) Works with clients of the Department's Aging & People with Disabilities programs and who is:

(A) An individual who is paid directly or indirectly with public funds who has or will have contact with recipients of services within:

(i) An adult foster home (defined in ORS 443.705); or

(ii) A residential facility (defined in ORS 443.400).

(B) Any direct care staff secured by any residential care or assisted living facility through the services of a personnel services or staffing agency and the direct care staff works in the facility.

(C) A homecare worker as defined in ORS 410.600, a personal support worker as defined in ORS 410.600, a personal care services provider, or an independent provider employed by a Department client who provides care to the client if the Department helps pay for the services.

(D) An employee providing care to Department APD program clients who works for an in-home care agency as defined by ORS 443.305 which has a contract with the Department APD programs.

(E) An individual in a position specified as being subject in relevant Oregon statutes or Oregon Administrative Rules.

(2) If BCU determines that an individual subject to this rule has a conviction listed in ORS 443.004, BCU shall make the determination of "ineligible due to ORS 443.004." Under OAR 125-007-0260(2)(d), this determination is considered an incomplete fitness determination. A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has. BCU shall provide notice of ineligibility due to ORS 443.004 to the individual.

(3) An individual subject to this rule who is an employee and hired prior to July 28, 2009 is exempt from section (2) of this rule provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(4) If an individual subject to this rule is grandfathered or not found ineligible due to ORS 443.004, the individual is subject to a fitness determination under OAR 125-007-0260 and 407-007-0320.

(5) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 125-007-0300, 407-007-0330, 407-007-0335, 943-007-0335, or 943-007-0501.

Stat. Auth.: ORS 181A.195 & 409.050
Stats. Implemented: ORS 181A.195 & 443.004
Hist.: DHSD 3-2010(Temp), f. & cert. ef. 5-5-10 thru 10-31-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0277
Convictions Under ORS 443.004 Resulting in Ineligibility for Mental Health or Alcohol and Drug Program SIs

(1) This rule applies to subject individuals who are mental health or substance abuse treatment providers defined under ORS 443.004(8).

(2) If BCU determines that an individual is subject to this rule and has a conviction listed in ORS 443.004(5), BCU shall make the determination of "ineligible due to ORS 443.004." Under OAR 125-007-0260(2)(d), this determination is considered an incomplete fitness determination. A fitness determination with a weighing test is not required regardless of any other potentially disqualifying convictions and conditions the SI has. BCU shall provide notice of ineligibility due to ORS 443.004 to the individual.

(3) If an individual subject to this rule is not found ineligible due to ORS 443.004, the individual is subject to a fitness determination under OAR 125-007-0260 and 407-007-0320.

(4) A determination of "ineligible due to ORS 443.004" is not subject to appeal rights under OAR 125-007-0300, 943-007-0335 or 943-007-0501.

Stat. Auth.: ORS 181A.195 & 409.050
Stats. Implemented: ORS 181A.195 & 443.004
Hist.: DHSD 3-2012(Temp), f. & cert. ef. 4-13-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0280
Potentially Disqualifying Convictions

A conviction of any of the following crimes is potentially disqualifying. Offenses or convictions that are classified as less than a misdemeanor, such as violations or infractions, are not potentially disqualifying (see ORS 161.505 to 161.565).

(1) The crimes listed in this section are permanent review crimes which require that a fitness determination with a weighing test be completed regardless of date of conviction.

(a) ORS 162.155, Escape II.
(b) ORS 162.165, Escape I.
(c) ORS 162.285, Tampering with a witness.
(d) ORS 162.325, Hindering prosecution.
(e) ORS 163.005, Criminal homicide.
(f) ORS 163.095, Aggravated murder.
(g) ORS 163.115, Murder.
(h) ORS 163.118, Manslaughter I.
(i) ORS 163.125, Manslaughter II.
(j) ORS 163.145, Criminally negligent homicide.
(k) ORS 163.149, Aggravated vehicular homicide.
(l) ORS 163.160, Assault IV.
(m) ORS 163.165, Assault III.
(n) ORS 163.175, Assault II.
(o) ORS 163.185, Assault I.
(p) ORS 163.187, Strangulation.
(q) ORS 163.190, Menacing.
(r) ORS 163.200, Criminal mistreatment II.
(s) ORS 163.205, Criminal mistreatment I.
(t) ORS 163.207, Female genital mutilation.
(u) ORS 163.208, Assault of public safety officer.
(v) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I.
(w) ORS 163.225, Kidnapping II.
(x) ORS 163.235, Kidnapping I.
(y) ORS 163.245, Custodial interference II.
(z) ORS 163.257, Custodial interference I.
(aa) ORS 163.263, Subjecting another person to involuntary servitude in the second degree.
(bb) ORS 163.264, Subjecting another person to involuntary servitude in the first degree.
(cc) ORS 163.266, Trafficking in persons.
(dd) ORS 163.275, Coercion.
(ee) ORS 163.355, Rape III.
(ff) ORS 163.365, Rape II.
(gg) ORS 163.375, Rape I.
(hh) ORS 163.385, Sodomy III.
(ii) ORS 163.395, Sodomy II.
(jj) ORS 163.405, Sodomy I.
(kk) ORS 163.408, Unlawful sexual penetration II.
(ll) ORS 163.411, Unlawful sexual penetration I.
(mm) ORS 163.415, Sexual abuse III.
(nn) ORS 163.425, Sexual abuse II.
(oo) ORS 163.427, Sexual abuse I.
(pp) ORS 163.432, Online sexual corruption of a child in the second degree.
(qq) ORS 163.433, Online sexual corruption of a child in the first degree.
(rr) ORS 163.435, Contributing to the sexual delinquency of a minor.
(ss) ORS 163.445, Sexual misconduct.
(tt) ORS 163.452, Custodial sexual misconduct I.
(uu) ORS 163.454, Custodial sexual misconduct II.
(vv) ORS 163.465, Public indecency.
(ww) ORS 163.467, Private indecency.
(xx) ORS 163.476, Unlawfully being in a location where children regularly congregate.
(yy) ORS163.479, Unlawful contact with a child.
(zz) ORS 163.515, Bigamy.
(aaa) ORS 163.525, Incest.
(bbb) ORS 163.535, Abandonment of a child.
(ccc) ORS 163.537, Buying or selling a person under 18 years of age.
(ddd) ORS 163.545, Child neglect II.
(eee) ORS 163.547, Child neglect I.
(fff) ORS 163.555, Criminal nonsupport.
(ggg) ORS 163.575, Endangering the welfare of a minor.
(hhh) ORS 163.670, Using child in display of sexually explicit conduct.
(iii) ORS 163.680, Paying for viewing a child's sexually explicit conduct.
(jjj) ORS 163.684, Encouraging child sexual abuse I.
(kkk) ORS 163.686, Encouraging child sexual abuse II.
(lll) ORS 163.687, Encouraging child sexual abuse III.
(mmm) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I.
(nnn) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II.
(ooo) ORS 163.693, Failure to report child pornography.
(ppp) ORS 163.700, Invasion of personal privacy.
(qqq) ORS 163.732, Stalking.
(rrr) ORS 163.750, Violating court's stalking protective order.
(sss) ORS 164.055, Theft I.
(ttt) ORS 164.057, Aggravated theft I.
(uuu) ORS 164.075, Theft by extortion.
(vvv) ORS 164.085, Theft by deception.
(www) ORS 164.098, Organized retail theft.
(xxx) ORS 164.125, Theft of services.
(yyy) ORS 164.135, Unauthorized use of a vehicle.
(zzz) ORS 164.170, Laundering a monetary instrument.
(aaaa) ORS 164.215, Burglary II.
(bbbb) ORS 164.225, Burglary I.
(cccc) ORS 164.315, Arson II.
(dddd) ORS 164.325, Arson I.
(eeee) ORS 164.365, Criminal mischief I.
(ffff) ORS 164.377, Computer crime.
(gggg) ORS 164.395, Robbery III.
(hhhh) ORS 164.405, Robbery II.
(iiii) ORS 164.415, Robbery I.
(jjjj) ORS 165.013, Forgery I.
(kkkk) ORS 165.022, Criminal possession of a forged instrument I.
(llll) ORS 165.032, Criminal possession of a forgery device.
(mmmm) ORS 165.055, Fraudulent use of a credit card.
(nnnn) ORS 165.065, Negotiating a bad check.
(oooo) ORS 165.581, Cellular counterfeiting I.
(pppp) ORS 165.800, Identity theft.
(qqqq) ORS 165.803, Aggravated identity theft.
(rrrr) ORS 165.810, Unlawful possession of a personal identification device.
(ssss) ORS 166.005, Treason.
(tttt) ORS 166.070 Aggravated harassment.
(uuuu) ORS 166.085, Abuse of corpse II.
(vvvv) ORS 166.087, Abuse of corpse I.
(wwww) ORS 166.155, Intimidation II.
(xxxx) ORS 166.165, Intimidation I.
(yyyy) ORS 166.220, Unlawful use of weapon.
(zzzz) ORS 166.270, Possession of weapons by certain felons.
(aaaaa) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers.
(bbbbb) ORS 166.275, Possession of weapons by inmates of institutions.
(ccccc) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school.
(ddddd) ORS 166.382, Possession of destructive device prohibited.
(eeeee) ORS 166.384, Unlawful manufacture of destructive device.
(fffff) ORS 166.429, Firearms used in felony.
(ggggg) ORS 166.450, Obliteration or change of identification number on firearms.
(hhhhh) ORS 166.720, Racketeering activity unlawful.
(iiiii) ORS 167.012, Promoting prostitution.
(jjjjj) ORS 167.017, Compelling prostitution.
(kkkkk) ORS 167.054, Furnishing sexually explicit material to a child.
(lllll) ORS 167.057, Luring a minor.
(mmmmm) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show.
(nnnnn) ORS 167.075, Exhibiting an obscene performance to a minor.
(ooooo) ORS 167.080, Displaying obscene materials to minors.
(ppppp) ORS 167.212, Tampering with drug records.
(qqqqq) ORS 167.262, Adult using minor in commission of controlled substance offense.
(rrrrr) ORS 167.315, Animal abuse II.
(sssss) ORS 167.320, Animal abuse I.
(ttttt) ORS 167.322, Aggravated animal abuse I.
(uuuuu) ORS 167.333, Sexual assault of animal.
(vvvvv) ORS 167.339, Assaulting law enforcement animal.
(wwwww) ORS 181.594, Sex crimes including transporting child pornography into the state.
(xxxxx) ORS 181.599, Failure to report as sex offender.
(yyyyy) ORS 433.010, Spreading disease (willfully) prohibited.
(zzzzz) ORS 475.525, Sale of drug paraphernalia prohibited.

(aaaaaa) ORS 475.752, Prohibited acts generally (regarding drug crimes; formerly ORS 475.840, 2005-2011; formerly ORS 475.992, 1977-2005).

(bbbbbb) ORS 475.805, Providing hypodermic device to minor prohibited.

(cccccc) ORS 475.840, Prohibited acts generally (regarding drug crimes formerly ORS 475.992; renumbered to ORS 475.752 in 2011).

(dddddd) ORS 475.846, Unlawful manufacture of heroin.

(eeeeee) ORS 475.848, Unlawful manufacture of heroin within 1,000 feet of school.

(ffffff) ORS 475.850, Unlawful delivery of heroin.

(gggggg) ORS 475.852, Unlawful delivery of heroin within 1,000 feet of school.

(hhhhhh) ORS 475.854, Unlawful possession of heroin.

(iiiiii) ORS 475.856, Unlawful manufacture of marijuana.

(jjjjjj) ORS 475.858, Unlawful manufacture of marijuana within 1,000 feet of school.

(kkkkkk) ORS 475.860, Unlawful delivery of marijuana.

(llllll) ORS 475.862, Unlawful delivery of marijuana within 1,000 feet of school.

(mmmmmm) ORS 475.864, Unlawful possession of marijuana.

(nnnnnn) ORS 475.866, Unlawful manufacture of 3,4-methylenedioxymethamphetamine.

(oooooo) ORS 475.868, Unlawful manufacture of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.

(pppppp) ORS 475.870, Unlawful delivery of 3,4-methylenedioxymethamphetamine.

(qqqqqq) ORS 475.872, Unlawful delivery of 3,4-methylenedioxymethamphetamine within 1,000 feet of school.

(rrrrrr) ORS 475.874, Unlawful possession of 3,4-methylenedioxymethamphetamine.

(ssssss) ORS 475.876, Unlawful manufacture of cocaine.

(tttttt) ORS 475.878, Unlawful manufacture of cocaine within 1,000 feet of school.

(uuuuuu) ORS 475.880, Unlawful delivery of cocaine.

(vvvvvv) ORS 475.882, Unlawful delivery of cocaine within 1,000 feet of school.

(wwwwww) ORS 475.884, Unlawful possession of cocaine.

(xxxxxx) ORS 475.886, Unlawful manufacture of methamphetamine.

(yyyyyy) ORS 475.888, Unlawful manufacture of methamphetamine within 1,000 feet of school.

(zzzzzz) ORS 475.890, Unlawful delivery of methamphetamine.

(aaaaaaa) ORS 475.892, Unlawful delivery of methamphetamine within 1,000 feet of school.

(bbbbbbb) ORS 475.894, Unlawful possession of methamphetamine.

(ccccccc) ORS 475.904, Unlawful delivery of controlled substance within 1,000 feet of school.

(ddddddd) ORS 475.906, Penalties for distribution to minors.

(eeeeeee) ORS 475.908, Causing another person to ingest a controlled substance.

(fffffff) ORS 475.910, Application of controlled substance to the body of another person.

(ggggggg) ORS 475.914, Prohibited acts for registrants (with the Oregon State Board of Pharmacy).

(hhhhhhh) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance.

(iiiiiii) ORS 475.990, Commercial drug offense.

(jjjjjjj) ORS 677.080, Prohibited acts (regarding the practice of medicine).

(kkkkkkk) ORS 685.990, Penalties (pertaining to naturopathic medicine).

(lllllll) ORS 689.527 Prohibited practices; rules (pertaining to pharmacy technicians and practitioners).

(mmmmmmm) Any federal crime.

(nnnnnnn) Any U.S. military crime.

(ooooooo) Any unclassified felony defined in Oregon Revised Statutes not listed in this rule.

(ppppppp) Any other felony in Oregon Revised Statutes not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.

(qqqqqqq) Any felony in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in this section but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.

(rrrrrrr) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to 161.155.

(sssssss) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in section (1) of this rule, as determined by BCU.

(ttttttt) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in section (1) of this rule, as determined by BCU.

(2) The crimes listed in this section are ten-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within ten years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.

(a) ORS 033.045, Contempt of court.

(b) ORS 109.311, Prohibited fees-adoption.

(c) ORS 133.076, Failure to appear on criminal citation.

(d) ORS 133.310(3), Violation of restraining order.

(e) ORS 135.290, Punishment by contempt of court (violation of release agreement).

(f) ORS 162.015, Bribe giving.

(g) ORS 162.025, Bribe receiving.

(h) ORS 162.065, Perjury.

(i) ORS 162.075, False swearing.

(j) ORS 162.117, Public investment fraud.

(k) ORS 162.145, Escape III.

(L) ORS 162.175, Unauthorized departure.

(m) ORS 162.185, Supplying contraband.

(n) ORS 162.195, Failure to appear II.

(o) ORS 162.205, Failure to appear I.

(p) ORS 162.247, Interfering with a peace officer.

(q) ORS 162.257, Interfering with a firefighter or emergency medical technician.

(r) ORS 162.265, Bribing a witness.

(s) ORS 162.275, Bribe receiving by a witness.

(t) ORS 162.295, Tampering with physical evidence.

(u) ORS 162.305, Tampering with public records.

(v) ORS 162.315, Resisting arrest.

(w) ORS 162.335, Compounding.

(x) ORS 162.355, Simulating legal process.

(y) ORS 162.365, Criminal impersonation.

(z) ORS 162.367, Criminal impersonation of peace officer.

(aa) ORS 162.369, Possession of false law enforcement identification card.

(bb) ORS 162.375, Initiating a false report.

(cc) ORS 162.385, Giving false information to police officer for a citation.

(dd) ORS 162.405, Official misconduct II.

(ee) ORS 162.415, Official misconduct I.

(ff) ORS 162.425, Misuse of confidential information.

(gg) ORS 163.195, Recklessly endangering another person.

(hh) ORS 163.196, Aggravated driving while suspended or revoked.

(ii) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II.

(jj) ORS 164.043, Theft III.

(kk) ORS 164.045, Theft II.

(ll) ORS 164.095, Theft by receiving.

(mm) ORS 164.138, Criminal possession of a rented or leased motor vehicle.

(nn) ORS 164.140, Criminal possession of rented or leased personal property.

(oo) ORS 164.162, Mail theft or receipt of stolen mail.

(pp) ORS 164.235, Possession of a burglary tool or theft device.

(qq) ORS 164.255, Criminal trespass I.

(rr) ORS 164.265, Criminal trespass while in possession of firearm.

(ss) ORS 164.272, Unlawful entry into motor vehicle.

(tt) ORS 164.354, Criminal mischief II.

(uu) ORS 165.007, Forgery II.

(vv) ORS 165.017, Criminal possession of a forged instrument II.

(ww) ORS 165.037, Criminal simulation.

(xx) ORS 165.042, Fraudulently obtaining a signature.

(yy) ORS 165.070, Possessing fraudulent communications device.

(zz) ORS 165.074, Unlawful factoring of credit card transaction.

(aaa) ORS 165.080, Falsifying business records.

(bbb) ORS 165.085, Sports bribery.
(ccc) ORS 165.090, Sports bribe receiving.
(ddd) ORS 165.095, Misapplication of entrusted property.
(eee) ORS 165.100, Issuing a false financial statement.
(fff) ORS 165.102, Obtaining execution of documents by deception.
(ggg) ORS 165.540, Obtaining contents of communication.
(hhh) ORS 165.543, Interception of communications.
(iii) ORS 165.570, Improper use of 9-1-1 emergency reporting system.
(jjj) ORS 165.572, Interference with making a report.
(kkk) ORS 165.577, Cellular counterfeiting III.
(lll) ORS 165.579, Cellular counterfeiting II.
(mmm) ORS 165.692, Making false claim for health care payment.
(nnn) ORS 166.015, Riot.
(ooo) ORS 166.023, Disorderly conduct I.
(ppp) ORS 166.025, Disorderly conduct II.
(qqq) ORS 166.065, Harassment.
(rrr) ORS 166.076, Abuse of a memorial to the dead.
(sss) ORS 166.090, Telephonic harassment.
(ttt) ORS 166.116, Interfering with public transportation.
(uuu) ORS 166.180, Negligently wounding another.
(vvv) ORS 166.190, Pointing firearm at another.
(www) ORS 166.240, Carrying of concealed weapon.
(xxx) ORS 166.250, Unlawful possession of firearms.
(yyy) ORS 166.470, Limitations and conditions for sales of firearms.
(zzz) ORS 166.480, Sale or gift of explosives to children.
(aaaa) ORS 166.649, Throwing an object off an overpass II.
(bbbb) ORS 166.651, Throwing an object off an overpass I.
(cccc) ORS 166.660, Unlawful paramilitary activity.
(dddd) ORS 167.007, Prostitution.
(eeee) ORS 167.008 Patronizing a prostitute.
(ffff) ORS 167.090, Publicly displaying nudity or sex for advertising purposes.
(gggg) ORS 167.122, Unlawful gambling in the second degree.
(hhhh) ORS 167.127, Unlawful gambling in the first degree.
(iiii) ORS 167.167, Cheating.
(jjjj) ORS 167.222, Frequenting a place where controlled substances are used.
(kkkk) ORS 167.325, Animal neglect II.
(llll) ORS 167.330, Animal neglect I.
(mmmm) ORS 167.337, Interfering with law enforcement animal.
(nnnn) ORS 167.340, Animal abandonment.
(oooo) ORS 167.352, Interfering with assistance, search and rescue or therapy animal.
(pppp) ORS 167.355, Involvement in animal fighting.
(qqqq) ORS 167.365, Dogfighting.
(rrrr) ORS 167.370, Participation in dogfighting.
(ssss) ORS 167.428, Cockfighting.
(tttt) ORS 167.431, Participation in cockfighting.
(uuuu) ORS 167.808(5)(b), Unlawful possession of inhalants, misdemeanor.
(vvvv) ORS 167.820, Concealing the birth of an infant.
(wwww) ORS 192.865, Criminal penalty (pertaining to Address Confidentiality Program).
(xxxx) ORS 314.075, Evading requirements of law prohibited (tax evasion).
(yyyy) ORS 411.630, Unlawfully obtaining public assistance.
(zzzz) ORS 411.640, Unlawfully receiving public assistance.
(aaaaa) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance).
(bbbbb) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits.
(ccccc) ORS 412.074, Unauthorized use and custody of records of temporary assistance for needy families program.
(ddddd) ORS 412.099, Sharing assistance prohibited.
(eeeee) ORS 417.990, Penalty for placement of children in violation of compact.
(fffff) ORS 471.410, Providing liquor to persons under 21 or to intoxicated persons; allowing consumption by minor on property.
(ggggg) ORS 475.912, Unlawful delivery of imitation controlled substance.
(hhhhh) ORS 475.916, Prohibited acts involving records and fraud.
(iiiii) ORS 475.918, Falsifying drug test results.
(jjjjj) ORS 475.950, Failure to report precursor substances transaction.
(kkkkk) ORS 475.955, Failure to report missing precursor substances.
(lllll) ORS 475.960, Illegally selling drug equipment.
(mmmmm) ORS 475.965, Providing false information on precursor substances report.
(nnnnn) ORS 803.230, Forging, altering or unlawfully producing or using title or registration.
(ooooo) ORS 807.620, Giving false information to police officer.
(ppppp) ORS 811.060, Vehicular assault of bicyclist or pedestrian.
(qqqqq) ORS 811.140, Reckless driving.
(rrrrr) ORS 811.540, Fleeing or attempting to elude police officer.
(sssss) ORS 811.700, Failure to perform duties of driver when property is damaged.
(ttttt) ORS 811.705, Failure to perform duties of driver to injured persons.
(uuuuu) ORS 819.300, Possession of a stolen vehicle.
(vvvvv) ORS 830.475, Failure to perform the duties of an operator (boat).
(wwwww) Any unclassified misdemeanor defined in Oregon Revised Statutes not listed elsewhere in this rule.
(xxxxx) Any other misdemeanor in Oregon Revised Statutes or a local Oregon jurisdiction not listed in this rule that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU.
(yyyyy) Any misdemeanor in a jurisdiction outside Oregon that is not the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule but that is serious and indicates behavior that poses a threat or jeopardizes the safety of vulnerable individuals, as determined by BCU. If a misdemeanor in a jurisdiction outside Oregon is similar to a violation in Oregon, then it may not be considered potentially disqualifying under this section.
(zzzzz) Any crime of attempt, solicitation, or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to 161.155.
(aaaaaa) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (2) of this rule, as determined by BCU.
(bbbbbb) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (2) of this rule, as determined by BCU.
(3) The crimes listed in this section are five-year review crimes which require that a fitness determination with a weighing test be completed if the date of conviction is within five years of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent risk.
(a) ORS 162.085, Unsworn falsification.
(b) ORS 162.235, Obstructing governmental or judicial administration.
(c) ORS 164.245, Criminal trespass II.
(d) ORS 164.335, Reckless burning.
(e) ORS 164.345, Criminal mischief III.
(f) ORS 165.813, Unlawful possession of fictitious identification.
(g) ORS 166.075, Abuse of venerated objects.
(h) ORS 166.095, Misconduct with emergency telephone calls.
(i) ORS 811.182, Criminal driving while suspended or revoked.
(j) ORS 813.010, Driving under the influence of intoxicants (DUII).
(k) ORS 830.315, Reckless operation of a boat.
(l) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance.
(m) ORS 830.730, False information to peace officer or Oregon State Marine Board.
(n) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to 161.155.
(o) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in section (3) of this rule, as determined by BCU.
(p) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in section (3) of this rule, as determined by BCU.
(4) Evaluations of crimes may be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.

(5) An SI may not be denied under these rules due to the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 to 419A.262.

(6) An SI may not be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 181.516, 181.537 & 409.050
Stats. Implemented: ORS 181.516, 181.534, 181.537 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0280, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; Suspended by DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0290
Other Potentially Disqualifying Conditions

Pursuant to OAR 125-007-0270(5), the following are potentially disqualifying conditions, if they exist on the date the Department receives the background check request:

(1) The SI makes a false statement to the QE or Department, including the provision of materially false information, false information regarding criminal records, or failure to disclose information regarding criminal records. Nondisclosure of violation or infraction charges may not be considered a false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to vulnerable individuals if the SI has been designated a predatory sex offender in any jurisdiction under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant for any crime in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program for any crime in any jurisdiction.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date).

(6) The SI has been found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction, regardless of the original conviction date (or date of guilty or no contest plea if there is no conviction date) within five years from the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) The SI has an adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date the background check request was signed or the date BCU conducted a criminal records check due to imminent danger.

(10) The SI has a finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

(11) Potentially disqualifying abuse as determined from abuse investigation reports which have an outcome of founded, substantiated, or valid and in which the SI is determined to have been responsible for the abuse.

(a) For SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division, potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report;

(B) Child protective services history reviewed pursuant to the federal Adam Walsh Act requirements, determined by BCU ADs to be potentially disqualifying; and

(C) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAAPI and APD programs based on severity.

(b) For staff, volunteers, or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor providing child welfare services pursuant to ORS Chapter 418 potentially disqualifying abuse includes:

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by OAPPI and APD based on severity.

(c) For child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I):

(A) Child protective services history held by the Department or OAAPI regardless of the date of initial report, date of outcome, and considered potentially disqualifying pursuant to OAR 461-165-0420; and

(B) Adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to BCU by the OAAPI and APD programs based on severity.

(d) For all other SIs, potentially disqualifying abuse includes founded or substantiated adult protective services investigations of physical abuse, sexual abuse, or financial exploitation initiated on or after January 1, 2010, as provided to the BCU by OAAPI and APD programs based on severity.

(12) Child protective services investigations open or pending through the Department or OAAPI as of the date the background check request was electronically submitted to BCU through CRIMS or the date BCU conducted a criminal records check due to imminent danger. This potentially disqualifying condition only applies to:

(a) SIs associated with child foster homes licensed by the Department's DD programs, child foster homes licensed through the Department's Child Welfare Division, child foster homes licensed through a private licensed child caring agency, adoptive families through a private licensed child caring agency, or adoptive families through the Department's Child Welfare Division;

(b) Staff, volunteers or contractors of a private licensed child caring agency, an ISRS program, a SPRF provider, or a System of Care contractor, providing child welfare services pursuant to ORS Chapter 418; or

(c) Child care providers and associated subject individuals defined in OAR 407-007-0210(30)(a)(I).

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0290, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2013(Temp), f. & cert. ef. 2-5-13 thru 8-2-13; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2015(Temp), f. & cert. ef. 2-3-15 thru 8-1-15; DHSD 4-2015, f. 7-31-15, cert. ef. 8-1-15; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0300
Weighing Test

If an SI has potentially disqualifying convictions under OAR 125-007-0270 or potentially disqualifying conditions under OAR 407-007-0290, BCU shall conduct a weighing test. The weighing test shall include consideration of factors pursuant to ORS 181A.195(10)(d) and the following if available to the BCU at the time of the weighing test.

(1) Circumstances regarding the nature of potentially disqualifying convictions and conditions including but not limited to:

(a) The details of incidents leading to the charges of potentially disqualifying convictions or resulting in potentially disqualifying conditions.

(b) Age of the SI at time of the potentially disqualifying convictions or conditions.

(c) Facts that support the convictions or potentially disqualifying conditions.

(d) Passage of time since commission of the potentially disqualifying convictions or conditions.

(e) Consideration of state or federal laws, regulations, or rules covering the position, facility, employer, or QE regarding the potentially disqualifying convictions or conditions.

(2) If applicable, circumstances regarding the nature of potentially disqualifying abuse including but not limited to:

(a) The nature and type of abuse; and

(b) Other information gathered during the scope of the abuse investigation.

(c) The date of the abuse incident and abuse investigation.

(d) The quality of the abuse investigation including, if applicable, any exhibits and related documents with consideration taken into account regarding completeness, objectivity, and sufficiency.

(e) Due process provided to the SI after the abuse investigation.

(f) Required action resulting from the founded or substantiated abuse including but not limited to training, counseling, corrective or disciplinary action, and the SI's compliance.

(3) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, and convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of alcohol or drug issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions including but not limited to patterns of criminal activity or behavior.

(g) Information from the Department's or Authority's protective services, abuse, or other investigations in which the investigator documented behavior or conduct by the SI that would pose a risk to or jeopardize the safety of vulnerable individuals.

(h) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers, including Department client employers.

(i) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(4) BCU shall consider the relevancy of the SI's criminal activity or potentially disqualifying conditions to the paid or volunteer position, or to the environment in which the SI will reside, work, or visit.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004

Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0300, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0315

Hired on a Preliminary Basis

(1) A preliminary fitness determination is required to determine if an SI may work, volunteer, or otherwise perform in the position listed on the background check request prior to a final fitness determination. An SI may not be hired on a preliminary basis prior to the completion of a preliminary fitness determination.

(2) An SI may be hired on a preliminary basis only during the period of time prior to a final fitness determination and into the position listed on the background check request.

(3) The SI must provide information required for a background check request and the QED must review the information.

(4) The QED shall make one of the following determinations:

(a) If the SI makes no disclosures of criminal history, the QED may hire the SI on a preliminary basis in accordance with relevant program rules or QE policies.

(b) If the SI discloses any criminal history and all of the history occurred outside the five year period from the date the SI manually or electronically signed the background check request, the QED may hire the SI on a preliminary basis in accordance with relevant program rules or QE policies.

(c) If the SI indicates any criminal history occurring within the five year period from the date the SI manually or electronically signed the background check request:

(A) The QED may allow the SI to be hired on a preliminary basis if the disclosed criminal history has the outcome of "dismissed," "no complaint filed," "expunged," or other outcome that BCU determines is not adverse.

(B) The QED may not allow the SI to be hired on a preliminary basis if the disclosed criminal history has an outcome of "pending outcome," "diversion or conditional discharge," "convicted," "on probation," "juvenile adjudication," "unknown," or other outcome that BCU determines is adverse.

(5) The QED shall submit the background check request to BCU immediately upon verification of the SI's identity, the SI's completion of the background check request, and the QED's completion of the preliminary fitness determination.

(6) If requested by the QED, BCU may conduct a preliminary fitness determination with a weighing test pursuant to OAR 125-007-0250.

(7) The QE may not hire a SI on a preliminary basis under any of the following circumstances:

(a) Being hired on a preliminary basis or probationary status is not allowed under program rules.

(b) The SI has disclosed criminal history occurring within the past five years that has an outcome of "pending outcome," "diversion or conditional discharge," "convicted," "on probation," "juvenile adjudication," "unknown" or other outcome BCU determines to be adverse and BCU has not completed a preliminary fitness determination resulting in the QE being allowed to hire the SI on a preliminary basis.

(c) The QE or BCU determines that:

(A) More likely than not, the SI poses a potential threat to vulnerable individuals, based on a preliminary fitness determination and weighing test;

(B) The SI's most recent background check under these rules or other Department or Authority criminal records check rules or abuse check rules resulted in a denial; or

(C) The SI is currently involved in contesting a background check under these or other Department or Authority criminal records check rules or abuse check rules.

(D) BCU has reason to believe hiring on a preliminary basis is not appropriate based on circumstances or compliance with the background check process of the SI, QED, or QE.

(d) An outcome of no hiring on a preliminary basis may only be overturned by the BCU.

(8) An SI hired on a preliminary basis shall be actively supervised at all times.

(a) The individual providing active supervision at all times shall do the following:

(A) Be in the same building as the SI or, if outdoors of QE buildings or any location off the QE property, be within line-of-sight and hearing, except as provided in section (8)(b)(B) of this rule;

(B) Know where the SI is and what the SI is doing; and

(C) Periodically observe the actions of the SI.

(b) The individual providing the active supervision may be either:

(A) An SI who has been approved without restrictions pursuant to these rules or previous Department or Authority criminal records check rules; or

(B) The adult client, an adult client's adult relation, the client's legal representative, or a child's parent or guardian. Active supervision by these individuals is appropriate in situations where care is given directly to clients usually in a home such as but not limited to in-home care, home health, or care by home care workers, personal care assistants, or child care providers.

(i) The adult client may actively supervise a homecare worker, personal care services provider, independent provider, or an employee of an in-home care agency or home health agency if the client makes an informed decision to employ the provider. Someone related to the client may also provide active supervision if the relative has been approved by the Department, the Authority, the QED, or the private-pay client receiving services through an in-home care or home health agency.

(ii) A child client's parent or guardian shall be responsible for providing active supervision in the case of child care providers. The supervision is not required to be performed by someone in the same building as the child.

(9) An SI approved without restrictions within the previous 24 months through a documented criminal records check or abuse check pursuant to these rules or prior Department or Authority criminal records check rules or abuse check rules may be hired on a preliminary basis without active supervision. Twenty-four months is calculated from date of previous approval to

the date of hire in the new position. This exemption from active supervision is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity or potentially disqualifying abuse within the previous 24 months.

(c) If, as determined by the QE or BCU, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(10) Revocation of hired on a preliminary basis is not subject to hearing or appeal. The QE or BCU may immediately revoke hired on a preliminary basis for any of the following reasons:

(a) There is any indication of falsification of application.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions or any out of state arrests or convictions.

(c) The QE or BCU determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal record, position duties, or Department program rules.

(11) Nothing in this rule is intended to require that an SI who is eligible to be hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request prior to a final fitness determination.

(12) Preliminary fitness determinations must be documented in writing, including any details regarding a weighing test, if required.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0320
Final Fitness Determinations

BCU shall make a final fitness determination pursuant to OAR 125-007-0260 after all necessary background checks have been received and a weighing test, if necessary, has been completed.

(1) The final fitness determination results in one of the following outcomes:

(a) BCU may approve an SI if:

(A) The SI has no potentially disqualifying convictions or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying convictions or potentially disqualifying conditions and, after a weighing test, BCU determines that more likely than not, the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals.

(b) BCU may approve an SI with restrictions if BCU determines that more likely than not, the SI poses no risk to the physical, emotional, or financial well-being of vulnerable individuals if certain restrictions are placed on the SI. Restrictions may include but are not limited to restrictions to one or more specific clients, job duties, or environments. A new background check and fitness determination shall be completed on the SI before removing a restriction.

(c) BCU shall deny an SI who the BCU determines, after a weighing test, more likely than not poses a risk to the physical, emotional, or financial well-being of vulnerable individuals.

(d)BCU shall consider a background check to have an outcome of incomplete fitness determination in the following circumstances:

(A) The QE or SI discontinues the application or the SI fails to cooperate with the criminal records check or fitness determination process, including but not limited to refusal to be fingerprinted or failing to respond in a timely manner to written correspondence from BCU. The background check request is considered closed and there are no hearing rights for the SI.

(B) BCU determines that the SI is ineligible due to ORS 443.004 in accordance with OAR 407-007-0275 or 407-007-0277. The background check request is considered completed and there are no hearing rights for the SI.

(C) The SI withdraws the application, leaves the position prior to completion of the background check, or the Department cannot locate or contact the subject individual.

(D) The SI is determined to be ineligible for the position by the QE for reasons other than the background check.

(E) BCU makes a determination under OAR 407-007-0335, in which an SI has potentially disqualifying abuse under OAR 407-007-0290(11)(d) with no other potentially disqualifying convictions or conditions. The SI has expedited hearings rights under OAR 407-007-0335.

(2) Upon completion of a final fitness determination, BCU or the QE shall provide notice to the SI.

(a) If approved, BCU shall provide notice to the QE through CRIMS. The QE shall provide the SI a copy of the notice or CRIMS documentation.

(b) If the final fitness determination is a denial based on potentially disqualifying abuse under OAR 407-007-0290(11)(d) and there are no other potentially disqualifying convictions or conditions, BCU shall issue a Notice of Intent to Deny and provide the SI hearing rights under OAR 407-007-0335.

(c) Except as required by section (4)(c) of this rule, if denied or approved with restrictions, BCU shall issue a notice of fitness determination to the SI which includes the potentially disqualifying convictions or conditions that the outcome was based upon, information regarding appeal rights, and the notice becoming a final order in the event of a withdrawal or failure to appear at the hearing.

(d) The effective date of action shall be recorded on the notice or CRIMS documentation.

(3) BCU shall provide the QE notification of the final fitness determination when the SI is being denied or approved with restrictions.

(4) When an SI is denied, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request. A denial applies only to the position and application in question. A denial shall result in immediate termination, dismissal, or removal of the SI.

(5) When an SI is approved with restrictions, the SI shall only be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request and only under the stated restrictions. A restricted approval applies only to the position and application in question. A restricted approval shall result in immediate implementation of the restrictions.

(6) BCU shall maintain any documents obtained or created during the background check process.

(7) BCU shall make new fitness determinations for each background check request. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0320, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 3-2013, f. & cert. ef. 8-1-13; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0325
Closed Case

If the SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and may be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI fails to disclose all criminal history on the background check request.

(b) The SI refuses to be fingerprinted when required by these rules.

(c) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or any other information necessary to conduct a criminal records check or an abuse check and there is not enough information available to make a fitness determination.

(d) The SI withdraws the application, leaves the position prior to completion of the background check, or the Department cannot locate or contact the subject individual.

(e) The SI is determined to be ineligible for the position by the QE for reasons other than the background check.

(2) When the application is closed without a final fitness determination, the SI does not have a right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the background check request. A closed case applies only to the position in question. A closed case shall result in immediate termination, dismissal, or removal of the SI.

(4) BCU or the QED shall document the reasons for a closed case.

Stat. Auth.: ORS 181.516, 181.537, 409.027 & 409.050
Stats. Implemented: ORS 181.516, 181.534, 181.537, 409.010, 409.027 & 443.004

Hist.: DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; Suspended by DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0330
Contesting a Fitness Determination

(1) An SI may contest a final fitness determination of denied or restricted approval pursuant to OAR 125-007-0300 unless already granted contested case hearing rights under OAR 407-007-0335.

(2) If an SI is denied, the SI may not hold the position, provide services or be employed, licensed, certified, or registered, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) An SI may represent himself or herself or have legal representation during the appeal process. For the purpose of this rule, the term "SI" shall be considered to include the SI's legal representative.

(a) An SI who is appealing an adverse outcome regarding the position of homecare worker as defined in ORS 410.600 or personal support worker as defined in ORS 410.600 may be represented by a labor union representative pursuant to ORS 183.459.

(b) For all other SIs, the SI may not be represented by a lay person.

(5) An SI may contest an adverse fitness determination by requesting a contested case hearing. The contested case hearing process is conducted in accordance with OAR 125-007-0300, ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing, the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within 45 calendar days after the effective date of action.

(c) BCU shall accept a properly addressed hearing request that was not timely filed if it was postmarked within the time specified for timely filing.

(d) In the event an appeal is not timely by the date of receipt or by the date of postmark, BCU shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(e) BCU may refer an untimely request to the OAH for a hearing on the issue of timeliness.

(6) BCU may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the BCU within a specified amount of time.

(b) The administrative review is not open to the public.

(7) BCU may conduct additional criminal records checks or abuse checks during the contested case hearing process to update or verify the SI's potentially disqualifying convictions or conditions and factors to consider in the weighing test. If needed, BCU shall amend the notice of fitness determination while still maintaining the original hearing rights and deadlines.

(8) The Department shall be represented by a hearing representative in contested case hearings. The Department may also be represented by the Office of the Attorney General.

(a) The administrative law judge shall make a new fitness determination based on evidence and the contested case hearing record.

(b) The only remedy an administrative law judge may grant is a fitness determination that the subject individual is approved, approved with restrictions, or denied. Under no circumstances shall the Department or the QE be required to place an SI in any position, nor shall the Department or the QE be required to accept services or enter into a contractual agreement with an SI.

(c) A hearing pursuant to these rules may be conducted in conjunction with a licensure or certification hearing for the SI.

(9) The notice of fitness determination issued is final as if the SI never requested a hearing in the following situations:

(a) The SI failed to request a hearing in the time allotted in this rule. No other document will be issued after the notice of fitness determination.

(b) The SI withdraws the request for hearing at any time during the appeal process.

(10) BCU may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to a contested case hearing.

(11) BCU shall issue a dismissal order in the following situations:

(a) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to the withdrawal is effective the date the withdrawal is received by BCU or the OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(b) BCU shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days.

(c) BCU shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. BCU shall review a good cause request to reinstate hearing rights if received in writing by BCU within 14 calendar days of the order.

(12) After a hearing, the administrative law judge shall issue a proposed and final order.

(a) If no written exceptions are received by BCU within 14 calendar days after the service of the proposed and final order, the proposed and final order becomes the final order.

(b) If timely written exceptions to the proposed and final order are received by BCU, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(13) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the order is served, pursuant to OAR 137-003-0675.

(14) BCU may provide the QED with the results of the appeal.

Stat. Auth.: ORS 181A.200, 183.459, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 183.459, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0330, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 10-2010, f. 10-29-10, cert. ef. 10-31-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0350
Immunity from Liability

(1) The Department, the Authority and the QE, acting within the course and scope of employment, have immunity from any civil liability that might otherwise be incurred or imposed for determining, in accordance with ORS 181A.200, that an SI is fit or not fit to hold a position, provide services, or be employed, licensed, certified, or registered.

(2) The Department, and Authority, and the QE, acting within the course and scope of employment, and an employer or employer's agent are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of a fitness determination or closed case if they in good faith comply with:

(a) ORS 181A.200 and 409.027; and

(b) The decision of the QE or employee of the QE acting within the course and scope of employment.

(3) No employee of the state, a business, or an organization, acting within the course or scope of employment, is liable for defamation, invasion of privacy, negligence, or any other civil claim in connection with the lawful dissemination of information lawfully obtained under ORS 181A.200.

Stat. Auth.: ORS 181A.200, 409.027 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 409.010, 409.027 & 443.004
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0350, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 2-2009, f. & cert. ef. 4-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 1-2011(Temp) f. & cert. ef. 4-15-11 thru 10-11-11; DHSD 7-2011(Temp), f. & cert. ef. 10-12-11 thru 11-1-11; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 2-2014, f. & cert. ef. 12-1-14; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

407-007-0370
Variances

(1) The Department and Authority may consider variance requests regarding these rules.

(a) The outcomes of a fitness determination made pursuant to these rules is not subject to variance. Challenges to fitness determinations may only be made by SIs through contested case hearing rights set forth in these rules.

(b) Neither the Department nor the Authority may grant variances to ORS 181A.195 and 181A.200.

(2) The Department or Authority may grant a variance to any section of these rules based upon a demonstration by the QE that the variance would not pose a significant risk to physical, emotional, or financial well-being of vulnerable individuals.

(3) The QE requesting a variance must submit, in writing, an application to the BCU that contains:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed;

(d) A plan and timetable for compliance with the section of the rule from which the variance is sought; and

(e) An explanation on how the welfare, health, or safety of individuals receiving care will be ensured during the time the variance is in effect.

(4) The Assistant Director or designee for the Department and Authority's Shared Services, Office of Human Resources shall approve or deny the request for a variance.

(5) BCU shall notify the QE of the decision within 60 calendar days of the receipt of the request and shall provide a copy to other relevant Department or Authority program offices.

(6) Appeal of the denial of a variance request must be made in writing to the Department or Authority's Director, whose decision is final.

(7) The Department or Authority shall determine the duration of the variance.

(8) The QE may implement a variance only after receipt of written approval from BCU.

(9) Granting a variance does not set a precedent that must be followed by the Department or Authority when evaluating subsequent variance requests.

Stat. Auth.: ORS 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: OMAP 8-2004, f. 2-26-04, cert. ef. 3-1-04; OMAP 22-2005, f. & cert. ef. 3-29-05; Renumbered from 410-007-0370, DHSD 8-2007, f. 8-31-07, cert. ef. 9-1-07; DHSD 10-2008, f. 12-26-08, cert. ef. 1-1-09; DHSD 7-2009, f. & cert. ef. 10-1-09; DHSD 10-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 8-2011, f. 10-28-11, cert. ef. 11-1-11; DHSD 2-2012(Temp), f. & cert. ef. 2-27-12 thru 8-24-12; DHSD 4-2012, f. & cert. ef. 8-1-12; DHSD 1-2016(Temp), f. & cert. ef. 1-14-16 thru 7-11-16

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Rule Caption: Align DHS Human Resource Background Check Rules with DAS Criminal Records Check Rules
Adm. Order No.: DHSD 2-2016(Temp)
Filed with Sec. of State: 1-14-2016
Certified to be Effective: 1-14-16 thru 7-11-16
Notice Publication Date:
Rules Amended: 407-007-0000, 407-007-0010, 407-007-0020, 407-007-0030, 407-007-0050, 407-007-0060, 407-007-0065, 407-007-0070, 407-007-0080, 407-007-0090
Rules Suspended: 407-007-0400, 407-007-0075
Subject: ORS 181A.215 (formerly ORS 181.547) shifts the criminal records check rules from Oregon state agencies to the Oregon Department of Administrative Services (DAS). The DAS rules (OAR 125-007-0200 to 125-007-0330) became effective 1/4/2016. The Department of Human Services (Department) is modifying its criminal records check rules to align with the DAS rules.

In addition, the statutes governing the criminal records check processes (ORS chapter 181) have been renumbered to ORS 181A. References to these statutes have been corrected. Other changes include updating rules to current processes, including the requirement for electronic submission of fingerprints (ORS 181.516) and upgrading to the Department's Background Check Unit's Criminal Records Information Management System (CRIMS).

Temporary rules are available on the Department of Human Services website: http://www.oregon.gov/DHS/POLICIES/Pages/ss-admin-rules.aspx. For hardcopy requests, call: (503) 947-5250.
Rules Coordinator: Jennifer Bittel—(503) 947-5250

407-007-0000
Purpose and Scope

(1) The purpose of these rules, OAR 407-007-0000 to 407-007-0100, is to supplement OAR 125-008-0200 to 125-007-0330 with guidelines and requirements specific to background checks for Department of Human Services (Department) and Oregon Health Authority (Authority) subject individuals (SIs). These rules provide for the reasonable screening under ORS 181A.195 and 181A.200 of the Department's employees, volunteers, and contractors to determine if they have a history of criminal behavior such that they should not be allowed to work, volunteer, be employed, or otherwise perform in positions covered by these rules.

(2) These rules apply to evaluating criminal records and potentially disqualifying conditions of an SI when conducting fitness determinations based upon such information. The fact that an SI is approved does not guarantee employment or placement. These rules do not apply to SIs covered under OAR 407-007-0200 to 407-007-0370.

(3) The Authority authorizes the Background Check Unit (BCU), a shared service of the Department and the Authority, to act on its behalf in carrying out criminal records checks. References in these rules to the Department or Authority shall be construed to be references to either or both agencies.

(3) Although abuse checks may occur concurrently with criminal records checks performed under these rules and may share similar processes, the criminal records check process is separate and distinct from the abuse checks that may be performed under OAR 407-007-0400 to 407-007-0460.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0010
Definitions

In addition to the definitions in OAR 125-007-0210, the following definitions apply to OAR 407-007-0000 to 407-007-0100:

(1) "Authority" means the Oregon Health Authority.

(2) "Authorized designee (AD)" means an individual whom the Department designates and authorizes to receive and process criminal records check requests from SIs and criminal records information.

(3) "Background Check Unit" means the Background Check Unit (BCU), the Unit in shared services which conducts criminal records checks and abuse checks for the Department and the Authority.

(4) "Client" means any individual who receives services, care, or funding for care through the Department.

(5) "Criminal Records Information Management System (CRIMS)" means the electronic records system used to process and maintain background check records under these rules.

(6) "Department" means the Department of Human Services.

(7) "Employee" means an individual working in the Department in any position including a new hire, promotion, demotion, direct appointment, re-employment, job rotation, developmental assignment, transfer, an individual impacted by the Department's lay-off process, or temporary hire.

(8) "Fingerprint capture" means taking an SI's fingerprints for a national criminal records check in a manner that meets current Oregon statutes and the Oregon State Police's (OSP's) capacity for receiving fingerprints.

(9) "Good cause" means a valid and sufficient reason for not complying with time frames set during the criminal records check process or contested case hearing process, including but not limited to an explanation of circumstances beyond a subject individual's reasonable control.

(10) "Hearing representative" means a Department employee representing the Department in a contested case hearing.

(11) "Human Resources" means either the Department's Office of Human Resources (which includes BCU) or the Authority's Office of Human Resources.

(12) "Other criminal records information" means information obtained and used in the criminal records check that is not criminal offender information from OSP. Other criminal records information includes but is not limited to police investigations and records, information from local or regional criminal records information systems, justice records, court records, information from the Oregon Judicial Information Network, sexual offender registration records, warrants, Oregon Department of Corrections records, Oregon Department of Transportation's Driver and Motor Vehicle Services Division information, information provided on the Background Check forms, disclosures by a subject individual, and any

other information from any jurisdiction obtained by or provided to the Department for the purpose of conducting a fitness determination.

(13) "Position" means the position listed on the background check request for the SI which determines whether the individual is an SI under these rules. Covered positions include any type of employment, volunteer placement, or contract placement.

(14) "Subject individual (SI)" means an individual on whom the Department may conduct a criminal records check and from whom the Department may require fingerprints for the purpose of conducting a national criminal records check. An SI includes any of the following:

(a) A Department employee.

(b) An individual who has been offered employment by the Department.

(c) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).

(d) A Department client who is placed in the Work Experience or JOBS Plus program at a Department site.

(e) An individual who provides or seeks to provide services to the Department at Department facilities, sites, or offices as a contractor, subcontractor, vendor, volunteer under Department direction and control, or student under Department direction and control who:

(A) May have contact with clients;

(B) Has access to personal information about employees of the Department, clients, or members of the public, including but not limited to Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information, or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules, or regulations or information that is defined as confidential under state or federal laws, rules, or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;

(ii) Billing, collections, setting up financial accounts, or other financial transactions; or

(iii) Purchasing or selling property;

(F) Provides security, design or construction services for government buildings, grounds, or facilities;

(G) Has access to critical infrastructure or secure facilities information; or

(H) Is providing information technology services and has control over or access to information technology systems.

(f) Any individual applying for employment or a volunteer placement or any employee, volunteer, contractor, or employee of any contractor in any of the following:

(A) A State-operated or Authority-contracted secure residential treatment facility;

(B) A State-operated group home within the Department's Stabilization and Crisis Unit;

(C) Oregon State Hospital.

(15) "Weighing test" means a process carried out by the Department in which available information is considered to make a fitness determination.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0020
Criminal History Check Required

(1) The Department conducts criminal records checks on all SIs through LEDS maintained by OSP pursuant to ORS Chapter 181 and the rules adopted pursuant thereto (see OAR chapter 125, division 007; and chapter 257, division 15).

(2) If a national criminal records check of an SI is necessary, OSP shall provide the Department the results of criminal records checks conducted pursuant to ORS 181A.195, including fingerprint identification, through the FBI.

(3) SIs must have a criminal records check in the following circumstances:

(a) If an individual becomes an SI on or after the effective date of these rules.

(b) Except as provided in section (3) of this rule, if the individual, whether previously considered an SI or not, changes positions, and the position requires a criminal records check. Change in a position may include but is not limited to promotion, transfer, demotion, re-employment, job rotation, developmental assignment, restoration, layoff, or recall.

(c) If the Department has reason to believe that a criminal records check is justified. Examples include but are not limited to any indication of possible criminal behavior by an SI or quality assurance monitoring of a previously conducted criminal records check.

(4) Human Resources may determine that conducting a new criminal records check and fitness determination for an employee is not required.

(a) After submission of a criminal records check, Human Resources may consider ending the criminal records check if:

(A) The SI who has been offered a new position has completed a previous criminal records check and fitness determination with an outcome of approved; and

(B) There has been no break in employment with the Department.

(b) Human Resources may cease the criminal records check without making a new fitness determination if there is no indication of new potentially disqualifying crimes or conditions, and at least one of the following is true:

(A) The previous criminal records check identified no potentially disqualifying crimes or conditions as defined at that time and Human Resources determines that the previous fitness determination is sufficient for the new position.

(B) Human Resources determines that the new position requires the same or less responsibility or access in the duties as described in OAR 407-007-0060(3).

(5) All SIs shall notify Human Resources within five days of being arrested, charged, or convicted of any crime.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0030
Criminal History Check Process

(1) Only Department employees, called ADs, may be authorized and approved pursuant to OAR 407-007-0230 to 407-007-0240 to receive and evaluate criminal offender information and other criminal records information. Only ADs may conduct fitness determinations.

(2) The Department shall submit the criminal records check to BCU in written form or through CRIMS. In addition to information required in OAR 125-007-0220, the background check request shall include:

(a) Disclosure of criminal history;

(A) The SI must disclose all arrests, charges, and convictions regardless of outcome or when the arrests, charges, or convictions occurred. Disclosure includes any juvenile record.

(B) The disclosed crimes and the dates must reasonably match the SI's criminal offender information and other criminal records information, as determined by the Department.

(b) Disclosure of other history required under OAR 407-007-0400 to 407-007-0460; and

(c) Disclosure of other information to be considered in the event of a weighing test if the SI disclosures any criminal history or other history required under OAR 407-007-0400 to 407-007-0460.

(3) The criminal records check request, either in paper format or via CRIMS, shall include the following notices:

(a) A notice regarding disclosure of Social Security number indicating:

(A) The SI's disclosure is voluntary; and

(B) The Department requests the Social Security number solely for the purpose of positively identifying the SI during the criminal records check process.

(b) A notice that the SI may be subject to fingerprinting and a criminal records check.

(4) The Department shall verify the identity of an SI using methods which include but are not limited to asking the SI for current and valid government-issued photo identification and confirming the information on the photo identification with the SI, the information written in the criminal records check request, and the information taken for a fingerprint capture if a national criminal records check is conducted.

(5) BCU shall conduct an Oregon criminal records check after receiving a criminal records check request.

(a) Using information submitted, BCU may obtain criminal offender information from the LEDS system and may request other criminal records information as needed.

(b) The Department shall handle criminal offender information obtained through LEDS in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 125, division 007 and chapter 257, division 15).

(6) BCU may conduct a fingerprint-based national criminal records check after an Oregon criminal records check is completed.

(a) A fingerprint-based national criminal records check may be completed under any of the following circumstances:

(A) The SI has out of state residency evidenced by the SI's possession of an out of state driver license or being outside Oregon for 60 or more consecutive days during the previous five years.

(B) The LEDS check, SI disclosures, or any other criminal records information obtained by the Department indicates there may be criminal records outside of Oregon.

(C) The Department has reason to question the identity or history of the SI.

(D) The SI's position is at Oregon state institutions under OAR 407-007-0010(19)(g).

(E) The SI is assigned duties involving any aspect of a criminal records or abuse check process.

(F) A fingerprint-based criminal records check is required by federal or state laws or regulations, other rules adopted by the Department, or by contract with the Department.

(G) If the Department has reason to believe that fingerprints are needed to make a final fitness determination.

(b) BCU shall request fingerprints for an SI under the age of 18 in accordance with OAR 125-007-0220(3).

(c) The SI shall complete and submit a fingerprint capture when requested by the Department.

(A) The Department shall give the SI notice regarding the Social Security number as set forth in OAR 407-007-0030.

(B) The SI shall submit fingerprint capture to the BCU within the time frame indicated in a written notice.

(C) The Department may require new fingerprint capture if previous captures are rejected by OSP or the FBI.

(7) The Department may also conduct a state-specific criminal records check in lieu of or in addition to a national criminal records check. Reasons for a state-specific criminal records check include but are not limited to:

(a) When the Department has reason to believe that out-of-state criminal records may exist.

(b) When the Department has been unable to complete a national criminal records check due to illegible fingerprints.

(c) When the national criminal records check results show incomplete information about charges or criminal records without final disposition.

(d) When there is indication of residency or criminal records in a state that does not submit all criminal records to the FBI.

(e) When, based on available information, the Department has reason to believe that a state-specific criminal records check is necessary.

(8) In order to complete a criminal records check and fitness determination, the Department may require additional information from an SI.

(a) Additional information includes but is not limited to criminal, judicial, other background information, or proof of identity.

(b) If an SI who is a represented Department employee is required to provide additional information, the process for obtaining that information through investigatory interviews shall adhere to collective bargaining agreements on investigatory interviews.

(9) The Department may conduct a criminal records check in situations of imminent danger.

(a) If the Department determines there is indication of criminal behavior by an SI that could more likely than not pose an immediate risk to the Department, its clients, or vulnerable persons, the Department shall authorize a criminal records check without the completion of a criminal records check request.

(b) If the Department determines that a fitness determination based on the criminal records check would be adverse to the SI, the Department shall provide the SI, if available, the opportunity to disclose criminal records, potentially disqualifying conditions, and other information as indicated in OAR 407-007-0060 before the completion of the fitness determination.

(10) Criminal records checks conducted under this rule shall be documented in writing.

Stat. Auth.:ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0050
Other Potentially Disqualifying Conditions

Pursuant to OAR 125-007-0273(5), the following are potentially disqualifying conditions:

(1) The SI makes a false statement to the Department, Authority, or Human Resources, including the provision of materially false information, false information regarding criminal history, or failure to disclose information regarding criminal history. Nondisclosure of charges classified as less than a misdemeanor such as violations or infractions may not be considered as false statement.

(2) The SI is a registered sex offender in any jurisdiction. There is a rebuttable presumption that an SI is likely to engage in conduct that would pose a significant risk to the Department, its clients, or vulnerable individuals if the SI has been designated a predatory sex offender under ORS 181.585 or found to be a sexually violent dangerous offender under ORS 144.635 (or similar statutes in other jurisdictions).

(3) The SI has an outstanding warrant in any jurisdiction.

(4) The SI has a deferred sentence, conditional discharge, or is participating in a diversion program in any jurisdiction for any potentially disqualifying crime.

(5) The SI is currently on probation, parole, or post-prison supervision for any crime in any jurisdiction, regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date.

(6) The SI is found in violation of post-prison supervision, parole, or probation for any crime in any jurisdiction regardless of the original conviction date or date of guilty or no contest plea if there is no conviction date, within five years or less from the date of the criminal records check request or the date the Department conducted a criminal records check due to imminent danger.

(7) The SI has an unresolved arrest, charge, or a pending indictment for any crime in any jurisdiction.

(8) The SI has been arrested in any jurisdiction as a fugitive from another state or a fugitive from justice, regardless of the date of arrest.

(9) An adjudication in a juvenile court in any jurisdiction, finding that the SI was responsible for a potentially disqualifying crime that would result in a conviction if committed by an adult. Subsequent adverse rulings from a juvenile court, such as probation violations, shall also be considered potentially disqualifying if within five years from the date of the criminal check request or the date BCU conducted a criminal records check due to imminent danger.

(10) A finding of "guilty except for insanity," "guilty except by reason of insanity," "not guilty by reason of insanity," "responsible except for insanity," "not responsible by reason of mental disease or defect," or similarly worded disposition in any jurisdiction regarding a potentially disqualifying crime, unless the local statutes indicate that such an outcome is considered an acquittal.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0060
Weighing Test

If the SI has potentially disqualifying convictions under OAR 125-007-0270 or potentially disqualifying conditions under OAR 407-007-0050, Human Resources shall conduct a weighing test. The weighing test shall include consideration of factors pursuant to ORS 181A.195(10)(d) and the following if available to the BCU or Human Resources at the time of the weighing test:

(1) Circumstances regarding the nature of potentially disqualifying crimes and conditions including but not limited to:

(a) Age of the SI at time of the potentially disqualifying crime or condition.

(b) Details of incidents leading to the charges of potentially disqualifying crimes or resulting in potentially disqualifying conditions.

(c) Facts that support the conviction or other potentially disqualifying condition.

(d) Passage of time since commission of the crime or potentially disqualifying condition.

(e) Consideration of state or federal laws, regulations, or rules covering the position or the Department, regarding the potentially disqualifying crimes or conditions.

(2) Other factors when available including but not limited to:

(a) Other information related to criminal activity including charges, arrests, pending indictments, or convictions. Other behavior involving contact with law enforcement may also be reviewed if information is relevant to other criminal records or shows a pattern relevant to criminal history.

(b) Periods of incarceration.

(c) Status of and compliance with parole, post-prison supervision, or probation.

(d) Evidence of drug or alcohol issues directly related to criminal activity or potentially disqualifying conditions.

(e) Evidence of other treatment or rehabilitation related to criminal activity or potentially disqualifying conditions.

(f) Likelihood of repetition of criminal behavior or behaviors leading to potentially disqualifying conditions, including but not limited to patterns of criminal activity or behavior or whether the SI appears to accept responsibility for past actions, as determined by the Department.

(g) Changes in circumstances subsequent to the criminal activity or disqualifying conditions including but not limited to:

(A) History of high school, college, or other education related accomplishments.

(B) Work history (employee or volunteer).

(C) History regarding licensure, certification, or training for licensure or certification.

(D) Written recommendations from current or past employers.

(h) Indication of the SI's cooperation, honesty, or the making of a false statement during the criminal records check process, including acknowledgment and acceptance of responsibility of criminal activity and potentially disqualifying conditions.

(3) The relevancy of the SI's criminal history or potentially disqualifying conditions to the position or to the environment of the position, shall be considered. Consideration includes the relation between the SI's potentially disqualifying crimes or conditions and the following tasks or duties in the position:

(a) Access to or direct contact with Department clients, client property, or client funds.

(b) Access to information technology services, or control over or access to information technology systems that would allow an individual holding the position to harm the information technology systems or the information contained in the systems.

(c) Access to information, the disclosure of which is prohibited by state or federal laws, rules, or regulations, or information that is defined as confidential under state or federal laws, rules, or regulations.

(d) Access to payroll functions.

(e) Responsibility for receiving, receipting, or depositing money or negotiable instruments.

(f) Responsibility for billing, collections, or other financial transactions.

(g) Access to mail received or sent to the Department, including interagency mail, or access to any mail facilities in the Department.

(h) Responsibility for auditing the Department or other governmental agencies.

(i) Responsibility for any personnel or human resources functions.

(j) Access to personal information about employees, clients, or members of the public including Social Security numbers, dates of birth, driver license numbers, residency information, medical information, personal financial information, criminal offender information, or other criminal records information.

(k) Access to medications, chemicals, or hazardous materials; access to facilities in which medications, chemicals, and hazardous materials are present; or access to information regarding the transportation of medications, chemicals, or hazardous materials.

(L) Access to property to which access is restricted in order to protect the health or safety of the public.

(m) Responsibility for security, design, or construction services. This includes government buildings, grounds, or facilities or buildings, owned, leased, or rented for government purposes.

(n) Access to critical infrastructure or security-sensitive facilities or information.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200 & 409.010

Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0065

Hired on a Preliminary Basis

The Department shall make a preliminary fitness determination to determine if an SI may work, volunteer, be employed, or otherwise perform in the position listed in the criminal records check request prior to a final fitness determination. The Department may not hire an SI on a preliminary basis prior to the completion of a preliminary fitness determination.

(1) The Department shall complete a preliminary fitness determination and send notice to the hiring manager.

(2) After review of the criminal records check request, the Department shall make one of the following determinations:

(a) An SI may be hired on a preliminary basis, only during the time period prior to a final fitness determination, into the position listed in the criminal records check request and allowed to participate in training, orientation, and position activities under the one of the following circumstances:

(A) If there is no indication of potentially disqualifying crimes or conditions in the criminal records check request and the Department has no reason to believe the SI has potentially disqualifying crimes or conditions.

(B) If an SI discloses potentially disqualifying crimes or conditions, the SI may be hired on a preliminary basis only after BCU completes a weighing test. The Department may hire an SI on a preliminary basis only if, based on information available at the time, BCU determines that more likely than not that the SI poses no potential threat to the Department, its clients, or vulnerable persons.

(b) The Department may not hire an SI on a preliminary basis if the BCU determines that:

(A) After a weighing test, the SI more likely than not poses a potential threat to the Department, its clients, or vulnerable persons;

(B) The SI's most recent criminal records check under these rules or other Department criminal records check rules resulted in a denial; or

(C) The SI is currently involved in contesting a criminal records check determination under these or other Department criminal records check or abuse check rules.

(4) An SI who is hired on a preliminary basis shall be actively supervised at all times by an individual who has been approved without restrictions pursuant to these rules or previous Department criminal records check rules. The individual providing active supervision shall do at all times the following:

(a) Be in the same building as the SI or, if outdoors of Department buildings or any location off Department property, be within line of sight and hearing of the SI;

(b) Know where the SI is and what the SI is doing; and

(c) Periodically observe the actions of the SI.

(5) An SI who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules may work after being hired on a preliminary basis without active supervision. The 24 month time frame is calculated from the date of previous approval to the date starting the new position. This exemption is not allowed in any of the following situations:

(a) If the SI cannot provide documented proof that he or she worked continuously under the previous approval for at least one year.

(b) If there is evidence of criminal activity within the previous 24 months.

(c) If the Department determines the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the new position.

(6) The Department may immediately remove an SI hired on a preliminary basis from the position. Removal is not subject to hearing or appeal. Reasons for removal include but are not limited to the following:

(a) There is any indication of falsification in the criminal records check request.

(b) The SI fails to disclose convictions for any potentially disqualifying crimes, any arrests that did not result in convictions, or any out of state arrests or convictions.

(c) The Department determines that allowing the SI to be hired on a preliminary basis is not appropriate, based on the application, criminal records, position duties, or regulations regarding the position.

(7) Nothing in this rule is intended to require that an SI, who is eligible for being hired on a preliminary basis be allowed to work, volunteer, be employed, or otherwise perform in the position listed in the criminal records check request prior to a final fitness determination.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050

Stats. Implemented: ORS 181A.195, 181A.200 & 409.010

Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0070
Final Fitness Determinations

The Department shall make a final fitness determination in accordance with OAR 125-007-0260 after all necessary criminal records checks and a weighing test, if necessary, have been completed. The Department may obtain and consider additional information as necessary to complete the final fitness determination.

(1) The final fitness determination may result in one of the following outcomes:

(a) The Department may approve an SI if:

(A) The SI has no potentially disqualifying crimes or potentially disqualifying conditions; or

(B) The SI has potentially disqualifying crimes or potentially disqualifying conditions and, after a weighing test with available information, the Department determines that more likely than not the SI poses no risk to the Department, its clients, or vulnerable persons.

(b) The Department may approve an SI with restrictions if, after a weighing test with available information, it determines that more likely than not that the SI poses no risk to the Department, its clients, or vulnerable persons, if certain restrictions are placed on the SI, such as but not limited to restrictions to one or more specific clients, position duties, or environments. The Department shall complete a new background check and fitness determination on the SI before removing a restriction. A fitness determination of approved with restrictions shall only be considered for the following SIs:

(A) An individual secured by the Department through the services of a temporary employment agency, staffing agency, or personnel services agency who is providing any of the duties or having access as described in OAR 407-007-0060(3).

(B) A volunteer or student under Department direction and control.

(C) A Department client who is placed in a Work Experience or JOBS Plus program at a Department site.

(D) Any individual who is required to complete a criminal records check pursuant to the statutory authority of ORS 181A.195 and 181A.200 or the authority of these rules pursuant to a contract with the Department.

(c) The Department shall deny an SI whom it determines, after a weighing test with available information, more likely than not poses a risk to the Department, its clients, or vulnerable individuals.

(d) The Department shall consider a criminal records check to have any outcome of incomplete fitness determination in the following circumstances:

(A) The Department or SI discontinues the application or the SI fails to cooperate with the criminal records check or fitness determination process, including but not limited to refusal to be fingerprinted or failing to respond in a timely manner to requests from the Department. The background check request is considered closed and there are no hearing rights for the SI.

(B) BCU determines that the SI has no potentially disqualifying convictions under OAR 125-007-0270 and no potentially disqualifying conditions under OAR 407-007-0050, and has been denied under OAR 407-007-0400 to 407-007-0460 due to a weighing test involving potentially disqualifying abuse.

(C) Human Resources determines that the SI is ineligible for the position due to federal requirements, state statutes, or for reasons other than criminal history.

(2) Upon completion of a final fitness determination, the Department shall provide written notice to the SI. The notice shall:

(a) Be in a Department approved format;

(b) Include information regarding appeal rights for denied or approved with restrictions outcomes. The notice shall also include a statement that it becomes a final order by default in the event of a withdrawal or a failure to participate during the appeal or hearing; and

(c) Be mailed or hand-delivered to the SI no later than 14 calendar days after the decision. The effective date of action shall be recorded on the notice.

(d) Human Resources shall also provide employees with all formal disciplinary documents and letters up to and including a letter of dismissal.

(4) When an SI is denied, the Department may not allow the SI to work, volunteer, be employed, or otherwise perform in the position listed in the criminal records check request. A denial applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal polices, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a denial shall result in immediate dismissal.

(5) Final fitness determinations shall be documented in writing, including any other necessary details including but not limited to restrictions in a restricted approval or potentially disqualifying crimes or conditions in a denial.

(6) The Department shall make new fitness determinations for each application. The outcome of previous fitness determinations does not set a precedent for subsequent fitness determinations.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0075
Closed Case

If an SI discontinues the application or fails to cooperate with the criminal records check or fitness determination process, the application is considered incomplete and shall be closed.

(1) Discontinuance or failure to cooperate includes but is not limited to the following circumstances:

(a) The SI refuses to be fingerprinted when required by these rules.

(b) The SI fails to respond within a stated time period to a request for corrections to the application, fingerprints, or provide any other information necessary to conduct a criminal records check and there is not enough information available to make a fitness determination.

(c) The SI withdraws the application, leaves the position prior to completion of the criminal records check, or the Department cannot locate or contact the SI.

(d) The SI is determined to be ineligible for the position for reasons other than the criminal records check.

(2) When the application is closed without a final fitness determination, there is no right to contest the closure.

(3) When a case is closed, the SI shall not be allowed to work, volunteer, be employed, or otherwise perform in the position listed on the Background Check Request form. A closed case applies only to the position in question.

(a) The process for a Department employee's removal from service or dismissal shall adhere to Department-wide Support Services discharge policies, Department of Administrative Services' Human Resource Services Division dismissal polices, and collective bargaining agreements on discharge, as applicable.

(b) For all other SIs, a closed case shall result in immediate dismissal.

(4) The Office of Human Resources or the BCU shall document in writing the reasons for a closed case, and shall provide that information to the SI.

Stat. Auth.: ORS 181.534, 181.537 & 409.050
Stats. Implemented: ORS 181.534, 181.537 & 409.010
Hist.: DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; Suspended by DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0080
Contesting a Final Fitness Determination

(1) An SI may contest a final fitness determination of denied or restricted approval pursuant to OAR 125-007-0300.

(2) If an SI is denied, then the SI may not work, volunteer, be employed, or otherwise perform in positions covered by these rules. An SI appealing a restricted approval may only work under the terms of the restriction during the appeal.

(3) If an adverse outcome is changed at any time during the appeal process, the change does not guarantee employment or placement.

(4) The SI has may represent himself or herself or have legal representation during the appeal process. The SI may not be represented by a lay person. In this rule, the term "SI" shall be considered to include the SI's legal representative.

(5) An SI who is already employed by the Department at the time of the final fitness determination may appeal through applicable personnel rules, policies, and collective bargaining provisions. The SI's decision to do so is an election of remedies as to the rights of the SI with respect to the fitness determination and constitutes a waiver of the contested case process described in this rule.

(6) An SI who wishes to challenge an adverse fitness determination may appeal the determination by requesting a contested case hearing. The appeal process is conducted in accordance with OAR 125-007-0300, ORS 183.411 to 183.497 and the Attorney General's Uniform and Model Rules

of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 to 137-003-0700.

(a) To request a contested case hearing the SI shall complete and sign the Hearing Request form.

(b) The completed and signed form must be received by the Department within the following time lines:

(A) For Department employees and SIs offered employment by the Department, no later than 15 calendar days after the effective date of action listed on the notice of the fitness determination.

(B) For all other SIs, no later than 45 calendar days after the effective date of action listed on the notice of the fitness determination.

(c) If a request for hearing is not timely, the Department shall determine, based on a written statement from the SI and available information, if there is good cause to proceed with the appeal.

(d) The Department may refer an untimely request to OAH for a hearing on the issue of timeliness.

(7) When an SI requests a contested case hearing, the Department may conduct an administrative review before referring the appeal to OAH.

(a) The SI must participate in the administrative review. Participation may include but is not limited to providing additional information or additional documents requested by the Department within a specified amount of time.

(b) The administrative review is not open to the public.

(8) The Department may conduct additional criminal records checks during the appeal process to update or verify the SI's criminal records. If needed, the Department shall amend the notice of fitness determination during the appeal process while still maintaining the original hearing rights and deadlines.

(9) A hearing representative shall represent the Department in contested case hearings. The Department may also use representation through the Department of Justice's Office of the Attorney General.

(a) The administrative law judge shall make a new fitness determination based on the evidence and the contested case hearing record.

(b) The only remedy that may be awarded is a fitness determination that the SI is approved or denied. Under no circumstances shall the Department be required to place an SI in any position, nor shall the Department be required to accept services or enter into a contractual agreement with an SI.

(10) The result of an appeal is a final order.

(a) In the following situations, the notice of fitness determination becomes the final order as if the SI never requested a hearing:

(A) Failure to request a hearing in the time allotted in this rule. No other document shall be issued after the notice of fitness determination.

(B) Withdrawal of the request for hearing at any time during the appeal process.

(b) The Department may make an informal disposition based on the administrative review. The Department shall issue a final order and new notice of fitness determination. If the resulting fitness determination is an adverse outcome, the appeal shall proceed to contested case hearing.

(c) The Department shall issue a dismissal order in the following circumstances:

(A) The SI may withdraw a hearing request verbally or in writing at any time before the issuance of a final order. A dismissal order due to a withdrawal is effective the date the withdrawal is received by the Department or OAH. The SI may cancel the withdrawal in writing within 14 calendar days after the date of withdrawal.

(B) The Department shall dismiss a hearing request when the SI fails to participate in the administrative review. Failure to participate in the administrative review shall result in termination of hearing rights. The order is effective on the due date for participation in the administrative review. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(C) The Department shall dismiss a hearing request when the SI fails to appear at the time and place specified for the contested case hearing. The order is effective on the date scheduled for the hearing. The Department shall review a good cause request to reinstate hearing rights if received in writing by the Department within 14 calendar days.

(d) After a hearing, the administrative law judge shall issue a proposed and final order.

(A) If no written exceptions are received by the Department within 14 calendar days after the service of the proposed and final order, the proposed and final order shall become the final order.

(B) If timely written exceptions to the proposed and final order are received by the Department, the Department's Director or designee shall consider the exceptions and serve a final order, or request a written response or a revised proposed and final order from the administrative law judge.

(11) Final orders, including dismissal and default orders, are subject to reconsideration or rehearing petitions within 60 calendar days after the final order is served, pursuant to OAR 137-003-0675.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200, 183.341 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0090
Record Keeping, Confidentiality

(1) All LEDS reports are confidential and the Department shall maintain the reports in accordance with applicable OSP requirements in ORS chapter 181 and the rules adopted pursuant thereto (see OAR chapter 257, division 15).

(a) LEDS reports may only be shared with approved Department authorized designees if there is a need to know consistent with these rules.

(b) The LEDS report and any photocopies may not be shown or given to the SI.

(2) The results of a national criminal records check provided by the FBI or through OSP are confidential and may not be disseminated by the Department except:

(a) If a fingerprint-based criminal records check was conducted on the SI, the SI shall be provided a copy of the results upon request.

(b) During the contested case hearing, the Department shall provide state and national criminal offender information as exhibits.

(3) All completed criminal records check requests, other criminal records information, and other records collected or developed during the criminal records check process shall be kept confidential and disseminated only on a need-to-know basis.

(4) The Department shall retain and destroy all criminal records check documents pursuant to federal law and records retention schedules published by Oregon State Archives.

Stat. Auth.: ORS 181A.195, 181A.200 & 409.050
Stats. Implemented: ORS 181A.195, 181A.200 & 409.010
Hist.: DHSD 2-2008(Temp), f. & cert. ef. 3-31-08 thru 9-26-08; DHSD 7-2008, f. 8-29-08, cert. ef. 9-1-08; DHSD 9-2009, f. 12-31-09, cert. ef. 1-1-10; DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

407-007-0400
Purpose

(1) The purpose of these rules, OAR 407-007-0400 to 407-007-0460, is to provide for the abuse check of Department of Human Services (Department) employees, volunteers, or individuals offered employment or placement by the Department to determine if they are fit to provide care.

(2) Although criminal records checks may occur concurrently with abuse checks performed under these rules and may share similar processes, the abuse check process is separate from the criminal records checks that may be performed under OAR 407-007-0000 to 407-007-0100.

Stat. Auth.: ORS 409.027 & 409.050
Stats. Implemented: ORS 409.025, 409.027 & 409.050
Hist.: DHSD 8-2009(Temp), f. & cert. ef. 10-1-09 thru 3-29-10; DHSD 2-2010, f. & cert. ef. 3-29-10; Suspended by DHSD 2-2016(Temp), f. & cert. ef.1-14-16 thru 7-11-16

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Department of Human Services, Aging and People with Disabilities and Developmental Disabilities
Chapter 411

Rule Caption: Adult Protective Services Definition of Sexual Abuse and Addition of Mandatory Reporters
Adm. Order No.: APD 24-2015(Temp)
Filed with Sec. of State: 12-16-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-020-0002
Subject: The Department of Human Services (Department) is immediately amending the adult protective services rules in OAR chapter 411, division 020 to comply with provisions of House Bill 2227 and Senate Bill 622. The Department must amend the sexual abuse and mandatory reporter definitions to comply with legislation.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-020-0002
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 020:

(1) "Abuse" means any of the following:

(a) PHYSICAL ABUSE.

(A) Physical abuse includes:

(i) The use of physical force that may result in bodily injury, physical pain, or impairment; or

(ii) Any physical injury to an adult caused by other than accidental means.

(B) For purposes of this section, conduct that may be considered physical abuse includes, but is not limited to:

(i) Acts of violence such as striking (with or without an object), hitting, beating, punching, shoving, shaking, kicking, pinching, choking, or burning; or

(ii) The use of force-feeding or physical punishment.

(C) Physical abuse is presumed to cause physical injury, including pain, to adults in a coma or adults otherwise incapable of expressing injury or pain.

(b) NEGLECT. Neglect including:

(A) Failure to provide the basic care, or services necessary to maintain the health and safety of an adult:

(i) Failure may be active or passive.

(ii) Failure creating a risk of serious harm or results in physical harm, significant emotional harm or unreasonable discomfort, or serious loss of personal dignity.

(iii) The expectation for care may exist as a result of an assumed responsibility or a legal or contractual agreement, including but not limited to, where an individual has a fiduciary responsibility to assure the continuation of necessary care or services.

(B) An adult who in good faith is voluntarily under treatment solely by spiritual means in accordance with the tenets and practices of a recognized church or religious denomination shall, for this reason alone, not be considered subjected to abuse by reason of neglect as defined in these rules.

(c) ABANDONMENT. Abandonment including desertion or willful forsaking of an adult for any period of time by an individual who has assumed responsibility for providing care, when that desertion or forsaking results in harm or places the adult at risk of serious harm.

(d) VERBAL OR EMOTIONAL ABUSE.

(A) Verbal or emotional abuse includes threatening significant physical harm or threatening or causing significant emotional harm to an adult through the use of:

(i) Derogatory or inappropriate names, insults, verbal assaults, profanity, or ridicule; or

(ii) Harassment, coercion, threats, intimidation, humiliation, mental cruelty, or inappropriate sexual comments.

(B) For the purposes of this section:

(i) Conduct that may be considered verbal or emotional abuse includes, but is not limited to, the use of oral, written, or gestured communication that is directed to an adult or within their hearing distance, regardless of their ability to comprehend.

(ii) The emotional harm that may result from verbal or emotional abuse includes, but is not limited to, anguish, distress, fear, unreasonable emotional discomfort, loss of personal dignity, or loss of autonomy.

(e) FINANCIAL EXPLOITATION. Financial exploitation including:

(A) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult;

(B) Alarming an adult by conveying a threat to wrongfully take or appropriate money or property of the adult if the adult reasonably believes that the threat conveyed maybe carried out;

(C) Misappropriating or misusing any money from any account held jointly or singly by an adult; or

(D) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult.

(f) SEXUAL ABUSE. Sexual abuse including:

(A) Sexual contact with a non-consenting adult or with an adult considered incapable of consenting to a sexual act. Consent, for purposes of this definition, means a voluntary agreement or concurrence of wills. Mere failure to object does not, in and of itself, constitute an expression of consent;

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe, threatening, pervasive or inappropriate exposure of an adult to sexually explicit material or language;

(C) Sexual exploitation of an adult;

(D) Any sexual contact between an employee of a facility and an adult residing in the facility unless the two are spouses;

(E) Any sexual contact that is achieved through force, trickery, threat, or coercion; or

(F) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, 163.467, or 163.525 except for incest due to marriage alone.

(g) INVOLUNTARY SECLUSION. Involuntary seclusion of an adult for the convenience of a caregiver or to discipline the adult.

(A) Involuntary seclusion may include:

(i) Confinement or restriction of an adult to his or her room or a specific area; or

(ii) Placing restrictions on an adult's ability to associate, interact, or communicate with other individuals.

(B) In a facility, emergency or short-term, monitored separation from other residents may be permitted if used for a limited period of time when:

(i) Used as part of the care plan after other interventions have been attempted;

(ii) Used as a de-escalating intervention until the facility evaluates the behavior and develops care plan interventions to meet the resident's needs; or

(iii) The resident needs to be secluded from certain areas of the facility when their presence in that specified area poses a risk to health or safety.

(h) WRONGFUL USE OF A PHYSICAL OR CHEMICAL RESTRAINT OF AN ADULT.

(A) A wrongful use of a physical or chemical restraint includes situations where:

(i) A licensed health professional has not conducted a thorough assessment before implementing a licensed physician's prescription for restraint;

(ii) Less restrictive alternatives have not been evaluated before the use of the restraint; or

(iii) The restraint is used for convenience or discipline.

(B) Physical restraints may be permitted if used when a resident's actions present an imminent danger to self or others and only until immediate action is taken by medical, emergency, or police personnel.

(2) "Adult" means an individual who is 18 years of age or older.

(3) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(4) "APD" means "Aging and People with Disabilities".

(5) "APS" means adult protective services as described in these rules.

(6) "APS Risk Management" means the process by which adult protective services continues to maintain ongoing active contact with a reported victim who continues to be at serious risk of harm.

(7) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of service to individuals in a planning and service area.

(8) "At-risk" means there is reason to believe injury, hazard, damage, or loss may occur.

(9) "Basic Care" means care essential to maintain the health and safety needs of an adult, but is not limited to, assistance with medication administration, medical needs, nutrition and supervision for safety as well as activities of daily living including assistance with bathing, dressing, hygiene, eating, mobility and toileting.

(10) "Community-Based Care Facility" means an assisted living facility, residential care facility, adult foster home, or registered room and board facility.

(11) "Conclusion" means:

(a) For the purposes of a facility investigation, a determination by the adult protective services worker whether an incident occurred and, if it did, whether the incident was the result of wrongdoing; and

(b) For the purposes of a community investigation or self-neglect assessment, a determination by the adult protective services worker as to whether an incident occurred and, if it did, whether the incident was the result of wrongdoing or self-neglect.

(12) "Conservatorship" means a court has issued an order appointing and investing an individual with the power and duty of managing the property of another individual.

(13) "Consumer" means the person applying for or eligible for Medicaid home or community-based services.

(14) "Department" means the Department of Human Services (DHS).

(15) "Evidence" means material gathered, examined, or produced during an adult protective services investigation. Evidence includes, but is not limited to, witness statements, documentation, photographs, and relevant physical evidence.

(16) "Financial Institution" has the meaning given that term in ORS 192.583.

(17) "Financial Records" has the meaning given that term in ORS 192.583.

(18) "Guardianship" means a court has issued an order appointing and investing an individual with the power and duty of managing the care, comfort, or maintenance of an incapacitated adult.

(19) "Health Care Provider" has the meaning given that term in ORS 192.556.

(20) "Imminent Danger" means there is reasonable cause to believe an adult's life, physical well-being, or resources are in danger if no intervention is initiated immediately.

(21) "Inconclusive" means that after a careful analysis of the evidence gathered in an investigation, a determination of whether wrongdoing occurred cannot be reached by a preponderance of the evidence.

(22) "Informed Choice" means the individual has the mental capacity, adequate information, and freedom from undue influence to understand the current situation, understand the options available and their likely consequences, be able to reasonably choose from among those options, and communicate that choice.

(23) "Law Enforcement Agency" means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police;

(d) Any district attorney; or

(e) The Oregon Department of Justice.

(24) "Licensed Care Facility" means a facility licensed by the Department, including nursing facilities, assisted living facilities, residential care facilities, and adult foster homes.

(25) "Local Office" means the local service staff of the Department or Area Agency on Aging.

(26) "Mandatory Reporter" for the purpose of these rules, means any public or private official who is required by statute to report suspected abuse or neglect.

(a) If an individual is a mandatory reporter and comes in contact with and has reasonable cause to believe that any individual living in a nursing facility or an older adult in any setting has suffered abuse or neglect, the mandatory reporter must immediately file a report with local law enforcement or an office of the Department.

(b) Definitions of abuse or neglect for these purposes and procedures for investigation are defined in ORS 124.050 to 124.095 or ORS 441.615 to 441.695 and OAR 411-085-0005, 411-085-0360, and 411-085-0370 (Nursing Facility Abuse).

(c) Mandatory reporting is also required if the individual comes into contact with anyone who has abused an older adult or any individual living in a nursing facility.

(d) The public or private officials who are mandatory reporters are:

(A) Physician, psychiatrist, naturopathic physician, osteopathic physician, chiropractor, podiatric physician, physician assistant, or surgeon including any intern or resident;

(B) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide, or employee of an in-home health service;

(C) Employee of the Department of Human Services, community developmental disabilities program, or Area Agency on Aging;

(D) Employee of the Oregon Health Authority, county health department, or community mental health program;

(E) Employee of a nursing facility or an individual who contracts to provide services to a nursing facility;

(F) Peace officer;

(G) Member of the Clergy;

(H) Regulated social worker, licensed professional counselor, or licensed marriage and family therapist;

(I) Physical, speech, or occupational therapist, audiologist, or speech language pathologist;

(J) Senior center employee;

(K) Information and referral or outreach worker;

(L) Firefighter or emergency medical services provider;

(M) Psychologist;

(N) Licensee of an adult foster home or an employee of the licensee;

(O) Attorney;

(P) Dentist;

(Q) Optometrist;

(R) Member of the Legislative Assembly;

(S) Personal support worker;

(T) Home care worker; and

(U) For nursing facilities, all of the above, plus legal counsel, guardian, or family member of the resident.

(27) "Multidisciplinary Team (MDT)" means a county-based investigative and assessment team that coordinates and collaborates for allegations of adult abuse and self-neglect. The team may consist of personnel of law enforcement, the local district attorney office, local Department or Area Agency on Aging offices, community mental health and developmental disability programs, plus advocates for older adults and individuals with disabilities, and individuals specially trained in abuse.

(28) "Multidisciplinary Team (MDT) Member" means an individual or a representative of an agency that is allowed by law and recognized to participate on the multidisciplinary team.

(29) "Older Adult" means any individual 65 years of age or older.

(30) "Physical Disability" means any physical condition or cognitive condition such as brain injury or dementia that significantly interferes with an adult's ability to protect themself from harm or neglect. (See OAR 411-020-0015, Eligibility).

(31) "Protected Health Information" has the meaning given that term in ORS 192.556.

(32) "Relevant" means tending to prove or disprove the allegation at hand.

(33) "Reported Perpetrator (RP)" means the facility, an agent or employee of the facility, or any individual reported to have committed wrongdoing.

(34) "Reported Victim (RV)" means the individual whom wrongdoing or self-neglect is reported to have been committed against.

(35) "Risk Assessment" means the process by which an individual is evaluated for risk of harm and for the physical and cognitive abilities to protect his or her interests and personal safety. The living situation, support system, and other relevant factors are also evaluated to determine the impact on the individual's ability to become or remain safe.

(36) "Risk of Serious Harm" means that without intervention, the individual is likely to incur substantial injury or loss.

(37) "Self-Determination" means an adult's ability to decide his or her own fate or course of action without undue influence.

(38) "Self-Neglect" means the inability of an adult to understand the consequences of his or her actions or inaction when that inability leads to or may lead to harm or endangerment to self or others.

(39) "Services" as used in the definition of abuse includes, but is not limited to, the provision of food, clothing, medicine, housing, medical services, housekeeping, and transportation as well as assistance with bathing or personal hygiene, or any other service essential to the well-being of an adult.

(40) "Substantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is true.

(41) "These Rules" mean the rules in OAR chapter 411, division 020.

(42) "Undue Influence" means the process by which an individual uses his or her role and power to exploit the trust, dependency, and fear of another individual and to deceptively gain control over the decision making of the second individual.

(43) "Unsubstantiated" means that the preponderance (majority) of the evidence gathered and analyzed in an investigation indicates that the allegation is not true.

(44) "Wrongdoing" means:

(a) For the purposes of a facility investigation, an act that violates a licensing or other rule without regard to the intent of the reported perpetrator or the outcome to the reported victim; and

(b) For the purposes of a community investigation, an action or inaction that meets the definition of abuse, without regard to the intent of the reported perpetrator or the outcome to the reported victim.

Stat. Auth.: ORS 410.070, 411.116, 441.637, 443.450, 443.765, & 443.767

Stats. Implemented: ORS 124.050–124.095, 410.020, 410.040, 410.070, 411.116, 441.630 – 441.695, 443.450, 443.500, 443.767, & 2012 OL Ch. 70

Hist.: SSD 5-1994, f. & cert. ef. 11-15-94; SSD 5-1995, f. 5-31-95, cert. ef. 6-1-95; SPD 6-2005, f. 4-29-05, cert. ef. 7-1-05; SPD 10-2006, f. 3-23-06, cert. ef. 4-1-06; SPD 33-2006, f. & cert. ef. 12-21-06; SPD 21-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 8-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 7-2012(Temp), f. & cert. ef. 6-1-12 thru 11-28-12; SPD 15-2012, f. & cert. ef. 11-28-12; APD 37-2014, f. 11-24-14, cert. ef. 1-1-15; APD 24-2015(Temp), f. 12-16-15, cert. ef. 1-1-16 thru 6-28-16

Rule Caption: RE-FILE: DHS — Home and Community-Based (HCB) Services and Settings and Person-Centered Service Planning
Adm. Order No.: APD 25-2015
Filed with Sec. of State: 12-28-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 411-004-0020
Subject: To implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS), the Department of Human Services (Department) is proposing to adopt rules in OAR chapter 411, division 004 to provide a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The proposed rules ensure individuals receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Seek employment and work in competitive integrated employment settings;
- Engage in community life;
- Control personal resources; and
- Receive services in the community.

The Department is amending 411-004-0020 to add in a sentence to assure providers they will not be charged sanctions or penalties, in most circumstances, until after September 1, 2018.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-004-0020
Home and Community-Based Services and Settings

(1) Residential and non-residential HCB settings must have all of the following qualities:

(a) The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

(A) Seek employment and work in competitive integrated employment settings;

(B) Engage in greater community life;

(C) Control personal resources; and

(D) Receive services in the greater community.

(b) The residential or non-residential setting is selected by an individual or, as applicable, the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting. The setting options must be:

(A) Identified and documented in the person-centered service plan for the individual;

(B) Based on the needs and preferences of the individual;

(C) For residential settings, based on the available resources of the individual for room and board; and

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the person-centered service plan.

(c) The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint.

(d) The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact.

(e) The setting facilitates individual choice regarding services and supports, and who provides the services and supports.

(2) Provider owned, controlled, or operated residential settings must have all of the following qualities:

(a) The setting meets all the qualities in section (1) of this rule.

(b) The setting is physically accessible to an individual.

(c) The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement. The individual has, at a minimum, the same responsibilities and protections from an eviction that a tenant has under the landlord tenant law of the state, county, city, or other designated entity. For a setting in which landlord tenant laws do not apply, the Residency Agreement must provide protections for the individual and address eviction and appeal processes. The eviction and appeal processes must be substantially equivalent to the processes provided under landlord tenant laws.

(d) Each individual has privacy in his or her own unit.

(e) Units must have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit.

(f) Individuals sharing units must have a choice of roommates.

(g) Individuals must have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(h) Each individual may have visitors of his or her choosing at any time.

(i) Each individual has the freedom and support to control his or her own schedule and activities.

(j) Each individual has the freedom and support to have access to food at any time.

(3) The qualities of an HCB setting described in sections (2)(d) to (2)(j) of this rule apply to children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities. Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing HCBS, and residing in provider owned, controlled, or operated residential settings, shall be addressed through a person-centered service planning process and documented in the person-centered service plan for the child. Limitations which deviate from and are more restrictive than what is typical for children of the same age without disabilities, must comply with OAR 411-004-0040.

(4) When conditions under sections (2)(d) to (2)(j) of this rule may not be met due to threats to the health and safety of the individual or others, the person-centered service plan may apply an individually-based limitation with the consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(5) Providers initially licensed, certified, or endorsed by DHS or OHA on or after January 1, 2016 must meet the requirements in this rule prior to being licensed, certified, or endorsed.

(6) Providers licensed, certified, or endorsed prior to January 1, 2016 must make measurable progress toward compliance with these rules and be in full compliance with these rules by September 1, 2018. The Department will not issue sanctions and penalties on these OAR 411 Division 4 rules until September 1, 2018 if a provider is making measureable progress towards compliance.

(7) HCB settings do not include the following:

(a) A nursing facility;

(b) An institution as outlined in ORS 426.010;

(c) An intermediate care facility for individuals with intellectual disabilities;

(d) A hospital providing long-term care services; or

(e) Any other setting that has the qualities of an institution.

(A) The following settings are presumed to have the qualities of an institution:

(i) A setting that is located in a building that is also a publicly or privately operated facility that provides inpatient institutional treatment;

(ii) A setting that is located in a building on the grounds of, or immediately adjacent to, a public institution; or

(iii) A setting that has the effect of isolating individuals receiving HCBS from the greater community.

(B) In addition to the qualities under subsection (A) above, non-residential settings that isolate individuals receiving HCBS from the greater community and are presumed to have the qualities of an institution also include:

(i) Facility-based prevocational settings that do not, at minimum, provide interaction with the general public; or

(ii) Facility or site-based non-residential day service settings that do not, at minimum, facilitate going out into the greater community.

(C) A setting that is presumed to have the qualities of an institution, as described in this section, will be subject to a heightened scrutiny process. If a setting has indicators that lead the State to question their HCBS status, the setting will be given the opportunity to rebut that presumption by submitting evidence of their compliance with these regulations. Based on the evidence, the State may determine that a setting has not overcome the presumption and HCBS funding will not be utilized. If the State determines that a setting has provided adequate evidence to rebut the presumption that it has the qualities of an institution, the State will submit the evidence to

CMS after a public comment period. CMS determines, based on information presented by DHS, OHA, or other parties, whether the setting is home and community-based or is institutional in nature. If CMS determines that a setting has not overcome the presumption and is institutional in nature, HCBS funding will not be utilized.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 23-2015,f. 12-15-15, cert. ef. 1-1-16; APD 25-2015, f. 12-28-15, cert. ef. 1-1-16

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Rule Caption: Residential Care and Assisted Living Facilities
Adm. Order No.: APD 26-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 411-054-0038
Rules Amended: 411-054-0000, 411-054-0005, 411-054-0012, 411-054-0025, 411-054-0027, 411-054-0036
Subject: The Department of Human Services (Department) is immediately amending OAR chapter 411, division 054 and adopting a new rule to add in requirements surrounding individually-based limitations for residential care and assisted living facilities to align the rules with the newly adopted rules in 411-004. The rules in 411-004 provide a foundation of standards to support the network of Medicaid-funded and private pay residential Home and Community-Based Services (HCBS), Home and Community-Based (HCB) settings, and person-centered service planning for individuals receiving HCBS in Oregon.

The amended rules ensure individuals in residential care and assisted living and facilities receive HCBS in settings that are integrated in and support the same degree of access to the greater community as people not receiving HCBS, including opportunities for individuals enrolled in or utilizing HCBS to:

- Engage in community life;
- Control personal resources; and
- Receive services in the community.

The Department needs to update language in 411-054-0012 (Market Study language) to comply with H.B. 2413 (2015) and 411-054-0025 (Criminal Background language) to comply with H.B. 4151 (2015).

The Department will update the rules to match current Department terminology, and perform minor grammar, punctuation, formatting, and housekeeping changes.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-054-0000
Purpose

(1) The purpose of these rules is to establish standards for assisted living and residential care facilities that promote the availability of a wide range of individualized services for elderly and persons with disabilities, in a homelike environment. The standards are designed to enhance the dignity, independence, individuality, and decision making ability of the resident in a safe and secure environment while addressing the needs of the resident in a manner that supports and enables the individual to maximize abilities to function at the highest level possible.

(2) Residential care and assisted living facilities are also required to adhere to Home and Community-Based Services, OAR 411-004. For purposes of these rules, all residential care and assisted living facilities are considered home and community-based care settings and therefore will be referred to as "facility."

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0005
Definitions

For the purpose of these rules, the following definitions apply:

(1) "Abuse" means abuse as defined in OAR 411-020-0002 (Adult Protective Services).

(2) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, health, and safety. Activities consist of eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), cognition, and behavior.

(3) "Acute Sexual Assault" means any non-consensual or unwanted sexual contact that warrants medical treatment or forensic collection.

(4) "Administrator" means the individual who is designated by the licensee that is responsible for the daily operation and maintenance of the facility as described in OAR 411-054-0065.

(5) "Advance Directive" means a document that contains a health care instruction or a power of attorney for health care.

(6) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(7) "APD" means "Aging and People with Disabilities".

(8) "Applicant" means the individual, individuals, or entity, required to complete a facility application for license.

(a) Except as set forth in OAR 411-054-0013(1)(b), applicant includes a sole proprietor, each partner in a partnership, and each member with a 10 percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(b) Except as set forth in OAR 411-054-0013(1)(b), for those who serve the Medicaid population, applicant includes a sole proprietor, each partner in a partnership, and each member with a five percent or more ownership interest in a limited liability company, corporation, or entity that:

(A) Owns the residential care or assisted living facility business; or

(B) Operates the residential care or assisted living facility on behalf of the facility business owner.

(9) "Area Agency on Aging (AAA)" as defined in ORS 410.040 means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or individuals with disabilities in a planning and service area. For the purpose of these rules, the term Area Agency on Aging is inclusive of both Type A and B Area Agencies on Aging that contract with the Department to perform specific activities in relation to residential care and assisted living facilities including:

(a) Conducting inspections and investigations regarding protective service, abuse, and neglect.

(b) Monitoring.

(c) Making recommendations to the Department regarding facility license approval, denial, revocation, suspension, non-renewal, and civil penalties.

(10) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six or more seniors and adult individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence.

(11) "Building Codes" are comprised of the set of specialty codes, including the Oregon Structural Specialty Code (OSSC), Oregon Mechanical Specialty Code (OMSC), Oregon Electrical Specialty Code (OESC), Oregon Plumbing Specialty Code (OPSC), and their reference codes and standards.

(12) "Caregiver" means a facility employee who is trained in accordance with OAR 411-054-0070 to provide personal care services to residents. The employee may be either a direct care staff or universal worker.

(13) "Change in Use" means altering the purpose of an existing room, within the facility, that requires structural changes.

(14) "Change of Condition - Short-Term" means a change in the resident's health or functioning, that is expected to resolve or be reversed with minimal intervention, or is an established, predictable, cyclical pattern associated with a previously diagnosed condition.

(15) "Change of Condition - Significant" means a major deviation from the most recent evaluation, that may affect multiple areas of functioning or health, that is not expected to be short-term, and imposes significant risk to the resident. Examples of significant change of condition include, but are not limited to:

(a) Broken bones;

(b) Stroke, heart attack, or other acute illness or condition onset;

(c) Unmanaged high blood sugar levels;

(d) Uncontrolled pain;

(e) Fast decline in activities of daily living;

(f) Significant unplanned weight loss;

(g) Pattern of refusing to eat;

(h) Level of consciousness change; and

(i) Pressure ulcers (stage 2 or greater).

(16) "Choice" means a resident has viable options that enable the resident to exercise greater control over his or her life. Choice is supported by the provision of sufficient private and common space within the facility that allows residents to select where and how to spend time and receive personal assistance.

(17) "CMS" means the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services.

(18) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(19) "Department" means the Department of Human Services (DHS).

(20) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person, who is:

(A) Chosen by the individual or, as applicable, the legal representative;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.

(D) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(b) An individual or the legal representative of the individual is not required to appoint a designated representative.

(21) "Dignity" means providing support in such a way as to validate the self-worth of the individual. Dignity is supported by creating an environment that allows personal assistance to be provided in privacy and by delivering services in a manner that shows courtesy and respect.

(22) "Direct Care Staff" means a facility employee whose primary responsibility is to provide personal care services to residents. These personal care services may include:

(a) Medication administration.

(b) Resident-focused activities.

(c) Assistance with activities of daily living.

(d) Supervision and support of residents.

(e) Serving meals, but not meal preparation.

(23) "Directly Supervised" means a qualified staff member maintains visual contact with the supervised staff.

(24) "Director" means the Director of the Department's Licensing and Regulatory Oversight, or that individual's designee. The term "Director" is synonymous with "Assistant Director".

(25) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made, that renders the licensee unable to operate the facility or makes the facility uninhabitable.

(26) "Disclosure" means the written information the facility is required to provide to consumers to enhance the understanding of facility costs, services, and operations.

(27) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(28) "Exception" means a written variance granted by the Department from a regulation or provision of these rules.

(29) "Facility" means the residential care or assisted living facility licensee and the operations, policies, procedures, and employees of the residential care or assisted living facility. For purposes of HCBS, "facility" can also mean "provider."

(30) "FPS" means the Facilities, Planning, and Safety Program within the Public Health Division of the Oregon Health Authority (OHA).

(31) "HCB" means "Home and Community-Based".

(32) "HCBS" means "Home and Community-Based Services." HCBS are services provided in the home or community of an individual. DHS, Office of Licensing and Regulatory Oversight and OHA provide oversight and license, certify, and endorse programs, settings, or settings designated as HCB.

(33) "Homelike Environment" means a living environment that creates an atmosphere supportive of the resident's preferred lifestyle. Homelike environment is also supported by the use of residential building materials and furnishings.

(34) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interests.

(35) "Independence" means supporting resident capabilities and facilitating the use of those abilities. Creating barrier free structures and careful use of assistive devices supports independence.

(36) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(37) "Individual" means a person enrolled in or utilizing HCBS.

(38) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020(2)(d) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual, or as applicable the legal representative, as described in OAR 411-004-0040.

(39) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to an individual, and, as applicable, the legal representative of the individual, in a manner that the individual, and, as applicable, the legal or designated representative, comprehends; and

(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, prior to implementation of the initial or updated person-centered service plan or any individually-based limitation.

(40) "Individuality" means recognizing variability in residents' needs and preferences and having flexibility to organize services in response to different needs and preferences.

(41) "Licensed Nurse" means an Oregon licensed practical or registered nurse.

(42) "Licensee" means the entity that owns the residential care or assisted living facility business, and to whom an assisted living or residential care facility license has been issued.

(43) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(b) For an individual 18 years of age and older, a guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

(44) "Major Alteration":

(a) Means:

(A) Any structural change to the foundation, floor, roof, exterior, or load bearing wall of a building;

(B) The addition of floor area to an existing building; or

(C) The modification of an existing building that results in a change in use where such modification affects resident services or safety.

(b) Does not include, cosmetic upgrades to the interior or exterior of an existing building (for example: changes to wall finishes, floor rings, or casework).

(45) "Management" or "Operator" means possessing the right to exercise operational or management control over, or directly or indirectly conduct, the day-to-day operation of a facility.

(46) "Modified Special Diet" means a diet ordered by a physician or other licensed health care professional that may be required to treat a medical condition (for example: heart disease or diabetes).

(a) Modified special diets include, but are not limited to:

(A) Small frequent meals;

(B) No added salt;

(C) Reduced or no added sugar; and

(D) Simple textural modifications.

(b) Medically complex diets are not included.

(47) "New Construction" means:

(a) A new building.

(b) An existing building or part of a building that is not currently licensed.

(c) A major alteration to an existing building.

(d) Additions, conversions, renovations, or remodeling of existing buildings.

(48) "Nursing Care" means the practice of nursing as governed by ORS Chapter 678 and OAR chapter 851.

(49) "OHA" means the Oregon Health Authority.

(50) "Owner" means an individual with an ownership interest.

(51) "Ownership Interest" means the possession of equity in the capital, the stock, or the profits of an entity.

(52) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030.

(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.

(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.

(53) "Person-Centered Service Plan Coordinator" means a:

(a) Resident's case manager;

(b) Person of the individual's choice for individuals who pay privately; or

(c) Person designated by DHS to provide case management services or person-centered service planning for and with individuals.

(54) "Personal Incidental Funds (PIF)" means the monthly amount allowed each Medicaid resident for personal incidental needs. For purposes of this definition, personal incidental funds include monthly payments, as allowed, and previously accumulated resident savings.

(55) "Privacy" means a specific area or time over which the resident maintains a large degree of control. Privacy is supported with services that are delivered with respect for the resident's civil rights.

(56) "Provider" means any person or entity providing HCBS.

(57) "P.R.N." means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(58) "Psychoactive Medications" mean medications used to alter mood, level of anxiety, behavior, or cognitive processes. Psychoactive medications include antidepressants, anti-psychotics, sedatives, hypnotics, and anti-anxiety medications.

(59) "Remodel" means a renovation or conversion of a building that requires a building permit and meets the criteria for review by the Facilities Planning and Safety Program as described in OAR 333-675-0000.

(60) "Renovate" means to restore to good condition or to repair.

(61) "Residency Agreement" means the written, legally enforceable agreement between a facility and an individual, or legal representative receiving services in a residential setting.

(62) "Resident" means any individual who is receiving room, board, care, and services on a 24-hour basis in a residential care or assisted living facility for compensation.

(63) "Residential Care Facility (RCF)" means a building, complex, or distinct part thereof, consisting of shared or individual living units in a homelike surrounding, where six or more seniors and adult individuals with disabilities may reside. The residential care facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, individuality, and independence.

(64) "Restraint" means any physical device the resident cannot manipulate that is used to restrict movement or normal access to the resident's body.

(65) "Retaliation" means to threaten, intimidate, or take an action that is detrimental to an individual (for example, harassment, abuse, or coercion).

(66) "Risk Agreement" means a process where a resident's high-risk behavior or choices are reviewed with the resident. Alternatives to and consequences of the behavior or choices are explained to the resident and the resident's decision to modify behavior or accept the consequences is documented.

(67) "Service Plan" means a written, individualized plan for services, developed by a service planning team and the resident or the resident's legal representative, that reflects the resident's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services.

(68) "Service Planning Team" means two or more individuals, as set forth in OAR 411-054-0036, that assist the resident in determining what services and care are needed, preferred, and may be provided to the resident.

(69) "Services" mean supervision or assistance provided in support of a resident's needs, preferences, and comfort, including health care and activities of daily living, that help develop, increase, maintain, or maximize the resident's level of independent, psychosocial, and physical functioning.

(70) "Subject Individual" means any individual 16 years of age or older on whom the Department may conduct a background check as defined in OAR 407-007-0210 and from whom the Department may require fingerprints for the purpose of conducting a national background check.

(a) For the purpose of these rules, subject individual includes:

(A) All applicants, licensees, and operators of a residential care or assisted living facility;

(B) All individuals employed or receiving training in an assisted living or residential care facility; and

(C) Volunteers, if allowed unsupervised access to residents.

(b) For the purpose of these rules, subject individual does not apply to:

(A) Residents and visitors of residents; or

(B) Individuals that provide services to residents who are employed by a private business not regulated by the Department.

(71) "Supportive Device" means a device that may have restraining qualities that supports and improves a resident's physical functioning.

(72) "These Rules" mean the rules in OAR chapter 411, division 054.

(73) "Underserved" means services are significantly unavailable within the service area in a comparable setting for:

(a) The general public.

(b) A specific population, for example, residents with dementia or traumatic brain injury.

(74) "Unit" means the personal and sleeping space of an individual receiving services in a RCF or ALF setting, as agreed to in the Residency Agreement.

(75) "Universal Worker" means a facility employee whose assignments include other tasks (for example, housekeeping, laundry, or food service) in addition to providing direct resident services. Universal worker does not include administrators, clerical or administrative staff, building maintenance staff, or licensed nurses who provide services as specified in OAR 411-054-0034.

Stat. Auth.: ORS 410.070 & 443.450

Stats. Implemented: ORS 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11; SPD 23-2011(Temp), f. & cert. ef. 11-10-11 thru 5-7-12; SPD 4-2012, f. 4-30-12, cert. ef. 5-1-12; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0012

Requirements for New Construction or Initial Licensure

(1) An applicant requesting approval of a potential license for new construction or licensing of an existing building that is not operating as a licensed facility, must communicate with the Department before submitting a letter of intent as described in section (3) of this rule.

(2) Before beginning new construction of a building, or purchase of an existing building with intent to request a license, the applicant must provide the following information for consideration by the Department for a potential license:

(a) Demonstrate a past history, if any, of substantial compliance with all applicable state and local laws, rules, codes, ordinances, and permit requirements in Oregon, and the ability to deliver quality services to citizens of Oregon; and

(b) Provide a letter of intent as set forth in section (3) of this rule.

(3) LETTER OF INTENT. Before applying for a building permit, a prospective applicant, with intent to build or operate a facility, must submit to the Department a letter of intent that includes the following:

(a) Identification of the potential applicant.

(b) Identification of the city and street address of the intended facility.

(c) Intended facility type (for example, RCF, ALF, or memory care), the intended number of units, and maximum resident capacity.

(d) Statement of whether the applicant is willing to provide care and services for an underserved population and a description of any underserved population the applicant is willing to serve.

(e) Indication of whether the applicant is willing to provide services through the state medical assistance program.

(f) Identification of operations within Oregon or within other states that provide a history of the applicant's ability to serve the intended population.

(g) An independent market analysis completed by a third party professional that meets the requirements of section (4) of this rule.

(4) MARKET ANALYSIS. The applicant must submit a current market analysis to the Department before applying for a building permit. A market analysis is not required for change of owner applicants of existing licensed buildings. The market analysis must include:

(a) A description of the intended population to be served, including underserved populations and those eligible to receive services through the state medical assistance program, as applicable.

(b) A current demographic overview of the area to be served.

(c) A description of the area and regional economy and the effect on the market for the project.

(d) Identification of the number of individuals in the area to be served who are potential residents.

(e) A description of available amenities (for example, transportation, hospital, shopping center, or traffic conditions).

(f) A description of the extent, types, and availability of existing and proposed facilities, as described in ORS 443.400 to 443.455, located in the area to be served.

(g) The rate of occupancy, including waiting lists, for existing and recently completed developments competing for the same market segment.

(5) The Department shall issue a written decision of a potential license within 60 days of receiving all required information from the applicant.

(a) If the applicant is dissatisfied with the decision of the Department, the applicant may request a contested case hearing in writing within 14 calendar days from the date of the decision.

(b) The contested case hearing shall be in accordance with ORS chapter 183.

(6) Before issuing a license, the Department shall consider the applicant's stated intentions and compliance with the requirements of this rule and all structural and other licensing requirements as stated in these rules.

(7) BUILDING DRAWINGS. After the letter of intent has been submitted to the Department, one set of building drawings and specifications must be submitted to FPS and must comply with OAR chapter 333, division 675.

(a) Building drawings must be submitted to FPS:

(A) Before beginning construction of any new building;

(B) Before beginning construction of any addition to an existing building;

(C) Before beginning any remodeling, modification, or conversion of an existing building that requires a building permit; or

(D) After application for an initial license of a facility not previously licensed under this rule.

(b) Drawings must comply with the building codes and the Oregon Fire Code (OFC) as required for the occupancy classification and construction type.

(c) Drawings submitted for a licensed assisted living or residential facility must be prepared by and bear the stamp of an Oregon licensed architect or engineer.

(8) 60 DAYS BEFORE LICENSURE. At least 60 days before anticipated licensure, the applicant must submit to the Department:

(a) A completed application form with the required fee.

(b) A copy of the facility's written rental agreements.

(c) Disclosure information.

(d) Facility policies and procedures to ensure the facility's administrative staff, personnel, and resident care operations are conducted in compliance with these rules.

(9) 30 DAYS BEFORE LICENSURE. 30 days before anticipated licensure the applicant must submit:

(a) To the Department, a completed and signed Administrator Reference Sheet that reflects the qualifications and training of the individual designated as facility administrator and a background check request.

(b) To FPS, a completed and signed Project Substantial Completion Notice that attests substantial completion of the building project and requests the scheduling of an onsite licensing inspection.

(10) TWO-DAYS BEFORE LICENSURE. At least two working days before the scheduled onsite licensing inspection of the facility, the applicant must submit, to the Department and FPS, a completed and signed Project Completion/Inspection Checklist that confirms the building project is complete and fully in compliance with these rules.

(a) The scheduled, onsite licensing inspection may not be conducted until the Project Completion/Inspection Checklist has been received by both FPS and the Department.

(b) The onsite licensing inspection may be rescheduled at the Department's convenience if the scheduled, onsite licensing inspection reveals the building is not in compliance with these rules as attested to on the Project Completion/Inspection Checklist.

(11) CERTIFICATE OF OCCUPANCY. The applicant must submit to the Department and FPS, a copy of the Certificate of Occupancy issued by the building codes agency having jurisdiction that indicates the intended occupancy classification and construction type.

(12) CONFIRMATION OF LICENSURE. The applicant, before admitting any resident into the facility, must receive a written confirmation of licensure issued by the Department.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455 & 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 16-2008, f. 12-31-08, cert. ef. 1-1-09; SPD 24-2010(Temp), f. & cert. ef. 10-5-10 thru 4-2-11; SPD 7-2011, f. 3-31-11, cert. ef. 4-1-11; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 1-2015, f. 1-14-15, cert. ef. 1-15-15; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0025
Facility Administration

(1) FACILITY OPERATION.

(a) The licensee is responsible for the operation of the facility and the quality of services rendered in the facility.

(b) The licensee is responsible for the supervision, training, and overall conduct of staff when staff are acting within the scope of his or her employment duties.

(c) The licensee is responsible for ensuring that the facility complies with the tuberculosis screening recommendations in OAR 333-019-0041.

(d) The licensee is responsible for obtaining background checks on all subject individuals.

(2) BACKGROUND CHECK REQUIREMENTS

(a) Background checks must be submitted to the Department for a criminal fitness determination on all subject individuals in accordance with OAR chapter 407-007-0200 to 407-007-0370, and 407-007-0600 to 0640, including before a subject individual's change in position.

(A) On or after July 28, 2009, no individual may be a licensee, or employed in any capacity in a facility, who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(B) Subject individuals who are employees and hired prior to July 28, 2009 are exempt from subsection (a) of this section provided that the employee remains in the same position working for the same employer after July 28, 2009. This exemption is not applicable to licensees.

(C) Background checks are to be completed every two years on all subject individuals.

(b) PORTABILITY OF BACKGROUND CHECK APPROVAL. A subject individual may be approved to work in multiple facilities under the same operational entity. The Department's Background Check Request form must be completed by the subject individual to show intent to work at various facilities.

(3) EMPLOYMENT APPLICATION. An application for employment in any capacity at a facility must include a question asking whether the applicant has been found to have committed abuse. The licensee must check all potential employees against the Oregon State Board of Nursing (Board) and inquire whether the individual is licensed or certified by the Board and whether there has been any disciplinary action by the Board against the individual or any substantiated abuse findings against a nursing assistant.

(4) Reasonable precautions must be exercised against any condition that may threaten the health, safety, or welfare of residents.

(5) REQUIRED POSTINGS. Required postings must be posted in a routinely accessible and conspicuous location to residents and visitors and must be available for inspection at all times. The licensee is responsible for posting the following:

(a) Facility license.

(b) The name of the administrator or designee in charge. The designee in charge must be posted by shift or whenever the administrator is out of the facility.

(c) The current facility staffing plan.

(d) A copy of the most recent re-licensure survey, including all revisits and plans of correction as applicable.

(e) The Ombudsman Notification Poster.

(f) Other notices relevant to residents or visitors required by state or federal law.

(6) NOTIFICATION. The facility must notify the Department's Central Office immediately by telephone, fax, or email, (if telephone communication is used the facility must follow-up within 72 hours by written or electronic confirmation) of the following:

(a) Any change of the administrator of record.

(b) Severe interruption of physical plant services where the health or safety of residents is endangered, such as the provision of heat, light, power, water, or food.

(c) Occurrence of epidemic disease in the facility. The facility must also notify the Local Public Health Authority as applicable.

(d) Facility fire or any catastrophic event that requires residents to be evacuated from the facility.

(e) Unusual resident death or suicide.

(f) A resident who has eloped from the facility and has not been found within 24 hours.

(7) POLICIES AND PROCEDURES. The facility must develop and implement written policies and procedures that promote high quality services, health and safety for residents, and incorporate the community-based care principles of individuality, independence, dignity, privacy, choice, and a homelike environment. The facility must develop and implement:

(a) A policy on the possession of firearms and ammunition within the facility. The policy must be disclosed in writing and by one other means of communication commonly used by the resident or potential resident in his or her daily living.

(b) A written policy that prohibits sexual relations between any facility employee and a resident who did not have a pre-existing relationship.

(c) Effective methods of responding to and resolving resident complaints.

(d) All additional requirements for written policies and procedures as established in OAR 411-054-0012 (Requirements for New Construction or Initial Licensure), 411-054-0040 (Change of Condition and Monitoring), 411-054-0045 (Resident Health Services), and 411-054-0085 (Refunds and Financial Management).

(e) A policy on smoking.

(A) The smoking policy must be in accordance with:

(i) The Oregon Indoor Clean Air Act, ORS 433.835 to 433.875;

(ii) The rules in OAR chapter 333, division 015; and

(iii) Any other applicable state and local laws.

(B) The facility may designate itself as non-smoking.

(f) A policy for the referral of residents who may be victims of acute sexual assault to the nearest trained sexual assault examiner. The policy must include information regarding the collection of medical and forensic evidence that must be obtained within 86 hours of the incident.

(g) A policy on facility employees not receiving gifts or money from residents.

(8) RECORDS. The facility must ensure the preparation, completeness, accuracy, and preservation of resident records. (a) The facility must develop and implement a written policy that prohibits the falsification of records.

(a) The facility must develop and implement a written policy that prohibits the falsification of records.

(b) Resident records must be kept for a minimum of three years after the resident is no longer in the facility.

(c) Upon closure of a facility, the licensee must provide the Department with written notification of the location of all records.

(9) QUALITY IMPROVEMENT PROGRAM. The facility must develop and conduct an ongoing quality improvement program that evaluates services, resident outcomes, and resident satisfaction.

(10) DISCLOSURE — RESIDENCY AGREEMENT. The facility must provide a Department designated Uniform Disclosure Statement (form SDS 9098A) to each individual who requests information about the facility. The residency agreement and the disclosure information described in subsection (a) of this section must be provided to all potential residents prior to move-in. All disclosure information and residency agreements must be written in compliance with these rules.

(a) The residency agreement and the following disclosure information must be reviewed by the Department before distribution and must include the following:

(A) Terms of occupancy, including policy on the possession of firearms and ammunition.

(B) Payment provisions including the basic rental rate and what it includes, cost of additional services, billing method, payment system and due dates, deposits, and non-refundable fees, if applicable.

(C) The method for evaluating a resident's service needs and assessing the costs for the services provided.

(D) Policy for increases, additions, or changes to the rate structure. The disclosure must address the minimum requirement of 30 days prior written notice of any facility-wide increases or changes and the requirement for immediate written notice for individual resident rate changes that occur as a result of changes in the service plan.

(E) Refund and proration conditions.

(F) A description of the scope of resident services available according to OAR 411-054-0030.

(G) A description of the service planning process.

(H) Additional available services.

(I) The philosophy of how health care and ADL services are provided to the resident.

(J) Resident rights and responsibilities.

(K) The facility's system for packaging medications including the option for residents to choose a pharmacy that meets the requirements of ORS 443.437.

(L) Criteria, actions, circumstances, or conditions that may result.

(M) Resident rights pertaining to notification of involuntary moveout.

(N) Notice that the Department has the authority to examine resident records as part of the evaluation of the facility.

(O) The facility's staffing plan.

(b) The facility may not include any provision in the residency agreement or disclosure information that is in conflict with these rules and may not ask or require a resident to waive any of the resident's rights or the facility's liability for negligence.

(c) The facility must retain a copy of the original and any subsequent signed and dated residency agreements and must provide copies to the resident or to the resident's designated representative.

(d) The facility must give residents 30 days prior written notice of any additions or changes to the residency agreement. Changes to the residency agreement must be faxed or mailed to the Department before distribution.

Stat. Auth.: ORS 181.534, 410.070, 443.004 & 443.450

Stats. Implemented: ORS 181.534, 443.004, 443.400 - 443.455 & 443.991

Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 13-2009, f. 9-30-09, cert. ef. 10-1-09; SPD 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 1-2010(Temp), f. & cert. ef. 3-11-10 thru 6-30-10; SPD 10-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0027

Resident Rights and Protections

(1) The facility must implement a residents' Bill of Rights. Each resident and the resident's designated representative, if appropriate, must be given a copy of the resident's rights and responsibilities prior to moving into the facility. The Bill of Rights must state that residents have the right:

(a) To be treated with dignity and respect.

(b) To be given informed choice and opportunity to select or refuse service and to accept responsibility for the consequences.

(c) To participate in the development of their initial service plan and any revisions or updates at the time those changes are made.

(d) To receive information about the method for evaluating their service needs and assessing costs for the services provided.

(e) To exercise individual rights that do not infringe upon the rights or safety of others.

(f) To be free from neglect, financial exploitation, verbal, mental, physical, or sexual abuse.

(g) To receive services in a manner that protects privacy and dignity.

(h) To have prompt access to review all of their records and to purchase photocopies. Photocopied records must be promptly provided, but in no case require more than two business days (excluding Saturday, Sunday, and holidays).

(i) To have medical and other records kept confidential except as otherwise provided by law.

(j) To associate and communicate privately with any individual of choice, to send and receive personal mail unopened, and to have reasonable access to the private use of a telephone.

(k) To be free from physical restraints and inappropriate use of psychoactive medications.

(l) To manage personal financial affairs unless legally restricted.

(m) To have access to, and participate in, social activities.

(n) To be encouraged and assisted to exercise rights as a citizen.

(o) To be free of any written contract or agreement language with the facility that purports to waive their rights or the facility's liability for negligence.

(p) To voice grievances and suggest changes in policies and services to either staff or outside representatives without fear of retaliation.

(q) To be free of retaliation after they have exercised their rights provided by law or rule.

(r) To have a safe and homelike environment.

(s) To be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(t) To receive proper notification if requested to move out of the facility, and to be required to move out only for reasons stated in OAR 411-054-0080 (Involuntary Move-out Criteria) and have the opportunity for an administrative hearing, if applicable.

(2) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the Agreement must include the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which must not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person centered service plan coordinator, which includes the right to:

(a) Live under a legally enforceable residency agreement;

(b) The freedom and support to access food at any time;

(c) To have visitors of the resident's choosing at any time;

(d) Choose a roommate when sharing a bedroom;

(e) Furnish and decorate the resident's bedroom according to the Residency Agreement;

(f) The freedom and support to control the resident's schedule and activities;

(3) Licensees and facility personnel may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident, as follows, parent, child, brother, sister, grandparent, grandchild, aunt or uncle, or niece or nephew. An owner, administrator, or employee may act as a representative payee for the resident or serve in other roles as provided by law.

(4) Licensees and facility personnel may not spend resident funds without the resident's consent.

(a) If the resident is not capable of consenting, the resident's representative must give consent.

(b) If the resident has no representative and is not capable of consenting, licensees and facility personnel must follow the requirements described in OAR 411-054-0085 and may not spend resident funds for items or services that are not for the exclusive benefit of the resident.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; SPD 11-2012, f. 8-31-12, cert. ef. 9-1-12; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0036
Service Plan — General

(1) If the resident has a Person-Centered Service Plan pursuant to 411-004-0030, the facility must incorporate all elements identified in the person-centered service plan into the resident's service plan.

(2) SERVICE PLAN. The service plan must reflect the resident's needs as identified in the evaluation and include resident preferences that support the principles of dignity, privacy, choice, individuality, and independence.

(a) The service plan must be completed:

(A) Prior to resident move-in, with updates and changes as appropriate within the first 30-days; and

(B) Following quarterly evaluations.

(b) The service plan must be readily available to staff and provide clear direction regarding the delivery of services.

(c) The service plan must include a written description of who will provide the services and what, when, how and how often the services will be provided.

(d) Changes and entries made to the service plan must be dated and initialed.

(e) When the resident experiences a significant change of condition the service plan must be reviewed and updated as needed.

(f) A copy of the service plan, including each update, must be offered to the resident or to the resident's legal representative.

(g) The facility administrator is responsible for ensuring the implementation of services.

(3) SERVICE PLAN REQUIREMENTS BEFORE MOVE-IN.

(a) Based on the resident evaluation performed before move-in, an initial service plan must be developed before move-in that reflects the identified needs and preferences of the resident.

(b) The initial service plan must be reviewed within 30-days of move-in to ensure that any changes made to the plan during the initial 30-days, accurately reflect the resident's needs and preferences.

(c) Staff must document and date adjustments or changes as applicable.

(4) QUARTERLY SERVICE PLAN REQUIREMENTS.

(a) Service plans must be completed quarterly after the resident moves into the facility.

(b) The quarterly evaluation is the basis of the resident's quarterly service plan.

(c) If the resident's service plan is revised and updated at the quarterly review, initialed, changes must be dated, and prior historical information must be maintained.

(5) SERVICE PLANNING TEAM. The service plan must be developed by a Service Planning Team that consists of the resident, the resident's legal representative, if applicable, any person of the resident's choice, the facility administrator or designee and at least one other staff person who is familiar with, or who will provide services to the resident. Involved family members and case managers must be notified in advance of the service-planning meeting.

(a) As applicable, the Service Planning Team must also include:

(A) Local APD or AAA case managers and family invited by the resident, as available.

(B) A licensed nurse if the resident will be, or is, receiving nursing services or experiences a significant change of condition as required in 411-054-0045(1)(f)(D) (Resident Health Services).

(C) The resident's physician or other health practitioner.

(b) Each resident must actively participate in the development of the service plan to the extent of the resident's ability and willingness to do so. If resident participation is not possible, documentation must reflect the facility's attempts to determine the resident's preferences.

(6) RISK AGREEMENT. When a resident's actions or choices pose a potential risk to that resident's health or well-being, the facility may utilize a risk agreement to explore alternatives and potential consequences with the resident.

(a) The facility must identify the need for and develop a written risk agreement following the facility's established guidelines and procedures. A risk agreement must include:

(A) An explanation of the cause of concern;

(B) The possible negative consequences to the resident or others;

(C) A description of the resident's preference;

(D) Possible alternatives or interventions to minimize the potential risks associated with the resident's current preferences and actions;

(E) A description of the services the facility will provide to accommodate the residents' choice or minimize the potential risk; and

(F) The final agreement, if any, reached by all involved parties, must be included in the service plan.

(b) The licensing policy analyst must be consulted and alternatives reviewed prior to when the resident signs the agreement.

(c) The facility will involve the resident, the resident's designated representative, and others as indicated, to develop, implement, and review the risk agreement. The resident's preferences will take precedence over those of a family member.

(d) A risk agreement will not be entered into or continued with or on behalf of a resident who is unable to recognize the consequences of their behavior or choices.

(e) The risk agreement must be reviewed at least quarterly.

Stat. Auth.: ORS 410.070 & 443.450
Stats. Implemented: ORS 443.400 - 443.455, 443.991
Hist.: SPD 14-2007, f. 8-31-07, cert. ef. 11-1-07; APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-054-0038
Individually-Based Limitations

This rule becomes effective on July 1, 2016.

(1) When threats to the health and safety of an individual or others arise, limitations may be applied in the following areas:

(a) To have unit entrance doors lockable by the individual, with only appropriate staff having a key to access the unit.

(b) For individuals sharing units, to have a choice of roommates.

(c) To have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement.

(d) To have visitors of his or her choosing at any time.

(e) To have the freedom and support to control his or her own schedule and activities.

(f) To have the freedom and support to have access to food at any time.

(2) An individually-based limitation must be supported by a specific assessed need and documented in the person-centered service plan by completing and signing a program approved form documenting the consent to the appropriate limitation. The form identifies and documents:

(a) The specific and individualized assessed need justifying the individually-based limitation;

(b) The positive interventions and supports used prior to any individually-based limitation;

(c) Less intrusive methods that have been tried but did not work;

(d) A clear description of the limitation that is directly proportionate to the specific assessed need;

(e) Regular collection and review of data to measure the ongoing effectiveness of the individually-based limitation;

(f) Established time limits for periodic reviews of the individually-based limitation to determine if the limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(g) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(h) An assurance that the interventions and support do not cause harm to the individual.

(3) Providers are responsible for:

(a) Maintaining a copy of the completed and signed form documenting the consent to the appropriate limitation. The form must be signed by the individual, or, if applicable, the legal representative of the individual;

(b) Regular collection and review of data to measure the ongoing effectiveness of and the continued need for the individually-based limitation; and

(c) Requesting a review of the individually-based limitation when a new individually-based limitation is indicated, or change or removal of an individually-based limitation is needed.

Stat. Auth.: ORS 409.050, 413.042, 413.085
Stats. Implemented: ORS 409.050, 413.042, 413.085
Hist.: APD 26-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: APD — Home and Community-Based Services and Settings for Adult Foster Homes
Adm. Order No.: APD 27-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-050-0602, 411-050-0615, 411-050-0630, 411-050-0632, 411-050-0635, 411-050-0642, 411-050-0645, 411-050-0650, 411-050-0655, 411-050-0662, 411-050-0665, 411-050-0670, 411-050-0685
Subject: The Department of Human Services (Department) is immediately amending OAR chapter 411, division 050 for adult foster homes for adults who are older or adults with physical disabilities to align the rules with the newly adopted rules in 411-004.

The Department is also updating the rules to improve and streamline processes and to make changes to enhance the safety and welfare of adult foster home residents and licensees. The Department updated the rules to ensure the rules were using current Department terminology and to perform minor grammar, punctuation, formatting, and housekeeping changes.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-050-0602
Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 050:

(1) "AAA" means an Area Agency on Aging, which is an established public agency within a planning and service area designated under Section 305 of the Older Americans Act that has responsibility for local administration of programs within the Department of Human Services. For the purpose of these rules, Type B AAAs contract with the Department to perform specific activities in relation to licensing adult foster homes, including processing applications, conducting inspections and investigations, issuing licenses, and making recommendations to the Department regarding adult foster home license denial, revocation, suspension, non-renewal, and civil penalties.

(2) "Abuse" means "abuse" as defined in OAR 411-020-0002 (Adult Protective Services).

(3) "Activities of Daily Living (ADL)" mean the personal, functional activities defined in OAR 411-015-0006 (Long-term Care Service Priorities for Individuals Served) required by an individual for continued well-being, which are essential for health and safety.

(4) "Adult Foster Home (AFH)" means any family home or other facility where residential care is provided in a home-like environment for compensation to five or fewer adults who are not related to the licensee, resident manager, or floating resident manager, by blood, marriage, or adoption and who are 65 years of age or older or an adult with a physical disability. For the purpose of these rules, "adult foster home" does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no resident thereof requires any element of care. "Facility" and "Home" are synonymous with "Adult Foster Home".

(5) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by a resident that provides health care instructions in the event the resident is no longer able to give directions regarding his or her wishes. The directive gives the resident the means to control his or her own health care in any circumstance. "Advance Directive for Health Care" does not include Physician Orders for Life-Sustaining Treatment (POLST).

(6) "Applicant" means a person who completes an application for an adult foster home license or who completes an application to become a resident manager, floating resident manager, or shift caregiver. "Applicant" is synonymous with "Co-applicant".

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210 (Criminal Records and Abuse Check for Providers).

(8) "Back-Up Provider" means a licensee, approved resident manager, or approved floating resident manager who does not live in the home, who has agreed to oversee the operation of an adult foster home, of the same license classification or level, in the event of an emergency.

(9) "Behavioral Interventions" mean those interventions that modify a resident's behavior or a resident's environment.

(10) "Board of Nursing Rules" means the standards for Registered Nurse Teaching and Delegation to Unlicensed Persons according to the statutes and rules of the Oregon State Board of Nursing, ORS 678.010 to 678.445 and OAR chapter 851, division 047.

(11) "Care" means the provision of assistance with activities of daily living to promote a resident's maximum independence and enhance the resident's quality of life. "Care" includes, but is not limited to, assistance with bathing, dressing, grooming, eating, money management, recreation, and medication management excluding assistance with self-medication.

(12) "Caregiver" means any person responsible for providing care and services to residents, including the licensee, resident manager, floating resident manager, shift caregivers, and any temporary, substitute, or supplemental staff, or other person designated to provide care and services to residents.

(13) "Care Plan" means a licensee's written description of a resident's needs, preferences, and capabilities, including by whom, when, and how often care and services are to be provided.

(14) "Centers for Medicare and Medicaid Services (CMS)" means the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA).

(15) "Classification" means a designation of license assigned to a licensee based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(16) "Co-Applicant" is synonymous with "Applicant" as defined in this rule.

(17) "Code of Federal Regulations" or "CFR" means the codification of the rules and regulations published in the Federal Register, and produced by the executive departments and agencies of the federal government of the United States.

(18) "Co-Licensee" is synonymous with "Licensee" as defined in this rule.

(19) "Compensation" means monetary or in-kind payments by or on behalf of a resident to a licensee in exchange for room, board, care, and services. "Compensation" does not include the voluntary sharing of expenses between or among roommates.

(20) "Complaint" means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to a resident or the condition of an adult foster home.

(21) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(22) "Consumer" means an individual eligible for Medicaid services for whom case management services are provided by the Department.

(23) "Criminal Records and Abuse Check Rules" refers to OAR 407-007-0200 to 407-007-0370.

(24) "Day Care" means care, assistance, and supervision of an individual who is older, as defined in these rules, who does not stay overnight.

(25) "Delegation" means the process where a registered nurse teaches and supervises a skilled nursing task.

(26) "Department" means the Department of Human Services.

(27) "Designated Representative" means:

(a) Any adult, such as a parent, family member, guardian, advocate, or other person who is:

(A) Chosen by the individual, or as applicable the legal representative;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual, or as applicable the legal representative, to serve as the representative of the individual, or as applicable the legal representative, in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until the individual modifies the authorization or notifies the agency that the designated representative is no longer authorized to act on his or her behalf.

(c) An individual, or as applicable the legal representative, is not required to appoint a designated representative.

(28) "Director" means the Director of the Department of Human Services or that person's designee.

(29) "Disability" means a physical, cognitive, or emotional impairment, which for an individual, constitutes or results in a functional limitation in one or more activities of daily living.

(30) "Disaster" means a sudden emergency occurrence beyond the control of the licensee, whether natural, technological, or man-made that renders the licensee unable to operate the facility or renders the facility uninhabitable on a temporary, extended, or permanent basis.

(31) "Emergency Preparedness Plan" means a written procedure that identifies a facility's response to an emergency or disaster for the purpose of minimizing loss of life, mitigating trauma, and to the extent possible, maintaining services for residents, and preventing or reducing property loss.

(32) "Entity" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.

(33) "Exclusion Lists" mean the following federal lists that exclude listed individuals from receiving federal awards, not limited to Medicaid and Medicare programs:

(a) The U.S. Office of Inspector General's Exclusion List at www.exclusions.oig.hhs.gov/; and

(b) The U.S. General Services Administration's System for Award Management Exclusion List at www.sam.gov.

(34) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions of ORS 443.705 to 443.825. "Exempt area" county licensing rules require review and approval by the Director before implementation.

(35) "Facility" is synonymous with "Adult Foster Home" as defined in this rule.

(36) "Family Member" means spouses in a legally recognized marriage or domestic partnership, natural parent, child, sibling, adopted child, adoptive parent, adoptive sibling, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(37) "Final Point of Safety" means a designated assembly area located on a public sidewalk or street not less than 50 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency.

(38) "Floating Resident Manager" means an employee of the licensee, approved by the local licensing authority, who under the direction of the licensee, is directly responsible for the care of residents in one or more adult foster homes owned by that licensee. A "floating resident manager" is not required to live in any one adult foster home owned by his or her employer, except on a temporary basis, as directed by the licensee, when the regularly scheduled caregiver is unavailable.

(39) "Home" means the physical structure where residents live. "Home" is synonymous with "Adult Foster Home" as defined in this rule.

(40) "Home and Community-Based Services" or "HCBS" means Home and Community-Based Services as defined in OAR chapter 411, division 4.

(41) "Home and Community-Based Settings" or "HCB Settings" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives Home and Community-Based Services. Adult Foster Homes are HCB Settings, and must comply with Federal regulations governing those settings.

(42) "Home-like" means an environment that promotes the dignity, security, and comfort of residents through the provision of personalized care and services, and encourages independence, choice, and decision-making by the residents.

(43) "House Policies" means the written and posted statements addressing house activities in an adult foster home identified in the Residency Agreement.

(44) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity. "Indirect ownership interest" includes an ownership interest in any entity that has an "indirect ownership interest" in the disclosing entity.

(45) "Individual" means an adult who is at least 65 years of age, or is an adult with physical disabilities who is receiving Home and Community-Based Services. For Home and Community-Based Settings, "Resident" includes individuals receiving day care services.

(46) "Individually-Based Limitation" or "Limitation"

(a) Any limitation to the following areas, as described in OAR 411-004-0020(2)(c) to (2)(j), which includes the right to:

(A) Live under a legally enforceable Residency Agreement with protections substantially equivalent to landlord tenant laws;

(B) The freedom and support to access food at any time;

(C) Have visitors of the resident's choosing at any time;

(D) Have a lockable door in the resident's bedroom, which may be locked by the individual;

(E) Choose a roommate when sharing a bedroom;

(F) Furnish and decorate the resident's bedroom according to the Residency Agreement;

(G) The freedom and support to control the resident's schedule and activities;

(H) Privacy in the resident's bedroom;

(b) A limitation must be based on a specific assessed need, and may only be implemented with the informed consent of the resident or the resident's legal representative.

(47) "Informed Consent" means:

(a) Options, risks, and benefits have been explained to the individual and, as applicable the legal representative of the individual, in a manner that the individual, and as applicable, the representative, comprehends; and

(b) The individual and, as applicable, the legal representative of the individual, consents to a person-centered service plan of action, including any individually-based limitations to the rules, before implementation of the initial or updated person-centered service plan or any individually-based limitation.

(48) "Initial Point of Safety" means a designated area that has unobstructed direct access to a public sidewalk or street located not less than 25 feet away from an adult foster home where occupants of the home evacuate to in the event of an emergency and for the purpose of conducting evacuation drills.

(49) "Investigative Authority" means the Office of Adult Abuse Prevention and Investigation, local Department offices, and Area Agencies on Aging that contract with the Department to provide adult protective services to adults who are older or adults with physical, mental, or developmental disabilities.

(50) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by the court or other agreement.

(a) Legal representatives acting outside of his or her authority or scope must meet the definition of designated representative.

(b) For an individual 18 years of age or older, a guardian appointed by a court order or an agent legally designated as the health care represen-

tative, where the court order or the written designation provide authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used in this rule.

(51) "Level" means the designation of ventilator-assisted care assigned to an adult foster home license based on the qualifications of the licensee, resident manager, floating resident manager, and shift caregivers, as applicable.

(52) "Licensed Health Care Professional" means a person who possesses a professional medical license that is valid in Oregon. Examples include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), respiratory therapist (RT), physical therapist (PT), physician assistant (PA), or occupational therapist (OT).

(53) "Licensee" means the person who was issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The "licensee" of the adult foster home does not include the owner or lessor of the building where the adult foster home is situated unless the owner or lessor of the building is also the operator.

(54) "Limited Adult Foster Home" means a home that provides care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

(55) "Liquid Resource" means cash or those assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(56) "Local Licensing Authority" means the local Department offices and Area Agencies on Aging that contract with the Department to perform specific functions of the adult foster home licensing process.

(57) "Nursing Care" means the practice of nursing by a licensed nurse, including tasks and functions relating to the provision of "nursing care" that are taught or delegated under specified conditions by a registered nurse to a person other than licensed nursing personnel, as governed by ORS chapter 678 and rules adopted by the Oregon State Board of Nursing in OAR chapter 851.

(58) "Occupant" means any person residing in or using the facilities of an adult foster home, including residents, licensees, resident manager, friends or family members, day care individuals, and room and board tenants. A floating resident manager who resides in an adult foster home on a temporary basis is considered an "occupant".

(59) "Older" means any person at least 65 years of age.

(60) "Ombudsman" means the Oregon Long-Term Care Ombudsman or a designee appointed by the Long-Term Care Ombudsman to serve as a representative of the Ombudsman Program in order to investigate and resolve complaints on behalf of adult foster home residents.

(61) "Operator" is synonymous with "Licensee" as defined in this rule.

(62) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. Persons with an ownership or control interest mean a person or corporation that:

(a) Has an "ownership interest" totaling five percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to five percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;

(d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(63) "Person-Centered Service Plan" as defined in OAR chapter 411, division 4.

(a) FOR INDIVIDUALS RECEIVING MEDICAID. The person-centered service plan coordinator completes the person-centered service plan.

(b) FOR NON-MEDICAID INDIVIDUALS. The person-centered service plan may be completed by the resident, and as applicable, the representative of the individual, and others as chosen by the individual. The licensee may assist non-Medicaid individuals in developing person-centered service plans when no alternative resources are available. The elements of the individual's person-centered service plan may be incorporated into the resident's care plan.

(64) "Person-Centered Service Plan Coordinator" means case managers, services coordinators, personal agents, and other people designated by DHS or OHA to provide case management services or person-centered service planning for and with individuals.

(65) "Physical Restraint" means any manual method or physical or mechanical device, material, or equipment attached to, or adjacent to, a resident's body that the resident may not easily remove and that restricts freedom of movement or normal access to his or her body. Physical restraints include, but are not limited to, wrist or leg restraints, soft ties or vests, hand mitts, wheelchair safety bars, lap trays, and any chair that prevents rising (such as a Geri-chair). Side rails (bed rails) are considered restraints when they are used to prevent a resident from getting out of a bed. The side rail is not considered a restraint when a resident requests a side rail for the purpose of assistance with turning.

(66) "Prescribing Practitioner" means a physician, nurse practitioner, physician assistant, chiropractor, dentist, ophthalmologist, or other health-care practitioner with prescribing authority.

(67) "Primary Caregiver" means a qualified licensee or resident manager, who lives in the home, personally provides care and services, and ensures the health and safety of residents a minimum of five consecutive days per week. More than one person who meets this criterion may be considered a "primary caregiver" as specified below:

(a) Co-licensees working three and four consecutive days and nights per week;

(b) Two approved resident managers working three and four consecutive days and nights per week; or

(c) A licensee and an approved resident manager working three and four consecutive days and nights per week.

(68) "P.R.N. (pro re nata)" means those medications and treatments that have been ordered by a qualified practitioner to be administered as needed.

(69) "Provider" means any person operating an adult foster home (i.e., licensee, resident manager, floating resident manager, or shift caregiver). "Provider" does not include substitute caregivers or the owner or lessor of the building where the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(70) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-050-0625 and 411-050-0630, except for completing the training and testing requirements. (See OAR 411-050-0635).

(71) "Psychoactive Medications" mean various medications used to alter mood, anxiety, behavior, or cognitive processes. For the purpose of these rules, "psychoactive medications" include, but are not limited to, antipsychotics, sedatives, hypnotics, and antianxiety medications.

(72) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(73) "Relative" means those persons identified as family members as defined in this rule.

(74) "Representative" means "Designated Representative" and "Legal Representative" as defined in these rules, unless otherwise stated.

(75) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to "reside" in a home if the person's visit is four weeks or greater.

(76) "Residency Agreement" or "Agreement" means the written and legally enforceable agreement between an adult foster home licensee and an individual receiving Home and Community Based Services (HCBS) in a provider owned, controlled, or operated setting. The Residency Agreement identifies the policies of the home, services to be provided, and the rights and responsibilities of the individual, and the licensee.

(77) "Resident" means an adult who is at least 65 years of age, or an adult with a physical disability who is receiving room and board and care and services in an adult foster home on a 24-hour day basis in exchange for compensation. For the purposes of this definition, Resident includes individuals receiving day care services. (See OAR 411-050-0615).

(78) "Resident Manager" means an employee of the licensee, approved by the local licensing authority, who lives in the adult foster home, and is directly responsible for the care of the residents.

(79) "Resident Rights" or "Rights" means civil, legal, or human rights, including, but not limited to, those rights listed in the Adult Foster Home Residents' Bill of Rights. (See ORS 443.739 and OAR 411-050-0655).

(80) "Residential Care" means the provision of care on a 24-hour day basis.

(81) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, and housekeeping to adults who are older or adults with physical disabilities and who do not need assistance with activities of daily living. Room and board facilities for two or more persons are required to register with the Department under the rules in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Adult foster homes with room and board tenants are not subject to OAR chapter 411, division 068.

(82) "Screening" means the evaluation process used to identify an individual's ability to perform activities of daily living and address health and safety concerns.

(83) "Self-Administration of Medication" means the act of a resident placing a medication in or on his or her own body. The resident identifies the medication, the time and manner of administration, and places the medication internally or externally on his or her own body without assistance.

(84) "Self-Preservation" in relation to fire and life safety means the ability of a resident to respond to an alarm without additional cues and reach a point of safety without assistance.

(85) "Services" mean activities that help the residents develop skills to increase or maintain the resident's level of functioning or assist the residents to perform personal care, activities of daily living, or individual social activities.

(86) "Shift Caregivers" mean caregivers who, by written variance of the local licensing authority, are responsible for providing care for regularly scheduled periods of time, such as 8 or 12 hours per day, in homes where there is no licensee or resident manager living in the home.

(87) "Subject Individual" means "subject individual" as defined in OAR 407-007-0210 and means any person 16 years of age or older, including:

(a) All licensed adult foster home providers and provider applicants;

(b) All persons intending to work in, or currently working in an adult foster home, including, but not limited to, caregivers and individuals in training;

(c) Volunteers on the home's premises who provide services for, or who have unsupervised access to any resident, or any resident's funds, belongings, or confidential information; and

(d) Occupants, excluding residents, residing in or on the premises of a proposed or currently licensed adult foster home, including:

(A) Household members;

(B) Room and board tenants; and

(C) Persons staying in the home for a period of four weeks or more.

(e) "Subject Individual" does not apply to:

(A) Persons under 16 years of age;

(B) Residents of the adult foster home or the resident's visitors;

(C) Persons who live or work in or on the adult foster home premises who do not:

(i) Have regular access to the home for meals; or

(ii) Have regular use of the adult foster home's appliances or facilities; or

(iii) Have unsupervised access to the residents or the residents' personal property.

(D) A person providing services to the residents who is employed by a private business not regulated by the Department.

(88) "Substantial Compliance" means a level of compliance with these rules where any deficiencies pose no greater risk to resident health or safety than the potential for causing minor harm.

(89) "Substitute Caregiver" means any person other than the licensee, resident manager, floating resident manager, or shift caregiver who provides care and services in an adult foster home under the jurisdiction of the Department.

(90) "Tenant" means any individual who is residing in an adult foster home who receives services, such as meal preparation, laundry, and housekeeping.

(91) "These Rules" mean the rules in OAR chapter 411, division 050.

(92) "Variance" means an exception from a regulation or provision of these rules in accordance with OAR 411-050-0642.

(93) "Ventilator-Assisted Care" means the provision of mechanical assistance to replace spontaneous breathing. Devices used include, but are not limited to, mechanical ventilators, manual ventilators, and positive airway pressure ventilators.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 106.010, 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0400, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0615

Provider Enrollment Agreements, Residency Agreements, and Refunds

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to care for residents who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Medicaid Provider Enrollment Agreement. The local licensing authority shall determine that the applicant, licensee, and any owner or officer of the corporation, as applicable, is not listed on either of the Exclusion Lists before approval of a Medicaid Provider Enrollment Agreement.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in the adult foster home.

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be completed, submitted, approved, and renewed with each licensing cycle.

(d) The rate of compensation established by the Department is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.

(e) An individual eligible for Medicaid services may not be admitted into an adult foster home unless and until:

(A) The Department has approved a Medicaid Provider Enrollment Agreement. The Department shall not issue a Medicaid payment to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place;

(B) The individual eligible for Medicaid services has been screened according to OAR 411-050-0655; and

(C) The Department has authorized the placement. The authorization must be clearly documented in the resident's record with other required admission materials. (See OAR 411-050-0655).

(f) The Department shall not make payment for the date a resident moves from the home, or for any time period thereafter.

(g) The licensee must enter into a written agreement with a resident who receives Medicaid services if the licensee charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(A) The written agreement must be consistent with the licensee's policy with private-pay residents and entered into at the time of the resident's admission or at the time the resident becomes eligible for Medicaid services.

(B) The licensee must give written notice to the resident and the resident's family or other representatives 30 calendar days before any increases, additions, or other modifications to the charges for storage.

(h) A licensee who elects to provide care for individuals eligible for Medicaid services is not required to admit more than one resident eligible for Medicaid services. However, if the licensee has an approved Medicaid Provider Enrollment Agreement, private-pay residents who become eligible for Medicaid services may not be asked to leave solely on the basis of Medicaid eligibility.

(i) The licensee or the Department may terminate a Medicaid Provider Enrollment Agreement according to the terms of the Medicaid Provider Enrollment Agreement.

(j) The Department may terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the adult foster home has been voluntarily surrendered, revoked, or non-renewed.

(k) The Department must terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to permit access by the Department, the local licensing authority, or the Centers for Medicare and Medicaid Services to any adult foster home licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership interest in the adult foster home did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails

to submit fingerprints if required under the criminal records and abuse check rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the adult foster home has been convicted of a criminal offense related to the person's involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

(E) Any person with an ownership or control interest, or who is an agent or managing employee of the adult foster home, fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(l) If the licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must comply with the following requirements:

(A) Simultaneously issue the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) to each resident eligible for Medicaid services in the licensee's adult foster home (See OAR 411-050-0645).

(B) Update Residency Agreement and submit to the local licensing authority for review.

(C) Obtain signatures of all current residents, or the resident's representative on the updated Agreement following the local licensing authority's review.

(m) If either the licensee or the Department terminates a Medicaid Provider Enrollment Agreement, a new Medicaid Provider Enrollment Agreement shall not be approved by the local licensing authority for a period of not less than 180 days from the date the licensee or the Department terminated the Medicaid Provider Enrollment Agreement.

(n) DEATH OF RESIDENT ELIGIBLE FOR MEDICAID SERVICES WITH NO SURVIVING SPOUSE. The licensee must forward all personal incidental funds (PIF) to the Estate Administration Unit, P. O. Box 14021, Salem, Oregon 97309-5024, within 10 business days of the death of a resident eligible for Medicaid services with no surviving spouse. (See Limits on Estate Claims, OAR 461-135-0835)

(2) RESIDENCY AGREEMENT. A licensee must enter into a written Agreement with all residents or the residents' representatives, which details the care and services to be provided, and the rate to be charged. The written Agreement must be signed by all parties before the admission of the resident. A copy of the Agreement is subject to review by the local licensing authority before licensure and before the implementation of any changes to the Agreement.

(a) The Agreement must include, but not be limited to:

(A) Services to be provided and the rate to be charged. For individuals receiving Medicaid, the Residency Agreement may state the rate will be "as authorized by the Department". A payment range may not be used unless the Agreement plainly states when an increase in rate may be expected based on a resident's increased care or service needs.

(B) Conditions under which the rates may be changed.

(C) The home's refund policy in instances of a resident's hospitalization, death, transfer to a nursing facility or other care facility, and voluntary or involuntary move. The refund policy must be in compliance with section (3) of this rule.

(D) A statement indicating that the resident is not liable for damages considered normal wear and tear on the adult foster home and the adult foster home's contents.

(b) The Agreement must disclose:

(A) The home's policies on voluntary moves and whether or not the licensee requires written notification of a non-Medicaid resident's intent to not return.

(B) Any charges for storage of belongings that remain in the adult foster home for more than 15 calendar days after the resident has left the home.

(C) Any policies the adult foster home may have on the use of alcohol, tobacco, intercoms, and monitors.

(D) The home's smoking policies in compliance with OAR 411-050-0650.

(E) The home's policy regarding animals. Restrictions may not apply to animals that provide assistance or perform tasks for the benefit of a person with a disability. Such animals are often referred to as service animals, assistance animals, support animals, therapy animals, companion animals, or emotional support animals.

(F) The home's policy regarding the presence and use of legal medical and recreational marijuana on the premises.

(G) The home's schedule of meal times with no more than a 14-hour span between the evening meal and the following morning's meal (See OAR 411-050-0645).

(H) Whether the home serves individuals eligible for Medicaid services.

(I) The home's policy regarding refunds for residents eligible for Medicaid services, including pro-rating partial months and if the room and board is refundable.

(J) A clear and precise statement of any limitation to the implementation of Advance Directives on the basis of conscience. This rule does not apply to medical professional or hospice orders for administration of medications. The statement must include:

(i) A description of conscientious objections as they apply to all occupants of the adult foster home;

(ii) The legal authority permitting such objections under ORS 127.505 to 127.660; and

(iii) Description of the range of medical conditions or procedures affected by the conscientious objection. (See OAR 411-050-0655).

(c) The Agreement must:

(A) Not conflict with the Resident's Rights, the family atmosphere of the home, or any of these rules; and

(B) Be reviewed and approved by the local licensing authority before the issuance of a license, and before implementing any changes.

(d) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the Agreement must include the freedoms authorized by 42 CFR 441.301(c)(2)(xiii) & 42 CFR 441.530(a)(1)(vi)(F), which must not be limited without the informed, written consent of the resident or the resident's representative, and approved by the person-centered service plan coordinator, which includes the right to:

(A) Live under a legally enforceable agreement with protections substantially equivalent to landlord tenant laws;

(B) The freedom and support to access food at any time;

(C) To have visitors of the resident's choosing at any time;

(D) Have a lockable door in the resident's bedroom, which may be locked by the resident;

(E) Choose a roommate when sharing a bedroom;

(F) Furnish and decorate the resident's bedroom according to the Residency Agreement;

(G) The freedom and support to control the resident's schedule and activities;

(H) Privacy in the resident's bedroom.

(e) The licensee may not charge or ask for application fees or nonrefundable deposits. Fees to hold a bed are permissible.

(f) The licensee must give a copy of the signed Agreement to the resident or the resident's representative and must retain the original signed Agreement and any amendments on the premises available for review.

(g) The licensee may not include any illegal or unenforceable provision in an Agreement with a resident and may not ask or require a resident to waive any of the resident's rights or licensee's liability for negligence.

(h) The licensee must give written notice to a non-Medicaid resident and the resident's family or other representatives 30 calendar days before any general rate increases, additions, or other modifications of the rates. The licensee is not required to give 30 day written notice if the rate change is due to the resident's increased care or service needs and the agreed upon rate schedule in the resident's Agreement has specified charges for those changes.

(3) REFUNDS FOR NON-MEDICAID RESIDENTS.

(a) If a resident dies, the licensee may not retain or require payment for more than 15 calendar days after the date of the resident's death, or the time specified in the licensee's Agreement, whichever is less.

(b) If a resident leaves an adult foster home for medical reasons and the resident or the resident's representative indicates the resident's intent to not return, the licensee may not retain or require payment for more than 15 calendar days after the date the licensee receives notification from the resident, the resident's representative, or the time specified in the licensee's Agreement, whichever is less.

(c) If a resident who has paid with private funds becomes eligible for Medicaid services, the licensee must accept payment from the Department from the date of eligibility forward as payment in full. The licensee must reimburse the resident or the resident's representative within 30 calendar days after the licensee receives payment from the Department for any private payment received after the resident became eligible for Medicaid services.

(d) The licensee must act in good faith to reduce the charge to a resident who has left the home by seeking a new resident to fill the vacancy.

(e) The licensee must refund any unused advance payment to the resident, or the resident's representative as appropriate, within 30 calendar days after the resident dies or leaves the home.

(f) If the adult foster home closes or the licensee gives written notice for the resident to leave, the licensee waives the right to collect any fees beyond the date of closure or the resident's departure, whichever is sooner.

(g) If a resident dies or leaves an adult foster home due to neglect or abuse at the adult foster home that is substantiated by a Department investigator, or due to conditions of imminent danger of life, health, or safety, the licensee may not charge the resident beyond the resident's last day in the home.

(h) The refund policies in these rules also apply to refunds for resident moves and transfers as described in OAR 411-050-0645.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.880, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0435, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 15-2015, f. 6-24-15, cert. ef. 6-28-155; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0630
Classification of Adult Foster Homes

(1) The local licensing authority shall issue a Class 1, Class 2, or Class 3 adult foster home license only if the qualifications of the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, fulfill the classification requirements of these rules.

(a) After receipt of the completed application materials, including the non-refundable fee, the local licensing authority must investigate the information submitted, including any pertinent information received from outside sources.

(b) The local licensing authority shall not issue a license if unsatisfactory references or a history of substantial non-compliance of the applicant within the last 24 months is verified.

(c) The local licensing authority may issue a Class 1 license if the applicant and resident manager, as applicable, complete the training requirements outlined in OAR 411-050-0625;

(d) The local licensing authority may issue a Class 2 license if the applicant, resident manager, and floating resident manager, as applicable, complete the requirements outlined in OAR 411-050-0625. In addition, these caregivers must each have the equivalent of two years of full time experience providing direct care to adults who are older or adults with physical disabilities;

(e) The local licensing authority may issue a Class 3 license if the applicant, resident manager, floating resident manager, and shift caregivers, as applicable, complete the training requirements outlined in OAR 411-050-0625 and have a current license as a health care professional in Oregon or possess the following qualifications:

(A) Have the equivalent of three years of full time experience providing direct care to adults who are older or adults with physical disabilities and who require full assistance in four or more activities of daily living; and

(B) Have references satisfactory to the Department. The applicant must submit current contact information from at least two licensed health care professionals who have direct knowledge of the applicant's ability and past experience as a caregiver.

(2) The Department may approve a licensee to care for residents requiring ventilator-assisted care. The licensee, resident manager, floating resident manager, or shift caregivers, as applicable, must meet the criteria for a Class 3 home according to section (1)(e) of this rule and comply with the additional requirements for adult foster homes serving residents requiring ventilator assisted care outlined in OAR 411-050-0660.

(3) To request a change in the classification of a licensed home, at any time other than the license renewal period, the licensee shall submit a written request to the local licensing authority, using the Department's form SDS 0748, to amend the licensee's previous application for a license.

(a) The complete request will include all the required information and documentation, as applicable, to demonstrate the applicant meets the standards for the requested classification according to these rules.

(b) Within 60 calendar days' receipt of the complete written request, the local licensing authority will investigate the information provided and shall:

(A) Approve the applicant's request and issue an amended license with the requested classification; or

(B) Deny the applicant's request, unless the applicant submits written notification to withdraw the requested change in classification. If the request is denied, the Department shall provide the applicant with Notice and an opportunity for a contested case hearing pursuant to ORS 183. The Notice shall state the reasons for the denial and shall be served personally upon the applicant or by certified or registered mail. Any request for a contested case hearing must be submitted to the Department, in writing, by the applicant within 10 days of service.

(4) A licensee may only admit or continue to care for residents whose impairment levels are within the classification of the licensed home.

(a) A licensee with a Class 1 license may only admit residents who require assistance in no more than four activities of daily living.

(b) A licensee with a Class 2 license may provide care for residents who require assistance in all activities of daily living, but require full assistance in no more than three activities of daily living.

(c) A licensee with a Class 3 license may provide care for residents who require full assistance in four or more activities of daily living, but only one resident who requires bed-care or full assistance with all activities of daily living, not including cognition or behavior.

(5) A licensee must request, in writing, a variance from the local licensing authority if:

(a) A new resident wishes to be admitted whose impairment level exceeds the license classification;

(b) A current resident becomes more impaired, exceeding the license classification; or

(c) There is more than one resident in the home who requires full bed-care or full assistance with all activities of daily living, not including cognition or behavior.

(6) The local licensing authority may grant a variance that allows the resident to be admitted or remain in the adult foster home. The local licensing authority must respond in writing within 30 calendar days after receipt of the licensee's written variance request. The licensee must prove the following criteria are met by clear and convincing evidence:

(a) It is the choice of the resident to reside in the home;

(b) The licensee is able to provide appropriate care and service to the resident in addition to meeting the care and service needs of the other residents;

(c) Additional staff is hired to meet the additional care requirements of all residents in the home as necessary;

(d) Outside resources are available and obtained to meet the resident's care needs;

(e) The variance shall not jeopardize the care, health, safety, or welfare of the residents; and

(f) The licensee is able to demonstrate how all occupants shall be safely evacuated in three minutes or less.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1995, f. & cert. ef. 3-15-95; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0443, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0632
Capacity

(1) Residents must be limited to five adults who require care and are unrelated to the licensee and resident manager by blood, marriage, or adoption.

(2) The number of residents permitted to reside in an adult foster home is determined by the ability of the staff to meet the care needs of the residents, the fire and life safety standards for evacuation, and compliance with the facility standards of these rules.

(3) The licensee must demonstrate, to the local licensing authority's satisfaction, the ability to meet the needs of the residents, in addition to, caring for any children or relatives beyond the license capacity of the adult foster home.

(4) The local licensing authority's determination of maximum capacity must ensure:

(a) The ratio of at least one caregiver per five residents, including any day care individuals and others requiring care or supervision except as allowed under section (5) of this rule.

(b) Children over the age of five have a bedroom available that is separate from the child's parents.

(c) The well-being of the household, including any children or other family members, shall not be jeopardized.

(d) The care needs of day care individuals shall be met.

(5) When a family member requires care in a home where the licensee is the primary live-in caregiver, a maximum capacity of five unrelated residents are allowed if the following criteria are met:

(a) The licensee must be able to demonstrate the ability to evacuate all occupants from the adult foster home within three minutes or less (See OAR 411-050-0650).

(b) The licensee must have sufficient, qualified staff and demonstrate the ability to provide appropriate care for all residents (See OAR 411-050-0645).

(c) There must be an additional 40 square feet of common living space for each person above the five residents (See OAR 411-050-0650).

(d) Bathrooms and bedrooms must meet the requirements of OAR 411-050-0650.

(e) The care needs of day care individuals must be within the classification of the license and any conditions imposed on the license.

(f) The well-being of the household, including any children or other family members, shall not be jeopardized.

(6) If day care individuals are in the home, the licensee must have arrangements for the day care individuals to sleep in areas other than a resident's bed, a resident's room, or space designated as common use, in accordance with OAR 411-050-0650.

(7) If room and board tenants are in the home, each tenant must have:

(a) An approved background check in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal Records and Abuse Check Rules).

(b) A tenancy agreement as defined in OAR 411-068-0040 (Room and Board Facilities).

(c) A copy of the current tenancy agreement signed and dated by the tenant.

(8) To request a change to the maximum capacity of a licensed home at any time other than the license renewal period, the licensee shall submit to the local licensing authority a written request using the Department's form, SDS 0749, to amend the licensee's previous application for a license.

(a) The complete request will include:

(A) All the required information and documentation, as applicable, to demonstrate the applicant meets the standards for the requested capacity according to these rules; and

(B) A $20 non-refundable fee for each additional resident bed requested.

(b) Within 60 calendar days' receipt of the complete written request, the local licensing authority must investigate the information provided and must:

(A) Approve the request and issue an amended license with the requested capacity; or

(B) Deny the applicant's request, unless the applicant submits written notification to withdraw the requested change in classification. If the request is denied, the Department shall provide the applicant with Notice and an opportunity for a contested case hearing pursuant to ORS 183. The Notice shall state the reasons for the denial and shall be served personally upon the applicant or by certified or registered mail. Any request for a contested case hearing must be submitted to the Department, in writing, by the applicant within 10 days of service.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, & 443.991

Hist. SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0408, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0635
Issuance

(1) The local licensing authority must issue a license within 60 calendar days after the completed application materials have been received if the home and applicant are in compliance with these rules.

(2) The license specifies the type of license and includes:

(a) The name of the licensee and the name of the resident manager or shift caregivers as applicable, who have met the requirements to operate the adult foster home.

(b) The address of the premises to which the license applies.

(c) The license classification and level if applicable.

(d) The maximum number of residents.

(e) The expiration date.

(3) The licensee must be given a copy of the Department's inspection report form as follows:

(a) INITIAL LICENSE. Form SDS 516 identifying any areas of noncompliance and a time frame for correction.

(b) RENEWAL LICENSE. Form SDS 517A and, if applicable, form SDS 517B citing any violations. The SDS 517B must specify a time frame for correction of each violation. The time frame for correction may not exceed 30 calendar days from the date of inspection.

(4) The licensee must post the most recent inspection reports in the entry of the home or an equally prominent place and must, upon request, provide a copy of the reports to each resident, person applying for admission to the home, or the legal representative, guardian, or conservator of a resident.

(5) The Department may attach conditions to the license that limit, restrict, or specify other criteria for operation of the home. The conditions must be visibly posted with the license.

(6) The local licensing authority shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and these rules;

(b) The applicant currently operates, or has operated, any other facility licensed by the applicant in substantial compliance with ORS 443.705 to 443.825;

(c) The local licensing authority has completed an inspection of the adult foster home that demonstrates the home is in compliance with these rules;

(d) The Department has completed a background check in accordance with OAR 411-050-0620;

(e) The local licensing authority has reviewed the record of sanctions available from the local licensing authority's files;

(f) The local licensing authority has determined that the nursing assistant registry maintained under 42 CFR 483.156 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;

(g) The local licensing authority has verified the applicant is not listed on either of the Exclusion Lists; and

(h) The applicant has demonstrated to the local licensing authority the financial ability and resources necessary to operate an adult foster home.

(7) A license is valid for one year unless revoked or suspended by the Department.

(8) When the Department reviews a license and determines that the convenience of both the licensee and the Department will be served, a license period may be changed to match the renewal schedule of another license held by the same licensee. The request for a schedule change may be made by either the Department or the licensee. No license period may extend beyond one year.

(9) In seeking an initial license, the burden of proof to establish compliance with ORS 443.705 to 443.825, and these rules, is upon the applicant of the adult foster home.

(10) The local licensing authority shall not issue a license to operate an additional adult foster home to a licensee who has failed to achieve and maintain substantial compliance with the rules and regulations while operating his or her existing home or homes.

(11) PROVISIONAL LICENSE. Notwithstanding any other provision of this rule or ORS 443.725 or 443.738, the local licensing authority may issue a 60-day provisional license to a qualified person.

(a) A provisional license may be issued if the local licensing authority determines it is in the best interests of the residents currently residing in the home, and any of the following exist:

(A) An emergency situation exists after receiving notification that a licensed provider is no longer overseeing the operation of an adult foster home.

(B) A new applicant has submitted an application and bed fee for a license to operate a currently licensed home. The applicant has demonstrated a good faith effort to submit a timely and complete application, but the application process cannot be completed before the expiration date of the current license.

(b) A person is considered qualified for a provisional license if he or she:

(A) Is at least 21 years of age.

(B) Has the necessary experience working with adults who are older or adults with physical disabilities to potentially qualify for the license classification of the home.

(C) Fully understands and has the ability to meet the residents' care needs.

(D) Meets the requirements of a substitute caregiver as described in OAR 411-050-0625.

(c) A provisional license may be extended one time for a period of 30 calendar days if an applicant has demonstrated a good faith effort to com-

plete the application process and obtain the required qualifications and trainings.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991
Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0415, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0642
Variances

(1) An applicant or licensee may request a variance to the provisions of these rules. The variance request must be in writing and must include clear and convincing evidence that:

(a) The requested variance does not jeopardize the care, health, welfare, or safety of the residents;

(b) All of the residents' needs shall be met; and

(c) All residents, in addition to other occupants in the home, may be evacuated in three minutes or less.

(2) VARIANCES NOT ALLOWED. Notwithstanding section (1) of this rule, no variance shall be granted by the local licensing authority from a regulation or provision of the rules pertaining to:

(a) Resident capacity as described in OAR 411-050-0632.

(b) Minimum age of licensee and any caregivers as described in OAR 411-050-0625.

(c) The training requirements of a licensee and all other caregivers except as allowed for provisional licenses as described in OAR 411-050-0635, or when a substitute caregiver holds an Oregon health care professional license as described in OAR 411-050-0625.

(d) Standards and practices for care and services as described in OAR 411-050-0655).

(e) Inspections of the facility as described in OAR 411-050-0670.

(f) Background checks as described in OAR 411-050-0620.

(3) The local licensing authority shall not grant a variance request to any rule that is inconsistent with Oregon Revised Statutes or 42 CFR 441.301(c)(2)(xiii) and 42 CFR 441.530(a)(1)(vi)(F). (See OAR 411-050-0655).

(4) The local licensing authority shall not grant a variance request related to fire and life safety without prior consultation with the Department.

(5) In making a determination to grant a variance, the local licensing authority must consider the licensee's history of compliance with rules governing adult foster homes or other long-term care facilities for adults who are older or adults with physical disabilities in Oregon and any other jurisdiction, if appropriate. The local licensing authority must determine that the variance is consistent with the intent and purpose of these rules before granting the variance. (See OAR 411-050-0600). The local licensing authority must respond, in writing, within 30 days of receiving a request for a variance. The written response must include the frequency of renewal.

(6) A variance is not effective until granted in writing by the local licensing authority. Variances are reviewed pursuant to these rules. If applicable, the licensee must re-apply for a variance at the time of license renewal, or more often if determined necessary by the local licensing authority.

(7) In seeking a variance, the burden of proof that the requirements of these rules have been met is upon the applicant or licensee.

(8) If a variance to any provision of these rules is denied, the applicant or licensee may request a meeting with the local licensing authority.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790
Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991
Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0442, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0645
Operational Standards

(1) GENERAL PRACTICES.

(a) A licensee must own, rent, or lease the home to be licensed, however, the local licensing authority may grant a variance to churches, hospitals, non-profit associations, or similar organizations. If a licensee rents or leases the premises where the adult foster home is located, the licensee may not enter into a contract that requires anything other than a flat rate for the lease or rental. A licensed provider of a building where an adult foster home is located may not allow the owner, landlord, or lessor to interfere with the admission, transfer, or voluntary or involuntary move of any resident in the adult foster home unless the owner, landlord, or lessor is named on the license.

(b) Each adult foster home must comply with:

(A) All applicable local business license, zoning, building, and housing codes.

(B) The Fair Housing Act.

(C) State and local fire and safety regulations for a single-family residence, and Oregon Fire Code, Appendix L.

(D) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016, Home and Community-Based Services and Settings and Person-Centered Service Plans. (See OAR chapter 411, division 4).

(c) ZONING. Adult foster homes are subject to applicable sections of ORS 197.660 to 197.670.

(d) COOPERATION AND ACCESS. The licensee must cooperate with the Department, Centers for Medicare and Medicaid Services (CMS), and local licensing and investigative personnel in inspections, complaint investigations, planning for resident care, application procedures, and other necessary activities.

(A) Department, CMS, local licensing, and investigative personnel must be provided access to all resident and facility records and may conduct private interviews with residents.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records, and with written permission from the resident or the resident's legal representative, may have access to resident records. (See OAR 114-005-0030).

(e) CONFIDENTIALITY. Information related to residents must be kept confidential, except as may be necessary in the planning or provision of care or medical treatment, or related to an inspection, investigation, or sanction action under these rules.

(f) TRANSPORTATION. A licensee must arrange for or provide appropriate transportation for residents when needed.

(g) STAFFING STANDARDS. The licensee must have qualified caregivers, including awake caregivers as necessary, sufficient in number to meet the 24-hour needs of each resident in addition to caring for any children or relatives beyond the license capacity of the adult foster home. In addition, the licensee must comply with the following standards:

(A) A licensee may not employ a resident manager, floating resident manager, or shift caregiver who does not meet or exceed the qualifications, training, and classification standards for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(B) A licensee may not employ or allow any caregiver to train or work in the home who is on either of the Exclusion Lists.

(h) ABSENCE OF A PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver is absent from the home for 10 days or more, the licensee must notify the local licensing authority, in writing, at least seven days before the primary caregiver's absence or immediately upon knowing of the absence. Notification must state the reason for and anticipated length of the absence. The licensee must submit a staffing plan to the local licensing authority that demonstrates coverage to meet the needs of the residents during the primary caregiver's absence and is signed by the back-up provider.

(i) CHANGE OF PRIMARY CAREGIVER. If a primary caregiver or a shift caregiver changes during the period the license covers, the licensee must notify the local licensing authority within 24 hours and identify who is providing care.

(A) If a licensee assumes the role as the primary caregiver or shift caregiver when there has been a change in primary caregiver, the licensee must submit an updated plan of 24-hour coverage to the local licensing authority within seven days.

(B) If a resident manager, floating resident manager, or shift caregiver changes, the licensee must submit a request for a change of resident manager, floating resident manager, or shift caregiver, as applicable, to the local licensing authority along with:

(i) The Department's supplemental application form (SDS 448B) completed by the resident manager applicant, floating resident manager applicant, or shift caregiver applicant;

(ii) A completed Health History and Physician or Nurse Practitioner's Statement (form SDS 903) for the new applicant;

(iii) Documentation of the initiation of or a copy of an approved background check; and

(iv) A $10 non-refundable fee.

(C) When there is a change in primary caregiver, an approved floating resident manager may assume the responsibilities of the live-in, primary caregiver until a new primary caregiver is employed. If a new primary caregiver is not employed within 60 calendar days, the floating resident manager must be designated as the home's resident manager and the licensee must notify the local licensing authority of the change in status.

(D) The local licensing authority shall issue a revised license when there is a change in a primary caregiver who is identified on the license.

(j) UNEXPECTED AND URGENT STAFFING NEED. If the local licensing authority determines an unexpected and urgent staffing need exists, the local licensing authority may authorize a person who has not completed the Department's current Ensuring Quality Care Course and passed the current examination to act as a resident manager or shift caregiver until training and testing are completed, or for 60 calendar days, whichever period is shorter. The licensee must notify the local licensing authority of the unexpected and urgent staffing need in writing and satisfactorily demonstrate:

(A) The licensee's inability to live in the home and act as the primary caregiver;

(B) The licensee's inability to find a qualified resident manager or shift caregiver, as applicable; and

(C) The proposed staff person is 21 years of age and meets the requirements of a substitute caregiver for the adult foster home as described in OAR 411-050-0625 and 411-050-0630.

(k) RESPONSIBILITY. A licensee is responsible for the supervision, training, and overall conduct of all caregivers, family members, and friends when acting within the scope of their employment, duties, or when present in the home.

(l) SEXUAL ABUSE. Sexual abuse, as defined in OAR 411-020-0002 (Adult Protective Services), is prohibited.

(m) COMMUNICATION.

(A) Applicants for an initial license must obtain and provide to the local licensing authority a current, active business address for electronic mail before obtaining a license.

(B) A licensee must notify the local licensing authority within 24 hours upon a change in the home's business address for electronic mail.

(C) A licensee must notify the local licensing authority, the residents and the resident's family members, representatives, and case managers, as applicable, of any change in the telephone number for the licensee or the adult foster home within 24 hours of the change.

(D) A licensee must notify the local licensing authority in writing before any change of the licensee's residence or mailing address.

(2) SALE OR LEASE OF EXISTING ADULT FOSTER HOMES AND TRANSFER OF LICENSES.

(a) A license is not transferable and does not apply to any location or person other than the location and person indicated on the license obtained from the local licensing authority.

(b) The licensee must inform real estate agents, prospective buyers, lessees, and transferees in all written communication, including advertising and disclosure statements, that the license to operate the adult foster home is not transferable and the licensee must refer them to the local licensing authority for information about licensing.

(c) When a home is to be sold or otherwise transferred or conveyed to another person who intends to operate the home as an adult foster home, that person must apply for and obtain a license from the local licensing authority before the transfer of operation of the home.

(d) The licensee must promptly notify the local licensing authority in writing about the licensee's intent to close or convey the adult foster home to another person. The licensee must provide written notice to the residents and the residents' representatives and case managers, as applicable, according to section (13) of this rule.

(e) The licensee must inform a person intending to assume operation of an existing adult foster home that the residents currently residing in the home must be given at least 30 calendar days' written notice of the licensee's intent to close the adult foster home for the purpose of conveying the home to another person.

(f) The licensee must remain licensed and responsible for the operation of the home and care of the residents in accordance with these rules until the home is closed and the residents have been relocated, or the home is conveyed to a new licensee who is licensed by the local licensing authority at a level appropriate to the care needs of the residents in the home.

(3) FORECLOSURE.

(a) A licensee must provide written notification to the local licensing authority within 10 calendar days after receipt of any notice of default, or any notice of potential default, with respect to a real estate contract, trust deed, mortgage, or other security interest affecting any property occupied or used by the licensee.

(b) The licensee must provide a copy of the notice of default or warning of potential default to the local licensing authority.

(c) The licensee must provide written updates to the local licensing authority at least every 30 days until the default or warning of potential default has been resolved and no additional defaults or potential defaults have been declared and no additional warnings have been issued. Written updates must include:

(A) The current status on what action has been or is about to be taken by the licensee with respect to the notice received.

(B) The action demanded or threatened by the holder of the security interest.

(C) Any other information reasonably requested by the local licensing authority.

(d) The licensee must provide written notification within 24 hours to the local licensing authority upon final resolution of the matters leading up to or encompassed by the notice of default or the notice warning of potential default.

(e) If the subject default property is licensed as an adult foster home, the licensee must provide written notification of the following within 24 hours to the local licensing authority, and all the residents and the residents' representatives, if applicable, regarding:

(A) The filing of any litigation regarding such security interest, including the filing of a bankruptcy petition by or against the licensee or an entity owning any property occupied or used by the licensee;

(B) The entry of any judgment with respect to such litigation;

(C) The passing of the date 40 days before any sale scheduled pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee; and

(D) The sale, pursuant to the exercise of legal rights under a security interest, or a settlement or compromise related thereto, of the licensee's property or property occupied or used by the licensee.

(4) MEALS.

(a) Three nutritious meals must be served daily at times consistent with those in the community. Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA's) My Plate and include fresh fruit and vegetables when in season.

(b) Meals must reflect consideration of a resident's preferences and cultural and ethnic background. This does not mean the licensee must prepare multiple, unique meals for the residents at the same time.

(c) A schedule of meal times and menus for the coming week must be prepared and posted weekly in a location accessible to residents and families.

(A) Meal substitutions for scheduled menu items in compliance with section (4)(a) of this rule are acceptable and must be documented on, or attached to, the weekly menu.

(B) The licensee must maintain the weekly menus for a minimum of the 12 most recent months during which the home has conducted business.

(C) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the licensee must support the resident's right to access food at any time. Limitations may only be used when there is a health or safety risk, as stated in OAR 411-050-0655, and when a written informed consent is obtained.

(D) If a resident misses a meal at a scheduled time, an alternative meal must be made available.

(d) There must be no more than a 14-hour span between the evening and morning meals. Snacks do not substitute for a meal in determining the 14-hour span. Nutritious snacks and liquids must be offered to fulfill each resident's nutritional requirements.

(e) Food may not be used as an inducement to control the behavior of a resident.

(f) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(g) Special consideration must be given to a resident with chewing difficulties or other eating limitations. Special diets must be followed, as prescribed in writing, by the resident's physician, nurse practitioner, or physician assistant.

(h) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Storage and food preparation areas must be free from food that is spoiled or expired.

(i) The household utensils, dishes, glassware, and household food may not be stored in bedrooms, bathrooms, or living areas.

(j) Meals must be prepared and served in the home where the residents live. Payment for meals eaten away from the home for the convenience of the licensee (e.g., restaurants, senior meal sites) is the responsibility of the licensee.

(A) Meals and snacks, as part of an individual recreational outing by choice, are the responsibility of the resident.

(B) Payment for food beyond the required three meals and snacks are the responsibility of the resident.

(k) Utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination. A dishwasher with a sani-cycle is recommended.

(l) Food preparation areas and equipment, including utensils and appliances, must be clean, free of offensive odors, and in good repair.

(5) TELEPHONE.

(a) The home must have a working landline and corded telephone with a listed number that is separate from any other number the home has, such as, but not limited to, internet or fax lines, unless the system includes features that notify the caregiver of an incoming call, or automatically switches to the appropriate mode. If a licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. A licensee may have only one phone line as long as the phone line complies with the requirements of these rules. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(b) The licensee must make a telephone that is in good working order available and accessible for the residents use with reasonable accommodation for privacy during telephone conversations. A resident with a hearing impairment, to the extent the resident may not hear a normal telephone conversation, must be provided with a telephone that is amplified with a volume control or a telephone that is hearing aid compatible.

(c) Restrictions on the use of the telephone by the residents must be specified in the written Residency Agreement and may not violate the residents' rights. Individual restrictions must be well documented in the resident's care plan.

(6) FACILITY RECORDS.

(a) Facility records must be kept current, maintained in the adult foster home, and made available for review upon request. Facility records include, but are not limited to:

(A) Proof the licensee and all subject individuals have a background check approved by the Department as required by OAR 411-050-0620.

(B) Proof the licensee and all other caregivers have met and maintained the minimum qualifications as required by OAR 411-050-0625, including:

(i) Proof of required continuing education. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of Department-approved classroom hours.

(ii) Completed certificates to document the substitute caregivers' completion of the Department's Caregiver Preparatory Training Study Guide and Workbook and to document the resident manager, floating resident manager, and shift caregivers, as applicable, completion and passing of the Department's Ensuring Quality Care Course and examination.

(iii) Documentation of orientation to the adult foster home for the resident manager, floating resident manager, shift caregivers, and substitute caregivers, as applicable.

(iv) Employment applications and the names, addresses, and telephone numbers of all caregivers employed or used by the licensee.

(v) Verification that all caregivers are not listed on either of the Exclusion Lists.

(C) Copies of notices sent to the local licensing authority pertaining to changes in the resident manager, floating resident manager, shift caregiver, or other primary caregiver.

(D) Proof of required vaccinations for animals on the premises.

(E) Well water tests, if required, according to OAR 411-050-0650. Test records must be retained for a minimum of three years.

(F) Residency Agreements with all residents and, if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(G) Records of evacuation drills according to OAR 411-050-0650, including the date, time of day, evacuation route, length of time for evacuation of all occupants, names of all residents and occupants, and names of residents and occupants that required assistance. The records must be kept at least three years.

(H) The Department's current Adult Foster Home Back-Up Agreement form (SDS 350) completed by the current back-up provider and the licensee, as stated in OAR 411-050-0610 and 411-050-0640.

(b) REQUIRED POSTED ITEMS. The following items must be posted in one location in the entryway or other equally prominent place in the home where residents, visitors, and others may easily read them:

(A) The adult foster home license;

(B) Conditions attached to the license, if any;

(C) A copy of a current floor plan meeting the requirements of OAR 411-050-0650;

(D) The Residents' Bill of Rights;

(E) The home's policies as stated in the current Residency Agreement that has been reviewed by the local licensing authority;

(F) The Department's procedure for making complaints;

(G) The Long-Term Care Ombudsman poster;

(H) The Department's inspection forms (form SDS 517A and, if applicable, form SDS 517B), including how corrections were made since the last annual inspection;

(I) The Department's notice pertaining to the use of any intercoms, monitoring devices, and video cameras that may be used in the adult foster home; and

(J) A weekly menu according to section (4) of this rule.

(c) POST BY PHONE. Emergency telephone numbers, including the contact number for at least one back-up provider who has agreed to respond in person in the event of an emergency and an emergency contact number for the licensee must be readily visible and posted by a central telephone in the adult foster home.

(7) RESIDENT RECORDS.

(a) An individual resident record must be developed, kept current, and readily accessible on the premises of the home for each individual admitted to the adult foster home. The record must be legible and kept in an organized manner so as to be utilized by staff. The record must contain the following information:

(A) A complete initial screening assessment and general information form (SDS 902) as described in OAR 411-050-0655.

(B) Documentation on form SDS 913 that the licensee has informed private-pay residents of the availability of a long-term care assessment.

(C) Documentation that the licensee has informed all residents of the right to formulate an Advance Directive.

(D) FINANCIAL INFORMATION:

(i) Detailed records and receipts, if the licensee manages or handles a resident's money. The Resident Account Record (form SDS 713) or other expenditure forms may be used if the licensee manages or handles a resident's money. The record must show amounts and sources of funds received and issued to, or on behalf of, the resident and be initialed by the person making the entry. Receipts must document all deposits and purchases of $5 or more made on behalf of a resident.

(ii) Residency Agreement signed and dated by the resident or the resident's representative may be kept in a separate file, but must be made available for inspection by the local licensing authority.

(E) Medical and legal information, including, but not limited to:

(i) Medical history, if available.

(ii) Current prescribing practitioner orders.

(iii) Nursing instructions, delegations, and assessments, as applicable.

(iv) Completed medication administration records retained for at least the last six months or from the date of admission, whichever is less. (Older records may be stored separately).

(v) Copies of Guardianship, Conservatorship, Advance Directive for Health Care, Power of Attorney, and Physician's Order for Life Sustaining Treatment (POLST) documents, as applicable.

(F) A complete, accurate, and current care plan.

(G) Effective July 1, 2016, documentation that supports or eliminates any individually-based limitation, as described in OAR 411-050-0655.

(H) A copy of the current house policies, as identified in the current Residency Agreement, and the current Resident's Bill of Rights, signed and dated by the resident or the resident's representative.

(I) SIGNIFICANT EVENTS. A written report (using form SDS 344 or its equivalent) of all significant incidents relating to the health or safety of the resident, including how and when the incident occurred, who was involved, what action was taken by the licensee and staff, as applicable, and the outcome to the resident.

(J) NARRATIVE OF RESIDENT'S PROGRESS. Narrative entries describing each resident's progress must be documented at least weekly and

maintained in each resident's individual record. All entries must be signed and dated by the person writing them.

(K) Non-confidential information or correspondence pertaining to the care needs of the resident.

(b) ACCESS TO RESIDENT RECORDS.

(A) Resident records must be readily available at the adult foster home to residents, the residents' representatives or other legally authorized persons, all caregivers working in the home, and the Department, the local licensing authority, the investigative authority, case managers, and the Centers for Medicare and Medicaid Services (CMS) for the purpose of conducting inspections or investigations.

(B) The State Long-Term Care Ombudsman must be provided access to all resident and facility records. A Deputy Ombudsman and Certified Ombudsman Volunteers must be provided access to facility records relevant to caregiving and resident records with written permission from the resident or the resident's representative. (See OAR 114-005-0030).

(c) RECORD RETENTION. Records, including any financial records for residents, must be kept for a period of three years from the date the resident left the home.

(d) CONFIDENTIALITY. In all other matters pertaining to confidential records and release of information, licensees must be guided by the principles and definitions described in OAR chapter 411, division 005 (Privacy of Protected Information).

(8) RESIDENCY AGREEMENT. The current Residency Agreement must be given to the resident and the resident's representative, as applicable, at the time the screening and assessment is conducted. Before the resident's admission, a signed and dated copy of the Residency Agreement must be obtained and placed in the resident's record. The policies within the Residency Agreement must be consistent with the practices of the licensee, staff, occupants, and visitors of the home. (See OAR 411-050-0615).

(9) RESIDENT MOVES AND TRANSFERS. The licensee must support a resident's choice to remain in his or her living environment, while recognizing that some residents may no longer be appropriate for the adult foster care setting due to safety and medical limitations.

(a) If a resident moves, or intends to move, out of an adult foster home for any reason, the licensee must cooperate with the potential provider's screening and assessment activities as directed by the resident or the resident's representative, and submit copies of pertinent information from the resident's record to the resident's new place of residence at the time of move. Pertinent information must include, at a minimum:

(A) Copies of current prescribing medical practitioner's orders for medications, current medication sheets, an updated care plan, including the elements of any person-centered service plan, and any documentation of limitations.

(B) Documentation of actions taken by the adult foster home staff, resident, or the resident's representative pertaining to the move or transfer.

(b) A licensee must immediately document voluntary and involuntary moves or transfers from the adult foster home in the resident's record as events take place. (See sections (11) and (12) of this rule).

(10) VOLUNTARY MOVES AND TRANSFERS.

(a) If a resident eligible for Medicaid services or the resident's representative gives notice of the resident's intent to leave the adult foster home, or the resident leaves the home abruptly, the licensee must promptly notify the resident's case manager and the local licensing authority.

(b) A licensee must obtain prior authorization from the resident, the resident's representative, and case manager, as applicable, before the resident's:

(A) Voluntary move from one bedroom to another in the adult foster home;

(B) Voluntary transfer from one adult foster home to another home that has a license issued to the same person; or

(C) Voluntary move to any other location.

(c) Notifications and authorizations of voluntary moves and transfers must be documented and available in the resident's record.

(d) The licensee remains responsible for the provision of care and services until the resident has moved from the home.

(11) INVOLUNTARY MOVES AND TRANSFERS.

(a) A resident may only be moved involuntarily to another room within the adult foster home, transferred to another adult foster home operated by the same licensee for a temporary or permanent stay, or moved from the adult foster home for the following reasons:

(A) Medical reasons. The resident has a medical or nursing condition that is complex, unstable, or unpredictable that exceeds the level of care and services the facility provides.

(B) The adult foster home is unable to accomplish evacuation of the adult foster home in accordance with OAR 411-050-0650.

(C) Welfare of the resident or other residents, including:

(i) The resident exhibits behavior that poses an imminent danger to self or others, including acts that result in the resident's arrest or detention;

(ii) The resident engages in behavior or action that repeatedly and substantially interfere with the rights, health, or safety of the residents or others; or

(iii) The resident engages in illegal drug use or commits a criminal act that causes potential harm to the resident or others.

(D) Failure to make payment for care or failure to make payment for room and board.

(E) The adult foster home has had its license revoked, not renewed, or the license was voluntarily surrendered by the licensee.

(F) The home was not notified before the resident's admission, or learns following the resident's admission, that the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(G) The licensee's Medicaid Provider Enrollment Agreement or specialized contract is terminated (pertains only to residents eligible for Medicaid).

(H) The resident engages in the use of legal medical marijuana, recreational marijuana, or both, in violation of the home's written policies or contrary to Oregon Law under the Oregon Medical Marijuana Act, ORS 475.300 to 475.346.

(b) MANDATORY WRITTEN NOTICE. A resident may not be moved involuntarily from the adult foster home, to another room within the adult foster home, or transferred to another adult foster home for a temporary or permanent stay without a minimum of 30 calendar days' written notice. The notice must be delivered in person to the resident and must be delivered in person or sent by registered or certified mail to the resident's representative, guardian, or conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. Where a resident lacks capacity and there is no representative, a copy of the notice must be immediately submitted to the State Long Term Care Ombudsman. The written notice must:

(A) Be on the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901);

(B) Be completed by the licensee; and

(C) Include the following information:

(i) The resident's name;

(ii) The reason for the proposed move or transfer, including the specific reasons the facility is unable to meet the resident's needs;

(iii) The date of the proposed change;

(iv) The resident's new location, if known;

(v) A notice of the right to hold an informal conference and hearing;

(vi) The name, address, and telephone number of the person giving the notice; and

(vii) The date the notice is issued.

(c) LESS THAN 30 DAYS' WRITTEN NOTICE. A licensee may give less than 30 calendar days' written notice in specific circumstances as identified in paragraphs (A) to (C) below, but must do so as soon as possible using the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901). The notice must be given in person to the resident, the resident's representative, guardian, conservator, and a copy must be immediately submitted to the local licensing authority, and to the resident's case manager, as applicable. The reasons for the notice must be fully documented in the resident's record. The licensee remains responsible for the provision of care and services until the resident has moved from the home. A licensee may give less than 30 calendar days' notice only if:

(A) Undue delay in moving the resident would jeopardize the health, safety, or well-being of the resident, including:

(i) The resident has a medical emergency that requires the immediate care of a level or type the adult foster home is unable to provide.

(ii) The resident exhibits behavior that poses an immediate danger to self or others.

(B) The resident is hospitalized or is temporarily out of the home and the licensee determines he or she is no longer able to meet the needs of the resident; or

(C) The home was not notified before the resident's admission, or learns following the resident's admission, the resident is on probation, parole, or post-prison supervision after being convicted of a sex crime defined in ORS 181.805.

(i) In the event a resident is given notice of an involuntary move due to (11)(c)(C) of this rule, the notice may be given without reasonable advance notice.

(ii) The resident shall be given the Department's Notice of Involuntary Move or Transfer of Resident form (SDS 901) as stated in (11) of this rule.

(12) RESIDENT HEARING RIGHTS. A resident, who has been given formal notice of an involuntary move or refused the right of return or re-admission, is entitled to an informal conference and hearing before the involuntary move or transfer as follows:

(a) INFORMAL CONFERENCE. The local licensing authority must hold an informal conference as promptly as possible after the request is received. The local licensing authority must send written notice of the time and place of the conference to the licensee and all persons entitled to the notice. Participants may include the resident and at the resident's request a family member, case manager, Ombudsman, legal representative of the resident, the licensee, and a representative from an adult foster home association or SEIU if requested by the licensee. The purpose of the informal conference is to resolve the matter without an administrative hearing. If a resolution is reached at the informal conference, the local licensing authority must document the outcome in writing and no administrative hearing is needed.

(b) ADMINISTRATIVE HEARING. If a resolution is not reached as a result of the informal conference, the resident or the resident's representative may request an administrative hearing. If the resident is being moved or transferred with less than 30 calendar days' notice according to section (11)(c) of this rule, the hearing must be held within seven business days of the move or transfer. The licensee must hold a space available for the resident pending receipt of an administrative order. These administrative rules and ORS 441.605(4) governing transfer notices and hearings for residents of long-term care facilities apply to adult foster homes.

(13) CLOSURE OF ADULT FOSTER HOMES.

(a) A licensee must notify the local licensing authority before the voluntary closure, proposed sale, or transfer of ownership of the home, and give the residents and the residents' families, representatives, and case managers, as appropriate, a minimum of 30 calendar days' written notice on the Department's form (SDS 901) according to section (11) of this rule.

(b) In circumstances where undue delay might jeopardize the health, safety, or well-being of residents, licensees, or staff, written notice must be given as soon as possible, according to section (11)(c).

(c) A licensee must surrender the physical license to operate an adult foster home to the local licensing authority at the time of the adult foster home's closure.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.705-795, 443.880

Stats. Implemented: ORS 197.660-670, 441.373, 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0644, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0650

Facility and Safety Standards

In order to qualify for or maintain a license, an adult foster home must comply with the following provisions:

(1) GENERAL CONDITIONS.

(a) INTERIOR AND EXTERIOR PREMISES. The building and furnishings, patios, decks, and walkways, as applicable, must be clean and in good repair. The interior and exterior premises must be well maintained and accessible according to the individual needs of the residents. There must be no accumulation of garbage, debris, rubbish, or offensive odors. Walls, ceilings, and floors must be of such character to permit washing, cleaning, or painting, as appropriate.

(b) ADDRESS. The address numbers of the adult foster home must be placed on the home in a position that is legible and clearly visible from the street or road fronting the property. If the home is so situated that the address number is not legible and clearly visible from the road fronting the property, such as when the home is accessed via a lengthy driveway or private access road, then the address numbers must also be posted where the driveway or private access road joins the fronting road. The address numbers must be at least four inches in height, made of reflective material, and contrast with the background.

(c) LIGHTING. Adequate lighting, based on the needs of the occupants, must be provided in each room, stairway, and exit way. Incandescent light bulbs and florescent tubes must be protected with appropriate covers.

(d) TEMPERATURE. The heating system must be in working order. Areas of the home used by the residents must be maintained at a comfortable temperature. Minimum temperatures during the day must be not less than 68 degrees, no greater than 85 degrees, and not less than 60 degrees during sleeping hours. Variations from the requirements of this rule must be based on resident care needs or preferences and must be addressed in each resident's care plan.

(A) During times of extreme summer heat, the licensee must make reasonable effort to keep the residents comfortable using ventilation, fans, or air conditioning. Precautions must be taken to prevent resident exposure to stale, non-circulating air.

(B) If the facility is air-conditioned, the system must be functional and the filters must be cleaned or changed as needed to ensure proper maintenance.

(C) If the licensee is unable to maintain a comfortable temperature for the residents during times of extreme summer heat, air conditioning or another cooling system may be required.

(e) COMMON USE AREAS. Common use areas for the residents must be accessible to all residents. There must be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the occupants at one time. Common space may not be located in an unfinished basement or garage unless such space was constructed for that purpose or has otherwise been legalized under permit. There may be additional space required if wheelchairs are to be accommodated. An additional 40 square feet of common living space is required for each day care individual, room and board tenant, or relative receiving care for remuneration that exceeds the limit of five.

(f) VIDEO MONITORS. Use of video monitors detracts from a home-like environment and the licensee may not use video monitors in any area of the home that would violate a resident's privacy unless requested by the resident or the resident's representative. The licensee may not ask the resident or the resident's representative to waive the resident's right to privacy as a condition of admission to the home.

(2) SANITATION AND PRECAUTIONS.

(a) NON-MUNICIPAL WATER SOURCE. A public water supply must be utilized if available. If a non-municipal water source is used, the licensor, a sanitarian, or a technician from a certified water-testing laboratory must collect a sample annually or as required by the Department. The water sample must be tested for coliform bacteria. Water testing and any necessary corrective action to ensure water is suitable for drinking must be completed at the licensee's expense. Water testing records must be retained for three years.

(b) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(c) COMMODES AND INCONTINENCE GARMENTS. Commodes used by residents must be emptied frequently and cleaned daily, or more frequently if necessary. Incontinence garments must be disposed of in closed containers.

(d) WATER TEMPERATURE. A resident who is unable to safely regulate the water temperature must be supervised.

(e) LAUNDRY. Before laundering, soiled linens and clothing must be stored in closed containers in an area that is separate from food storage, kitchen, and dining areas. Pre-wash attention must be given to soiled and wet bed linens. Sheets and pillowcases must be laundered at least weekly and more often if soiled.

(f) Garbage and refuse must be suitably stored in readily cleanable, rodent-proof, covered containers, pending weekly removal.

(g) VENTILATION. All doors and windows that are used for ventilation must have screens in good condition.

(h) INFECTION CONTROL. Standard precautions for infection control must be followed in resident care. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(i) DISPOSAL OF SHARPS. Precautions must be taken to prevent injuries caused by needles, scalpels, and other sharp instruments or devices during procedures. The puncture-resistant container must be located as close as practical to the use area. Disposal must be made according to local regulations as stated in section (5) of this rule. (See 459.386 to 459.405).

(j) FIRST AID. Current, basic first-aid supplies and a first-aid manual must be readily available in the home.

(k) PESTS. Reasonable precautions must be taken to prevent pests (e.g., ants, cockroaches, other insects, and rodents).

(l) PETS OR OTHER ANIMALS. Sanitation for household pets and other domestic animals on the premises must be adequate to prevent health

hazards. Proof of rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and not present a danger to the residents or guests.

(m) SAFETY BARRIERS. Patios, decks, walkways, swimming pools, hot tubs, spas, saunas, water features, and stairways, as appropriate, must be equipped with safety barriers designed to prevent injury. Resident access to or use of swimming or other pools, hot tubs, spas, or saunas on the premises must be supervised.

(3) BATHROOMS. Bathrooms must:

(a) Provide individual privacy and have a finished interior with a door that opens to a hall or common-use room. If a resident's bedroom includes a private bathroom, the door for the private bathroom must open to the bedroom. No person must have to walk through another person's bedroom to access a bathroom.

(b) Be large enough to accommodate the individual needs of the residents and any equipment that may be necessary.

(c) Have a mirror, a window that opens or other means of ventilation, and a window covering for privacy.

(d) Be clean and free of objectionable odors.

(e) Have bathtubs, showers, toilets, and sinks in good repair. A sink must be located near each toilet and a toilet and sink must be available for the resident's use on each floor with resident rooms. There must be at least one toilet, one sink, and one bathtub or shower for each six household occupants (including residents, day care individuals, room and board tenants, the licensee, and the licensee's family).

(f) Have hot and cold water at each bathtub, shower, and sink in sufficient supply to meet the needs of the residents.

(g) Have nonporous surfaces for shower enclosures. Glass shower doors, if applicable, must be tempered safety glass, otherwise, shower curtains must be clean and in good condition.

(h) Have non-slip floor surfaces in bathtubs and showers.

(i) Have grab bars for each toilet, bathtub, and shower to be used by the residents for safety.

(j) Have barrier-free access to toilet and bathing facilities.

(k) Have adequate supplies of toilet paper and soap supplied by the licensee. Residents must be provided with individual towels and washcloths that are laundered in hot water at least weekly or more often if necessary. Residents must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, roller-dispensed hand towels or paper towels in a dispenser must be provided for the residents' use.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must have:

(A) Been constructed as a bedroom when the home was built, or remodeled under permit.

(B) A finished interior with walls or partitions of standard construction that go from floor to ceiling.

(C) A door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom. The bedroom door must be large enough to accommodate the occupant of the room and any mobility equipment that may be needed by the resident.

(D) Adequate ventilation, heating, and lighting with at least one window that opens and meets the requirements in section (5)(e) of this rule.

(E) At least 70 square feet of usable floor space for one resident or 120 square feet for two residents excluding any area where a sloped ceiling does not allow a person to stand upright.

(F) No more than two occupants per room. (See also OAR 411-050-0632 pertaining to a child's bedroom). This rule is not intended to prohibit a child five years of age or younger from occupying his or her parent's bedroom.

(b) The licensee, any other caregivers, and family members may not sleep in areas designated as living areas or share a bedroom with a resident. This rule is not intended to prohibit a caregiver or other person of the resident's choosing from temporarily staying in the resident's room when required by the resident's condition.

(c) There must be a bed at least 36 inches wide for each resident consisting of a mattress and springs, or equivalent, in good condition. Cots, rollaways, bunks, trundles, daybeds with restricted access, couches, and folding beds may not be used for residents. Each bed must have clean bedding in good condition consisting of a bedspread, mattress pad, two sheets, a pillow, a pillowcase, and blankets adequate for the weather. Waterproof mattress covers must be used for incontinent residents. Day care individuals may use a cot or rollaway bed if bedroom space is available that meets the requirements of section (4)(a) of this rule. A resident's bed may not be used by a day care individual.

(d) Each resident's bedroom must have a separate, private dresser and closet space sufficient for the resident's clothing and personal effects, including hygiene and grooming supplies. A resident must be provided a private, secure storage space to keep and use reasonable amounts of personal belongings. A licensee may not use a resident's bedroom for storage of items, supplies, devices, or appliances that do not belong to the resident.

(e) All resident bedroom doors must have a locking device on the inside of the door, released by a single action. (See OAR 411-050-0650(5)). Providers licensed before January 1, 2016, have until September 1, 2018 to fully implement this requirement.

(f) Drapes or shades for bedroom windows must be in good condition and allow privacy for the residents.

(g) A resident who is non-ambulatory, has impaired mobility, or is cognitively impaired must have a bedroom with a safe, second exit at ground level. A resident with a bedroom above or below the ground floor must demonstrate his or her capability for self-preservation.

(h) Resident bedrooms must be in close enough proximity to the licensee or caregiver in charge to alert the licensee or caregiver in charge to resident nighttime needs or emergencies, or the bedrooms must be equipped with a functional call bell or intercom within the residents' abilities to operate. Intercoms may not violate the resident's right to privacy and must have the capability of being turned off by the resident or at the resident's request.

(i) Bedrooms used by the licensee, resident manager, shift caregiver, and substitute caregiver, as applicable, must be located in the adult foster home and must have direct access to the residents through an interior hallway or common use room.

(5) SAFETY.

(a) FIRE AND LIFE SAFETY. Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The home may be inspected for fire safety by the State Fire Marshal's Office, or the State Fire Marshal's designee, at the request of the local licensing authority or the Department using the standards in these rules, as appropriate.

(b) HEAT SOURCES. All heating equipment including, but not limited to, wood stoves, pellet stoves, and fireplaces must be installed in accordance with all applicable state and local building and mechanical codes. Heating equipment must be in good repair, used properly, and maintained according to the manufacturer's or a qualified inspector's recommendations.

(A) A licensee who does not have a permit verifying proper installation of an existing woodstove, pellet stove, or gas fireplace must have it inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth, Patio, and Barbeque Association member and follow the inspector's recommended maintenance schedule.

(B) Fireplaces must have approved and listed protective glass screens or metal mesh screens anchored to the top and bottom of the fireplace opening.

(C) The local licensing authority may require the installation of a noncombustible, heat-resistant, safety barrier 36 inches around a woodstove to prevent residents with ambulation or confusion problems from coming in contact with the stove.

(D) Unvented, portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over, shut-off capability may be used when approved by the State Fire Marshal or the State Fire Marshal's designee. A heater must be directly connected to an electrical outlet and may not be connected to an extension cord.

(c) EXTENSION CORDS AND ADAPTORS. Extension cord wiring and multi-plug adaptors may not be used in place of permanent wiring. UL-approved, re-locatable power taps (RPTs) with circuit breaker protection and no more than six electrical sockets are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPT must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) LOCKS AND ALARMS. Hardware for all exit doors and interior doors must be readily visible, have simple hardware that may not be locked against exit, and have an obvious method of operation. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted.

(A) All resident bedroom doors must have a locking device on the inside of the door, released by a single action. Providers licensed before January 1, 2016, have until September 1, 2018 to fully implement this requirement.

(B) The lock on each resident's bedroom door must have a personalized key that locks and unlocks only the lock on the resident's bedroom door.

(C) Each Resident shall be provided a key to the lock for his or her bedroom.

(D) A set of master key to all of the residents' locked doors must be immediately available to the licensee and all other caregivers in the home.

(E) If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(e) WINDOWS. Bedrooms must have at least one window or exterior door that leads directly outside, readily opens from the inside without special tools, and provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 24 inches in height or 20 inches in width. If the interior sill height of the window is more than 44 inches from the floor level, approved steps or other aids to the window exit that the occupants are capable of using must be provided. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with interior sill heights of no more than 48 inches above the floor may be accepted when approved by the State Fire Marshal or the State Fire Marshal's designee.

(f) CONSTRUCTION. Interior and exterior doorways must be wide enough to accommodate the mobility equipment used by the residents such as wheelchairs and walkers. All interior and exterior stairways must be unobstructed, equipped with handrails on both sides, and appropriate to the condition of the residents. (See also section (5)(q) of this rule).

(A) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread index of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(i) MANUFACTURED HOMES. A manufactured home (formerly mobile homes) must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The manufactured home must have a manufacturer's label permanently affixed on the unit itself that states the manufactured home meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

> "As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(ii) If such a label is not evident and the licensee believes the manufactured home meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the home's manufacturer.

(iii) Manufactured homes built in 1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(B) STRUCTURAL CHANGES. The licensee must notify the local licensing authority, in writing, at least 15 calendar days before any remodeling, renovations, or structural changes in the home that require a building permit. Such activity must comply with local building, sanitation, utility, and fire code requirements applicable to a single-family dwelling (see ORS 443.760(1)). The licensee must forward all required permits and inspections, an evacuation plan as described in section (5)(l) of this rule, and a revised floor plan as described in section (5)(o) of this rule, to the local licensing authority within 30 calendar days of completion.

(g) FIRE EXTINGUISHERS. At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a location visible and readily accessible to any occupant of the home on each floor, including basements. Fire extinguishers must be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(h) CARBON MONOXIDE AND SMOKE ALARMS.

(A) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the manufacturer's instructions. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(i) If bedrooms are located in multi-level homes, carbon monoxide alarms must be installed on each level, including the basement.

(ii) Carbon monoxide alarms may be hard-wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with a battery back-up. Battery operated carbon monoxide alarms must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(B) SMOKE ALARMS. Smoke alarms must be installed in accordance with the manufacturer's instructions in each bedroom, in hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, any interior designated smoking area, and in basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(i) Ceiling placement of smoke alarms is recommended.

(ii) Battery operated smoke alarms or hard-wired smoke alarms with a battery backup must be equipped with a device that warns of a low battery.

(iii) A bedroom used by a hearing-impaired occupant who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(C) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when activated an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed. Intercoms and room monitors may not be used to amplify alarms.

(D) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the manufacturer's instructions at least monthly (per NFPA 72). Testing must be documented in the facility records. The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(i) COMBUSTIBLES AND FIREARMS. Flammables, combustible liquids, and other combustible materials must be safely and properly stored in the original, properly labeled containers or safety containers and secured in areas to prevent tampering by residents or vandals.

(A) Oxygen and other gas cylinders in service or in storage, must be adequately secured to prevent the cylinders from falling or being knocked over.

(B) No smoking signs must be visibly posted where oxygen cylinders are present.

(C) Firearms must be stored, unloaded, in a locked cabinet. The firearms cabinet must be located in an area of the home that is not accessible to the residents.

(D) Ammunition must be secured in a locked area separate from the firearms.

(j) HAZARDOUS MATERIALS. Cleaning supplies, poisons, insecticides, and other hazardous materials must be properly stored in the original container, or in a container manufactured for the type of product. The containers must be properly labeled and kept in a safe area that is not accessible to residents, or near food preparation areas, food storage areas, dining areas, or medications.

(k) MEDICAL SHARPS. All sharps, including, but not limited to needles and lancets, must be disposed of in approved sharps containers. Sharps containers must:

(A) Be puncture-resistant;

(B) Be leak-proof;

(C) Be labeled or color-coded red to warn that the contents are hazardous;

(D) Have a lid, flap, door, or other means of closing the container and inhibits the ability to remove sharps from the container;

(E) Not be overfilled;

(F) Be stored in an upright position in a secure location that is not accessible to residents and not close to any food preparation or food storage area; and

(G) Must be closed immediately once full and properly disposed of within 10 days, according to the home's waste management company's or pharmacy's instructions.

(l) EVACUATION PLAN. An emergency evacuation plan must be developed and revised as necessary to reflect the current condition of the residents in the home. The evacuation plan must be rehearsed with all occupants.

(m) ORIENTATION TO EMERGENCY PROCEDURES. Within 24 hours of arrival, any new resident or caregiver must be shown how to respond to a smoke alarm, shown how to participate in an emergency evacuation drill, and receive an orientation to basic fire safety. New caregivers must also be oriented in how to conduct an evacuation.

(n) EVACUATION DRILL. An evacuation drill must be held at least once every 90 calendar days, with at least one evacuation drill per year conducted during sleeping hours. The evacuation drill must be clearly documented, signed by the caregiver conducting the drill, and maintained according to OAR 411-050-0645.

(A) The licensee and all other caregivers must:

(i) Be able to demonstrate the ability to evacuate all occupants from the facility to the initial point of safety within three minutes or less. The initial point of safety must:

(I) Be exterior to and a minimum of 25 feet away from the structure;

(II) Have direct access to a public sidewalk or street; and

(III) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.

(ii) Be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less. The final point of safety must be a minimum of 50 feet away from the structure, and:

(I) Have direct access to a public sidewalk or street; or

(II) Not be in the backyard of a home unless the backyard has direct access to a public street or sidewalk.

(B) Conditions may be applied to a license if the licensee or caregivers demonstrate the inability to meet the evacuation times described in this section. Conditions may include, but are not limited to, reduced capacity of residents, additional staffing, or increased fire protection. Continued problems are grounds for revocation or non-renewal of the license.

(o) FLOOR PLAN. The licensee must develop a current and accurate floor plan that indicates:

(A) The size of rooms;

(B) Which bedrooms are to be used by residents, the licensee, caregivers, and for day care and room and board tenants, as applicable;

(C) The location of all the exits on each level of the home, including emergency exits such as windows;

(D) The location of wheelchair ramps;

(E) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(F) The planned evacuation routes, initial point of safety, and final point of safety; and

(G) Any designated smoking areas in or on the adult foster home's premises.

(p) RESIDENT PLACEMENT. A resident, who is unable to walk without assistance or not capable of self-preservation, may not be placed in a bedroom on a floor without a second ground level exit. (See also section (4)(f) of this rule).

(q) STAIRS. Stairs must have a riser height of between 6 to 8 inches and tread width of between 8 to 10.5 inches. Lifts or elevators are not an acceptable substitute for a resident's capability to ambulate stairs. (See also section (5)(f) of this rule).

(r) EXIT WAYS. All exit ways must be barrier free and the corridors and hallways must be a minimum of 36 inches wide or as approved by the State Fire Marshal or the State Fire Marshal's designee. Interior doorways used by the residents must be wide enough to accommodate residents' wheelchairs and walkers, and beds that are used by residents for evacuation purposes. Any bedroom window or door identified as an exit must remain free of obstacles that would interfere with evacuation.

(s) RAMPS. There must be at least one wheelchair ramp from a minimum of one exterior door if an occupant of the home is non-ambulatory. Wheelchair ramps must comply with the U.S. Department of Justice's 2010 Americans with Disabilities Act (ADA) Standards for Accessible Design (http://www.ada.gov/2010ADAstandards_index.htm, Chapter 4, Accessible Routes, Section 405, Ramps).

(t) EMERGENCY EXITS. There must be a second safe means of exit from all sleeping rooms. A provider whose sleeping room is above the first floor may be required to demonstrate at the time of licensure, renewal, or inspection, how the premises will be evacuated from the provider's sleeping room using the secondary exit.

(u) FLASHLIGHT. There must be at least one plug-in, rechargeable flashlight in good functional condition available on each floor of the home for emergency lighting.

(v) SMOKING. The licensee must identify the home's smoking policies in the home's Residency Agreement. If smoking is allowed in or on the premises of the home:

(A) The Residency Agreement must restrict smoking to designated areas, and prohibit smoking in:

(i) Any bedroom, including that of the residents, licensee, resident manager, any other caregiver, occupant, or visitor;

(ii) Any room where oxygen is used; and

(iii) Anywhere flammable materials are stored.

(B) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(w) EMERGENCY PREPAREDNESS PLAN. A licensee must develop and maintain a written emergency preparedness plan for the protection of all occupants in the home in the event of an emergency or disaster. Emergency supplies, consistent with the community standards (including www.redcross.org/prepare/location/home-family) must be kept current and readily available in the home.

(A) The written emergency plan must:

(i) Include an evaluation of potential emergency hazards including, but not limited to:

(I) Prolonged power failure or water or sewer loss;

(II) Fire, smoke, or explosion;

(III) Structural damage;

(IV) Hurricane, tornado, tsunami, volcanic eruption, flood, or earthquake;

(V) Chemical spill or leak; and

(VI) Pandemic.

(ii) Include an outline of the caregiver's duties during an evacuation.

(iii) Consider the needs of all occupants of the home including, but not limited to:

(I) Access to medical records necessary to provide services and treatment.

(II) Access to pharmaceuticals, medical supplies, and equipment during and after an evacuation.

(III) Behavioral support needs.

(iv) Include provisions and supplies sufficient to shelter in place for a minimum of three days without electricity, running water, or replacement staff.

(v) Planned relocation sites.

(B) The licensee must notify the Department or the local licensing authority of the home's status in the event of an emergency that requires evacuation and during any emergent situation when requested.

(C) The licensee must re-evaluate the emergency preparedness plan at least annually and whenever there is a significant change in the home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SSD 14-1985, f. 12-31-85 ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Sections (8) thru (10) renumbered to 411-050-0447; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 2-1998(Temp), f. & cert. ef. 2-6-98 thru 8-1-98; SDSD 6-1998, f. 7-31-98, cert. ef. 8-1-98; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2007, f. 6-27-07, cert. ef. 7-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0445, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0655

Standards and Practices for Care and Services

(1) PRE-ADMISSION SCREENING AND ASSESSMENT.

(a) Before admission, the licensee must conduct and document a screening to determine if a prospective resident's care needs exceed the license classification of the home. The screening must:

(A) Evaluate the ability of the prospective resident to evacuate the home within three minutes along with all the occupants of the home.

(B) Determine if the licensee and caregivers are able to meet the prospective resident's needs in addition to meeting the needs of the other residents of the home.

(C) Include medical diagnoses, medications, personal care needs, nursing care needs, cognitive needs, communication needs, night care needs, nutritional needs, activities, lifestyle preferences, and other information, as needed, to assure the prospective resident's care needs shall be met.

(b) The screening process must include interviews with the prospective resident and the prospective resident's family, prior care providers, and case manager, as appropriate. The licensee must also interview, as necessary, any physician, nurse practitioner, physician assistant, registered nurse, pharmacist, therapist, or mental health or other licensed health care profes-

sional involved in the care of the prospective resident. A copy of the screening document must be:

(A) Given to the prospective resident or the prospective resident's representative.

(B) Placed in the resident's record if admitted to the home; or

(C) Maintained for a minimum of three years if the prospective resident is not admitted to the home.

(c) If the Department or AAA knows a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805 is applying for admission to an adult foster home, the Department or AAA shall notify the home of the person's status as a sex offender.

(d) The licensee may refuse to admit a person who is on probation, parole, or post-prison supervision after being convicted of a sex crime as defined in ORS 181.805.

(e) REQUIRED DISCLOSURES.

(A) The licensee must disclose the home's policies to a prospective resident or the prospective resident's representative, as applicable. A copy of the home's current and approved Residency Agreement identifying the home's policies shall be provided to the prospective resident and his or her representative. (See OAR 411-050-0615).

(B) LONG-TERM CARE ASSESSMENT. The licensee must inform a prospective private-pay resident or the prospective resident's representative, if appropriate, of the availability of long-term care assessment services provided through the Department or a certified assessment program. The licensee must document on the Department's form (SDS 913) that the prospective private-pay resident has been advised of the right to receive a long-term care assessment. The licensee must maintain a copy of the form in the resident's record upon admission and make a copy available to the Department upon request.

(2) BEFORE ADMISSION.

(a) The licensee must obtain and document general information regarding a resident before the resident's admission. The information must include the names, addresses, and telephone numbers of the resident's relatives, significant persons, case managers, and medical or mental health providers. The information must also include the date of admission and, if available, the resident's medical insurance information, birth date, prior living facility, and mortuary.

(b) Before admission, the licensee must obtain and place in the resident's record:

(A) Prescribing practitioner's written or verbal orders for medications, treatments, therapies, and special diets, as applicable. Any verbal orders must be followed by written orders within seven calendar days of the resident's admission. Attempts to obtain written orders must be documented in the resident's record.

(B) Prescribing practitioner or pharmacist review of the resident's preferences for over-the-counter medications and home remedies.

(C) Any medical information available, including the resident's history of accidents, illnesses, impairments, or mental status that may be pertinent to the resident's care.

(c) The licensee must ask for copies of the resident's Advance Directive, Physician's Order for Life Sustaining Treatment (POLST), and proof of court-appointed guardianship or conservatorship, if applicable. Copies of these documents must be placed in a prominent place in the resident's record and sent with the resident if the resident is transferred for medical care.

(d) The licensee must review the home's current Residency Agreement with the resident and the resident's representative, as appropriate. These reviews must be documented by having the resident, or the resident's representative, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the resident's record.

(3) SCREENING BEFORE RE-ADMISSION. When a resident temporarily leaves the home including, but not limited to, a resident's hospitalization, the licensee shall conduct the necessary elements of the pre-admission and screening assessment requirements, and document those findings to:

(a) Determine whether readmission to the home is appropriate for the classification of the home.

(b) Determine whether the licensee can continue to meet the resident's care and safety needs in addition to those of the other residents.

(c) Demonstrate compliance with these rules.

(d) If applicable, demonstrate the basis for refusing the resident's readmission to the home according to OAR 411-050-0645 (11).

(4) CARE PLAN.

(a) During the initial 14 calendar days following the resident's admission to the home, the licensee must continue to assess and document the resident's preferences and care needs. The assessment and care plan must be completed by the licensee and documented within the initial 14-day period. The care plan must describe the resident's needs, preferences, capabilities, what assistance the resident requires for various tasks, and must include:

(A) By whom, when, and how often care and services shall be provided;

(B) The resident's ability to perform activities of daily living (ADLs);

(C) Special equipment needs;

(D) Communication needs (examples may include, but are not limited to, hearing or vision needs, such as eraser boards or flash cards, or language barriers, such as sign language or non-English speaking);

(E) Night needs;

(F) Medical or physical health problems, including physical disabilities, relevant to care and services;

(G) Cognitive, emotional, or other impairments relevant to care and services;

(H) Treatments, procedures, or therapies;

(I) Registered nurse consultation, teaching, delegation, or assessment;

(J) Behavioral interventions;

(K) Social, spiritual, and emotional needs, including lifestyle preferences, activities, and significant others involved;

(L) The ability to exit in an emergency, including assistance and equipment needed;

(M) Any use of physical restraints or psychoactive medications; and

(N) Dietary needs and preferences.

(b) Effective July 1, 2016, the licensee must identify any individually-based limitations to the following freedoms on the Department's Individual Consent to HCBS Limitations form:

(A) Support to access to food at any time;

(B) Visitors of the resident's choosing at any time;

(C) A lock on the resident's bedroom, lockable by the resident;

(D) Choice of a roommate, if sharing a bedroom;

(E) Support to furnish and decorate the resident's bedroom as the resident chooses;

(F) Freedom and support to control the resident's schedule and activities; and

(G) Privacy in the resident's bedroom.

(c) Effective July 1, 2016, a limitation to any freedom in (b) of this rule must be supported by a specific assessed need due to threats to the health and safety of the resident or others. For Medicaid-eligible residents, the person-centered service plan coordinator must authorize the limitation and the individual must consent to the limitation. The licensee must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the limitation.

(B) The positive interventions and supports used before any limitation.

(C) Less intrusive methods that have been tried, but did not work.

(D) A clear description of the condition that is directly proportionate to the specific assessed need.

(E) Regular reassessment and review to measure the ongoing effectiveness of the limitation.

(F) Established time limits for periodic review of the limitation to determine if the limitation should be terminated or remains necessary. The limitation must be reviewed at least annually.

(G) The informed consent of the resident or, as applicable, the legal representative of the resident, including any discrepancy between the wishes of the resident and the consent of the legal representative.

(H) An assurance that the interventions and support do not cause harm to the individual.

(d) Limitations are not transferable between care settings. Continued need for any limitation at the new care setting must comply with the requirements as stated in OAR 411-050-0655.

(e) The licensee must review and update each resident's care plan every six months and when a resident's condition changes. The review must be documented in the resident's record at the time of the review and include the date of the review and the licensee's signature. If a care plan contains many changes and becomes less legible, a new care plan must be written.

(5) PERSON-CENTERED SERVICE PLAN. A Medicaid-eligible resident's case manager will complete a person-centered service plan, pursuant to OAR 411-004-0030. The licensee must incorporate all applicable

elements identified in the person-centered service plan that the provider is responsible for implementing.

(a) The licensee must notify the resident's case manager in the event a review and change or removal of an existing limitation is warranted, and when a new limitation is supported by a specific assessed need.

(A) All attempts to notify the resident's case manager about a review to change, remove, or add a limitation must be documented, and available in the resident's record.

(B) The licensee will not be held responsible for any failure on the case manager's part to conduct a review of current limitations or to complete the person-centered service plan.

(b) Providers may assist non-Medicaid residents in developing a person-centered service plan when no alternative resources are available.

(6) REGISTERED NURSE CONSULTATION.

(a) RN CONSULTATION AND ASSESSMENT. A licensee must obtain a medical professional consultation and assessment to meet the care needs of a resident as required in these rules. A registered nurse consultation must be obtained when a skilled nursing care task, as defined by the Oregon State Board of Nursing, has been ordered by a physician or other licensed health care professional.

(b) A licensee must also request a registered nurse consultation under the following conditions:

(A) When a resident has a health concern or behavioral symptoms that may benefit from a nursing assessment and provider education.

(B) When written parameters are needed to clarify a prescribing practitioner p.r.n. order for medication and treatment (See section (7)(g) of this rule).

(C) Before the use of physical restraints when not assessed, taught, and reassessed, according to section (7)(o) of this rule, by a physician, nurse practitioner, physician assistant, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist.

(D) Before requesting psychoactive medications to treat behavioral symptoms or the use of new psychoactive medications when not assessed, taught, and reassessed according to section (7)(h) of this rule, by a physician, nurse practitioner, physician assistant, or mental health practitioner.

(E) When care procedures are ordered that are new for a resident, the licensee, or other caregivers.

(c) RN DELEGATIONS. A registered nurse may determine a nursing care task be taught utilizing the delegation process. RN delegations are not transferable to other residents or caregivers. (Refer to OAR chapter 851, division 047).

(d) Documentation of nurse consultations, delegations, assessments, and reassessments must be maintained in the resident's record and made available to the Department upon request.

(7) STANDARDS FOR MEDICATIONS, TREATMENTS, AND THERAPIES.

(a) MEDICATIONS. The licensee and caregivers must demonstrate an understanding of each resident's medication administration regimen. Medication resource material must be readily available at the home and include the reason a medication is used, any specific instructions, the medication's actions, and common side effects.

(b) WRITTEN ORDERS. The licensee must obtain and place a signed order in the resident's record for any medications, dietary supplements, treatments, or therapies that have been ordered by a prescribing practitioner. The written orders must be carried out as prescribed unless the resident or the resident's legal representative refuses to consent. The prescribing practitioner must be notified if the resident refuses to consent to an order.

(A) CHANGED ORDERS. Changes to a written order may not be made without a prescribing practitioner order. The prescribing practitioner must be notified if the resident refuses to consent to the change order. Changes to medical orders obtained by telephone must be followed-up with signed orders within seven calendar days. Changes in the dosage or frequency of an existing medication require a new properly labeled and dispensed medication container. If a new properly labeled and dispensed medication container is not obtained, the change must be written on an auxiliary label attached to the medication container, not to deface the existing original pharmacy label, and must match the new medication order. Attachment of the auxiliary label must be documented in the residents' record. (See section (7)(f)(D) of this rule).

(B) DOCUMENTATION OF CHANGED ORDERS. Attempts to obtain the signed written changes must be documented and readily available for review in the resident's record. The resident's medications, including medications that are prescribed, over-the-counter medications, and home remedies, must be reviewed by the resident's prescribing practitioner or pharmacist at least annually. The review must be in writing, include the date of the review, and contain the signature of the prescribing practitioner or a pharmacist.

(c) MEDICATION SUPPLIES. The licensee must have all currently prescribed medications, including p.r.n. medications, and all prescribed over-the-counter medications available in the home for administration. Refills must be obtained before depletion of current medication supplies. Attempts to order refills must be documented in the resident's record.

(d) HEALTH CARE PROFESSIONAL ORDERS (IMPLEMENTED BY AFH STAFF). The licensee who implements a hospice, home health, or other licensed medical professional-generated order must:

(A) Have a copy of the hospice, home health, or licensed medical professional document that communicates the written order.

(B) Transcribe the order onto the medication administration record (MAR).

(C) Implement the order as written.

(D) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(e) HOSPICE AND HOME HEALTH ORDERS (IMPLEMENTED BY NON-AFH STAFF). A licensee must allow a resident to receive hospice services. The licensee who provides adult foster home services to a recipient of hospice or home health services, but who does not implement a hospice or home health-generated order must:

(A) Have a copy of the hospice or home health document that communicates the written order; and

(B) Include the order on subsequent medical visit reports for the prescribing practitioner to review.

(f) MEDICATION ADMINISTRATION RECORD (MAR). A current, written medication administration record (MAR) must be kept for each resident and must:

(A) List the name of all medications administered by a caregiver, including over-the-counter medications and prescribed dietary supplements. The MAR must identify the dosage, route, date, and time each medication and supplement is to be given.

(B) Identify any treatments and therapies administered by a caregiver. The MAR must indicate the type of treatment or therapy and the time the procedure must be performed.

(C) Be immediately initialed by the caregiver administering the medication, treatment, or therapy as it is completed. A resident's MAR must contain a legible signature that identifies each set of initials.

(D) Document changed and discontinued orders immediately showing the date of the change or discontinued order. A changed order must be written on a new line with a line drawn to the start date and time.

(E) Document missed or refused medications, treatments, or therapies. If a medication, treatment, or therapy is missed or refused by the resident, the initials of the caregiver administering the medication, treatment, or therapy must be circled, and a brief, but complete, explanation must be recorded on the back of the MAR.

(g) P.R.N. MEDICATIONS. Prescription medications ordered to be given "as needed" or "p.r.n." must have specific parameters indicating what the medication is for and specifically when, how much, and how often the medication may be administered. Any additional instructions must be available for the caregiver to review before the medication is administered to the resident.

(A) P.R.N. DOCUMENTATION. As needed (p.r.n) medications must be documented on the resident's MAR with the time, dose, the reason the medication was given, and the outcome.

(B) P.R.N. ADVANCE SET-UP. As needed (p.r.n.) medications may not be included in any advance set-up of medication.

(h) PSYCHOACTIVE MEDICATIONS.

(A) A licensee is not required to request an evaluation of a resident's use of a psychoactive medication if the resident is admitted to the home and the resident has been prescribed the psychoactive medication for a condition that is currently monitored by a physician, nurse practitioner, physician assistant, or mental health professional and the written order for the psychoactive medication is in the resident's record.

(B) If a resident is admitted to a home with no documented history as to the reason for taking a psychoactive medication, or if the licensee requests medical professional intervention to address behavioral symptoms, the licensee must request a physician, nurse practitioner, physician assistant, or mental health professional evaluate the resident's need for the psychoactive medication and the intended effect of the medication, common side effects, and circumstances for reporting. The evaluation request must be documented in the resident's record and include:

(i) A probable cause of the resident's behavior.

(ii) Behavioral and environmental interventions to be used instead of or in addition to psychoactive medication, if applicable. Alternative interventions must be tried as instructed by a licensed medical professional and the resident's response to the alternative interventions must be documented in the resident's record before administering a psychoactive medication.

(iii) A plan for reassessment by the resident's prescribing physician, nurse practitioner, physician assistant, or mental health professional.

(C) The prescription and order for a psychoactive medication must specify the dose, frequency of administration, and the circumstance for use (i.e., specific symptoms). The licensee and all caregivers must be aware of and comply with these parameters.

(D) The licensee and all caregivers must know the intended effect of a psychoactive medication for a particular resident and the common side effects, as well as the circumstances for reporting to the resident's physician, nurse practitioner, physician assistant, or mental health professional.

(E) The resident's care plan must identify and describe the behavioral symptoms psychoactive medications are prescribed for and a list of all interventions, including behavioral, environmental, and medication.

(F) Psychoactive medications must never be given to discipline a resident or for the convenience of the caregivers.

(i) MEDICATION CONTAINERS AND STORAGE.

(A) MEDICATION CONTAINERS. Each of the resident's prescribed medication containers, including bubble packs, must be clearly labeled by the pharmacy. All medications, including over-the-counter medications, must be in the original container. Medications stored in advanced set up containers are required to be labeled as described in these rules.

(B) OVER-THE-COUNTER PRODUCTS. Over-the-counter products such as medications, vitamins, and supplements purchased for a specific resident's use must be marked with the resident's name. Over-the-counter items in stock bottles (with original labels) may be used for multiple residents in the home and must be clearly marked as the house supply.

(C) STORAGE OF RESIDENT MEDICATION. All resident medications, including over-the-counter medications, must be kept in a locked, central location that is cool, clean, dry, not subject to direct sunlight, and separate from medications belonging to the licensee, caregivers, and all other non-residents. Medications requiring refrigeration must also be locked and stored separately from non-resident medications.

(D) STORAGE OF NON-RESIDENT MEDICATION. All non-resident medications must be kept locked and separate from resident medications. Residents shall not have access to medications belonging to the licensee, caregivers, other household members, or pets.

(j) DISPOSAL OF MEDICATION. Outdated, discontinued, recalled, or contaminated medications, including over-the-counter medications, may not be kept in the home and must be disposed of within 10 calendar days of expiration, discontinuation, or the licensee's knowledge of a recall or contamination. A licensee must contact the local DEQ waste management company in the home's area for instructions on proper disposal of unused or expired medications.

(k) DOCUMENTATION OF DISPOSAL. The disposal of a resident's medication must be documented in the resident's record and the documentation must be readily available in the resident's record.

(A) The disposal of a controlled substance must be documented in the resident's record and the disposal must be witnessed by a caregiver who is 18 years of age or older.

(B) Documentation regarding the disposal of medications and controlled substances must include:

(i) The date of disposal.

(ii) Description of the medication, (i.e., name, dosage, and amount being disposed).

(iii) Name of the resident for whom the medication was prescribed.

(iv) Reason for disposal.

(v) Method of disposal.

(vi) Signature of the person disposing of the medication.

(vii) For controlled substances, the signature of the caregiver who witnessed the disposal according to this rule.

(l) ADVANCED SET-UP. The licensee may set-up each resident's medications for up to seven calendar days in advance (excluding p.r.n. medications) by using a closed container manufactured for the advanced set-up of medications. If used, each resident must have his or her own container with divisions for the days of the week and times of the day the medications are to be given. The container must be clearly labeled with the resident's name, name of each medication, time to be given, dosage, amount, route, and description of each medication. The container must be stored in the locked area with the residents' medications.

(m) SELF-ADMINISTRATION OF MEDICATION. A licensee must have a prescribing practitioner written order of approval for a resident to self-medicate. A resident able to handle his or her own medical regimen may keep his or her medications in his or her own room in a lockable storage area or device. Medications must be kept locked except those medications on the residents' own person. The licensee must notify the prescriber of the medication if the resident shows signs of no longer being able to self-medicate safely.

(n) INJECTIONS. Subcutaneous, intramuscular, and intravenous injections may be self-administered by a resident if the resident is fully independent in the task or may be administered by a relative of the resident or an Oregon licensed registered nurse (RN). An Oregon licensed practical nurse (LPN) may give subcutaneous and intramuscular injections. A caregiver who has been delegated and trained by a registered nurse under provision of the Oregon State Board of Nursing (OAR 851-047-0000 to 851-047-0040) may give subcutaneous injections. Intramuscular and intravenous injections may not be delegated. (See OAR 411-050-0650(5) for storage and disposal requirements of sharps, including, but not limited to used needles and lancets).

(o) PHYSICAL RESTRAINTS. Physical restraints may only be used when required to treat a resident's medical symptoms or to maximize a resident's physical functioning. Physical restraints may only be used after a written assessment is completed as described below and all alternatives have been exhausted. Licensees and caregivers may use physical restraints in adult foster homes only in compliance with these rules, including the Resident's Rights listed in section (9) of this rule. Before the use of any type of physical restraint, the following must be completed:

(A) ASSESSMENT. A written assessment must be obtained from the resident's physician, nurse practitioner, physician assistant, registered nurse, Christian Science practitioner, mental health clinician, physical therapist, or occupational therapist that includes consideration of all other alternatives.

(B) ORDERS. If it is determined that a physical restraint is necessary following the assessment and trial of other measures, the least restrictive restraint must be used as infrequently as possible. The licensee must obtain a written order from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner before the use of a physical restraint. The written order must include specific parameters, including the type of physical restraint, circumstances for use, and duration of use, including:

(i) Procedural guidance for the use of the physical restraint.

(ii) The frequency for reassessment.

(iii) The frequency and procedures for nighttime use.

(iv) Dangers and precautions for using the physical restraint.

(C) Physical restraints may not be used on an as needed (p.r.n.) basis in an adult foster home.

(D) CONSENT. Physical restraints must not be used without first obtaining the written consent of the resident or the resident's legal representative.

(E) DOCUMENTATION. If it is determined a physical restraint is necessary following the assessment and trial of other measures, the written order for the use of a physical restraint must be documented in the resident's care plan explaining why and when the restraint is to be used, along with instructions for periodic release. Any less restrictive, alternative measures planned during the assessment, and cautions for maintaining the resident's safety while restrained, must also be recorded in the resident's care plan. The resident's record must include:

(i) The completed assessment as described in this rule.

(ii) The written order authorizing the use of the physical restraint from the resident's physician, nurse practitioner, physician assistant, or Christian Science practitioner.

(iii) Written consent of the resident or the resident's legal representative to use the specific type of physical restraint.

(iv) The reassessments completed by a medical professional as described above in subsection (B) of this rule.

(F) DAYTIME USE. A resident physically restrained during waking hours must have the restraints released at least every two hours for a minimum of 10 minutes and be repositioned, offered toileting, and provided exercise or range-of-motion exercises during this period. The use of restraints, restraint release, and activities that occurred during the release period must be documented in the resident's record.

(G) NIGHTTIME USE. The use of physical restraints at night is discouraged and must be limited to unusual circumstances. If used, the restraint must be of a design to allow freedom of movement with safety. The frequency of night monitoring to address resident safety and care needs

must be determined in the assessment. Tie restraints of any kind must not be used to keep a resident in bed.

(H) If any physical restraints are used in an adult foster home, the restraints must allow for quick release at all times. Use of restraints may not impede the three-minute evacuation of all occupants of the home.

(I) Physical restraints may not be used for the discipline of a resident or for the convenience of the adult foster home.

(8) RESIDENT CARE.

(a) Care and supervision of residents must be in a home-like atmosphere. The training of the licensee and caregivers and care and supervision of residents must be appropriate to the age, care needs, and conditions of the residents in the home. Additional staff may be required if, for example, day care individuals are in the home or if necessary to safely evacuate the residents and all occupants from the home as required by OAR 411-050-0650.

(b) If a resident has a medical regimen or personal care plan prescribed by a licensed health care professional, the provider must cooperate with the plan and ensure the plan is implemented as instructed.

(c) NOTIFICATION. The licensee must notify emergency personnel, the resident's physician, nurse practitioner, physician assistant, registered nurse, family representative, and case manager, as applicable, under the following circumstances:

(A) EMERGENCIES (MEDICAL, FIRE, POLICE). In the event of an emergency, the licensee or caregiver with the resident at the time of the emergency must first call 911 or the appropriate emergency number for the home's community. This does not apply to a resident with a medical emergency who practices Christian Science.

(i) If a resident is receiving hospice services, the caregivers must follow the written instructions for medical emergencies from the hospice nurse.

(ii) If a resident has a completed Physician's Orders for Life-Sustaining Treatment (POLST) or other legal documents, such as an Advance Directive or Do Not Resuscitate (DNR) order, copies of the documents must be made available to the emergency personnel when they arrive.

(B) HOSPITALIZATION. In the event the resident is hospitalized.

(C) HEALTH STATUS CHANGE. When the resident's health status or physical condition changes.

(D) DEATH. Upon the death of the resident.

(d) The licensee shall not inflict, or tolerate to be inflicted, abuse or punishment, financial exploitation, or neglect of the residents.

(e) The licensee must exercise reasonable precautions against any conditions that may threaten the health, safety, or welfare of the residents.

(f) A qualified caregiver must always be present and available at the home when a resident is in the home. A resident may not be left in charge in lieu of a caregiver.

(g) ACTIVITIES. The licensee must make available at least six hours of activities per week that are of interest to the residents, not including television and movies. Information regarding activity resources is available from the local licensing authority. Activities must be oriented to individual preferences as indicated in the resident's care plan (See section (4) of this rule). Documentation of the activities offered to each resident and the resident's participation in those activities must be recorded in the resident's records.

(h) DAY CARE. Before the admission of each day care individual, the licensee must:

(A) Conduct and document a screening as described in section (1) of this rule.

(B) Obtain current medical professional orders as described in section (7) of this rule, if medications are to be administered and the necessary delegations, as applicable.

(C) Develop and maintain a current, written medication administration record (MAR) as described in section (7) of this rule, if medications are to be administered.

(i) DIRECT INVOLVEMENT OF CAREGIVERS. The licensee or caregivers must be directly involved with the residents on a daily basis. If the physical characteristics of the adult foster home do not encourage contact between the caregivers and residents and among residents, the licensee must demonstrate how regular positive contact occurs.

(j) RESIDENT MONEY. If the licensee manages or handles a resident's money, a separate account record must be maintained in the resident's name. The licensee may not under any circumstances commingle, borrow from, or pledge any of a resident's funds. The licensee may not act as a resident's guardian, conservator, trustee, or attorney-in-fact unless related by birth, marriage, or adoption to the resident as follows: parent, child, brother, sister, grandparent, grandchild, aunt, uncle, niece, or nephew. Nothing in this rule may be construed to prevent the licensee or the licensee's employee from acting as a representative payee for the resident. (See also OAR 411-020-0002 and ORS 127.520).

(A) Personal incidental funds (PIF) for individuals eligible for Medicaid services must be used at the discretion of the individual for such things as clothing, tobacco, and snacks (not part of daily diet).

(B) The licensee and other caregivers may not accept gifts from the residents through undue influence or accept gifts of substantial value. Caregivers and family members of the caregivers may not accept gifts of substantial value or loans from the resident or the resident's family. The licensee or other caregivers may not influence, solicit from, or suggest to any of the residents or the residents' representatives that the residents or the residents' representatives give the caregiver or the caregiver's family money or property for any purpose.

(C) The licensee may not subject the resident or the resident's representative to unreasonable rate increases.

(k) The licensee and other caregivers may not loan money to the residents.

(9) RESIDENT'S RIGHTS.

(a) Resident's Bill of Rights. The licensee, the licensee's family, and employees of the home must guarantee not to violate these rights and to help the residents exercise them. The Residents' Bill of Rights provided by the Department must be explained and a copy given to each resident at the time of admission. The Residents' Bill of Rights states each resident has the right to:

(A) Be treated as an adult with respect and dignity.

(B) Be informed of all resident rights and all house policies as written in the Residency Agreement.

(C) Be encouraged and assisted to exercise constitutional and legal rights, including the right to vote.

(D) Be informed of his or her medical condition and the right to consent to or refuse treatment.

(E) Receive appropriate care, services, and prompt medical care as needed.

(F) Be free from abuse.

(G) Complete privacy when receiving treatment or personal care.

(H) Associate and communicate privately with any person of choice and send and receive personal mail unopened.

(I) Have access to, and participate in, activities of social, religious, and community groups.

(J) Have medical and personal information kept confidential.

(K) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(L) Be free from chemical and physical restraints except as ordered by a physician or other qualified practitioner. Restraints are used only for medical reasons, to maximize a resident's physical functioning, and after other alternatives have been tried. Restraints are not to be used for discipline or convenience.

(M) Manage his or her own financial affairs unless legally restricted.

(N) Be free from financial exploitation. The licensee may not charge or ask for application fees or non-refundable deposits or solicit, accept, or receive money or property from a resident other than the amount agreed to for services.

(O) A written agreement regarding services to be provided and the rates to be charged. The licensee must give 30 days' written notice before any change in the rates or the ownership of the home.

(P) Not be transferred or moved out of the adult foster home without 30 calendar days' written notice and an opportunity for a hearing. A licensee may transfer a resident only for medical reasons, for the welfare of the resident or other residents, or for nonpayment.

(Q) A safe and secure environment.

(R) Be free of discrimination in regard to race, color, national origin, gender, sexual orientation, or religion.

(S) Make suggestions or complaints without fear of retaliation.

(T) Be free of discrimination in regard to the execution of an Advance Directive, Physician's Order for Life-Sustaining Treatment (POLST), or Do Not Resuscitate (DNR) orders.

(b) Effective January 1, 2016 for providers initially licensed after January 1, 2016, and effective no later than September 1, 2018 for providers initially licensed before January 1, 2016 the following additional rights may not be violated or limited, without prior consent from the person-centered service plan coordinator, the individual, and the individual's representative, if applicable:

(A) To live under a legally enforceable Residency Agreement with protections substantially equivalent to landlord tenant laws.

(B) The freedom and support to access food at any time.

(C) To have visitors of the resident's choosing at any time.

(D) To have a lockable door in the resident's bedroom, which may be locked by the resident.

(E) To choose a roommate when sharing a bedroom.

(F) To furnish and decorate the resident's bedroom according to the Residency Agreement.

(G) The freedom and support to control the resident's schedule and activities.

(H) To privacy in the resident's bedroom.

(10) INDIVIDUALLY-BASED LIMITATIONS. This section and (11) of this rule will become effective on July 1, 2016.

(a) Individual limitations must be supported by a specific assessed need. A limitation may be implemented only with the informed consent of the resident, or the resident's legal representative. Limitations may only be considered to the rights identified in (9)(b) of this rule.

(b) Limitations are not transferable between care settings.

(11) REQUIRED DOCUMENTATION FOR INDIVIDUALLY-BASED LIMITATIONS. Each limitation under consideration must be documented on the Department-approved consent form. Documentation must include:

(a) The reason the limitation is needed.

(b) The positive interventions and supports used before any individually-based limitation.

(c) Less intrusive methods that were tried before and did not work.

(d) A clear description of how the limitation supports the assessed need of the resident.

(e) A way to regularly measure if the limitation is working.

(f) When the limitation will be reviewed or removed.

(g) Informed consent from the resident or resident's legal representative, including any discrepancy between the wishes of the individual and the consent of the legal representative.

(h) An assurance that the limitation will not be harmful to the resident.

Stat. Auth.: ORS 127.520, 410.070, 441.373, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991, 443.373

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88, Renumbered from 411-050-0445(8) thru (10); SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0447, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0662

Qualifications and Requirements for Limited Adult Foster Homes

(1) To qualify for a limited adult foster home license the applicant or licensee must submit:

(a) A completed application for initial or renewal limited licenses.

(b) The Department's Health History and Physician's or Nurse Practitioner's Statement that indicates the applicant or licensee is physically, cognitively, and emotionally capable of providing care to a specific adult who is older or who has a physical disability and with whom the applicant has an established relationship of not less than one year. The Health History and Statement must be submitted initially and every third year or sooner if there is reasonable cause for health concerns.

(c) Documentation of the initiation of a background check or copy of an approved background check for each subject individual.

(d) Completion of the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(e) A $20 non-refundable fee. If the licensee requests and is granted a variance from the capacity limitation of one resident, a $20 per bed non-refundable fee for each non-relative resident is required.

(2) The applicant or licensee must demonstrate a clear understanding of the resident's care needs.

(3) The applicant or licensee must live in the home that is to be licensed.

(4) The applicant or licensee must own, rent, or lease the home where care is being provided. The applicant or licensee must provide verification of proof of ownership or a copy of the signed and dated rental or lease agreement as applicable.

(5) A caregiver must be available at all times, 24 hours a day, seven days a week, when the resident is in the home. The caregiver must have the knowledge and ability to meet the resident's care needs. All caregivers must:

(a) Have an approved background check according to the Criminal Records and Abuse Check rules (OAR 407-007-0200 through 407-007-0370) before working in the home.

(b) Complete the Department's Caregiver Preparatory Training Study Guide (DHS 9030) and Workbook (DHS 9030-W).

(c) Be at least 18 years of age.

(6) The licensee must notify the local licensing authority if the licensee shall be absent from the home 10 days or more and the resident shall be remaining in the home during the absence. The licensee must also submit a staffing plan to the local licensing authority demonstrating coverage during the absence that meets the needs of the resident.

(7) The resident's bedroom must be in close enough proximity to the licensee or caregiver in charge to alert him or her to nighttime needs or emergencies, or the bedroom must be equipped with a functional call bell or intercom within the resident's abilities to operate.

(8) The licensee and caregiver must have a complete understanding of the resident's medications. The licensee must have a copy of current prescribing practitioner orders including, if applicable, written authorization for self-administration of medications.

(9) Medications must be stored in the original labeled container except when stored in a seven-day closed container manufactured for advanced set-up of medications.

(10) The licensee and caregiver must place used, disposable syringes and needles, and other sharp items in a puncture-resistant, red container designed for disposal of sharp items. Disposal must be according to local regulations as stated in section 411-050-0655. (See ORS 459.386-405).

(11) The licensee, the licensee's family, and employees of the home must guarantee not to violate the Resident's Rights as outlined in OAR 411-050-0655.

(12) The licensee must have a copy of any Advance Directive, Physician Order for Life-Sustaining Treatment (POLST), and Do Not Resuscitate (DNR) orders.

(13) The home must have a working landline and corded telephone. If the licensee has a caller identification service on the home number, the blocking feature must be disabled to allow incoming calls to be received unhindered. Voice over internet protocol (VoIP), voice over broadband (VoBB), or cellular telephone service may not be used in place of a landline.

(14) CONSTRUCTION. Interior and exterior doorways used by a resident must be wide enough to accommodate wheelchairs and walkers if used by the resident. Interior and exterior stairways must be unobstructed, equipped with handrails, and appropriate to the condition of the resident.

(15) Hardware for all exit doors and interior doors must be readily visible and have simple hardware that may not be locked against exit and must have an obvious method of operation. Bedrooms for all residents must have a lockable door for the resident's privacy, as stated in OAR 411-050-0650. The locking device must release by a single-action on the inside of the room and open to a hall or common-use room. The resident shall be provided a key to the lock for his or her bedroom. A master key to the resident's door lock must be quickly available to the licensee and all other caregivers in the home. Providers licensed before January 1, 2016, have until September 1, 2018 to fully implement this requirement. Hasps, sliding bolts, hooks and eyes, slide chain locks, and double key deadbolts are not permitted. If a home has a resident with impaired judgment who is known to wander away, the home must have an activated alarm system to alert a caregiver of the resident's unsupervised exit.

(16) Buildings must be of sound construction with wall and ceiling flame spread rates at least substantially comparable to wood lath and plaster or better. The maximum flame spread of finished materials may not exceed 200 and the smoke developed index may not be greater than 450. If more than 10 percent of combined wall and ceiling areas in a sleeping room or exit way is composed of readily combustible material such as acoustical tile or wood paneling, such material must be treated with an approved flame retardant coating. Exception: Buildings supplied with an approved automatic sprinkler system.

(a) MANUFACTURED HOMES. Manufactured home (formerly mobile homes) units must have been built in 1976 or later and designed for use as a home rather than a travel trailer. The unit must have a manufacturer's label permanently affixed on the unit itself that states the unit meets the requirements of the Department of Housing and Urban Development (HUD). The required label must read as follows:

"As evidenced by this label No. ABC000001, the manufacturer certifies to the best of the manufacturer's knowledge and belief that this mobile home has been inspected in accordance with the requirements of the Department of Housing and Urban Development and is constructed in conformance with the Federal Mobile Home Construction and Safety Standards in effect on the date of manufacture. See date plate."

(b) If such a label is not evident and the licensee believes the unit meets the required specifications, the licensee must take the necessary steps to secure and provide verification of compliance from the manufacturer.

(c) Mobile homes built in1976 or later meet the flame spread rate requirements and do not have to have paneling treated with a flame retardant coating.

(17) The applicant or licensee must meet minimal fire safety standards including:

(a) A functional smoke alarm with back-up battery must be installed in all sleeping areas and hallways or access ways that adjoin sleeping areas.

(b) A functional carbon monoxide alarm with back-up battery must be installed within 15 feet of each bedroom and at a height as recommended by the manufacturer.

(c) At least one fire extinguisher with a minimum classification of 2-A:10-B:C must be mounted in a visible and readily accessible location on each floor, including basements, and be checked at least once a year by a qualified person who is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose.

(d) The licensee must have a safe evacuation plan and may be required to demonstrate the evacuation plan. The licensee may be required to install an Americans with Disabilities Act (ADA) compliant ramp for the safety of all occupants.

(e) The licensee and all occupants must be able to evacuate within three minutes to an initial point of safety exterior to and away from the structure, with access to a public sidewalk or street. The licensee and all occupants must be able to demonstrate the ability to further evacuate all occupants from the initial point of safety to the final point of safety within two minutes or less.

(f) Smoking is prohibited in any bedroom, including that of the resident, the licensee, occupants, or caregivers and in any room where oxygen is used or stored.

(g) The home must be built of standard construction and must meet all applicable state and local building, mechanical, and housing codes for fire and life safety.

(h) A resident must have a bedroom that:

(A) Was constructed as a bedroom when the home was built or remodeled under permit.

(B) Is finished with walls or partitions of standard construction that go from floor to ceiling.

(C) Has a door large enough to accommodate the occupant of the room and any equipment that may be necessary such as a hospital bed or wheelchair.

(D) Has adequate ventilation, heat, and lighting with at least one operable window or exterior door that leads directly outside as a secondary egress for resident use.

(E) Has at least 70 square feet of usable floor space.

(i) All exit ways, including windows, must remain unobstructed at all times.

(j) Flammable materials must not be stored within 36 inches of open flame or heat sources.

(k) Only sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the State Fire Marshal or State Fire Marshal's designee. Heaters must be plugged directly into an outlet and may not be used with extension cords.

(l) The licensee must install or make available, any supportive device necessary to meet the resident's needs and ensure resident safety including, but not limited to, grab bars, ramps, and door alarms.

(18) A license is not transferable and does not apply to any location or person other than the location and the person indicated on the license obtained from the local licensing authority.

(19) The licensee must notify the local licensing authority at least 30 days before any change in residential or mailing address.

(20) The Department, the local licensing authority, and the Centers for Medicare and Medicaid Services (CMS) have authority to conduct inspections with or without advance notice to the licensee or the resident of a home. The licensee must allow and authorize other caregivers and occupants to permit entrance and access to the home and the resident for the purpose of assessing, monitoring, inspection, investigation, and other duties within the scope of the Department, the local licensing authority, or CMS.

(21) The applicant or licensee must obtain any training and maintain resident record documentation deemed necessary by the Department to provide adequate care for the resident.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0665

Abuse Reporting, Complaints, and Notification of Findings

(1) ABUSE REPORTING. Abuse is prohibited. The facility employees and licensee may not permit, aid, or engage in abuse of residents. Abuse and suspected abuse must be reported in accordance with OAR 411-020-0020.

(a) STAFF REPORTING. All facility employees must immediately report abuse and suspected abuse to the investigative authority.

(b) LICENSEE REPORTING. The licensee must immediately notify the investigative authority of any incident of abuse or suspected abuse, including events overheard or witnessed by observation.

(c) LAW ENFORCEMENT AGENCY. The local law enforcement agency must be called first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).

(2) IMMUNITY AND PROHIBITION OF RETALIATION.

(a) The licensee may not retaliate against any resident after the resident or someone acting on the resident's behalf has filed a complaint in any manner, including, but not limited to:

(A) Increasing or threatening to increase charges;

(B) Decreasing or threatening to decrease services;

(C) Withholding rights or privileges;

(D) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(E) Threatening to harass or abuse a resident in any manner.

(b) The licensee must ensure any complainant, witness, or employee of a facility is not subjected to retaliation by any caregiver, (including the caregiver's family and friends who may live in or frequent the adult foster home) for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the home or a resident or, if an employee, dismissal or harassment.

(c) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(3) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(4) The local licensing authority must furnish each adult foster home with a Complaint Notice that states the telephone number of the Department, the investigative authority, and the Long-Term Care Ombudsman, and the procedure for making complaints.

(5) Any person who believes these rules have been violated may file a complaint with the Department, the local licensing authority, or the investigative authority.

(6) The Department or the investigative authority shall investigate complaints in accordance with the adult protective services rules in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943, division 45, as applicable.

(7) Immediate protection shall be provided for the residents by the Department, the local licensing authority, or the investigative authority, as necessary, regardless of whether the investigative report is completed. The licensee must immediately cease any practice that places a resident at risk of serious harm.

(8) PRELIMINARY FINDINGS. The Department, through the investigative authority, shall provide, by written communication or electronic mail, a copy of the preliminary abuse investigation report to the licensee and complainant within seven business days of the completion of the investigation:

(a) The report shall be accompanied by a notice informing the licensee and complainant of the right to give additional information about the content of the report to the investigative authority within 10 calendar days of receipt of the report.

(b) The investigative authority must review the responses and reopen the investigation or amend the report if the additional evidence warrants a change.

(9) A copy of the entire report shall be sent to the Department upon completion of the investigation report.

(10) NOTIFICATION OF FINDINGS. Upon a determination of substantiated abuse or a rule violation, the Department must provide written notification of its findings to the licensee.

(a) CONTENT. The written notice shall:

(A) Explain the nature of each allegation.

(B) Include the date and time of each occurrence.

(C) For each allegation, include a determination of whether the allegation is substantiated, unsubstantiated, or inconclusive.

(D) For each substantiated allegation, state whether the violation was abuse or another rule violation.

(E) Include a copy of the complaint investigation report.

(F) State that the complainant, any person reported to have committed wrongdoing, and the facility have 15 calendar days to provide additional or different information.

(G) For each allegation, explain the applicable appeal rights available.

(b) APPORTIONMENT. If the Department determines there is substantiated abuse, the Department may determine the licensee, an individual, or both the licensee and an individual were responsible for abuse. In determining responsibility, the Department shall consider intent, knowledge, and ability to control, and adherence to professional standards, as applicable.

(A) LICENSEE RESPONSIBLE. Examples of when the Department shall determine the licensee is responsible for the abuse include, but are not limited to, the following:

(i) Failure to provide sufficient, qualified staffing in accordance with these rules without reasonable effort to correct.

(ii) Failure to check for or act upon relevant information available from a licensing board.

(iii) Failure to act upon information from any source regarding a possible history of abuse by any staff or prospective staff.

(iv) Failure to adequately train, orient, or provide sufficient oversight to staff.

(v) Failure to provide adequate oversight to residents.

(vi) Failure to allow sufficient time to accomplish assigned tasks.

(vii) Failure to provide adequate services.

(viii) Failure to provide adequate equipment or supplies.

(ix) Failure to follow orders for treatment or medication.

(B) INDIVIDUAL RESPONSIBLE. Examples of when the Department determines an individual is responsible include, but is not limited to:

(i) Intentional acts against a resident, including assault, rape, kidnapping, murder, or sexual, verbal, or mental abuse.

(ii) Acts contradictory to clear instructions from the facility, such as those identified in section (10)(b)(A) of this rule, unless the act is determined by the Department to be the responsibility of the facility.

(iii) Callous disregard for resident rights or safety.

(iv) Intentional acts against a resident's property (e.g., theft or misuse of funds).

(C) An individual shall not be considered responsible for the abuse if the individual demonstrates the abuse was caused by factors beyond the individual's control. "Factors beyond the individual's control" are not intended to include such factors as misuse of alcohol or drugs or lapses in sanity.

(D) NURSING ASSISTANTS. In cases of substantiated abuse by a nursing assistant, the written notice shall explain:

(i) The Department's intent to enter the finding of abuse into the Nursing Assistant Registry following the procedure set out in OAR 411-089-0140; and

(ii) The nursing assistant's right to provide additional information and request a contested case hearing as provided in OAR 411-089-0140.

(c) DISTRIBUTION.

(A) The written notice shall be mailed to:

(i) The licensee;

(ii) Any person reported to have committed wrongdoing;

(iii) The complainant, if known;

(iv) The Long-term Care Ombudsman; and

(v) The local licensing authority.

(B) A copy of the written notice must be placed in the Department's facility complaint file.

(11) Upon receipt of a notice that substantiates abuse for victims covered by ORS 430.735, the facility must provide written notice of the findings to the individual found to have committed abuse, residents of the facility, and the residents' case manager and representatives.

(12) Licensees who acquire substantiated complaints pertaining to the health, safety, or welfare of residents may be assessed civil penalties, have conditions placed on their licenses, or have their licenses suspended, revoked, or not renewed.

(13) COMPLAINT REPORTS. Copies of all completed complaint reports must be maintained and available to the public at the local licensing authority. Individuals may purchase a photocopy upon requesting an appointment to do so.

(14) The Department and the local licensing authority shall not disclose information that may be used to identify a resident in accordance with OAR 411-020-0030 (Confidentiality) and federal HIPAA Privacy Rules. Completed reports placed in the public file must be in compliance with OAR 411-050-0670 and must:

(a) Protect the privacy of the complainant and the resident. The identity of the person reporting suspected abuse must be confidential and may be disclosed only with the consent of that person, by judicial process (including administrative hearing), or as required to perform the investigation by the Department or a law enforcement agency.

(b) Treat the names of the witnesses as confidential information.

(c) Clearly designate the final disposition of the complaint.

(A) PENDING COMPLAINT REPORTS. Any information regarding the investigation of the complaint may not be filed in the public file until the investigation has been completed.

(B) COMPLAINT REPORTS AND RESPONSES. The investigation reports, including copies of the responses with confidential information deleted, must be available to the public at the local licensing authority office along with other public information regarding the adult foster home.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, 443.790

Stats. Implemented: ORS 124.050, 124.060, 124.075, 443.001-004, 443.705-825, 443.875, 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SDSD 11-2001, f. 12-21-01, cert. ef. 1-1-02; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10; Renumbered from 411-050-0455, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 50-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; APD 15-2015, f. 6-24-15, cert. ef. 6-28-15; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0670
Inspections

(1) The local licensing authority must conduct an inspection of an adult foster home and all structures on the adult foster home property:

(a) Before issuance of a license;

(b) Before the annual renewal of a license. The local licensing authority must conduct this inspection unannounced;

(c) Upon receipt of an oral or written complaint of violations that threaten the health, safety, or welfare of residents; or

(d) Anytime the Department has probable cause to believe a home has violated a regulation or provision of these rules or is operating without a license.

(2) The Department may conduct inspections:

(a) Any time such inspections are authorized by these rules and any other time the Department considers it necessary to determine if a home is in compliance with these rules or with conditions placed upon the license.

(b) To determine if cited violations have been corrected.

(c) For the purpose of routine monitoring of the residents' care.

(3) State or local fire inspectors must be permitted access to enter and inspect adult foster homes regarding fire safety upon the Department's request.

(4) The Department, the local licensing authority, the investigative authority, and the Centers for Medicare and Medicaid Services (CMS) have authority and must have full access to examine and copy facility and resident records, including, but not limited to, Residency Agreements, and resident account records, as applicable.

(5) PRIVATE INTERVIEW. Department, local licensing authority, investigative authority, and CMS staff have authority to interview the licensee, resident manager, other caregivers, and the residents. Interviews must be confidential and conducted privately.

(6) Licensees must authorize all staff to permit the Department, local licensing authority, the investigative authority, and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of the inspector's or investigator's authority:

(a) Entrance to the adult foster home and any other structure on the premises; and

(b) Access to resident and facility records.

(7) The Department, local licensing authority, the investigative authority, and CMS has authority to conduct inspections with or without advance notice to the licensee, staff, or the residents of the home. The Department, local licensing authority, and CMS shall not give advance notice of any inspection if it is believed that notice might obstruct or seriously diminish the effectiveness of the inspection or enforcement of these rules.

(8) If Department, local licensing authority, the investigative authority, or CMS staff are not permitted access for inspection, a search warrant may be obtained.

(9) The inspector must respect the private possessions of the residents, licensee, and staff while conducting an inspection.

(10) PUBLIC FILE. The local licensing authority must maintain current information on all licensed adult foster homes and must make all non-confidential information available to prospective residents and other interested members of the public at local licensing authority offices throughout the state as authorized by law. The information includes:

(a) The location of the adult foster home and the name and mailing address of the licensee if different.

(b) A brief description of the physical characteristics of the home.

(c) A copy of the current license that indicates the current classification, level, and capacity of the home, as applicable.

(d) The date the licensee was first licensed to operate that home.

(e) The date of the last licensing inspection including any fire inspection, the name and telephone number of the office that performed the inspection, and a summary of the inspection findings.

(f) Copies of all non-confidential portions of complaint investigations involving the home, together with the findings, actions taken by the Department, and responses from the licensee and complainant, as appropriate. All complaint terminology must be clearly defined and the final disposition clearly designated.

(g) Any license conditions, suspensions, denials, revocations, non-renewals, civil penalties, variances, or other actions taken by the Department involving the home.

(h) Whether care is provided primarily by the licensed provider, a resident manager, or shift caregivers.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 14-1985, f. 12-31-85, ef. 1-1-86; SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; Renumbered from 411-050-0450, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

411-050-0685
Civil Penalties

(1) Except as otherwise provided in this rule, civil penalties, not to exceed $100 per violation to a maximum of $250, may be assessed for a general violation of these rules.

(2) Mandatory penalties up to $500, unless otherwise required by law, shall be assessed for falsifying resident or facility records or causing another to do so.

(3) A mandatory penalty of $250 shall be imposed for failure to have either the licensee or other qualified caregiver on duty 24 hours per day in the adult foster home.

(4) A mandatory penalty of $250 shall be imposed for dismantling or removing the battery from any required smoke alarm or failing to install any required smoke alarm.

(5) The Department shall impose a civil penalty of not less than $250 and no more than $500 on a licensee who admits a resident knowing that the resident's care needs exceed the license classification of the licensee and the admission places the resident or other residents at risk of harm.

(6) Civil penalties up to a maximum of $1,000 per occurrence may be assessed for substantiated abuse.

(7) If the Department, or the Department's designee, conducts an investigation and abuse is substantiated and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the Department shall impose a civil penalty of not less than $2,500 for each violation.

(a) To impose this civil penalty, the Department must establish:

(A) The abuse arose from deliberate or other than accidental action or inaction.

(B) The conduct resulting in the abuse was likely to cause death, serious injury, rape, or sexual abuse of a resident.

(C) The person with the finding of abuse had a duty of care toward the resident.

(b) For the purposes of this civil penalty, the following definitions apply:

(A) "Serious injury" means a physical injury that creates a substantial risk of death or that causes serious disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(B) "Rape" means rape in the first, second, or third degree as described in ORS 163.355, 163.365, and 163.375.

(C) "Sexual abuse" means any form of nonconsensual sexual contact including, but not limited to, unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing, or sexual harassment. The sexual contact must be in the form of any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the actor for the purpose of arousing or gratifying the sexual desire of either party.

(D) "Other than accidental" means failure on the part of the licensee, or licensee's employees, agents, or volunteers for whose conduct licensee is responsible, to comply with applicable Oregon Administrative Rules.

(8) In addition to any other liability or penalty provided by law, the Department may impose a penalty for any of the following:

(a) Operating the home without a license.

(b) The number of residents exceeds the licensed capacity.

(c) The licensee fails to achieve satisfactory compliance with the requirements of these rules within the time specified, or fails to maintain such compliance.

(d) The home is unable to provide adequate level of care to the residents.

(e) There is retaliation or discrimination against a resident, family, employee, or any other person for making a complaint against the home.

(f) The licensee fails to cooperate with the Department or fails to cooperate with the prescribing practitioner or licensed health care professional in carrying out a resident's care plan.

(g) The licensee fails to obtain an approved background check from the Department before employing a caregiver in the home.

(9) A civil penalty may be imposed for violations other than those involving the health, safety, or welfare of a resident if the licensee fails to correct the violation as required when a reasonable time frame for correction was given.

(10) Violations requiring a mandatory civil penalty, which occurred while the licensee was operating the AFH, will be imposed by the Department, even if the licensee subsequently closes the home or voluntarily surrenders the license.

(11) Any civil penalty imposed under this rule becomes due and payable 10 calendars days after the order imposing the civil penalty becomes final by operation of law or on appeal. The notice must be delivered in person or sent by registered or certified mail and must include:

(a) A reference to the particular sections of the statute, rule, standard, or order involved.

(b) A short and plain statement of the matters asserted or charged.

(c) A statement of the amount of the penalty or penalties imposed.

(d) A statement of the right to request a hearing.

(12) The person to whom the notice is addressed shall have 10 calendar days after receipt of the notice to make written application for a hearing. If a written request for a hearing is not timely received, the Department shall issue a final order by default.

(13) All hearings shall be conducted according to the applicable provisions of ORS 183.

(14) When imposing a civil penalty, the Department shall consider the following factors:

(a) The past history of the person incurring the penalty in taking all feasible steps or procedures to correct the violation;

(b) Any prior violations of statutes, rules, or orders pertaining to the facility;

(c) The economic and financial conditions of the person incurring the penalty;

(d) The immediacy and extent to which the violation threatens or threatened the health, safety, or welfare of one or more residents; and

(e) The degree of harm to residents.

(15) If the person notified fails to request a hearing within the time specified, or if after a hearing the person is found to be in violation of a license, rule, or order, an order may be entered assessing a civil penalty.

(16) Unless the penalty is paid within 10 calendar days after the order becomes final, the order constitutes a judgment and may be recorded by the county clerk, which becomes a lien upon the title to any interest in real property owned by that person. The Department may also initiate a notice of revocation for failure to comply with a final order.

(17) Civil penalties are subject to judicial review under ORS 183.480, except that the court may, at its discretion, reduce the amount of the penalty.

(18) All penalties recovered under ORS 443.790 to 443.815 are paid to the Quality Care Fund.

Stat. Auth.: ORS 410.070, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.001 to 443.004, 443.705 to 443.825, 443.875, & 443.991

Hist.: SSD 11-1988, f. 10-18-88, cert. ef. 11-1-88; SSD 3-1992, f. 5-26-92, cert. ef. 6-1-92; SSD 3-1996, f. 3-29-96, cert. ef. 4-1-96; SDSD 4-2001, f. & cert. ef. 3-1-01; SPD 31-2006, f. 12-27-06, cert. ef. 1-1-07; SPD 22-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 9-2010, f. 6-30-10, cert. ef. 7-1-10 Renumbered from 411-050-0487, SPD 33-2013, f. 8-30-13, cert. ef. 9-1-13; APD 6-2014, f. 3-31-14, cert. ef. 4-1-14; APD 27-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Direct Nursing Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: APD 28-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 411-380-0010, 411-380-0020, 411-380-0030, 411-380-0040, 411-380-0050, 411-380-0060, 411-380-0070, 411-380-0080, 411-380-0090
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily adopting rules in OAR chapter 411, division 380 to establish standards and procedures for the provision of direct nursing services for individuals 21 years of age or older with intellectual or developmental disabilities and complex, long-term, medical conditions that require shift staff nursing level of supports.

The rules in OAR chapter 411, division 380 define direct nursing services, specify eligibility and limitations for direct nursing services, and specify nursing service requirements for case management entities and the Department. The rules also establish and detail provider requirements including qualifications, enrollment, billing and payment, and documentation and recordkeeping requirements.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-380-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 380 establish standards and procedures for the provision of direct nursing services for adults with intellectual or developmental disabilities. These rules define eligibility for services, prescribe Medicaid provider enrollment conditions, and enact service and documentation requirements.

(2) Direct nursing services provide medical tasks to individuals with complex health management support needs in order to live as independently as possible in a home and community-based setting.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0020
Definitions

(1) "Acuity Level" means the amount of medically related support needs of an individual as measured by an Assessment.

(2) "Assessment" means "Direct Nursing Services Assessment" as defined in this rule.

(3) "Authorization" means the approval of the case management entity for planning, provision, and payment of direct nursing services.

(4) "Case Management Entity" means the Community Developmental Disability Program or Support Services Brokerage contracted to deliver the functions of case management.

(5) "Complex Health Management Support Needs" mean those medical or nursing tasks, activities, or duties in response to a health condition or series of conditions that impacts all aspects of the care of an individual, requiring oversight by a nurse and clinician.

(6) "Department" means the "Department of Human Services".

(7) "Direct Nursing Services" mean the services described in OAR 411-380-0050 (Direct Nursing Service Requirements) that are determined medically necessary to support an adult with complex health management support needs in his or her home and community. Direct nursing services are provided on a shift staffing basis.

(8) "Direct Nursing Services Assessment" means the assessment to measure the acuity and support level of nursing tasks to determine eligibility for direct nursing services.

(9) "Enrolled Medicaid Provider" means an RN or LPN that meets and completes all the requirements in these rules, OAR 407-120-0300 to 0400 (Medicaid Provider Enrollment and Claiming), OAR chapter 410, division 120 (OHA, Medicaid General Rules) as applicable.

(10) "Home Health Agency" has the meaning given that term in ORS 443.005.

(11) "In-Home Care Agency" has the meaning given that term in ORS 443.305.

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

(13) "LPN" means a licensed practical nurse who holds a current license from the Oregon State Board of Nursing pursuant to ORS chapter 678 and OAR chapter 851, division 045 (Standards and Scope of Practice for the LPN and RN). An LPN providing direct nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an in-home care or home health agency that is an enrolled Medicaid provider.

(14) "MMIS" means "Medicaid Management Information System". MMIS is the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of the system include verifying provider enrollment and individual eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(15) "Medicaid Provider Enrollment Agreement" means an agreement between the Department and a provider for the provision of covered services to covered individuals for payment.

(16) "National Provider Index Number" means a federally directed provider number mandated for use on Health Insurance Portability and Accountability Act (HIPAA) covered transactions by individuals, provider organizations, and subparts of provider organizations that meet the definition of health care provider (45 Code of Federal Regulations (CFR) 160.103) and who conduct HIPAA covered transactions electronically.

(17) "Nursing Intervention" means the actions deliberately designed, selected, and performed by a nurse to implement the Nursing Service Plan.

(18) "Nursing Service Plan" means the written guidelines developed by an RN as described in OAR 411-380-0050 (Direct Nursing Service Requirements) that identifies the specific needs of an individual and the intervention or regiment to assist the individual to achieve optimal health potential. Developing the Nursing Service Plan includes establishing individual and nursing goals and determining nursing interventions to meet care objectives.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and all direct nursing service needs.

(b) The Nursing Service Plan is separate from the ISP as well as any service plans developed by other health professionals.

(19) "OHA" means "Oregon Health Authority".

(20) "Prior Authorization for Services" means payment authorization for direct nursing services given by the Department or contracted agencies of the Department prior to provision of the service. A physician referral is not a prior authorization for services.

(21) Provider" means an enrolled Medicaid Provider who holds a current license from the Oregon State Board of Nursing as an RN or LPN pursuant to ORS chapter 678.

(22) "RN" means a registered nurse who holds a current license from the Oregon State Board of Nursing pursuant to ORS chapter 678 and OAR chapter 851, division 045 (Standards and Scope of Practice for the LPN and RN). An RN providing direct nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an in-home care or home health agency that is an enrolled Medicaid provider.

(23) "These Rules" mean the rules in OAR chapter 411, division 380.

(24) "Third Party Resources" means a medical or financial resource that, under law, is available and applicable to pay for medical services and items for an individual.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0030
Eligibility and Limitations for Direct Nursing Services

(1) ELIGIBILITY. To be eligible for direct nursing services, an individual must:

(a) Be 21 years of age or older;

(b) Be determined eligible for developmental disabilities services by a Community Developmental Disability Program in the county of origin as described in OAR 411-320-0080;

(c) Be OSIPM eligible;

(d) Meet the level of care as defined in OAR 411-320-0020;

(e) Based on a functional needs assessment, require complex health management support needs;

(f) Based on a Direct Nursing Services Assessment completed by the Department, score 45 or higher; and

(g) Have health impairments requiring long term direct nursing services determined medically necessary and appropriate based on the order of a physician.

(2) ACUITY LEVELS. The amount of hours available for direct nursing services is based on the following acuity levels as measured by the Assessment:

(a) Level 1: Score of 75 or above and on a ventilator for 20 hours or more per day = up to a maximum of 554 hours per month for direct nursing services;

(b) Level 2: Score of 70 or above = up to a maximum of 462 hours per month for direct nursing services;

(c) Level 3: Score of 65 to 69 = up to a maximum of 385 hours per month for direct nursing services;

(d) Level 4: Score of 60 to 64 = up to a maximum of 339 hours per month for direct nursing services;

(e) Level 5: Score of 50 to 59 or if an individual requires ventilation for sleeping hours = up to a maximum of 293 hours per month for direct nursing services;

(f) Level 6: Score of 45 to 49 = up to a maximum of 140 hours per month for direct nursing services.

(3) SERVICE DELIVERY.

(a) Except as limited under section (4)(a) of this rule, direct nursing services may be delivered in the home of an individual, in an adult foster home, at an employment or day service site, or in the community.

(b) The hours for direct nursing services for individuals accessing other attendant care services at an employment setting or in the community, are prorated based on the acuity level of the individual between the employment setting and the home or adult foster home of the individual.

(4) LIMITATIONS.

(a) Direct nursing services are excluded for:

(A) An individual residing in a 24-hour residential setting as described in OAR chapter 411, division 325;

(B) An individual while in a medical or psychiatric hospital; or

(C) An individual residing in school, nursing facility, assisted living facility, or residential care facility.

(b) Direct nursing services may not substitute for or duplicate other direct or private duty nursing services provided by State Plan or third party resources.

(c) Direct nursing services provided concurrently with care being provided under OAR 410-142-0240 (OHA, Hospice Core Services) or OAR 410-127-0040 (OHA, Home Health Care Services) are not reimbursable under these rules;

(d) Direct nursing services are not covered in conjunction with any intravenous or enteral/parenteral related skilled nursing services as described in OAR 410-148-0300 (OHA, Other Home IV and Enteral/Parenteral Administration Services).

(e) Direct nursing services may not duplicate school-based nursing services covered under the provision of the Individuals with Disabilities Education Act (IDEA).

(f) Direct nursing services do not include:

(A) Hours spent receiving professional training or career development;

(B) Administrative functions such as non-individual-specific services, quality assurance reviews, authoring health related agency policies and procedures, or providing general training for caregivers;

(C) Travel time spent in transit to or from the residence of the provider; or

(D) Nursing services as defined under OAR chapter 411, division 048 (Long Term Care Community Nursing). This includes nurse delegation.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0040
Complaints, Notifications of Planned Actions and Hearings

(1) INDIVIDUAL COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015 (Complaints).

(b) The case management entity must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015 (Complaints).

(c) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(2) NOTIFICATION OF PLANNED ACTION. In the event that direct nursing services are denied, reduced, suspended, or terminated or voluntarily reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020 (Notification of Planned Action).

(3) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025 (Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials).

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 (Contested Case Hearings for Reductions, Suspensions, Terminations, or Denials) for a denial, reduction, suspension, or termination of direct nursing services.

(c) Upon entry, individual request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0050
Direct Nursing Service Requirements

(1) ASSESSMENT. The Department completes an Assessment at the following times:

(a) For initial eligibility of direct nursing services;

(b) As part of annual ISP planning but no longer than 12 months from the last Assessment; and

(c) After any significant change of condition, such as hospitalization, emergency visits, or significant changes in the health status of the individual reported by the case management entity or provider.

(2) NURSING SERVICE PLAN. Each individual must have a written Nursing Service Plan that meets the standards in OAR chapter 851, division 045 (Standards and Scope of Practice for the LPN and RN).

(a) The provider must develop a Nursing Service Plan within seven days of the initiation of direct nursing services and submit the Nursing Service Plan to the case management entity and Department for review.

(b) The provider must review, update, and resubmit the Nursing Service Plan to the case management entity and the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the provider who writes the Nursing Service Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospitalization, emergency visits, or significant change in the health status of the individual.

(c) The provider must share the Nursing Service Plan with the individual and if applicable, the guardian, designated representative, foster care provider, or agency providers.

(3) Direct nursing services must be documented as part of the ISP. The maximum number of eligible hours based on the Assessment must be authorized in the ISP.

(4) Hours for direct nursing services may not overlap with or duplicate attendant care hours as assessed by a functional needs assessment, except under the following conditions:

(a) The individual is approved for 2:1 attendant care staffing based on a functional needs assessment and the attendant care hours have been authorized by the Department;

(b) A provider accompanies an individual to an employment or day service setting and the attendant care is already authorized; or

(c) A provider accompanies an individual to a community activity that requires additional attendant care.

(5) Direct nursing services include, but are not limited to:

(a) Continuous assessment and reassessment of the medical condition of the individual, as part of each shift;

(b) Skilled nursing tasks;

(c) Nursing interventions;

(d) Implementation of treatment and therapies;

(e) Data collection;

(f) Documentation;

(g) Written and oral communication with individuals, physicians and other health professionals, other caregivers, case management entities, ISP teams, foster care providers, and agency providers; and

(h) Other nursing responsibilities under OAR 851-045-0040 (Oregon State Board of Nursing Scope of Practice Standards for All Licensed Nurses) and approved by the Department.

(6) Direct nursing services must be provided on a shift staffing basis. Shifts are from a minimum of four hours and a maximum of sixteen hours.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0060
Qualifications for Providers of Direct Nursing Services

(1) The direct nursing services provided under these rules may be delivered by the following enrolled Medicaid providers:

(a) Self-employed LPNs or RNS licensed under ORS 678.021;

(b) Home health agencies licensed under ORS 443.015 and meeting the requirements in OAR chapter 333, division 027 (Home Health Agencies);

(c) In-home care agencies licensed under ORS 443.315 and meeting the requirements in OAR chapter 333, division 536 (In-Home Care Agencies);

(d) An adult foster home provider as described in OAR 411-360-0140 (Standards and Practices for Health Care) and section (2) of this rule; and

(e) A family member as described in section (2) of this rule.

(2) The decision to have an adult foster home provider or family member deliver direct nursing services must be made by the individual and the ISP team and may not be for the convenience of the adult foster home provider or family member.

(3) The legal representative of an individual is prohibited from providing direct nursing services.

(4) A provider of direct nursing services must --

(a) Be a licensed RN or LPN with a current and unencumbered license; and

(b) Meet and maintain provider enrollment requirements under OAR 407-120-0320 (Provider Enrollment) as follows:

(A) Providers delivering services prior to January 1, 2016 must meet the provider enrollment requirements under OAR 407-120-0320 (Provider Enrollment) no later than June 28, 2016.

(B) Provider applicants enrolling on or after January 1, 2016 must meet the provider enrollment requirements 407-120-0320 (Provider Enrollment).

(5) Providers must submit a resume to the case management entity indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law. At least one year of experience working with individuals with intellectual or developmental disabilities is recommended but not required.

(6) PROFESSIONAL LIABILITY INSURANCE. The provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(a) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(b) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(7) PROVIDER ENROLLMENT. Providers must enroll through the MMIS system by:

(a) Completing and submitting the Medicaid Provider Enrollment Application that includes the Provider Enrollment Agreement;

(b) Completing a Criminal Background Check as described in OAR 407-007-0200 to 0370 (Criminal History Checks); and

(c) Enrolling, receiving, and submitting a National Provider Index Number.

(8) An applicant listed in the exclusions database of the Office of the Inspector General is not eligible to become or must be removed as an enrolled Medicaid Provider per OAR 410-120-1400(3)(b) (OHA, Provider Sanctions).

(9) All enrolled Medicaid providers must comply with federal, state, and Department conflict of interest regulations or policy.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0070
Provider Disenrollment and Termination

(1) Enrolled Medicaid providers may be denied enrollment, terminated, or prohibited from providing direct nursing services for any of the following:

(a) Violation of any part of these rules;

(b) A substantiation of a violation of the protective service and abuse rules in OAR chapter 411, division 020 (Adult Protective Services - General) and OAR chapter 407, division 045 (Office of Investigations and Training);

(c) Any sanction or action as a result of an investigation of the Oregon State Board of Nursing;

(d) Failure to keep required licensure or certifications current;

(e) Failure to provide copies of the records described in these rules to OHA, the Department, or case management entity;

(f) Failure to participate in the review of the Nursing Service Plan or care coordination meetings when requested by the case management entity;

(g) Failure to provide services;

(h) Fraud or misrepresentation in the provision of direct nursing services;

(i) Evidence of conduct derogatory to the standards of nursing as described in OAR 851-045-0070 (Conduct Derogatory to the Standards of Nursing Defined) that results in referral to the Oregon State Board of Nursing; or

(j) A demonstrated pattern of repeated unsubstantiated complaints of neglect or abuse per OAR chapter 411, division 020 (Adult Protective Services — General) and OAR chapter 407, division 045 (Office of Investigations and Training).

(2) Enrolled Medicaid providers may appeal a termination of their Medicaid provider number based on OAR 407-120-0360(8)(g) (Consequences of Non-Compliance and Provider Sanctions) and OAR chapter 410, division 120 (OHA, Medical Assistance Programs), as applicable.

(3) An enrolled Medicaid provider of direct nursing services must provide advance written notice to the Department and any individuals the provider is delivering direct nursing services to at least 30 days prior to no longer providing direct nursing services.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0080
Provider Documentation and Records

(1) Documentation of direct nursing services must be written in an accurate, timely, thorough and clear manner.

(2) Documentation must comply with the OAR chapter 851 (Oregon State Board of Nursing) and must include:

(a) The name of the individual on each page of documentation;

(b) The date of service;

(c) Time of start and end of service delivery by each provider;

(d) Anything unusual from the standard plan of care must be expanded on the narrative;

(e) Interventions;

(f) Outcomes including the response of the individual to services delivered;

(g) Nursing assessment of the individuals status and any changes in that status per each working shift; and

(h) Full signature of provider.

(3) Documentation of provided direct nursing services must be sent to the case management entity upon request or as outlined in the ISP and maintained in the home, foster home, or the place of business of the provider of services.

(4) Providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, OHA, Centers for Medicare and Medicaid Services, or their authorized representatives, or within the timeframe specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(5) Access to records by the Department including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the individual or guardian.

(6) Per OAR 410-120-1360(2)(e) (OHA, Requirements for Financial, Clinical and Other Records), providers must --

(a) Retain billing forms, timesheets, and financial records for at least five years from the date of service; and

(b) Retain clinical record documentation of provided services for at least seven years from the date of service.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-380-0090
Provider Billing and Payment

(1) AUTHORIZATION OF HOURS. Authorization for direct nursing service hours are:

(a) Based on acuity levels from the Assessment; and

(b) Authorized in the ISP by the case management entity.

(2) PRIOR AUTHORIZATION.

(a) Providers must request electronic authorization for direct nursing service hours through MMIS and have hours prior authorized by the Department.

(b) The Department may withdraw, modify, or deny prior authorizations in the event of any of the following:

(A) Change in the status of the individual, such as eligibility for direct nursing services, hospitalization, improvement in health status, or death;

(B) Decision of the individual, family, or legal representative, to change providers;

(C) Failure to comply with the delivery of direct nursing services and documentation; or

(D) Failure to perform other expected duties.

(3) CLAIMS.

(a) A provider must comply with the rules for authorization of claims as written in OAR 410-120-1300 (OHA, Timely Submission of Claims) and OAR 410-120-1320 (OHA, Authorization of Payment).

(b) A provider must follow all Department required documentation procedures for timesheets, invoices, and signatures and submit true and accurate information.

(c) Medicaid funds are the payer of last resort. A provider must bill all third party resources until all resources are exhausted.

(d) A provider may not submit the following to the Department or case management entity:

(A) A false billing form for payment;

(B) A billing form for payment that has been, or is expected to be, paid by another source; or

(C) Any billing form for services that have not been provided.

(e) The billing form used to submit a claim must include the prior authorization number.

(f) A provider must sign the billing form acknowledging agreement with the terms and conditions of the claim and attesting that the hours were delivered as billed.

(g) Timely submission of claims is required per OAR 410-120-1300(1) (OHA, Timely Submission of Claims). A provider must submit a claim for payment to the case management entity within 12 months of the date of service.

(h) The case management entity must review the claim and match the number of hours claimed by the provider against the number of hours prior authorized. The case management entity must review, approve, and forward the claim to the Department in a timely manner.

(4) PAYMENT.

(a) Payment for direct nursing services is made in accordance with:

(A) These rules;

(B) OAR 410-120-1300 (OHA, Timely Submission of Claims);

(C) OAR 411-120-1320 (OHA, Authorization of Payment);

(D) OAR 411-120-1340 (OHA, Payment);

(E) OAR 411-120-1380 (OHA, Compliance with Federal and State Statutes);

(F) OAR 407-120-300 to 400 (Provider Enrollment and Claiming); and

(G) OAR 407-120-1505 (Provider and Contractor Audits, Appeals, and Post Payment Recoveries).

(b) Funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 (Convictions Under ORS 443.004 Resulting in Ineligibility for Aging and People with Disabilities Program and Developmental Disabilities Program).

(c) Payment for direct nursing services are fee for service with payment made subsequent to the delivery of the services.

(d) The Department does not pay for services that are not authorized in the ISP.

(e) Providers must be present with an individual in the delivery of direct nursing services in order to claim payments.

(f) Holidays are paid at the same rate as non-holidays.

(g) Hours will not be authorized for overtime.

(h) Payment by the Department for direct nursing services is considered payment in full for the services rendered under Medicaid. A provider may not demand or receive additional payment for direct nursing services from an individual, family member, foster care provider, agency provider, or any other source, under any circumstances.

(i) Payment may be denied based on the provisions of OAR 410-120-1320 (OHA, Authorization of Payment) and the provisions of these rules.

(5) OVERPAYMENT. An overpayment occurs when a provider submits a claim or encounter, or received payment to which the provider is not properly entitled. The determination of overpayment is based on OAR 410-120-1397(5)(a-h) (OHA, Recovery of Overpayments to Providers - Recoupment). The Department and OHA recoup all overpayments under such rules.

Stat. Auth.: ORS 409.050, 413.085
Stats. Implemented: ORS 409.050, 413.085
Hist.: APD 28-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Personal Support Workers Providing Developmental Disability Home Care Services
Adm. Order No.: APD 29-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 411-375-0055
Rules Amended: 411-375-0010, 411-375-0050, 411-375-0070, 411-375-0080
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily updating the rules for personal support workers in OAR chapter 411 division 375 to:

Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

Implement changes associated with the Fair Labor Standards Act and Collective Bargaining Agreement regarding hours, pay, and benefits for personal support workers; and

Implement changes to the termination and inactivation procedures.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-375-0010
Definitions

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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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

(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 Agremeent 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
Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-375-0055
Limitations on Hours Worked

(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
Hist.: APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-375-0070
Provider Enrollment Inactivation and Termination

(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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-375-0080

Hearing Rights

(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 ADMINSTRATIVE 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

Hist.: APD 30-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 48-2014, f. 12-26-14, cert. ef. 12-28-14; APD 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities

Adm. Order No.: APD 30-2015(Temp)

Filed with Sec. of State: 12-31-2015

Certified to be Effective: 1-1-16 thru 6-28-16

Notice Publication Date:

Rules Amended: 411-360-0010, 411-360-0020, 411-360-0050, 411-360-0055, 411-360-0060, 411-360-0130, 411-360-0140, 411-360-0170, 411-360-0190

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities. These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20;

- Incorporate direct nursing services to support an adult with complex health management support needs as described in OAR chapter 411, division 380; and

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

Under the HCB setting standards, adult foster homes meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;

- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;

- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;

- The setting is physically accessible to an individual;

- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;

- Each individual has privacy in his or her own unit;

- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;

- Individuals sharing units have a choice of roommates;

- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;

- Individuals may have visitors of their choosing at any time;

- Each individual has the freedom and support to control his or her own schedule and activities; and

- Each individual has the freedom and support to have access to food at any time.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-360-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 360 prescribe the standards and procedures for the licensure of adult foster homes for individuals with intellectual or developmental disabilities (AFH-DD).

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(a) An AFH-DD provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.

(b) An AFH-DD provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

(3) An AFH-DD facilitates individual choice regarding services and supports, and who provides the services and supports, through a cooperative relationship between the AFH-DD provider, the individual, the legal or designated representative of the individual (if applicable), and the Community Developmental Disability Program.

(4) An AFH-DD protects and encourages the independence, dignity, choice, and decision making of the individual while addressing the needs of the individual in a manner that supports and enables the individual to achieve optimum physical, mental, and social well-being and independence.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 443.705-825
Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0020
Definitions

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 360:

(1) "Adult Foster Home (AFH)" means any home licensed by the Department in which residential care and services are provided in a home-like environment for compensation to five or fewer adults who are not related to the provider by blood, marriage, or adoption. An adult foster home does not include any house, institution, hotel, or other similar living situation that supplies room or board only, if no individual thereof requires any element of care. An adult foster home is considered a provider owned, controlled, or operated residential setting.

(2) "Adult Foster Home for Individuals with Intellectual or Developmental Disabilities (AFH-DD)" means an adult foster home licensed by the Department to provide home and community-based services to support individuals with intellectual or developmental disabilities.

(3) "Advance Directive" or "Advance Directive for Health Care" means the legal document signed by an individual or the legal representative of the individual that provides health care instructions in the event the individual is no longer able to give directions regarding his or her wishes. The Advance Directive gives the individual the means to control his or her own health care in any circumstance. An Advance Directive for Health Care does not include Physician Orders for Life-Sustaining Treatment (POLST).

(4) "AFH" means "adult foster home" as defined in this rule.

(5) "AFH-DD" means an "adult foster home for individuals with intellectual or developmental disabilities" as defined in this rule.

(6) "Applicant" means a person who completes an application for an adult foster home license who is also the owner of the business or a person who completes an application to become a resident manager. The term applicant includes a co-applicant (if applicable).

(7) "Bill of Rights" means civil, legal, or human rights afforded to individuals in an adult foster home that are in accordance with those rights afforded to all other U.S. citizens including, but not limited to, those rights delineated in the Adult Foster Home Bill of Rights for individuals with intellectual or developmental disabilities described in OAR 411-360-0170.

(8) "Care" means supportive services that encourage maximum individual independence and enhance the quality of life for an individual including, but not limited to:

(a) Provision of 24-hour supervision, being aware of the whereabouts of the individual, and ensuring the health, safety, and welfare of the individual;

(b) Assistance with activities of daily living as defined in OAR 411-317-0000;

(c) Assistance with instrumental activities of daily living as defined in OAR 411-317-0000;

(d) Assistance with quality of life activities, such as socialization and recreation; and

(e) Monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(9) "Caregiver" means any person responsible for providing care and services to support individuals. A caregiver includes a provider, resident manager, and any temporary, substitute, or supplemental caregiver or other person designated to provide care and service to support individuals in an adult foster home for individuals with intellectual or developmental disabilities.

(10) "CDDP means "Community Developmental Disability Program".

(11) "Clinical Criteria" means the criteria used by the Department or the Medically Fragile Children's Unit as described in OAR 411-350-0055 to assess the private duty nursing support needs of an individual aged 18 through 20.

(12) "CMS" means "Centers for Medicare and Medicaid Services".

(13) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(14) "Compensation" means monetary or in-kind payments by or on behalf of an individual to a provider in exchange for room and board, care, and services as indicated in the ISP. Compensation does not include the voluntary sharing of expenses between or among roommates.

(15) "Complaint" means an allegation that a licensee or caregiver has violated these rules or an expression of dissatisfaction with a provider, the services provided, or the condition of an adult foster home.

(16) "Condition" means a provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee.

(17) "Controlled Substance" means any drug classified as schedules one through five under the Federal Controlled Substance Act.

(18) "Day Care" means care, assistance, and supervision of an individual who does not stay overnight. Individuals receiving day care services are included in the licensed capacity of a home as described in OAR 411-360-0060.

(19) "Delegation" is the process by which a registered nurse authorizes a provider, resident manager, or substitute caregiver to perform nursing tasks in selected situations and confirms that authorization in writing. Delegation may only occur after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(20) "Denial" means the refusal of the Department to issue a license to operate an adult foster home for individuals with intellectual or developmental disabilities because the Department has determined that an applicant or the home is not in compliance with one or more of these rules.

(21) "Department" means the Department of Human Services or the designee of the Department.

(22) "Direct Nursing Services" mean the nursing services described in OAR chapter 411, division 380 that are determined medically necessary to support an adult with complex health management support needs in his or her home and community. Direct nursing services are provided on a shift staffing basis.

(23) "Director" means:

(a) The Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director; or

(b) The Director of the Department of Human Services, Office of Licensing and Regulatory Oversight, or the designee of the Director.

(24) "Disaster" means an occurrence beyond the control of a licensee, whether natural, technological, or man-made that renders a home uninhabitable on a temporary, extended, or permanent basis.

(25) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(26) "Enjoin" means to prohibit by judicial order.

(27) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation.

(28) "Exempt Area" means a county where there is a county agency that provides similar programs for licensing and inspection of adult foster homes that the Director finds are equal to or superior to the requirements of ORS 443.705 to 443.825 and that the Director has exempted from the license, inspection, and fee provisions described in ORS 443.705 to 443.825. Exempt area county licensing rules require review and approval by the Director prior to implementation.

(29) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an individual residing in an adult foster home for individuals with intellectual or developmental disabilities is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx. A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(30) "Home" means the physical structure of an adult foster home for individuals with intellectual or developmental disabilities.

(31) "Homelike" means an environment that promotes the dignity, security, and comfort of individuals through the provision of personalized care and services to support and encourage independence, choice, and decision making by the individuals.

(32) "House Rules" mean the social courtesies identified through a collaborative process by all members of the household. The identified rules are non-binding and may not be solely provider driven expectations for individuals residing in the home.

(33) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in the disclosing entity.

(34) "Individual" means an adult residing in an adult foster home for individuals with intellectual or developmental disabilities, regardless of source of compensation.

(35) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-360-0170 and OAR 411-004-0040.

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

(37) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by a court or other agreement. The term "legal representative" includes the guardian of an individual, as well as:

(a) For health care decisions, a court-appointed guardian, a health care representative under an Advance Directive for Health Care, or a power of attorney for health care.

(b) For financial decisions, a court-appointed conservator, an agent under a power of attorney, or a representative payee.

(38) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules.

(39) "Licensee" means the person who is issued a license, whose name is on the license, and who is responsible for the operation of an adult foster home. The licensee of an adult foster home does not include the owner or lessor of the building in which the adult foster home is situated unless the owner or lessor of the building is the provider.

(40) "Limited License" means a license is issued to a licensee who intends to provide care and services for compensation to a specific individual who is unrelated to the licensee but with whom the licensee has an established relationship of no less than one year.

(41) "Liquid Resource" means cash or assets that may readily be converted to cash, such as a life insurance policy that has a cash value, stock certificates, or a guaranteed line of credit from a financial institution.

(42) "Marijuana" means all parts of the plant Cannabis family Moraceae, whether growing or not, the resin extracted from any part of the plant, and every compound, manufacture, salt derivative, mixture, or preparation of the plant or its resin. Marijuana does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted there from), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. "Legal medical marijuana" refers to the use of marijuana authorized under the Oregon Medical Marijuana Act (OMMA), ORS 475.300 to ORS 475.346.

(43) "Mental Health Assessment" means the assessment used to determine the need for mental health services by interviewing an individual and obtaining all pertinent biopsychosocial information as identified by the individual, the family of the individual, and collateral sources. A mental health assessment:

(a) Addresses the condition presented by the individual;

(b) Determines a diagnosis; and

(c) Provides treatment direction and individualized services and supports.

(44) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(45) "Nursing Services" mean the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing.

(46) "Occupant" means any person residing in or using the facilities of an adult foster home including the individuals, licensee, resident manager, friends, family members, a person receiving day care services, and room and board tenants.

(47) "OHA" means "Oregon Health Authority".

(48) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(49) "OIS" means the "Oregon Intervention System".

(50) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meets the eligibility criteria described in OAR chapter 461.

(51) "Over the Counter Topical" means a medication that is purchased without a prescription and is applied to the skin and not in an orifice.

(52) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an adult foster home. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling five percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to five percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to five percent or more in a disclosing entity;

(d) Owns an interest of five percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least five percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(53) "Private Duty Nursing Services" mean the State Plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support an individual aged 18 through 20.

(54) "Provider" means any person operating an adult foster home, such as a licensee or resident manager. "Provider" does not include caregivers or the owner or lessor of the building in which an adult foster is situated unless the owner or lessor of the building is also the operator of the adult foster home.

(55) "Provider Enrollment" means an agreement between the Department and a Medicaid provider to provide room and board and care and services for compensation to support a Medicaid eligible individual in an adult foster home.

(56) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(57) "Provisional License" means a 60-day license issued in an emergency situation when a licensed provider is no longer overseeing the operation of an adult foster home. A provisional license is issued to a qualified person who meets the standards of OAR 411-360-0070 and OAR 411-360-0110.

(58) "Qualified Entity Initiator (QEI)" has the meaning set forth in OAR 407-007-0210 (Criminal Records and Abuse Checks for Providers).

(59) "Qualified Mental Health Professional" means a licensed medical practitioner or any other person meeting the qualifications specified in OAR 309-019-0125.

(60) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing care and services to support an individual. Relief care may include 24-hour relief care or hourly relief care. Individuals receiving relief care are included in the licensed capacity of a home as described in OAR 411-360-0060.

(61) "Reside" means for a person to live in an adult foster home for a permanent or extended period of time. For the purpose of a background check, a person is considered to reside in a home if the visit of the person is for four consecutive weeks or greater.

(62) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(63) "Resident Manager" means an employee of a licensee approved by the Department, who resides in an adult foster home and is directly responsible for the care and services to support individuals on a day-to-day basis.

(64) "Respite" means "relief care" as defined in this rule.

(65) "Revocation" means the action taken by the Department to rescind an adult foster home license after the Department has determined that the provider is not in compliance with one or more of these rules.

(66) "Room and Board" means receiving compensation for the provision of meals, a place to sleep, laundry, basic utilities, and housekeeping to a person that does not need assistance with activities of daily living. Room and board facilities for two or more people are required to register with the Department as described in OAR chapter 411, division 068, unless registered with the local authority having jurisdiction. Room and board does not include provision of care.

(67) "Room and Board Tenant" means a person who resides in an adult foster home and receives services, such as meal preparation, laundry, and housekeeping. A room and board tenant does not include individuals for whom the provider receives a foster care service payment to provide care or individuals supported by the provider in an alternate role, such as a personal support worker.

(68) "Self-Preservation" in relation to fire and life safety means the ability of an individual to respond to an alarm without additional cues and reach a point of safety without assistance.

(69) "Services" mean the activities and supports that assist an individual to develop appropriate skills to increase or maintain his or her level of functioning. Services available in the community and arranged for by the provider may include mental health services, rehabilitation services, social services, activities of daily living, medical, dental, other health care services, educational services, financial management services, legal services, vocational services, transportation, and other services required to meet the needs of the individual as described in the ISP for the individual.

(70) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet

where extra or additional food is offered without the order of a physician or licensed health care provider but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(71) "Subject Individual" means:

(a) Any person 16 years of age or older, including:

(A) A licensed adult foster home provider and provider applicant;

(B) A person intending to work in or currently working in an adult foster home, including but not limited to a substitute caregiver and a potential substitute caregiver in training;

(C) A volunteer if allowed unsupervised access to an individual; and

(D) An occupant, excluding an individual, residing in or on the premises of a proposed or currently licensed adult foster home, including:

(i) A member of the household;

(ii) A room and board tenant; and

(iii) A person visiting for four consecutive weeks or greater.

(b) Subject individual does not apply to:

(A) An individual of the adult foster home or a visitor of an individual;

(B) A person who resides or works in an adult foster home who does not have:

(i) Regular access to the home for meals;

(ii) Regular use of the appliances or facilities of the adult foster home; or

(iii) Unsupervised access to an individual or the personal property of an individual.

(C) A person providing services to an individual that is employed by a private business not regulated by the Department.

(72) "Substitute Caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the Department that is left in charge of the individuals for any period of time and has access to the individuals' records.

(73) "Suspension" means an immediate, temporary withdrawal of the approval to operate an adult foster home after the Department determines a provider or home is not in compliance with one or more of these rules or there is a threat to the health, safety, or welfare of individuals.

(74) "These Rules" mean the rules in OAR chapter 411, division 360.

(75) "Urgent Medical Need" means the onset of psychiatric or medical symptoms requiring attention within 48 hours to prevent a serious deterioration in the mental or physical condition of an individual.

(76) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the provider.

(77) "Young Adult" means a young individual aged 18 through 20 who resides in an adult foster home under the custody of the Department, voluntarily, or under guardianship.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 28-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0050

License Application and Fees

(1) An applicant for an AFH-DD license must complete a written application on forms supplied by the Department and submit the application to the Department with the non-refundable fee.

(a) The application is not complete until the required information is submitted to the Department with the required non-refundable fee. Incomplete applications are void after 60 days from the date the application form is received by the Department.

(b) Failure to provide accurate information may result in the denial of the application.

(2) A separate application is required for each location where an AFH-DD is to be operated.

(3) An application for an AFH-DD that has a resident manager must include a completed application for the resident manager on the form supplied by the Department.

(4) The application for an AFH-DD license must include:

(a) The maximum capacity as described in OAR 411-360-0060;

(b) A list of all persons that reside in the home that receive care, including family members that reside in the home that require care and persons receiving relief care and day care services;

(c) A list of all other occupants that reside in the home or on the property of the home, including family members, friends, and room and board tenants;

(d) The statement of a physician on the form supplied by the Department regarding the ability of the applicant to provide care and services;

(e) Financial information including:

(A) A completed Financial Information Sheet on the form supplied by the Department;

(i) An applicant must have the financial ability and maintain sufficient liquid resources to pay the operating costs of an AFH-DD for at least two months without solely relying on potential income from individuals and room and board payments.

(ii) If an applicant is applying to operate more than one AFH-DD, the applicant must demonstrate the financial ability and maintain sufficient liquid resources to pay the operating costs of all the homes for at least two months without solely relying on potential income from individuals and room and board payments.

(iii) If an applicant is unable to demonstrate the financial ability and resources required by this section of this rule, the Department may require the applicant to furnish a financial guarantee such as a line of credit or guaranteed loan to fulfill the requirements of this rule.

(B) Documentation of all unsatisfied judgments, liens, and pending lawsuits in which a claim for money or property is made against the applicant;

(C) Documentation of all bankruptcy filings by the applicant;

(D) Documentation of all unpaid taxes due from the applicant including, but not limited to, property taxes, employment taxes, and state and federal income taxes;

(E) Copies of bank statements from the last three months demonstrating banking activity in both checking and savings accounts as applicable or demonstration of cash on hand may be requested; and

(F) A copy of a complete and current credit report for the applicant may be requested.

(f) If the home is leased or rented, a copy of the signed and dated lease or rental agreement. The agreement must be a standard lease or rental agreement for residential use and include the following:

(A) The name of the owner and landlord;

(B) Verification that the rent is a flat rate; and

(C) Signatures and date signed by the landlord and applicant;

(g) If the applicant is purchasing or owns the home, verification of purchase or ownership;

(h) A current and accurate floor plan for the home that indicates:

(A) The size of the rooms;

(B) The size of the windows;

(C) Which bedrooms are to be used by individuals, the licensee, caregivers, room and board tenants (as applicable), and for day care and relief care services;

(D) The location of all the exits on each level of the home including emergency exits such as windows;

(E) The location of any wheelchair ramps;

(F) The location of all fire extinguishers, smoke alarms, and carbon monoxide alarms;

(G) Planned evacuation routes; and

(H) Any designated smoking areas in or on the premises of the home.

(i) If requesting a license to operate more than one AFH-DD, a plan covering administrative responsibilities and staffing qualifications for each home;

(j) Three personal references for the applicant. The personal references may not be family members, current or potential licensees, or co-workers of current or potential licensees;

(k) A written description of the daily operation of the AFH-DD including:

(A) The schedule of the provider, resident manager, and substitute caregivers; and

(B) A plan of coverage for the absence of the provider, resident manager, and substitute caregivers.

(l) Written information describing the operational plan for the AFH-DD including:

(A) The use of a substitute caregiver, if applicable; and

(B) A plan of coverage for the absence of the resident manager, if applicable;

(m) A signed background check and if needed, the mitigating information and fitness determination form for each person who is to have regular contact with the individuals, including the provider, the resident manager, caregivers, and other occupants of the home over the age of 16 (excluding individual service recipients);

(n) A signed consent form for a background check with regards to abuse of children;

(o) Founded reports of child abuse or substantiated abuse allegations with dates, locations, and resolutions of those reports for all persons that reside in the home, as well as all applicant or provider employees, independent contractors, and volunteers;

(p) The classification being requested with information and supporting documentation regarding qualifications, relevant work experience, and training of caregivers as required by the Department;

(q) A $20.00 per bed non-refundable fee for each individual service recipient (includes all private pay and publicly funded individuals, but does not include day care and family members);

(r) A copy of the standard Residency Agreement for the AFH-DD; and

(s) A mailing address if different from the address of the AFH-DD and a business address for electronic mail.

(5) After receipt of the completed application materials, including the non-refundable fee, the Department investigates the information submitted and inspects the home. Compliance with these rules is determined upon submission and completion of the application and the process described.

(a) The applicant is given a copy of the inspection form identifying any areas of noncompliance and specifying a timeframe for correction, but no later than 60 days from the date of inspection.

(b) Deficiencies noted during an inspection of the home must be corrected in the timeframe specified by the Department. Applicants must be in compliance with these rules before a license is issued. An application is denied if cited deficiencies are not corrected within the timeframes specified by the Department.

(6) Applicants must attend a local orientation offered by the local CDDP prior to being licensed.

(7) An applicant may withdraw a new or renewal application at any time during the application process by notifying the Department in writing.

(8) An applicant whose license has been revoked, non-renewed, or voluntarily surrendered during a revocation or non-renewal process, or whose application has been denied, may not be permitted to make a new application for one year from the date that the action is final, or for a longer period of time if specified in the final order.

(9) All monies collected under these rules are to be paid to the Quality of Care Fund.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, & 443.790

Stats. Implemented: ORS 443.705 - 443.825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0055

Provider Enrollment Agreements, Contracts, and Residency Agreements

(1) MEDICAID PROVIDER ENROLLMENT AGREEMENT.

(a) An applicant or licensee who intends to provide care and services to support individuals who are or become eligible for Medicaid services must enter into a Medicaid Provider Enrollment Agreement with the Department, follow Department rules, and abide by the terms of the Agreement. A Medicaid Provider Enrollment Agreement is not approved unless the Department has determined that the applicant, licensee, co-licensee, or any owner or officer of the corporation, as applicable, is not listed on the Office of Inspector General's or the U.S. General Services Administration's (System for Award Management) Exclusion Lists.

(b) An approved Medicaid Provider Enrollment Agreement does not guarantee the placement of individuals eligible for Medicaid services in an AFH-DD.

(c) An approved Medicaid Provider Enrollment Agreement is valid for the length of the license unless earlier terminated by the licensee or the Department. A Medicaid Provider Enrollment Agreement must be completed, submitted, approved, and renewed with each licensing cycle.

(d) An individual eligible for Medicaid services may not be admitted into an AFH-DD unless and until the Department has approved a Medicaid Provider Enrollment Agreement. Medicaid payment is not issued to a licensee without a current license and an approved Medicaid Provider Enrollment Agreement in place.

(e) The rate of compensation established by the Department is considered payment in full. The licensee may not request or accept additional funds or in-kind payment from any source.

(f) The Department does not issue payment for the date of the exit of an individual or for any time period thereafter.

(g) The licensee or the Department may terminate a Medicaid Provider Enrollment Agreement according to the terms of the Agreement.

(h) The Department may terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to maintain substantial compliance with all related federal, state, and local laws, ordinances, and regulations; or

(B) The license to operate the AFH-DD has been voluntarily surrendered, revoked, or not renewed.

(i) The Department must terminate a Medicaid Provider Enrollment Agreement under the following circumstances:

(A) The licensee fails to permit access by the Department or CMS to any AFH-DD licensed to and operated by the licensee;

(B) The licensee submits false or inaccurate information;

(C) Any person with five percent or greater direct or indirect ownership in the AFH-DD did not submit timely and accurate information on the Medicaid Provider Enrollment Agreement form or fails to submit fingerprints if required under the background check rules in OAR 407-007-0200 to 407-007-0370;

(D) Any person with five percent or greater direct or indirect ownership interest in the AFH-DD has been convicted of a criminal offense related to his or her involvement with Medicare, Medicaid, or Title XXI programs in the last 10 years; or

(E) Any person with an ownership or control interest, or who is an agent or managing employee of the AFH-DD fails to submit timely and accurate information on the Medicaid Provider Enrollment Agreement form.

(j) If a licensee submits notice of termination of the Medicaid Provider Enrollment Agreement, the licensee must concurrently issue a Notice of Involuntary Move or Transfer to each individual eligible for Medicaid services residing in the licensee's AFH-DD.

(k) If either a licensee or the Department terminates the Medicaid Provider Enrollment Agreement, the licensee may not re-apply for a new Medicaid Provider Enrollment Agreement for a period of no less than 180 days from the date the licensee or the Department terminated the Agreement.

(l) A licensee must forward all of the personal incidental funds (PIF) of an individual who is a recipient of Medicaid services within 10 business days of the death of the individual to the Estate Administration Unit, PO Box 14021, Salem, Oregon 97309-5024.

(2) PRIVATE PAY CONTRACT. A licensee who provides care and services to support individuals who pay with private funds or individuals receiving only day care services must enter into a written contract with the individual or the person paying for the care and services of the individual. The written contract is the admission agreement. The written contract must be signed by all parties prior to the admission of the individual and updated as needed. A copy of the contract is subject to review by the Department prior to licensure and prior to the implementation of any changes to the contract.

(a) The contract must include, but not be limited to:

(A) An ISP;

(B) A schedule of rates; and

(C) Conditions under which the rates may be changed.

(b) The provider must give a copy of the signed contract to the individual or the legal representative of the individual and retain the original contract in the record for the individual.

(c) The licensee must give written notice to a private pay individual or the person paying for the care and services of the individual 30 days prior to any general rate increases, additions, or other modifications of the rates unless the change is due to a medical emergency resulting in a greater level of care in which case the notice must be given within 10 days of the change.

(3) RESIDENCY AGREEMENT.

(a) The licensee must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The eviction process and appeal rights available to each individual;

(B) The right of the individual to furnish and decorate his or her bedroom, subject to the limitations specified herein; and

(C) Policies and conditions for the following:

(i) Designated smoking areas. Use of tobacco must be in compliance with the Oregon Indoor Clean Air Act and OAR 411-360-0130;

(ii) Use and presence of medical marijuana in compliance with the Oregon Medical Marijuana Act and OAR 411-360-0140. The Residency Agreement expectations for medical marijuana must be reviewed and approved by the Department. If an individual intends to use medical marijuana in the AFH-DD, the Residency Agreement including guidelines for medical marijuana must be signed and dated by the individual or the legal

representative of the individual and included in the record for the individual;

(iii) Restriction related to pets, if any;

(iv) Monthly charges and services to be provided; and

(v) Refunds in case of departure, hospitalization, or death.

(b) The Residency Agreement may not violate the rights of an individual as stated in ORS 430.210, 443.739, OAR 411-360-0170, and 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement must be reviewed and approved by the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 34-2013, f. & cert. ef. 9-27-13; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0060

Capacity

(1) The maximum capacity of an AFH-DD is limited to five individuals who require care and services who are unrelated to the provider by blood, marriage, or adoption.

(2) The number of individuals permitted to reside in an AFH-DD is determined by the ability of the caregiver to meet the care, service, and support needs of the individuals, fire safety standards, physical structure standards, and the standards of these rules.

(a) Determination of maximum capacity includes consideration of total household composition including all children, adult relatives, and older adults.

(b) In determining maximum capacity, consideration is given to whether children over the age of 5 have a bedroom separate from their parents and the number and age of children or others that reside in the AFH-DD requiring care.

(3) Children under the age of 10 living in the AFH-DD, individuals receiving relief care services, individuals receiving day care services, and any other visitors to the AFH-DD who require care, are included in the licensed capacity of the AFH-DD.

(4) A provider may exceed the licensed capacity of the AFH-DD by one or more individuals if:

(a) Approved by the Department;

(b) The capacity of the AFH-DD as determined by OAR 411-360-0060 does not exceed five; and

(c) There is adequate bedroom and living space available in the AFH-DD for the individuals receiving care.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0130

AFH-DD Standards

In order to qualify for or renew a license, an AFH-DD must meet the following provisions.

(1) GENERAL CONDITIONS.

(a) Each AFH-DD must maintain up-to-date documentation verifying the AFH-DD meets applicable local business license, zoning, building, and housing codes, and state and local fire and safety regulations for a single-family residence. General buildings must be of sound construction and meet all applicable state and local fire and safety regulations in effect at the time of construction. It is the duty of the provider to check with local government to be sure all applicable local codes have been met. A current floor plan of the house must be on file with the local CDDP.

(b) Mobile homes must have been built since 1976 and designed for use as a home rather than a travel trailer. The mobile home must have the label from the manufacturer permanently affixed to the home that states the mobile home meets the requirements of the Department of Housing and Urban Development (HUD) or authority having jurisdiction.

(c) The building, patios, decks, walkways, and furnishings must be clean and in good repair. The interior and exterior must be well maintained and accessible according to the needs of the individuals residing in the home. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting, as appropriate. There must be no accumulation of garbage, debris, rubbish, or offensive odors.

(d) Stairways (interior and exterior) must have handrails and be adequately lighted. Yard and exterior steps must be accessible and appropriate to the needs of the individuals residing in the home.

(e) Adequate lighting must be provided in each room, internal and external stairways, and internal and external exit ways. Incandescent light bulbs and florescent tubes must be protected and installed per the directions of the manufacturer.

(f) The heating system must be in working order. Areas of the AFH-DD used by individuals must be maintained at a comfortable temperature. Minimum temperatures during the day (when individuals are home) must be no less than 68 degrees F and no less than 60 degrees at night when individuals are sleeping. During times of extreme summer heat, the provider must make every reasonable effort to make the individuals comfortable and safe using ventilation, fans, or air conditioners. The temperature may not exceed 85 degrees in the house.

(g) There must be at least 150 square feet of common space and sufficient comfortable furniture in the AFH-DD to accommodate the recreational and socialization needs of the occupants at one time. Common space may not be located in the basement or in garages unless such space was constructed for that purpose or has otherwise been legalized under permit. Additional space may be required if wheelchairs are to be accommodated.

(h) Providers must not permit individuals to access or use swimming or other pools, hot tubs, saunas, or spas on the AFH-DD premise without supervision. Swimming pools, hot tubs, spas, or saunas must be equipped with sufficient safety barriers or devices designed to prevent accidental injury or unsupervised access.

(i) Hallways and exit ways must be at least 36 inches wide or as approved by the authority having jurisdiction. Interior doorways used by individuals must be wide enough to accommodate wheelchairs and walkers if used by individuals.

(j) Only ambulatory individuals capable of self-preservation may be housed on a second floor or in a basement.

(k) Split level homes must be evaluated according to accessibility, emergency egress, and evacuation capability of the individuals.

(l) Ladders, rope, chain ladders, and other devices may not be used as a secondary means of egress.

(m) Marijuana must not be grown in or on the premises of the AFH-DD. Individuals with Oregon Medical Marijuana Program (OMMP) registry cards must arrange for and obtain their own supply of medical marijuana from a designated grower as authorized by OMMP. The licensed provider, the caregiver, other employee, or any occupant in or on the premises of the AFH-DD must not be designated as the grower for and individual and must not deliver marijuana from the supplier.

(2) SANITATION.

(a) A public water supply must be utilized if available. If a non-municipal water source is used, the water source must be tested for coliform bacteria by a certified agent yearly and records must be retained for two years. Corrective action must be taken to ensure potability.

(b) Septic tanks or other non-municipal sewage disposal systems must be in good working order.

(c) Garbage and refuse must be suitably stored in readily cleanable, rodent proof, covered containers, pending weekly removal.

(d) Prior to laundering, soiled linens and clothing must be stored in containers in an area separate from food storage, kitchen, and dining area. Special pre-wash attention must be given to soiled and wet bed linens.

(e) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals or guests.

(f) There must be adequate control of insects and rodents, including screens in good repair on doors and windows used for ventilation.

(g) Universal precautions for infection control must be followed in care to individuals. Hands and other skin surfaces must be washed immediately and thoroughly if contaminated with blood or other body fluids.

(h) All caregivers must take precautions to prevent injuries caused by needles and other sharp instruments or devices during procedures. After they are used, disposable syringes and needles and other sharp items must be placed in puncture-resistant containers for disposal. The puncture-resistant containers must be located as close as practical to the use area. Disposal

must be according to local regulations and resources (ORS 459.386 to 459.405).

(3) BATHROOMS. Bathrooms must:

(a) Provide for individual privacy and have a finished interior, a mirror, a window capable of being opened or other means of ventilation, and a window covering. No person must have to walk through the bedroom of another person to access a bathroom;

(b) Be clean and free of objectionable odors;

(c) Have tubs or showers, toilets, and sinks in good repair. A sink must be located near each toilet. A toilet and sink must be provided on each floor where rooms of non-ambulatory individuals or individuals with limited mobility are located. There must be at least one toilet, one sink, and one tub or shower for each six household occupants, including the provider and the family of the provider;

(d) Have hot and cold water in sufficient supply to meet the needs of the individuals for personal hygiene. Hot water temperature sources for bathing areas may not exceed 120 degrees F;

(e) Have shower enclosures with nonporous surfaces. Glass shower doors must be tempered safety glass. Shower curtains must be clean and in good condition. Non-slip floor surfaces must be provided in tubs and showers;

(f) Have grab bars for toilets, tubs, and showers for the safety of individuals as required by the disabilities of the individuals;

(g) Have barrier-free access to toilet and bathing facilities with appropriate fixtures if there are non-ambulatory individuals in the AFH-DD. Alternative arrangements for non-ambulatory individuals must be appropriate to individual needs for maintaining good personal hygiene;

(h) Have adequate supplies of toilet paper for each toilet and soap for each sink; and

(i) Individuals must be provided with individual towels and wash cloths that are laundered in hot water at least weekly or more often if necessary. Individuals must have appropriate racks or hooks for drying bath linens. If individual hand towels are not provided, individuals must be provided with individually dispensed paper towels.

(4) BEDROOMS.

(a) Bedrooms for all household occupants must:

(A) Have been constructed as a bedroom when the home was built or remodeled under permit;

(B) Have a finished interior with walls or partitions of standard construction that go from floor to ceiling;

(C) Have a door that opens directly to a hallway or common use room without passage through another bedroom or common bathroom;

(D) Be adequately ventilated, heated, and lighted with at least one window capable of being opened that meets the fire regulations described in subsection (h) of this section;

(E) Have at least 70 square feet of usable floor space for each individual or 120 square feet of usable floor space for two individuals; and

(F) Have no more than two persons per room.

(b) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

(c) Individuals must have the freedom to decorate and furnish his or her own bedroom as agreed to within the Residency Agreement.

(d) SINGLE ACTION LOCKS.

(A) An AFH-DD licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) An AFH-DD licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk and when a written informed consent is obtained as described in OAR 411-360-0170 and OAR 411-004-0040.

(e) Providers, resident managers, or their family members must not sleep in areas designated as common use living areas or share bedrooms with individuals.

(f) There must be a bed for each individual. The bed must include a frame unless otherwise documented by an ISP Team decision. The bed must include a clean and comfortable mattress, a waterproof mattress cover if an individual is incontinent, and a pillow.

(g) Each bedroom must have sufficient, separate, private dresser and closet space for the clothing and personal effects for each individual, including hygiene and grooming supplies. Individuals must be allowed to keep and use reasonable amounts of personal belongings and to have private, secure storage space.

(h) Drapes or shades for windows must be in good condition and allow privacy for individuals.

(i) Bedrooms must be on ground level for individuals who are non-ambulatory or have impaired mobility.

(j) Individual bedrooms must be in close enough proximity to the provider to alert the provider to nighttime needs or emergencies, or be equipped with an intercom or audio monitor as approved by an ISP team.

(k) Bedrooms must have at least one window or exterior door that readily opens from the inside without special tools and that provides a clear opening of not less than 821 square inches (5.7 sq. ft.), with the least dimensions not less than 22 inches in height or 20 inches in width. Sill height must not be more than 44 inches from the floor level or there must be approved steps or other aids to window egress that may be used by individuals. Windows with a clear opening of not less than 5.0 square feet or 720 square inches with sill heights of 48 inches may be accepted when approved by the State Fire Marshal or the designee of the State Fire Marshal.

(5) MEALS.

(a) The provider must support the freedom of the resident to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk, as described in OAR 411-360-0170 and OAR 411-004-0040, and when a written informed consent is obtained.

(b) Three nutritious meals and two snacks must be provided. Meals must be served daily at times consistent with those in the community.

(A) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season, unless otherwise specified in writing by a physician.

(B) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations.

(c) A schedule of meal times and menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and the families of the individuals. Menu substitutions in compliance with subsection (a) of this section are acceptable. If an individual misses a meal at a scheduled time, an alternative meal must be made available.

(A) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(B) Access to food beyond the required three meals and snacks are the responsibility of the individual.

(d) Food may not be used as an inducement to control the behavior of an individual.

(e) MODIFIED OR SPECIAL DIETS. For individuals with modified or special diets ordered by a physician or licensed health care provider, the provider must:

(A) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the modified or special diet; and

(B) Maintain documentation that identifies how modified or special diets are prepared and served to individuals.

(f) Adequate storage must be available to maintain food at a proper temperature, including a properly working refrigerator. Food storage and preparation areas must be such that food is protected from dirt and contamination and free from food that is spoiled or expired.

(g) Household utensils, dishes, glassware, and household food supplies may not be stored in bedrooms, bathrooms, or living areas.

(h) Meals must be prepared and served in the AFH-DD where individuals reside. Payment for meals eaten away from the AFH-DD for the convenience of the provider (e.g. restaurants, senior meal sites) is the responsibility of the provider. Meals and snacks as part of an individual recreational outing are the responsibility of the individual.

(i) Household utensils, dishes, and glassware must be washed in hot soapy water, rinsed, and stored to prevent contamination.

(j) Food storage and preparation areas and equipment must be clean, free of objectionable odors, and in good repair.

(k) Home-canned foods must be processed according to the guidelines of the Oregon State University Extension Service. Freezing is the most acceptable method of food preservation. Milk must be pasteurized.

(6) TELEPHONE.

(a) A telephone must be provided in the AFH-DD that is available and accessible for the use of the individuals for incoming and outgoing calls. Telephone lines must be unblocked to allow for access.

(b) Emergency telephone numbers for the local CDDP, police, fire, medical if not served by 911, an emergency number to reach a provider who does not reside in the AFH-DD, and any emergency physician and additional persons to be contacted in the case of an emergency, must be posted in close proximity to all phones utilized by the licensee, resident manager, individuals, and caregivers.

(c) Telephone numbers for making complaints or a report of alleged abuse to the Department, the local CDDP, and Disability Rights Oregon must also be posted.

(d) In all cases, a telephone must be accessible to individuals for outgoing calls (emergencies) 24 hours a day.

(e) AFH-DD telephone numbers must be listed in the local telephone directory.

(f) The licensee must notify the Department, individuals, and as applicable the families, legal representatives, and service coordinators of the individuals of any change in the AFH-DDs telephone number within 24 hours of the change.

(7) SAFETY.

(a) Buildings must meet all applicable state and local building, mechanical, and housing codes for fire and life safety. The AFH-DD may be inspected for fire safety by the Office of the State Fire Marshal at the request of the Department using the standards in these rules as appropriate.

(b) Heating in accordance with the specifications of the manufacturer and electrical equipment, including wood stoves, must be installed in accordance with all applicable fire and life safety codes. Such equipment must be used and maintained properly and be in good repair.

(A) Providers who do not have a permit verifying proper installation of an existing wood stove must have the wood stove inspected by a qualified inspector, Certified Oregon Chimney Sweep Association member, or Oregon Hearth Products Association member and follow the recommended maintenance schedule.

(B) Fireplaces must have protective glass screens or metal mesh curtains attached to the top and bottom of the fireplace.

(C) The installation of a non-combustible heat resistant safety barrier may be required to be installed 36 inches around wood stoves to prevent individuals with ambulation or confusion problems from coming in contact with the stove.

(D) Un-vented portable oil, gas, or kerosene heaters are prohibited. Sealed electric transfer heaters or electric space heaters with tip-over shut-off capability may be used when approved by the authority having jurisdiction.

(c) Extension cord wiring and multi-plug adaptors must not be used in place of permanent wiring. UL-approved, re-locatable power tabs (RPTs) with circuit breaker protection are permitted for indoor use only and must be installed and used in accordance with the manufacturer's instructions. If RPTs are used, the RPTs must be directly connected to an electrical outlet, never connected to another RPT (known as daisy-chaining or piggy-backing), and never connected to an extension cord.

(d) All exit doors and interior doors used for exit purposes must have simple hardware that cannot be locked against exit and must have an obvious method of single action operation. Hasps, sliding bolts, hooks and eyes, and double key deadbolts are not permitted. Homes with one or more individuals who have impaired judgment and are known to wander away from their place of residence must have a functional and activated alarm system to alert a caregiver of an unsupervised exit by the individual.

(e) CARBON MONOXIDE ALARMS. Carbon monoxide alarms must be listed as complying with ANSI/UL 2034 and must be installed and maintained in accordance with the instructions of the manufacturer. Carbon monoxide alarms must be installed within 15 feet of each bedroom at the height recommended by the manufacturer.

(A) Carbon monoxide alarms may be hard wired, plug-in, or battery operated. Hard wired and plug-in alarms must be equipped with battery back-up. Battery operated alarms must be equipped with a device that warns of a low battery.

(B) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular carbon monoxide alarm must be equipped with an additional carbon monoxide alarm that has visual or vibrating capacity.

(f) SMOKE ALARMS. Smoke alarms must be installed in accordance with the instructions of the manufacturer in each bedroom, hallways or access areas that adjoin bedrooms, the family room or main living area where occupants congregate, laundry rooms, office rooms, and basements. In addition, smoke alarms must be installed at the top of all stairways in multi-level homes.

(A) Ceiling placement of smoke alarms is recommended. If wall mounted, smoke alarms must be between 6 inches and 12 inches from the ceiling and not within 12 inches of a corner.

(B) Smoke alarms must be equipped with a device that warns of low battery when battery operated or with a battery back-up if hard wired.

(C) Smoke alarms when activated must be audible in all sleeping rooms.

(D) Bedrooms used by hearing-impaired occupants who may not hear the sound of a regular smoke alarm must be equipped with an additional smoke alarm that has visual or vibrating capacity.

(g) All carbon monoxide alarms and smoke alarms must contain a sounding device or be interconnected to other alarms to provide, when actuated, an alarm that is audible in all sleeping rooms. The alarms must be loud enough to wake occupants when all bedroom doors are closed.

(h) The licensee must test all carbon monoxide alarms and smoke alarms in accordance with the instructions of the manufacturer at least monthly (per NFPA 72). Testing must be documented in the AFH-DD records.

(i) FIRE EXTINGUISHERS. At least one 2A-10BC rated fire extinguisher must be in a visible and readily accessible location on each floor, including basements. Fire extinguishers must be inspected at least once a year by a qualified person that is well versed in fire extinguisher maintenance. All recharging and hydrostatic testing must be completed by a qualified agency properly trained and equipped for this purpose and documentation must be maintained in the AFH-DD records.

(j) The licensee must maintain carbon monoxide alarms, smoke alarms, and fire extinguishers in functional condition. If there are more than two violations in maintaining battery operated alarms in working condition, the Department may require the licensee to hard wire the alarms into the electrical system.

(8) EMERGENCY PROCEDURES AND PLANNING.

(a) EVACUATION DRILLS.

(A) The provider must conduct unannounced evacuation drills when individuals are present, once every quarter with at least one drill per year occurring during the hours of sleep. Drills must occur at different times of the day, evening, and night, with exit routes being varied based on the location of a simulated fire. All occupants must participate in the evacuation drills.

(B) Written documentation must be made at the time of the drill and kept by the provider for at least two years following the drill. Evacuation drill documentation must include:

(i) The date and time of the drill or simulated drill;

(ii) The location of the simulated fire and exit route;

(iii) The last names of all individuals, the provider, caregivers, and all other occupants present on the premises at the time of the drill;

(iv) The type of evacuation assistance provided by the provider to individuals;

(v) The amount of time required by each individual to evacuate; and

(vi) The signature of the provider or caregiver conducting the drill.

(b) The provider must document that, within 24 hours of arrival, each new individual receives an orientation to basic safety and is shown how to respond to a fire and carbon monoxide alarm and how to exit from the AFH-DD in an emergency.

(c) The provider must demonstrate the ability to evacuate all individuals from the AFH-DD within three minutes. If there are problems in demonstrating this evacuation time, the Department may apply conditions to the license that include, but are not limited to, reduction of individuals under care, additional staffing, increased fire protection, or revocation of the license.

(d) The provider must provide, post, and keep up to date, a floor plan on each floor. The floor plan must contain room sizes, the location of the bed for each individual, windows, exit doors, the sleeping rooms for the resident manager or provider, smoke and carbon monoxide alarms, fire extinguishers, escape routes, and wheelchair ramps. A copy of the floor plan must be updated to reflect any change and a copy of the updated floor plan must be submitted to the Department.

(e) There must be at least one plug-in rechargeable flashlight available for emergency lighting in a readily accessible area on each floor including the basement.

(f) If an individual accesses the community independently, the provider must provide the individual information about appropriate steps to take in an emergency, such as emergency contact telephone numbers, contacting police or fire personnel, or other strategies to obtain assistance.

(g) WRITTEN EMERGENCY PLAN. Providers must develop, maintain, update, and implement a written Emergency Plan for the protection of all the individuals in the event of an emergency or disaster. The Emergency Plan must:

(A) Be practiced at least annually. The Emergency Plan practice may consist of a walk-through of the duties or a discussion exercise dealing with a hypothetical event, commonly known as a tabletop exercise;

(B) Consider the needs of the individuals being served and address all natural and human-caused events identified as a significant risk for the AFH-DD, such as a pandemic or an earthquake;

(C) Include provisions and sufficient supplies, such as sanitation and food supplies, to shelter in place, when unable to relocate, for at least three days under the following conditions:

(i) Extended utility outage;

(ii) No running water;

(iii) Inability to replace food supplies; and

(iv) Caregivers unable to report as scheduled.

(D) Include provisions for evacuation and relocation that Identifies:

(i) The duties of caregivers during evacuation, transporting, and housing of individuals including instructions to caregivers to notify the Department and local CDDP of the plan to evacuate or the evacuation of the AFH-DD as soon as the emergency or disaster reasonably allows;

(ii) The method and source of transportation;

(iii) Planned relocation sites that are reasonably anticipated to meet the needs of the individuals in the AFH-DD;

(iv) A method that provides persons unknown to the individual the ability to identify each individual by name, and to identify the name of the supporting provider for the individual; and

(v) A method for tracking and reporting to the Department and the local CDDP the physical location of each individual until a different entity resumes responsibility for the individual.

(E) Address the needs of the individuals including provisions to provide:

(i) Immediate and continued access to medical treatment with the evacuation of the individual summary sheet and the emergency information identified in OAR 411-360-0170, and other information necessary to obtain care, treatment, food, and fluids for individuals;

(ii) Continued access to life sustaining pharmaceuticals, medical supplies, and equipment during and after an evacuation and relocation;

(iii) Behavior support needs anticipated during an emergency; and

(iv) Adequate staffing to meet the life-sustaining and safety needs of the individuals.

(F) Providers must instruct and provide training to all caregivers about the duties and responsibilities of the caregivers for implementing the Emergency Plan.

(i) Documentation of caregiver training must be kept on record by the provider.

(ii) The provider must re-evaluate the Emergency Plan at least annually or when there is a significant change in the AFH-DD.

(G) Applicable parts of the Emergency Plan must coordinate with each applicable employment provider or day program provider to address the possibility of an emergency or disaster during day time hours.

(9) SPECIAL HAZARDS.

(a) Flammable and combustible liquids and hazardous materials must be safely and properly stored in original, properly labeled containers or safety containers, and secured to prevent tampering by individuals and vandals.

(b) Oxygen and other gas cylinders in service or in storage must be adequately secured to prevent cylinders from falling or being knocked over. No smoking signs must be visibly posted where oxygen or other gas cylinders are present. Oxygen and other gas cylinders may not be used or stored in rooms where a wood stove, fireplace, or open flames are located.

(c) To protect the safety of an individual in an AFH-DD, the provider must store hunting equipment and weapons in a safe and secure manner inaccessible to the individuals in the AFH-DD. Ammunition must be secured in a locked area separate from the firearms.

(d) For AFH-DDs with one or more employees, smoking regulations in compliance with the Indoor Clean Air Act must be adopted to allow smoking only in outdoor designated areas. Signs must be posted prohibiting smoking in the workplace per OAR 333-015-0040.

(A) Designated smoking areas must be at least 10 feet from any entrance, exit, window that opens, ventilation intake, or accessibility ramp.

(B) Smoking is prohibited in sleeping rooms.

(C) Smoking is prohibited in vehicles when individuals or employees occupy the vehicle.

(D) Ashtrays of noncombustible material and safe design must be provided in areas where smoking is permitted.

(e) Cleaning supplies, poisons, and insecticides must be properly stored in original, properly labeled containers in a safe area away from food, food preparation and storage, dining areas, and medications and in a manner to prevent tampering by individuals.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0140

Standards and Practices for Health Care

(1) INDIVIDUAL HEALTH CARE. An individual must receive care and services that supports and promotes the health and well-being of the individual as follows:

(a) The AFH-DD must ensure each individual has a primary physician or primary licensed health care provider whom the individual or the legal representative of the individual has chosen from among qualified providers.

(b) The AFH-DD must ensure each individual receives a medical evaluation by a licensed health care provider no less than every two years or as recommended by the licensed health care provider.

(c) The AFH-DD must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(d) A written and signed order from a physician or licensed health care provider is required prior to the use or implementation of any of the following:

(A) Prescription medications;

(B) Non-prescription medications except over the counter topicals;

(C) Treatments other than basic first aid;

(D) Modified or special diets;

(E) Adaptive equipment; and

(F) Aids to physical functioning.

(e) The provider must implement the order of a physician or licensed health care provider.

(f) Injections may be self-administered by the individual or administered by a relative of the individual, a currently licensed registered nurse, a licensed practical nurse under registered nurse supervision, or the provider, resident manager, or substitute caregiver who has been trained and is monitored by a physician or delegated by a registered nurse in accordance with the rules of the Board of Nursing in OAR chapter 851, division 047. Documentation regarding the training or delegation must be maintained in the record for the individual.

(2) REQUIRED DOCUMENTATION.

(a) A provider must maintain and keep current records on each individual to aid physicians, licensed health care providers, the CDDP, and the Department in understanding the medical history of the individual. Such documentation must include:

(A) A list of known health conditions, medical diagnoses, any known allergies, immunizations, Hepatitis B status, previous TB tests, incidents or injuries affecting the health, safety, or emotional well-being of the individual, and history of emotional or mental health status that may be pertinent to current care and services;

(B) A record of visits and appointments to licensed health care providers that includes documentation of the consultation, any treatment provided, and any follow-up reports provided to the provider;

(C) A record of known hospitalizations and surgeries;

(D) Current signed orders for all medications, treatments, therapies, special diets, and adaptive equipment;

(E) Medication administration records (MARs);

(F) Documentation of the consent from the legal representative of the individual for medical treatment that is not routine including surgery and anesthesia; and

(G) Copies of previous mental health assessments and assessment updates, including multi-axial DSM diagnosis, treatment recommendations, and progress records for mental health treatment services.

(b) When requested, copies of medical records and MARs must be provided to the legal guardian, Department caseworker, or services coordinator.

(3) MEDICATION PROCUREMENT AND STORAGE. All medications must be:

(a) Kept in the original containers;

(b) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified by the written order of a physician or licensed health care provider; and

(c) Kept in a secured, locked container and stored as indicated by the product manufacturer.

(4) MEDICATION ADMINISTRATION.

(a) All medications and treatments must be recorded on an individualized MAR. The MAR must include:

(A) The name of the individual;

(B) A transcription of the written order of the physician or licensed health care provider including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;

(C) For over the counter topical medications without a written order from a physician or licensed health care provider, a transcription of the printed instructions from the topical medication package;

(D) Times and dates of administration or self-administration of the medication;

(E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;

(F) Method of administration;

(G) An explanation of why a PRN (as needed) medication was administered;

(H) Documented effectiveness of any PRN (as needed) medication administration;

(I) An explanation of all medication administration or documentation irregularities; and

(J) Documentation of any known allergy or adverse drug reaction.

(b) Any errors in the MAR must be corrected with a circle of the error and the initials of the person making the correction.

(5) SELF-ADMINISTRATION OF MEDICATION.

(a) For individuals who independently self-administer medications, there must be a plan as determined by the ISP team for the periodic monitoring and review of the self-administration of medications.

(b) The AFH-DD must ensure that individuals able to self-administer medications keep the medications in a place unavailable to other individuals residing in the AFH-DD and store the medications as recommended by the product manufacturer.

(6) USE OF MEDICAL MARIJUANA.

(a) Prior to using medical marijuana in an AFH-DD, an individual must:

(A) Possess a valid OMMP registry card. A copy of the current OMMP registry card for the individual must be made available to the provider and maintained in the individual's record;

(B) Provide a copy of the written statement by the physician that indicates medical marijuana may mitigate the symptoms of the qualifying condition of the individual and includes instructions for the use of medical marijuana;

(C) Be responsible for obtaining the marijuana from an OMMP approved third party grower who is not the provider, caregiver, resident manager, or any other occupant in or on the premises of the AFH-DD; and

(D) Sign an agreement that the individual understands that:

(i) Marijuana is not allowed to be grown by any person in or on the premises of the AFH-DD;

(ii) A participant in the OMMP may not possess more than one ounce of marijuana at any one time while in or on the premises of the AFH-DD;

(iii) Medical marijuana may only be administered by ingesting it with food and by a vaporizer. If assistance with administration is necessary, the individual must agree to arrange for a "designated primary caregiver". The designated primary caregiver must be authorized by the OMMP and identified on the OMMP registry card for the individual;

(iv) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot be designated as the OMMP-approved designated primary caregiver of the individual and identified on the OMMP registry card for the individual;

(v) A provider, caregiver, resident manager, or any occupants of the AFH-DD cannot assist with the preparation, administration, or delivery of medical marijuana;

(vi) The individual must maintain any equipment used to administer marijuana;

(vii) Marijuana must be kept in locked storage in the bedroom of the individual when not being administered;

(viii) The individual must immediately notify the OMMP of any change in status, such as a change in address, designated primary caregiver, or person responsible for the marijuana grow site. A copy of the updated OMMP registry card for the individual must be made available to the provider for the record of the individual; and

(ix) Failure to comply with Oregon laws, Oregon rules, or the Residency Agreement of the AFH-DD may result in additional action.

(b) An individual must comply with the Oregon Medical Marijuana Act, the rules for the OMMP in OAR chapter 333, division 008, these rules, and any other requirements for the OMMP.

(c) An individual must self-administer medical marijuana by ingesting the marijuana or inhaling the marijuana with a vaporizer. Smoking marijuana in or on the premises of the AFH-DD is prohibited. Marijuana must be administered privately in a room that is not shared with another person. The individual may not have visitors, other individuals, or any other person in this private space while self-administering the marijuana.

(d) An individual must designate a grower to provide the marijuana as necessary. The grower must not be the provider, resident manager, caregiver, or any occupant in or on the premises of the AFH-DD. The grower designated by the individual must be authorized by OMMP and identified on the OMMP registry card for the individual.

(A) The designated grower for individuals being served in the foster care system must accommodate the specific needs related to the dispensation and tracking of the controlled substance. Not more than 28 grams at a time may be stored on the property of the AFH-DD per card holder. The remainder of the OMMP card holder's marijuana must be stored at the site of the grower.

(B) Each 28 grams, as needed, must be packaged in an airtight container clearly dated and labeled as to the total amount in grams with the name of the OMMP card holder. The container must be stored in a locked cabinet as is done with all controlled medications. Each administration must be tracked on the individual's MAR as to dosage in grams as weighed on a scale, date, and time of day.

(e) A provider, caregiver, resident manager, or any other occupants in or on the premises of the AFH-DD must not prepare or in any way assist with the administration or procurement of an individual's marijuana. The provider must monitor the individual's usage of medical marijuana to ensure safety and to document that the individual's use of medical marijuana is in compliance with the physician's instructions for using marijuana as documented in the individual's ISP.

(f) If a provider, resident manager, or caregiver also has an OMMP card for medical purposes, a substitute caregiver must be available to support the individuals when the provider, resident manager, or caregiver is under the influence of the medical marijuana. Any OMMP card holder in or on the premises of the AFH-DD must not smoke marijuana in or on the premises of the AFH-DD but may ingest the marijuana or inhale the marijuana with a vaporizer.

(7) PSYCHOTROPIC MEDICATIONS.

(a) Psychotropic medications and medications for behavior must be:

(A) Prescribed by a physician or licensed health care provider through a written order; and

(B) Monitored by the prescribing physician, licensed health care provider, ISP team, and provider for desired responses and adverse consequences.

(b) A provider, resident manager, or any caregiver may not discontinue, change, or otherwise alter the prescribed administration of a psychotropic medication for an individual without direction from a licensed health care provider.

(c) A provider, resident manager, or any caregiver may not use alternative medications intended to alter or affect mood or behavior, such as herbals or homeopathic remedies, without direction and supervision of a licensed health care provider.

(d) PRN (as needed) psychotropic medication orders are not allowed.

(e) PSYCHOTROPIC MEDICATIONS FOR YOUNG ADULTS. A qualified mental health professional or a licensed health care provider must provide a mental health assessment prior to any young adult being prescribed one or more psychotropic medications or any antipsychotic medication.

(A) A mental health assessment is not required in the following situations:

(i) In case of urgent medical need;

(ii) For a change in the delivery system of the same medication;

(iii) For a change in medication within the same classification;

(iv) A one-time medication order given prior to a medical procedure; or

(v) An anti-epileptic medication prescribed for a seizure disorder.

(B) When a mental health assessment is required, the provider must notify and inform the following of the need for a mental health assessment:

(i) The legal guardian of the young adult, or the caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(C) The required mental health assessment:

(i) Must be completed within three months prior to the prescription of a psychotropic medication; or

(ii) May be an update of a prior mental health assessment that focuses on a new or acute problem.

(D) Information from the mental health assessment must be provided to the licensed health care provider prior to the issuance of a prescription for a psychotropic medication.

(E) Within one business day after receiving a new prescription or knowledge of a new prescription for a psychotropic medication for the young adult, the provider must notify:

(i) The legal guardian of the young adult, or the caseworker of the Department when the Department is the legal guardian of the young adult; and

(ii) The services coordinator.

(F) The notification described in subsection (E) of this section must contain:

(i) The name of the prescribing physician or licensed health care provider;

(ii) The name of the medication;

(iii) The dosage, any change of dosage, or suspension or discontinuation of the current psychotropic medication;

(iv) The dosage administration schedule prescribed; and

(v) The reason the medication was prescribed.

(G) The provider must get a written informed consent from one of the following prior to filling a prescription for any new psychotropic medication, except in case of urgent medical need:

(i) The legal guardian of the young adult; or

(ii) The Department when the Department is the legal guardian of the young adult.

(H) When a young adult has more than two prescriptions for psychotropic medications, an annual review of the psychotropic medications must occur by a licensed health care provider or a qualified mental health professional who has the authority to prescribe drugs, such as the Oregon Medicaid Drug Use Review Program.

(f) BALANCING TEST. When a psychotropic medication is first prescribed and annually thereafter, the provider must obtain a signed balancing test from the prescribing licensed health care provider using the Balancing Test Form (form SDS 4110), or by inserting the required form content into a form maintained by the provider.

(A) The provider must present the physician or licensed health care provider with a full and clear description of the behavior and symptoms to be addressed, as well as any side effects observed; and

(B) The provider must keep signed copies of the balancing test in the medical record for the individual for seven years.

(8) MEDICATION SAFEGUARDS.

(a) Safeguards to prevent adverse effects or medication reactions must be utilized and include:

(A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by the licensed health care provider, from a single pharmacy that maintains a medication profile for the individual;

(B) Maintaining information about each desired effects and side effects of the medication; and

(C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or caregiver.

(b) An individual's record must include documentation of the reason when all medications are not provided through a single pharmacy.

(9) MEDICATION DISPOSAL. All unused, discontinued, outdated, recalled, and contaminated medications including over-the-counter medications may not be kept in the AFH-DD and must be disposed of within 10 days of expiration, discontinuation, or the knowledge of the provider of recall or contamination. A provider may contact the local DEQ waste management company in the area for instructions on proper disposal of medications. Disposal of all controlled medications must be documented and witnessed by at least one other person who is 18 years of age or older. A written record of the disposal of the medication must be maintained that includes documentation of:

(a) Date of disposal;

(b) Description of the medication, including dosage, strength, and amount being disposed;

(c) Name of the individual for whom the medication was prescribed;

(d) Reason for disposal;

(e) Method of disposal;

(f) Signature of the person disposing of the medication; and

(g) For controlled medications, the signature of a witness to the disposal.

(10) NURSING SERVICES. When nursing services are provided to an individual the provider must:

(a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(11) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Delegation and training of nursing tasks to a provider, resident manager, or substitute caregiver;

(E) Teaching and education of the provider and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(F) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in medical condition requires an update to the Nursing Service Plan.

(c) Community nursing services exclude direct nursing care.

(d) A Nursing Service Plan must be present when Department funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(e) When community nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(f) A registered nurse providing community nursing services must:

(A) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(B) Meet the qualifications described in OAR 411-048-0210; and

(C) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(g) A registered nurse providing community nursing services must comply with:

(A) Provider record and documentation requirements referenced in OAR chapter 411, division 048 for financial, clinical, and other records including the Provider Enrollment Agreement and electronic billing procedures;

(B) Department direct contracts (if applicable); and

(C) Service record requirements outlined in this rule.

(12) PRIVATE DUTY NURSING. As defined in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and the Medicaid State Plan, private duty nursing services may be provided to a young adult aged 18 through 20 that resides in a foster home and meets the clinical criteria described in OAR 411-350-0055 (Private Duty Nursing).

(a) A Nursing Service Plan must be present when OHA funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(b) When private duty nursing services are provided to a young adult the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the young adult; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200.

(13) DIRECT NURSING SERVICES. Direct nursing services may be provided to individuals 21 years of age and over as described in OAR chapter 411, division 380.

(a) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(b) When direct nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the direct nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) A nurse providing direct nursing services must be an enrolled Medicaid Provider and meet the qualifications described in OAR 411-380-0080.

(d) An individual may choose the AFH-DD provider licensed by the Department to provide direct nursing services in the AFH-DD under the following conditions:

(A) The provider must meet the qualifications to provide direct nursing services described in OAR 411-380-0060;

(B) More than one individual resides in the AFH-DD and requires direct nursing services;

(C) The AFH-DD provider is the choice of the individual or the legal representative of the individual and is not for the convenience of the AFH provider; and

(D) The AFH-DD provider meets the requirements as an enrolled Medicaid Provider as described in OAR 411-380-0060 and has a separate and distinct Medicaid provider number.

(E) LIMITATIONS.

(i) The AFH-DD provider, while delivering a direct nursing service singularly to an eligible individual in the AFH-DD, must assure the needs of other individuals in the home are met up to and including additional staffing such as resident managers, substitute caregivers, or additional nurses in the home. Documentation must record staffing coverage; and

(ii) To assure the health and safety of individuals with medically complex conditions in an AFH-DD, an AFH-DD provider delivering direct nursing services in the licensed AFH-DD is limited to 40 total hours per week of direct nursing services.

(14) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a provider, resident manager, and a substitute caregiver in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

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Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0170

Documentation and Record Requirements

(1) INDIVIDUAL RECORDS. A record must be developed, kept current, and available on the premises of the AFH-DD for each individual admitted to the AFH-DD.

(a) The provider must maintain a summary sheet for each individual in the AFH-DD. The summary sheet must include:

(A) The name of the individual, current and previous address, date of entry into the AFH-DD, date of birth, gender, marital status, religious preference, preferred hospital, Medicaid prime and private insurance number (if applicable), and guardianship status; and

(B) The name, address, and telephone number of:

(i) The legal representative, family, advocate, or other significant person;

(ii) The primary licensed health care provider and designated back up licensed health care provider or clinic preferred by the individual;

(iii) The dentist preferred by the individual;

(iv) The day program or employer (if applicable);

(v) The services coordinator; and

(vi) Other representatives providing care and services to the individual.

(b) EMERGENCY INFORMATION. The provider must maintain emergency information for each individual receiving care and services in the AFH-DD in addition to the individual summary sheet identified in subsection (a) of this section. The emergency information must be kept current and must include:

(A) The name of the individual;

(B) The name, address, and telephone number of the provider;

(C) The address and telephone number of the AFH-DD where the individual resides if different from that of the provider;

(D) The physical description of the individual, which may include a picture of the individual with the date the picture was taken, and identification of:

(i) The race, gender, height, weight range, hair, and eye color of the individual; and

(ii) Any other identifying characteristics that may assist in identifying the individual, such as marks or scars, tattoos, or body piercings.

(E) Information on the abilities and characteristics of the individual including:

(i) How the individual communicates;

(ii) The language the individual uses and understands;

(iii) The ability of the individual to know how to take care of bodily functions; and

(iv) Any additional information that may assist a person not familiar with the individual to understand what the individual can do for him or herself.

(F) The health support needs of the individual including:

(i) Diagnosis;

(ii) Allergies or adverse drug reactions;

(iii) Health issues that a person needs to know when taking care of the individual;

(iv) Special dietary or nutritional needs, such as requirements around textures or consistency of foods and fluids;

(v) Food or fluid limitations due to allergies, diagnosis, or medications the individual is taking that may be an aspiration risk or other risk for the individual;

(vi) Additional special requirements the individual has related to eating or drinking, such as special positional needs or a specific way foods or fluids are given to the individual;

(vii) Physical limitations that may affect the ability of the individual to communicate, respond to instructions, or follow directions; and

(viii) Specialized equipment needed for mobility, positioning, or other health-related needs.

(G) The emotional and behavioral support needs of the individual including:

(i) Mental health or behavioral diagnosis and the behaviors displayed by the individual; and

(ii) Approaches to use when dealing with the individual to minimize emotional and physical outbursts.

(H) Any court ordered or guardian authorized contacts or limitations;

(I) The supervision requirements of the individual and why; and

(J) Any additional pertinent information the provider has that may assist in the care and services to support the individual if a natural or man-made disaster occurs.

(c) Individual records must be made available to representatives of the Department conducting inspections or investigations as well as to individuals to whom the information pertains, the legal representative of the individual, or other legally authorized people.

(d) Individual records must be kept by the provider for a period of at least three years. When an individual moves or an AFH-DD closes, copies of pertinent information must be transferred to the new place of residence for the individual.

(e) Providers must comply with ORS 179.505 in all other matters pertaining to confidential records and release of information.

(2) INDIVIDUAL ACCOUNT RECORDS. For those individuals not yet capable of managing money as determined by the ISP team or legal representative of the individual, the provider must prepare, maintain, and keep current a separate and accurate written record of all money received or disbursed on behalf of or by the individual.

(a) The account record must include:

(A) The date, amount, and source of income received;

(B) The date, amount, and purpose of funds disbursed; and

(C) The signature of the provider or caregiver making each entry.

(b) Purchases of $10.00 or more made on behalf of an individual must be documented by receipts unless an alternate amount is otherwise specified by the ISP team.

(c) Personal Incidental Funds (PIF) are to be used at the discretion of the individual for things, such as clothing, video games, and snacks (not part of daily diet) as addressed in the ISP for the individual.

(d) Each account record must include the disposition of the room and board fee that the individual pays to the provider at the beginning of each month.

(e) REIMBURSEMENT TO INDIVIDUAL. The provider must reimburse the individual any funds that are missing due to theft or mismanagement on the part of the provider, resident manager, or caregiver of the AFH-DD, or for any funds within the custody of the provider that are missing. Such reimbursement must be made within 10 business days of the verification that funds are missing.

(f) Financial records must be maintained for at least seven years.

(3) PERSONAL PROPERTY RECORD. A provider must prepare and maintain an accurate individual written record of personal property that has significant emotional or monetary value to each individual as determined by a documented ISP team or legal representative decision. The personal property record must include:

(a) The description and identifying number (if any):

(b) Date of inclusion in the record;

(c) Date and reason for removal from record;

(d) Signature of provider making each entry; and

(e) A signed and dated annual review of the personal property record for accuracy.

(4) INDIVIDUAL SUPPORT PLAN.

(a) A health and safety transition plan must be developed for an individual at the time of entry for the first 60 days of care and services.

(b) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.

(c) To effectively provide services, providers must have access to the portion of the ISP for which the provider is responsible for implementing.

(d) For a new or renewed ISP with an effective date of July 1, 2016 or later, the ISP must justify and document any individually-based limitations as described in section (5) of this rule and OAR 411-004-0040.

(e) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(f) For an individual in employment services or other Department-funded day services, a copy of the plan maintained by the provider for employment services or other Department-funded day services must be integrated or attached to the ISP for the individual.

(g) The ISP must include at least six hours of activities each week that are of interest to the individual that do not include television or movies made available by the provider. Activities are those available in the community and made available or offered by the provider or the CDDP.

(A) Activities may include:

(i) Recreational and leisure activities; and

(ii) Other activities required to meet the needs of an individual as described in the ISP for the individual.

(B) Activities may not include:

(i) Rehabilitation;

(ii) Educational services; or

(iii) Employment services.

(5) INDIVIDUALLY-BASED LIMITATIONS.

(a) Effective July 1, 2016, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's bedroom, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Support to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement;

(F) Freedom and support to control the individual's schedule and activities; and

(G) Privacy in the individual's bedroom.

(b) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The licensee must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the individually-based limitation;

(B) The positive interventions and supports used prior to any individually-based limitation;

(C) Less intrusive methods that have been tried but did not work;

(D) A clear description of the condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(G) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the resident and the consent of the legal representative; and

(H) An assurance that the interventions and support do not cause harm to the individual.

(6) HOUSE RULES.

(a) House rules are subject to review and approval by the Department prior to implementation and as changes occur.

(b) House rules must be posted in a conspicuous location in the AFH-DD that is accessible to individuals and visitors.

(c) House rules may not violate the rights of an individual as stated in ORS 430.210, ORS 443.739, OAR 411-318-0010, and described in section (9) of this rule.

(d) House rules may not be in conflict with these rules.

(e) A provider must review and provide a copy of the house rules to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or the legal representative of the individual, sign and date a copy of the house rules. A copy of the signed and dated house rules must be maintained in the record for the individual.

(7) RESIDENCY AGREEMENTS. The provider must maintain a Residency Agreement with all individuals as described in OAR 411-360-0055, and if applicable, specialized contracts with the Department, and tenancy agreements with room and board tenants.

(8) UNUSUAL INCIDENTS. A written report of all unusual incidents relating to an individual must be sent to the CDDP within five business days of the incident. The report must include how and when the incident occurred, who was involved, what action was taken by the provider or caregiver, the outcome to the individual, and what action is being taken to prevent the reoccurrence of the incident.

(9) GENERAL INFORMATION. The provider must maintain all other information or correspondence pertaining to the individual.

(10) MONTHLY PROGRESS NOTES. The provider must maintain and keep current monthly progress notes for each individual residing in the AFH-DD that include, at a minimum, the progress of the ISP supports, any medical, behavioral, or safety issues, or any other events that are significant to the individual.

(11) BILL OF RIGHTS FOR INDIVIDUALS.

(a) As stated in ORS 443.739, each individual residing in an AFH-DD has the right to:

(A) Be treated as an adult, with respect and dignity.

(B) Be informed of all rights and all house rules.

(C) Be encouraged and assisted to exercise legal rights, including the right to vote.

(D) Be informed of his or her medical condition and the right to consent to or refuse treatment.

(E) Receive appropriate care and services, and prompt medical care as needed.

(F) A safe and secure environment.

(G) Be free from mental and physical abuse.

(H) Be free from chemical or physical restraints except as ordered by a physician or other qualified practitioner.

(I) Complete privacy when receiving treatment or personal care.

(J) Associate and communicate privately with any person the individual chooses.

(K) Send and receive personal mail unopened.

(L) Participate in activities of social, religious and community groups.

(M) Have medical and personal information kept confidential.

(N) Keep and use a reasonable amount of personal clothing and belongings, and to have a reasonable amount of private, secure storage space.

(O) Manage the individual's own money and financial affairs unless legally restricted.

(P) Be free from financial exploitation. The provider may not charge or ask for application fees or nonrefundable deposits and may not solicit, accept, or receive money or property from an individual other than the amount agreed to for services.

(Q) A written agreement regarding the services to be provided and the rate schedule to be charged. The provider must give 30 days' written notice before any change in the rates or the ownership of the home.

(R) Not to be transferred or moved out of the AFH-DD without 30 days' advance written notice and an opportunity for a hearing. A provider may transfer or discharge an individual only for medical reasons including a medical emergency described in ORS 443.738 (11)(b), or for the welfare of the individual or other individuals residing in the AFH-DD, or for non-payment.

(S) Be free of discrimination in regard to race, color, religion, sex, sexual orientation, or national origin.

(T) Make suggestions and complaints without fear of retaliation.

(b) The provider must guarantee these rights and help individuals exercise them.

(c) The provider shall post a copy of the Bill of Rights in the entry or other equally prominent place in the AFH-DD. The Bill of Rights must include the name and phone number of the office to call in order to report a complaint.

(d) The provider must explain and provide a copy of the Bill of Rights along with a description of how to exercise these rights to each individual and the legal representative of the individual at the time of entry and document in the file for the individual that a copy of the Bill of Rights was provided.

(e) The provider must review the Bill of Rights with each individual and the legal representative of the individual annually or as changes occur.

(f) In addition to the rights described in subsection (a) of this section, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(g) In addition to the rights described in subsection (a) of this section, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(12) AFH-DD records must be kept current and maintained by the provider and be available for inspection upon request.

(13) EMPLOYMENT RECORDS. AFH-DD records must include proof that the provider, resident manager, and any other caregivers have met the minimum qualifications as required by OAR 411-360-0110. The following documentation must be included in the AFH-DD record and made available for review upon request:

(a) Completed employment applications including the names, addresses, and telephone numbers of all caregivers employed by the provider. An application for employment in any capacity in an AFH-DD must include a question asking whether the person applying for employment has ever been found to have committed abuse;

(b) Proof that the provider has the approval from the Department for each subject individual, as defined in OAR 411-360-0020, to have contact with older adults, adults with disabilities, or adults with intellectual or developmental disabilities as a result of a background check as defined in OAR 407-007-0210;

(c) Proof of required training according to OAR 411-360-0120. Documentation must include the date of each training, subject matter, name of agency or organization providing the training, and number of training hours;

(d) A certificate to document completion of the Department's Basic Training Course for the provider, resident manager, and substitute caregivers;

(e) Proof of mandatory abuse report training for the provider, resident manager, and substitute caregivers;

(f) Proof of any additional training required for the specific classification of an AFH-DD or the provider, resident manager, and all caregivers; and

(g) Documentation of caregiver orientation to the AFH-DD, training of emergency procedures, training on the ISPs for individuals, and training on behavior supports and the Nursing Service Plan (if applicable).

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-360-0190

Standards for Admission, Transfers, Respite, Crisis Placements, Exit, and Closures

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, gender, sexual orientation, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters an AFH-DD is subject to eligibility as described in this section.

(a) To become a Department-funded resident of an AFH-DD, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or other funded comprehensive residential services.

(b) To be eligible for Department-funded relief care in an AFH-DD, an individual must:

(A) Meet the criteria in subsection (2)(a)(A-D) of this section;

(B) Be referred by a CDDP or Brokerage; and

(C) Not be receiving services in a 24-hour residential setting as described in OAR chapter 411, division 325 or a supported living setting as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY. All individuals considered for entry into the AFH-DD must:

(a) Be referred by the CDDP or have prior written approval of the CDDP or Department if the services for the individual are paid for by the Department; or

(b) Be placed with the agreement of the CDDP if the individual is either private pay or not eligible for developmental disability services.

(4) DOCUMENTATION UPON ENTRY.

(a) At the time of a referral from the CDDP, a provider must be given:

(A) A copy of the eligibility determination document for an individual;

(B) A statement indicating the safety skills of the individual including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges of the individual including supervision and support needs;

(D) The medical history of the individual and information on health care support that includes when available:

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of the current or recommended medications, treatments, diets, and aids to physical functioning for the individual;

(F) Copies of documents relating to the guardianship or conservatorship of the individual, health care representation of the individual, or any other legal restrictions on the rights of the individual (if applicable);

(G) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Program (if applicable); and

(H) Copies of protocols, risk tracking record, and any support documentation (if available).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An ISP team meeting must be conducted prior to an individual entering an AFH-DD. The findings of the ISP team meeting must be recorded in the file for the individual and include, at a minimum:

(a) The Residency Agreement as described in OAR 411-360-0055;

(b) The name of the individual proposed for services;

(c) The date of the meeting and the date determined to be the date of entry for the individual;

(d) Documentation of the participants included in the meeting;

(e) Documentation of the pre-entry information required by section (4) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.

(6) The provider retains the right to deny the entry of any individual if the provider feels the support needs of the individual may not be met by the provider or for any other reason specifically prohibited by these rules.

(7) An AFH-DD may not be used as a site for foster care for children, adults from other agencies, or any other type of shelter or day care without the written approval of the Department.

(8) TRANSFERS.

(a) An individual may not be transferred by a provider to another AFH-DD or moved out of the AFH-DD without 30 days advance written notice to the individual, the legal representative of the individual, and the CDDP stating reasons for the transfer as provided in ORS 443.739(18) and OAR 411-088-0070, and the right of the individual to a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080, except for a medical emergency or to protect the welfare of the individual or other individuals. Individuals may only be transferred by a provider for the following reasons:

(A) Behavior that poses a significant danger to the individual or others;

(B) Failure to make payment for care and services;

(C) The license for the AFH-DD has been suspended, revoked, not renewed, or the provider voluntarily surrendered the license;

(D) The care and service needs of the individual exceed the ability of the provider; or

(E) There is a mutual decision made by the individual, the legal representative of the individual, and the ISP team that a transfer is in the best interest of the individual and all ISP team members agree.

(b) Individuals who object to the transfer by the AFH-DD provider must be given the opportunity for a hearing as provided in ORS 443.738(11)(c) and OAR 411-088-0080. Participants may include the individual and at the request of the individual, the provider, a family member, and the CDDP. If a hearing is requested to appeal a transfer, the individual must continue to receive the same services until the appeal is resolved.

(9) RELIEF CARE.

(a) Relief care may be provided to one or more individuals if the addition of the individual receiving relief care in the AFH-DD does not cause the capacity of the AFH-DD as determined by OAR 411-360-0060 to exceed five. Relief care may not be provided for longer than 14 days duration without prior approval from the Department.

(b) The provider must have information sufficient to provide for the health and safety of an individual receiving relief care that includes the following:

(A) Medications provided in a container labeled from a pharmacy or in the original container labeled from the manufacturer;

(B) A list of medications, administration times, and self-administration information as needed. Administration of medication must be documented on a MAR;

(C) Basic summary sheet for the individual that includes the following:

(i) The name of the physician of the individual and the phone number for the physician;

(ii) The name of the emergency contact person of the individual and the phone number for the emergency contact;

(iii) List of supports related to food and drink (textures, special diets, allergies, preferences);

(iv) List of supports related to health supports;

(v) List of supports related to safety including ability to adjust water temperature; and

(vi) List of supports related to challenging behaviors.

(c) On the first relief care visit of an individual, the provider must practice and document a fire drill immediately upon the arrival of the individual. For subsequent relief care visits, the provider must review the fire evacuation procedures with the individual and document the review.

(d) No use of PRN (as needed) psychotropic medications is allowed.

(10) CRISIS SERVICES.

(a) All individuals considered for crisis services received in an AFH-DD must:

(A) Be referred by the CDDP or Department;

(B) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080; and

(C) Have a written Crisis Plan developed by the CDDP or Regional Crisis Diversion Program that serves as the justification for, and the authorization of, care, services and supports, and expenditures pertaining to an individual receiving crisis services provided under this rule.

(b) An individual receiving support services under OAR chapter 411, division 340 and receiving crisis services in an AFH-DD must have a Support Services ISP and a Support Services Brokerage Crisis Addendum upon the entry of the individual to the AFH-DD.

(c) Individuals not enrolled in support services receiving services to avert a crisis situation for less than 90 days must have a Transition Plan at the time of entry that addresses any critical information relevant to the health and safety of the individual including the current orders of a physician.

(d) An entry meeting as described in section (5) of this rule is required for an individual receiving crisis services in an AFH-DD.

(e) An exit meeting as described in section (11) of this rule is required for an individual receiving crisis services in an AFH-DD when the individual exits the AFH-DD.

(f) An individual receiving crisis services in an AFH-DD does not have appeal rights regarding exit upon completion of the Crisis Plan for the individual.

(11) IMMEDIATE EXIT.

(a) An individual who was admitted on or after July 1, 2014 may be moved without advance notice if all of the following are met:

(A) The AFH-DD provider was not notified prior to the entry of the individual to the AFH-DD that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(B) The AFH-DD provider learns that the individual is on probation, parole, or post-prison supervision after being convicted of a sex crime; and

(C) The individual presents a current risk of harm to another individual, staff, or visitor in the AFH-DD as evidenced by:

(i) Current or recent sexual inappropriateness, aggressive behavior of a sexual nature, or verbal threats of a sexual nature; or

(ii) Current communication from the State Board of Parole and Post-Prison Supervision, Department of Corrections, or community corrections agency parole or probation officer that the Static 99 score for the individual or other assessment indicates a probable sexual re-offense risk to others in the AFH-DD.

(b) Prior to the move, the AFH-DD provider must contact the Central Office of the Department by telephone to review the criteria in subsection (a) of this section. The Department shall respond within one business day of contact by the AFH-DD. The parole or probation officer of the Department of Corrections must be included in the review, if available. The Department shall advise the AFH-DD provider if rule criteria for immediate exit are not met. The Department shall assist in locating placement options.

(c) A written move-out notice must be completed on form number SDS 0719DD. The form must be filled out in its entirety and a copy of the notice must be delivered in person to the individual or if applicable the legal representative of the individual. Where an individual lacks capacity and there is no legal representative, a copy of the notice to move-out must be immediately faxed to the State Long Term Care Ombudsman.

(d) Prior to the move, the AFH-DD licensee must orally review the notice and the right to object with the individual, or as applicable the legal representative of the individual, and determine if a hearing is requested. A request for hearing does not delay the exit. The AFH-DD must immediately telephone the Central Office of the Department when a hearing is requested. The hearing must be held within five business days of the exit of

the individual. An informal conference may not be held prior to the hearing.

(12) EXIT.

(a) A provider may only exit an individual for valid reasons equivalent to those for transfers as described in section (8)(a) of this rule or for an immediate exit as described in section (11) of this rule.

(b) The provider must give at least 30 days written notice to an individual, the services coordinator, and the Department before termination of residency, unless an immediate exit as described in section (11) of this rule or where undue delay might jeopardize the health, safety, or well-being of the individual or others. If an individual requests a hearing to appeal an exit from an AFH-DD, the individual must receive the same services until the appeal is resolved. This does not apply to an immediate exit as described in section (11) of this rule.

(c) The provider must promptly notify the CDDP in writing if an individual gives notice or plans to leave the AFH-DD or if an individual abruptly leaves. An individual is not required to give notice to an AFH-DD provider if the individual chooses to exit the AFH-DD.

(13) EXIT MEETING. An ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the file for an individual and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of strategies to prevent the exit of the individual from the AFH-DD (unless the individual or the legal representative of the individual is requesting the exit or the individual must exit immediately as described in section (11) of this rule);

(f) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and

(g) Documentation of the proposed plan for services for the individual after the exit.

(14) WAIVER OF EXIT MEETING. Requirements for an exit meeting may be waived if an individual is immediately removed from the AFH-DD under the following conditions:

(a) The individual or the legal representative of an individual requests an immediate move from the AFH-DD; or

(b) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(15) CLOSURE. Providers must notify the Department and CDDP in writing prior to announcing a voluntary closure of the AFH-DD to individuals and the legal representatives of the individuals.

(a) The provider must give each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, except in circumstances where undue delay might jeopardize the health, safety, or welfare of the individuals, provider, or caregivers.

(b) If a provider has more than one AFH-DD, the individuals may not be shifted from one AFH-DD to another AFH-DD without providing each individual, the legal representative of the individual, and the CDDP 30 days written notice of the planned closure, unless prior approval is given and agreement obtained from the individuals, the legal representative of the individuals, and the CDDP or when undue delay might jeopardize the health, safety, or well-being of the individuals, provider, or caregivers.

(c) A provider must return the AFH-DD license to the Department if the AFH-DD closes prior to the expiration of the license.

Stat. Auth.: ORS 409.050, 410.070, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790

Stats. Implemented: ORS 443.705-825

Hist.: SPD 3-2005, f. 1-10-05, cert. ef 2-1-05; SPD 13-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 25-2011(Temp), f. & cert. ef. 12-1-11 thru 5-29-12; SPD 29-2011(Temp), f. & cert. ef. 12-30-11 thru 5-29-12; SPD 5-2012, f. & cert. ef. 5-29-12; SPD 34-2013, f. & cert. ef. 9-27-13; APD 29-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 47-2014, f. 12-26-14, cert. ef. 12-28-14; APD 30-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Employment Services for Individuals with Intellectual or Developmental Disabilities

Adm. Order No.: APD 31-2015(Temp)

Filed with Sec. of State: 12-31-2015

Certified to be Effective: 1-1-16 thru 6-28-16

Notice Publication Date:

Rules Amended: 411-345-0010, 411-345-0020, 411-345-0025, 411-345-0030, 411-345-0085, 411-345-0110, 411-345-0160

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 345 for employment services for individuals with intellectual or developmental disabilities.

These rules are being temporarily amended to:

Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;

Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services;

Ensure alignment with Executive Order 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities);

Align with the terms of the Lane v. Brown proposed settlement agreement; and

Align provider requirements.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-345-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 345, effectuate Oregon's Employment First policy under which the employment of individuals with intellectual or developmental disabilities in competitive integrated employment is the highest priority over unemployment, segregated employment, or other non-work day activities.

(2) For individuals who successfully achieve the goal of competitive integrated employment, future person-centered service planning focuses on maintaining employment, maximizing the number of hours an individual works consistent with his or her preferences and interests, and considering additional career or advancement opportunities.

(3) Employment services are considered and provided on an individualized basis using a person-centered approach based on informed choice and consistent with the philosophy of self-determination.

(4) These rules prescribe service standards and requirements for providers of home and community-based services in settings where employment services and other non-residential services are provided.

(5) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(6) These rules prescribe qualifications and eligibility requirements for individuals with intellectual or developmental disabilities to receive employment services and other non-residential services.

(7) Employment services are provided in accordance with these rules and Oregon's Employment First policy as described in the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).

Stat. Auth.: ORS 409.050, 427.007, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0000, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0020
Definitions

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 345:

(1) "ADL" means "activities of daily living".

(2) "Agency Service Provider" means a public or private community agency or organization certified and endorsed by the Department to provide services under these rules and the rules in OAR chapter 411, division 323.

(3) "Career Development Plan":

(a) Means the part of an ISP that identifies:

(A) The employment goals and objectives for an individual;

(B) The services and supports needed to achieve those goals;

(C) The people, agencies, and providers assigned to assist the individual to attain those goals;

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting; and

(E) The services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(4) "CDDP" means "Community Developmental Disability Program".

(5) "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.

(6) "Competitive Integrated Employment" means work that is performed on a full-time or part-time basis (including self-employment):

(a) For which an individual:

(A) Is compensated at a rate that:

(i) Is not less than the higher of the rate specified in federal, state, or local minimum wage law, and also is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; or

(ii) In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities, and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(B) Is eligible for the level of benefits provided to other employees.

(b) That is at a location where the employee interacts with other persons who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and

(c) That, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

(7) "Customized Employment" means competitive integrated employment for an individual with a disability that is based on an individualized determination of the strengths, needs, and interests of the individual, is designed to meet the specific abilities of the individual and the business needs of the employer.

(8) "Department" means the Department of Human Services.

(9) "Discovery" is a time-limited comprehensive, person-centered, and community-based employment planning support service to better inform an individual seeking an individualized job in a competitive integrated employment setting and to create a Discovery Profile. Discovery includes a series of work or volunteer related activities to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as identify the conditions and employment settings in which the individual will be successful. Discovery is also an opportunity for the individual to begin active pursuit of competitive integrated employment.

(10) "Discovery Profile" is a comprehensive and person-centered report produced as an outcome of discovery, representing an individual and providing information to better inform employment service planning and job development activities. The Discovery Profile includes information about the strengths, interests, abilities, skills, experiences, and support needs of the individual, as well as information about conditions and employment settings for the success of the individual.

(11) "Employment Path Services" means services to provide learning and work experiences, including volunteer opportunities, for an individual to develop general, non-job-task-specific, strengths and skills that contribute to employability in an individual job in a competitive integrated employment setting in the general workforce.

(12) "Employment Service" means a home and community-based service that supports the primary objective of exploring, obtaining, maintaining, or advancing in an individual job in a competitive integrated employment setting in the general workforce.

(a) Employment services under these rules include:

(A) Supported Employment.

(i) Individual Employment Support.

(I) Job Coaching.

(II) Job Development.

(ii) Small Group Employment Support.

(B) Discovery; and

(C) Employment Path Services.

(b) Employment services do not include vocational assessments in sheltered workshop settings or facility-based settings. Employment services do not include new participants in sheltered workshop settings.

(13) "Employment Professional" means an employee of an agency service provider, an independent provider, or an employee of an independent provider who has the qualifications and training to provide employment services under these rules, including individual employment support, small group employment support, discovery, or employment path services.

(14) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency service provider that has met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.

(15) "Evidence-Based Practices" means well-defined best practices, which have been demonstrated to be effective by multiple peer-reviewed research studies that are specific to the relevant population or subset of that population.

(16) "Executive Director" means the person designated by a board of directors or corporate owner of an agency service provider who is responsible for the administration of agency provided employment services, attendant care, and skills training.

(17) "Facility-Based" means a service that is operated at a fixed site owned, operated, or controlled by a service provider where an individual has few or no opportunities to interact with people who do not have a disability except for paid staff.

(18) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment may be the Adult Needs Assessment (ANA), Child Needs Assessment, Support Needs Assessment Profile (SNAP), or Supports Intensity Scale (SIS).

(A) The Department incorporates Version C of the ANA and CNA into these rules by this reference. The ANA and CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm.

(B) The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.

(C) The Department incorporates the SIS into these rules by this reference.

(c) A printed copy of a blank functional needs assessment may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

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

(20) "Independent Provider" means a qualified person who is contracted or employed by an individual to provide employment services based on the ISP for the individual.

(21) "Individual Employment Support" means job coaching or job development services to obtain or maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(22) "Integrated Employment Setting" means employment at a location where an employee interacts with other people who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that individuals who are not individuals with disabilities and who are in comparable positions interact with other persons; and that, as appropriate, presents opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.

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

(24) "Job Coaching" means support for an individual to maintain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(25) "Job Development" means support for an individual to obtain an individual job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(26) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(27) "OIS" means "Oregon Intervention System".

(28) "OSIPM" means "Oregon Supplemental Income Program-Medical".

(29) "PRN" means the administration of medication to an individual on an 'as needed' basis (pro re nata).

(30) "Productivity" consistent with ORS 427.005, means regular engagement in income producing work, preferable competitive integrated employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement, or engagement by an individual with an intellectual or developmental disability in work contributing to a household or community.

(31) "Service Provider" means:

(a) An agency service provider as defined in this rule;

(b) An independent provider, as defined in this rule, qualified to provide services under these rules; or

(c) A personal support worker as defined in OAR 411-375-0010, qualified to provide services under these rules.

(32) "Sheltered Workshop" means a facility in which individuals with intellectual and developmental disabilities are congregated for the purpose of receiving employment services and performing work tasks for pay at the facility. A sheltered workshop primarily employs individuals with intellectual and developmental disabilities and other disabilities, with the exception of service support staff. A sheltered workshop is a fixed site that is owned, operated, or controlled by a provider, where an individual has few or no opportunities to interact with people who do not have disabilities, not including paid support staff.

(33) " Small Group Employment Support" means services and training activities provided in regular business, industry, and community settings for groups of two to eight individuals with disabilities. Small group employment support is provided in a manner that promotes integration into the workplace and interaction between participants and people without disabilities in those workplaces.

(34) "These Rules" mean the rules in OAR chapter 411, division 345.

(35) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by an agency service provider.

(36) "Vocational Assessment" means an assessment administered to provide employment related information essential to the development of, or revision of, the employment related planning documents for an individual.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0005, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 12-2010, f. 6-30-10, cert. ef. 7-1-10; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 26-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0025
Services Provided

(1) The delivery of employment services provided under these rules presumes all individuals eligible for services are capable of working in an integrated employment setting and earning minimum wage or better.

(2) Employment is the preferred activity for individuals receiving services under these rules. Competitive integrated employment is the highest priority over unemployment, segregated or sheltered employment, small group employment support, or non-work day activities.

(3) Employment services must be individually planned based on person-centered planning principles. Consistent with the person-centered approach to these services, individuals accessing employment services under these rules must be encouraged, on an ongoing basis, to explore their interests, strengths, and abilities relating to employment or career advancement.

(4) All employment services have an optimal and expected outcome of sustained paid employment at the maximum number of hours, consistent with individual preferences, and work experience leading to further career development, maximizing hours, and competitive integrated employment for which an individual is compensated at or above minimum wage, with a goal of not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities.

(5) Effective January 1, 2016, for agency service providers initially certified and endorsed on or after January 1, 2016, and effective no later than September 1, 2018, for agency service providers initially certified and endorsed before January 1, 2016, all employment services and non-residential day services must be provided in a setting that meets the home and community-based service requirements described in OAR chapter 411, division 004.

(6) Employment services are provided under these rules in accordance with the State of Oregon Executive Order No. 15-01 and OAR chapter 407, division 025 (Integrated Employment Services to Individuals with Intellectual and Developmental Disabilities).

(7) Employment services must be evidence-based where evidence-based practices have been identified.

(8) Employment services must be:

(a) Offered to eligible individuals in accordance with the exit, entry, and transfer requirements described in OAR 411-345-0140;

(b) Provided to eligible individuals under the authorization of an ISP and Career Development Plan in accordance with OAR 411-345-0160;

(c) Offered in accordance with these rules when services are provided by a certified provider organization;

(d) Provided in a non-residential setting, unless an individual is operating a home-based business;

(e) Provided in the most integrated employment setting appropriate to the needs of an individual, and consistent with the choice of the individual regarding services, providers, and goals; and

(f) Designed to:

(A) Increase independence, integration, and productivity;

(B) Promote integration into the workforce and workplace;

(C) Promote interaction with people without disabilities; and

(D) Support successful employment outcomes consistent with personal and career goals.

(9) Employment services do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Services, 29 U.S.C. § 701-7961, as amended;

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended;

(c) Vocational assessments in a sheltered workshop; or

(d) Services used for support to work in a sheltered workshop setting for individuals who did not use services for support in a sheltered workshop setting on or before June 30, 2015.

(10) Employment services include the following:

(a) SUPPORTED EMPLOYMENT.

(A) INDIVIDUAL EMPLOYMENT SUPPORT:

(i) JOB COACHING — Support to assist an individual to maintain an individualized job in a competitive integrated employment setting in the general workforce, including customized employment or self-employment.

(I) Personal care or attendant care provided as an incidental part of job coaching is considered a component part of the employment service.

(II) Job coaching does not include support in volunteer work.

(III) Individuals utilizing job coaching must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(IV) Job coaching must be provided, at minimum, for the number of hours identified in an ISP.

(V) Transportation provided within the course of job coaching is a component part of the employment service.

(ii) Support to maintain self-employment also requires the following:

(I) Ongoing assistance, counseling, and guidance after a business has been launched.

(II) Self-employment support may not be provided to defray the operational expenses of the business.

(III) The self-employment must yield an income that is comparable to the income received by other people who are not individuals with disabilities, and who are self-employed in similar occupations or in similar tasks and who have similar training, experience, and skills.

(IV) Evidence of the self-employment must be documented and reviewed by the services coordinator or personal agent on an annual basis. Documentation may include, but is not limited to, tax records submitted to the Internal Revenue Service and an annual business plan.

(iii) JOB DEVELOPMENT — Support to assist an individual to obtain an individualized job in a competitive integrated employment setting

in the general workforce, including customized employment or self-employment.

(I) Personal care or attendant care provided as an incidental part of job development is considered a component part of the employment service.

(II) The job developed must provide compensation at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(III) The job developed must meet criteria established in a Career Development Plan including, but not limited to, criteria regarding the number of hours the individual shall work in the job. The Career Development Plan must also include a goal relating to working a maximum number of hours consistent with individual preferences.

(IV) Job development may be authorized in the limited circumstances where the service is not available through Vocational Rehabilitation and the Department has approved authorization.

(V) Transportation provided within the course of job development is a component part of the employment service.

(B) SMALL GROUP EMPLOYMENT SUPPORT — To provide services and training activities in regular business, industry, and community settings.

(i) Small group employment support may be provided in groups of two to eight individuals.

(ii) Small group employment support must be provided in a manner that promotes integration into the work place and interaction with people without disabilities in those work places.

(iii) Small group employment support does not include vocational services provided in a provider owned, operated, or controlled setting, or a facility-based work setting.

(iv) Small group employment support does not include support in volunteer work.

(v) Individuals utilizing small group employment support must be compensated at a rate that is not less than the higher of the rate specified in federal, state, or local minimum wage law and also is not less than the customary rate and benefits paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities, and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills.

(vi) Personal care or attendant care provided as an incidental part of small group employment support is considered a component part of the employment service.

(vii) Transportation provided within the course of small group employment support is a component part of the employment service.

(b) DISCOVERY — A comprehensive and person-centered employment planning support service to better inform an individual seeking competitive integrated employment in the general workforce and develop a Discovery Profile.

(A) Discovery must include a series of work or volunteer related activities, completed in competitive integrated employment settings, to inform the individual and the job developer about the strengths, interests, abilities, skills, experiences, and support needs of the individual. Discovery must include analyzing detailed information from novel and past experiences in order to identify the conditions or integrated employment settings in which the individual shall be most successful.

(B) Discovery may include job and task analysis activities, assessment for use of assistive technology, job shadowing, informational interviewing, employment preparation, resume development, and volunteerism to identify transferable skills and job or career interests.

(C) Discovery must be completed within a three month period. A three month extension may be authorized if the individual and the services coordinator or personal agent determines there is a legitimate reason. Legitimate reasons may include, but are not limited to:

(i) The individual has a medical event that delayed completing discovery;

(ii) The individual had a medical event that significantly changed his or her strengths, interests, and abilities; or

(iii) An opportunity to participate in particular work trials or volunteer positions may only be scheduled outside of the three month period.

(D) Discovery must have an outcome of a Discovery Profile. The Discovery Profile must meet requirements established by the Department.

(E) Discovery results in a referral to vocational rehabilitation services.

(F) Personal care or attendant care provided as an incidental part of discovery is considered a component part of the employment service.

(G) Transportation provided within the course of discovery is a component part of the employment service.

(c) EMPLOYMENT PATH SERVICES - Support to obtain experience and develop general skills that contribute to employability in competitive integrated employment settings in the general workforce.

(A) Personal care provided as an incidental part of employment path services is considered a component part of the employment service.

(B) Producing goods or services may be incidental to employment path services but the primary purpose must be to develop general employment skills that may be used in an individual integrated job.

(C) Employment path services are expected to occur over a defined period of time with specific outcomes to be achieved, as determined by the individual and his or her service and supports planning team through an ongoing person-centered planning process.

(D) Employment path services require that an individual have an employment-related goal in his or her ISP. General habilitation activities accessed through employment path services must be designed to support such employment goals.

(E) Transportation provided within the course of employment path services is a component part of the employment service.

(F) Consistent with setting requirements for home and community-based services, employment path services must be provided in a setting where individuals using these services gain experience working with the general public.

(i) Providers initially certified or endorsed by the Department on or after January 1, 2016 must provide this service in settings that meet this requirement.

(ii) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.

(G) Employment path services are a facility-based service if delivered at a fixed site where the supported individual has few or no opportunities to interact with people who do not have a disability except for paid staff. Facility-based employment services under this definition are permissible until September 1, 2018.

(H) Employment path services are the only service that may be used for support in a sheltered workshop setting. Effective July 1, 2015, no service may be authorized in a sheltered workshop setting for any individual who has not already used services for support to work in a sheltered workshop.

(I) The services coordinator or personal agent:

(i) Must always offer employment path services in the most integrated setting based on the preferences and interests of the individual;

(ii) Must encourage individuals who use employment path services in sheltered workshop settings to choose a community-based employment service option and not a sheltered workshop setting option;

(iii) Must offer an option to use employment services in a non-disability specific setting, meaning a setting that is not owned, operated, or controlled by a provider of home and community-based services, or a setting designed specifically to hire people who have disabilities. The services coordinator or personal agent must document the non-disability specific setting options presented in the ISP and Career Development Plan; and

(iv) Must offer a non-disability specific setting option, at least annually, during career development planning, and more frequently upon request.

(11) Attendant care and skills training must be:

(a) Provided to eligible individuals under the authorization of an ISP; and

(b) Offered in accordance with these rules, when services are provided by an agency service provider.

(12) Attendant care and skills training do not include:

(a) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-7961, as amended; or

(b) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(13) Agency service providers operating under these rules may provide attendant care or skills training or both attendant care and skills training.

(a) ATTENDANT CARE SERVICES.

(A) Attendant care services include assistance with ADL, IADL, and health-related tasks in the home of the individual or community. ADL and IADL services provided through attendant care must support the individual

to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.

(B) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding.

(i) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(ii) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(iii) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(iv) "Reassurance" means to offer an individual encouragement and support.

(v) "Redirection" means to divert an individual to another more appropriate activity.

(vi) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(vii) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(b) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(A) Skills training may be applied to the use and care of assistive devices and technologies.

(B) Skills training is authorized when:

(i) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(ii) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(iii) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator or personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(C) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator or personal agent must reassess or redefine the use of skills training with the individual for that particular goal.

(c) Attendant care and skills training must, at minimum, facilitate going out into the broader community.

(A) Providers initially certified or endorsed by the Department on or after January 1, 2016, must provide this service in settings that meet this requirement.

(B) Existing providers certified and endorsed prior to January 1, 2016, must make measurable progress toward compliance with this requirement, consistent with a Department approved transition plan, and be in full compliance with this requirement by September 1, 2018.

(d) Attendant care and skills training is a facility-based service if delivered at a fixed site operated, owned, or controlled by a service provider.

Stat. Auth.: ORS 409.050, 410.070
Stats. Implemented: ORS 430.610, 430.630, 430.670
Hist.: SPD 14-2011, f. & cert. ef. 7-1-11; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0030
Service Provider Requirements

(1) Providers of employment services must be:

(a) A provider certified and endorsed under OAR chapter 411, division 323 (Agency Certification and Endorsement);

(b) A provider organization certified under OAR 411-340-0170 (Standards for Provider Organizations) prior to January 1, 2016; or

(c) A qualified independent provider. Independent providers who are employed by the individual may only provide job coaching.

(2) EMPLOYMENT SERVICE PROVIDER REQUIREMENTS:

(a) EMPLOYMENT PROFESSIONALS. All employment professionals who provide employment services must:

(A) Provide services designed to support successful employment outcomes consistent with the personal and career goals of an individual, including goals identified in the ISP and Career Development Plan for the individual;

(B) Ensure all records are confidential as described in OAR 411-323-0060 (Policies and Procedures);

(C) Perform the duties as a mandatory reporter when appropriate and as required by law; and

(D) Have a service agreement or job description with clearly stated job responsibilities. The service agreement must be current, signed by the employment professional, and dated. The service agreement must also include duties specific to the area of specialization, including job coach, job developer, discovery provider, or employment path services provider.

(b) INDEPENDENT PROVIDERS. All qualified independent providers must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 (Criminal History Checks). Additionally:

(i) A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role; and

(ii) The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(C) Not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275 (Convictions Under ORS 443.0045), unless hired or contracted with prior to July 28, 2009, remaining in the current position for which the independent provider was hired;

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

(E) Not be the spouse of the supported individual;

(F) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(G) Understand requirements of maintaining confidentiality and safeguarding individual information;

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

(I) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation service;

(J) Meet the required qualifications for the employment service provided including those required for an employment professional; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) AGENCY SERVICE PROVIDERS.

(A) INSPECTIONS AND INVESTIGATIONS. The agency service provider must allow inspections and investigations as described in OAR 411-323-0040 (Inspections and Investigations).

(B) AGENCY MANAGEMENT AND PERSONNEL PRACTICES. The agency service provider must comply with the agency management and personnel practices as described in OAR 411-323-0050 (Agency Management and Personnel Practices).

(C) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency service provider must maintain written documentation of six hours of pre-service training prior to staff providing services or supports to individuals, including mandatory abuse reporting training, training to work with individuals with intellectual or developmental disabilities, and training on the support needs of the individual to whom they shall provide support;

(D) STAFFING REQUIREMENTS:

(i) Each agency service provider must provide direct service staff appropriate to the number and level of individuals served, to ensure individual rights, basic health, and safety are met;

(ii) Staff must have approval to work based on current Department policy and procedures for background checks in OAR 411-323-0050 (Agency Management and Personnel Practices);

(iii) When individuals are present at an agency site, the service provider must provide and document there are staff trained in the following areas:

(I) At least one staff member on duty with CPR certification at all times;

(II) At least one staff member on duty with current First Aid certification at all times;

(III) At least one staff member on duty with training to meet other specific medical needs as determined through ISP processes; and

(IV) At least one staff member on duty with training to meet other specific behavior intervention needs as determined through ISP processes.

(3) EMPLOYMENT PROVIDER QUALIFICATIONS:

(a) EMPLOYMENT PROFESSIONAL. Each employment professional must possess and demonstrate the following qualifications:

(A) Knowledge of developmental disability services;

(B) Knowledge of the rules governing employment services;

(C) Ability to provide skills training for individuals to increase employability;

(D) Ability to support individuals to maintain and be successful in employment; and

(E) Demonstrate by background, education, references, skills, and abilities that the employment professional is capable of safely and adequately performing the tasks to support the ISP and Career Development Plan for an individual, with such demonstration confirmed in writing by the individual, including:

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

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the individual; and

(iv) Training of a nature and type sufficient to ensure that the employment professional has knowledge of emergency procedures specific to the individual receiving services.

(b) Qualifications for specific types of employment professionals:

(A) JOB DEVELOPERS. A provider of job development services must also possess and demonstrate the following qualifications:

(i) Possess knowledge of best practice methodologies for job development; and

(ii) Be able to demonstrate the core competencies of a job developer within one year of employment, including those pertaining to skills assessment, job matching, job customization, job carving, community building, mapping and networking, analyzing labor trends, identifying patterns in job markets, identifying incentives for businesses, and mentoring job seekers. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(B) JOB COACHES. A provider of job coaching services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for job coaching; and

(ii) Be able to demonstrate the core competencies of a job coach within one year of employment, including skills to recognize and adapt supports to individual learning styles and needs, conduct task design and accommodations, train instructional and schedule procedures, and collaborate with employee, employer, co-workers, and support team.Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(C) DISCOVERY PROVIDER.

(i) A provider of discovery services must also possess and demonstrate the following qualifications:

(I) Knowledge of best practice methodologies for conducting discovery; and

(II) Be able to demonstrate the core competencies of a discovery provider within one year of employment, including skills to facilitate the discovery process, apply person-centered planning techniques, develop an employment portfolio, identify the strengths, interests, and talents of the job seeker, and integrate all pertinent information required by the Department into a Discovery Profile. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(ii) A discovery provider must be qualified as a vendor of Vocational Rehabilitation job placement in order to provide the discovery service.

(D) EMPLOYMENT PATH SERVICE PROVIDERS. A provider of employment path services must also possess and demonstrate the following qualifications:

(i) Knowledge of best practice methodologies for providing employment path services; and

(ii) Be able to demonstrate the core competencies of an employment path service provider within one year of employment, including skills to provide learning and work experiences to teach general, non-job-task-specific strengths and skills. Documentation that the employment professional has demonstrated these competencies must be maintained in the personnel file.

(4) EMPLOYMENT PROVIDER TRAINING:

(a) An employment professional employed by an agency service provider must complete the following training:

(A) A review of these rules;

(B) CPR and First Aid by a recognized training agency within 90 calendar days of hire;

(C) Six hours of pre-service training, including:

(i) Mandatory abuse reporting training;

(ii) Training to work with individuals with intellectual or developmental disabilities; and

(iii) Training on the employment service and support needs of the individual to whom they will provide support.

(b) An agency service provider must keep documentation of required training in the personnel files of the employment professional.

(c) All employment specialists must complete a competency based employment training as follows:

(A) Job coaches must complete at least one Department approved training for job coaching within 90 days of providing job coaching.

(B) Job developers must complete at least one Department approved training for job developers within 90 days of providing job development.

(C) Discovery providers must complete at least one Department approved training for discovery before being authorized to provide discovery.

(D) Employment path providers must complete at least one Department approved training for employment path providers within 90 days of providing employment path services.

(d) Documentation that the employment professionals have completed this training requirement must be maintained in the personnel file.

(e) Effective July 1, 2016, agency service providers of employment services must have at least one employee in a supervisory position who has the Department approved credentialing. Effective July 1, 2016, providers independently contracted to provide an employment service must have the Department approved credentialing.

(5) DISQUALIFICATION. Employment professionals must self-report any potentially disqualifying condition as described in OAR 407-007-0280 (Potentially Disqualifying Conditions) and OAR 407-007-0290 (Other Potentially Disqualifying Conditions). The employment professionals must notify the Department or the designee of the Department within 24 hours.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0010, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 5-2011(Temp), f. & cert. ef. 2-7-11 thru 8-1-11; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0085

Reports and Recordkeeping

(1) PROGRESS NOTES.

(a) Providers must maintain:

(A) Regular progress notes regarding the employment service provided. The progress note must include, at minimum, the following information regarding the service rendered:

(i) Date and time the service was provided;

(ii) Information regarding progress towards achieving the intended employment goal for which the employment services was purchased; and

(iii) Documentation of the number of hours the supported individual works.

(B) At minimum, monthly documentation of the wages and level of benefits the supported individual receives.

(b) Progress notes must be made available upon request.

(2) For each individual supported, service providers being paid for job development services must report activity at least monthly to the services coordinator or personal agent for the individual.

(3) For each individual supported, service providers being paid for discovery services must complete a Discovery Profile and submit the Discovery Profile to the services coordinator or personal agent for the individual.

(4) All documentation required by these rules, unless stated otherwise, must:

(a) Be prepared at the time, or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than five years.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

Hist.: APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0110
Individuals' Rights

(1) An agency service provider must have and implement written policies and procedures that protect the rights of individuals described in OAR 411-318-0010 (Individual Rights) and encourage and assist individuals to understand and exercise these rights.

(2) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 (Individual Rights) must be provided to an individual and the legal or designated representative of the individual.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 26-1982(Temp), f. & ef. 12-3-82; MHD 9-1983, f. & ef. 6-7-83; MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0050, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-345-0160
Individual Support Plan

(1) An individual has the right to participate in his or her ISP meeting and must be afforded every opportunity to develop and direct his or her ISP and Career Development Plan.

(2) In order to receive employment services, an individual must have an employment related goal in his or her ISP and Career Development Plan.

(3) All individuals utilizing services under these rules must participate in career development planning as a part of the annual ISP.

(4) A Career Development Plan must be developed and implemented with the ISP as follows. The Career Development Plan must

(a) Focus on the strengths of the individual;

(b) Prioritize employment in integrated settings;

(c) Be based on person-centered planning principles;

(d) Be completed with the goal of maximizing the number of hours spent working consistent with the interests, abilities, and choices of the individual; and

(e) Document all employment service options presented, including an option to use employment services in a non-disability setting.

(5) For services provided by an agency service provider, the ISP and Career Development Plan must be implemented, and a copy of the sections of the ISP and Career Development Plan for each individual that are necessary to deliver the employment services must be available for the employment service provider prior to the start of services and at least annually or as changes occur.

(6) Agency service providers must:

(a) Assign a staff member to participate as a team member in the development of the ISP and Career Development Plan when invited by the individual;

(b) Follow any required process and format as described in this rule;

(c) Train staff to understand the ISP, Career Development Plan, and supporting documents for each individual and to provide individual services; and

(d) Comply with Department rules and policies regarding the ISP and Career Development Plan.

(7) Agency service providers must participate in a face-to-face meeting annually with the ISP team of an individual. An exception is made when:

(a) The individual chooses not to participate in the meeting or the legal representative of the individual objects to the participation of the individual in the face-to face meeting. The individual must receive a copy of the ISP and Career Development Plan related to the necessary delivery of services; or

(b) The individual objects to the participation of an agency service provider during the face-to-face meeting.

(8) In preparation for the ISP meeting, the agency service provider must:

(a) Gather person-centered information regarding preferences, interests, and desires of the individual supported;

(b) Review the current ISP and Career Development Plan of the individual to determine the ongoing appropriateness and adequacy of the services and supports identified in the ISP and Career Development Plan; and

(c) Share all materials drafted in preparation for the ISP meeting with the ISP team one week prior to the ISP meeting.

(9) The agency service provider must receive a copy of the ISP and Career Development Plan, or at least portions thereof, related to the necessary delivery of services.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 7-1990(Temp), f. & cert. ef. 6-12-90; MHD 13-1990, f. & cert. ef. 12-7-90; MHD 1-1997, f. & cert. ef. 1-31-97; Renumbered from 309-047-0075, SPD 23-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 14-2011, f. & cert. ef. 7-1-11; SPD 61-2013, f. 12-27-13, cert. ef. 12-28-13; APD 27-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 45-2014, f. 12-26-14, cert. ef. 12-28-14; APD 31-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Support Services for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: APD 32-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-340-0020, 411-340-0030, 411-340-0120, 411-340-0130, 411-340-0140, 411-340-0150, 411-340-0160, 411-340-0170
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules for support services for adults with intellectual or developmental disabilities in OAR chapter 411, division 340 to:

Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

Incorporate the most recent version of the In-Home Expenditure Guidelines;

Align provider requirements associated with delivering in home attendant care and related services, and employment services, with other developmental disability services;

Require an agency to obtain Medicaid certification and endorsement appropriate to each service delivered;

Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;

Implement changes associated with the Fair Labor Standards Act by limiting payment to no more than 50 hours in a work week per personal support worker per individual;

Incorporate guidelines for conflict free case management to prohibit individuals from receiving case management services from an entity that is affiliated with other direct service providers;

Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20 in the family home; and

Incorporate direct nursing services to support an adult with complex health management support needs in his or her home and community as described in OAR chapter 411, division 380.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-340-0020
Definitions

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 340:

(1) "ADL" means "activities of daily living".

(2) "Brokerage" means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(3) "Brokerage Director" means the Director of a publicly or privately-operated brokerage, who is responsible for administration and provision of services according to these rules, or the designee of the Brokerage Director.

(4) "CDDP" means "Community Developmental Disability Program".

(5) "Certificate" means the document issued by the Department to a brokerage, or to a provider organization requiring certification under OAR 411-340-0170(2), that certifies the brokerage or provider organization is eligible to receive state funds for the provision of services.

(6) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-340-0150(5) about:

(a) Case management;

(b) Service options;

(c) Service setting options; and

(d) Provider types.

(7) "Clinical Criteria" means the criteria used by the Department or the Medically Fragile Children's Unit as described in OAR 411-350-0055 to assess the private duty nursing support needs of an individual aged 18 through 20.

(8) "CPMS" means "Client Process Monitoring System".

(9) "Crisis Diversion Services" mean the services authorized and provided according to OAR 411-320-0160 that are intended to maintain an individual at home or in the family home while the individual is in emergent status. Crisis diversion services include short-term residential placement services indicated on a Support Services Brokerage Crisis Addendum.

(10) "Department" means the Department of Human Services.

(11) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(12) "Direct Nursing Services" mean the nursing services described in OAR chapter 411, division 380 that are determined medically necessary to support an adult with complex health management support needs in his or her home and community. Direct nursing services are provided on a shift staffing basis.

(13) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(14) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(15) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(16) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(17) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.

(18) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(19) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of an individual for brokerage services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(20) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult enrolled in a support services brokerage is known as the Adult Needs Assessment (ANA). The Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank ANA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(21) "Home Delivered Meals" means "Home Delivered Meals" as defined in OAR 411-040-0010.

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

(23) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(24) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for support services funds. Effective January 1, 2016, the Department incorporates Version 4.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: (http://www.dhs.state.or.us/spd/tools/dd/cm/ss_exp_guide.pdf). A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(25) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(26) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

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

(28) "Job Coaching" means "job coaching" as defined in OAR 411-345-0020.

(29) "Job Development" means "job development" as defined in OAR 411-345-0020.

(30) "Level of Care" means an individual meets the following institutional level of care for an ICF/ID:

(a) The individual has a an intellectual disability or a developmental disability as defined in OAR 411-320-0020 and meets the eligibility criteria in OAR 411-320-0080 for developmental disability services; and

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(31) "OHA" means the "Oregon Health Authority".

(32) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(33) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(34) "Owner" means a person with an ownership interest.

(35) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(36) "Personal Agent" means a person who:

(a) Is a case manager for the provision of case management services;

(b) Is the person-centered plan coordinator for an individual as defined in the Community First Choice state plan amendment;

(c) Works directly with individuals and, if applicable, the legal or designated representatives and families of individuals to provide or arrange for support services as described in these rules;

(d) Meets the qualifications set forth in OAR 411-340-0150(5); and

(e) Is a trained employee of a brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(37) "Plan Year" means 12 consecutive months that, unless otherwise set according to the conditions of OAR 411-340-0120, begins on the start date specified in the first authorized ISP for an individual after entry to a brokerage. Subsequent plan years begin on the anniversary of the start date of the initial ISP.

(38) "Policy Oversight Group" means the group that meets the requirements of OAR 411-340-0150(1) that is formed to provide individual-based leadership and advice to each brokerage regarding issues, such as development of policy, evaluation of services, and use of resources.

(39) "Private Duty Nursing Services" mean the State Plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support an individual aged 18 through 20.

(40) "Regional Crisis Diversion Program" means "Regional Crisis Diversion Program" as defined in OAR 411-320-0020.

(41) "Support Services" mean the services of a brokerage listed in OAR 411-340-0120 and the uniquely determined activities and purchases arranged through the brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in his or her own home or the family home;

(b) Are designed, selected, and managed by an individual;

(c) Are provided in accordance with the ISP for an individual; and

(d) May include purchase of supports as a social benefit required for an individual to live in his or her own home or the family home.

(42) "Support Services Brokerage Crisis Addendum" means the short-term plan that is required by the Department to be added to an ISP to describe crisis diversion services an individual is to receive while the individual is in emergent status.

(43) "Support Services Funds" mean the public funds designated by the brokerage for assistance with the purchase of supports according to an ISP.

(44) "Supported Employment — Individual Employment Support" means "supported employment - individual employment support" as defined in OAR 411-345-0020.

(45) "Supported Employment - Small Group Employment Support" means "supported employment - small group employment support" as defined in OAR 411-345-0020.

(46) "These Rules" mean the rules in OAR chapter 411, division 340.

(47) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-340-0090.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1760, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 3-2013(Temp), f. 3-20-13, cert. ef. 4-1-13 thru 9-28-13; SPD 30-2013(Temp), f. & cert. ef. 7-2-13 thru 9-28-13; SPD 31-2013, f. 7-22-13, cert. ef. 8-1-13; SPD 32-2013(Temp), f. 7-22-13, cert. ef. 8-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0030

Certification of Support Services Brokerages and Provider Organizations

(1) CERTIFICATE REQUIRED.

(a) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, manage, or operate a brokerage without being certified by the Department under this rule.

(b) No person or governmental unit acting individually or jointly with any other person or governmental unit may establish, conduct, maintain, or operate a provider organization without either certification under this rule or OAR 411-340-0170.

(c) Certificates are not transferable or assignable and are issued only for the brokerage, or for the provider organization granted certification under OAR 411-340-0170, and people or governmental units named in the application.

(d) Certificates, including those issued before January 1, 2016 are effective for a maximum of two years.

(e) The Department shall conduct a review of the brokerage, or the provider organization granted certification under OAR 411-340-0170 or requiring certification and endorsement as set forth in OAR chapter 411 division 323, prior to the issuance of a certificate or endorsement.

(2) CERTIFICATION. A brokerage must apply for an initial certificate and for a certificate renewal. A provider organization requesting certification under these rules must apply before January 1, 2016.

(a) The application must be on a form provided by the Department and must include all information requested by the Department.

(b) The applicant requesting certification as a brokerage must identify the maximum number of individuals to be served.

(c) To renew certification, the brokerage must make application at least 30 days, but not more than 120 days, prior to the expiration date of the existing certificate. On renewal of brokerage certification, no increase in the maximum number of individuals to be served by the brokerage may be certified unless specifically approved by the Department. A certificate for a provider organization that was issued under these rules before January 1, 2016 may not be renewed. On and after January 1, 2016, the provider organization must apply for certification and endorsement as set forth in OAR chapter 411, division 323.

(d) Application for renewal must be filed no more than 120 days prior to the expiration date of the existing certificate and extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(e) Failure to disclose requested information on the application or providing incomplete or incorrect information on the application may result in denial, revocation, or refusal to renew the certificate.

(f) Before issuance or renewal of the certificate, the applicant must demonstrate to the satisfaction of the Department that the applicant is capable of providing services identified in a manner consistent with the requirements of these rules.

(3) CERTIFICATION EXPIRATION, TERMINATION OF OPERATIONS, OR CERTIFICATE RETURN.

(a) Unless revoked, suspended, or terminated earlier, each certificate to operate a brokerage or provider organization expires on the expiration date specified on the certificate or two years from the date the certificate was issued, whichever is sooner.

(b) If a certified brokerage or provider organization is discontinued, the certificate automatically terminates on the date operation is discontinued.

(4) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION. The brokerage, or provider organization requiring certification under OAR 411-340-0170, must notify the Department in writing of any pending action resulting in a five percent or more change in ownership and of any pending change in the legal entity, legal status, or management corporation of the brokerage or provider organization.

(5) NEW CERTIFICATE REQUIRED. A new certificate for a brokerage or provider organization is required upon change in the ownership, legal entity, or legal status of a brokerage or provider organization. The brokerage or provider organization must apply for a certificate as described in section (2) of this rule at least 30 days before the change in ownership, legal entity, or legal status.

(6) CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may deny, revoke, or refuse to renew a certificate when the Department finds the brokerage or provider organization, the brokerage or provider organization director, or any person holding five percent or greater financial interest in the brokerage or provider organization:

(a) Demonstrates substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized and the brokerage or provider organization fails to correct the noncompliance within 30 calendar days of receipt of written notice of non-compliance;

(b) Has demonstrated a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized during two inspections within a six year period (for the purpose of this rule, "inspection" means an on-site review of the service site by the Department for the purpose of investigation or certification);

(c) Has been convicted of a felony or any crime as described in OAR 407-007-0275;

(d) Has been convicted of a misdemeanor associated with the operation of a brokerage or provider organization;

(e) Falsifies information required by the Department to be maintained or submitted regarding services of individuals, program finances, or individuals' funds;

(f) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(g) Has been placed on the Office of Inspector General's list of excluded or debarred providers (http://exclusions.oig.hhs.gov/).

(7) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. Following a Department finding that there is a substantial failure to comply with these rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in section (6) of this rule has occurred, the Department may issue a notice of certificate revocation, denial, or refusal to renew.

(8) IMMEDIATE SUSPENSION OF CERTIFICATE. When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the certificate holder, immediately suspend a certificate without a pre-suspension hearing and the brokerage or provider organization may not continue operation.

(9) HEARING. An applicant for a certificate or a certificate holder may request a hearing pursuant to the contested case provisions of ORS chapter 183 upon written notice from the Department of denial, suspension, revocation, or refusal to renew a certificate. In addition to, or in lieu of a

hearing, the applicant or certificate holder may request an administrative review by the Department's director. An administrative review does not preclude the right of the applicant or certificate holder to a hearing.

(a) The applicant or certificate holder must request a hearing within 60 days of receipt of written notice by the Department of denial, suspension, revocation, or refusal to renew a certificate. The request for a hearing must include an admission or denial of each factual matter alleged by the Department and must affirmatively allege a short plain statement of each relevant, affirmative defense the applicant or certificate holder may have.

(b) In the event of a suspension pursuant to section (8) of this rule and during the first 30 days after the suspension of a certificate, the brokerage or provider organization may submit a written request to the Department for an administrative review. The Department shall conduct the review within 10 days after receipt of the request for an administrative review. Any review requested after the end of the 30-day period following certificate suspension is treated as a request for a hearing under subsection (a) of this section. If following the administrative review the suspension is upheld, the brokerage or provider organization may request a hearing pursuant to the contested case provisions of ORS chapter 183.

Stat. Auth.: ORS 409.050, 427.402, 430.662
Stats. Implemented: ORS 427.005, 427.007, 427.400-410, 430.610, 430.620, 430.662-695
Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1770, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0120
Support Service Brokerage Services

(1) Each brokerage must provide or arrange for the following services as required to meet individual support needs:

(a) Assistance for individuals to determine needs and plan supports in response to needs;

(b) Case management;

(c) Assistance for individuals to find and arrange the resources to provide planned supports;

(d) Assistance with development and expansion of community resources required to meet the support needs of individuals served by the brokerage;

(e) Information, education, and technical assistance for individuals to use to make informed decisions about support needs and to direct providers;

(f) Fiscal intermediary services in the receipt and accounting of support services funds on behalf of individuals in addition to making payment to providers with the authorization of an individual;

(g) Employer-related supports; and

(h) Assistance for individuals to effectively put plans into practice, including help to monitor and improve the quality of supports as well as assess and revise plan goals.

(2) SELF-DETERMINATION. Brokerages must apply the principles of self- determination to the provision of services required in section (1) of this rule.

(3) PERSON-CENTERED PLANNING. A brokerage must use a person-centered planning approach to assist individuals to establish outcomes, determine needs, plan for supports, and review and redesign support strategies.

(4) HEALTH AND SAFETY ISSUES. The planning process must address basic health and safety needs and supports including, but not limited to:

(a) Identification of risks, including risk of serious neglect, intimidation, and exploitation;

(b) Informed decisions by the individual regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(c) Education and support to recognize and report abuse.

(5) PERSONAL AGENT SERVICES.

(a) An individual entered into brokerage services must be assigned a personal agent for case management services.

(b) INITIAL DESIGNATION OF PERSONAL AGENT.

(A) The brokerage must designate a personal agent for individuals newly entered in support services within 10 business days from the date entry becomes known to the brokerage.

(B) In the instance of an individual transferring into a brokerage from another brokerage, the brokerage must designate a personal agent within 10 days of entry to the new brokerage.

(C) The brokerage must send a written notice that includes the name, telephone number, and location of the personal agent or brokerage to the individual, and as applicable the legal or designated representative of the individual, within 10 business days from the date entry becomes known to the brokerage.

(D) Prior to implementation of the initial ISP for an individual, the brokerage must ask the individual to identify any family and other advocates to whom the brokerage must provide the name, telephone number, and location of the personal agent.

(c) CHANGE OF PERSONAL AGENT. Changes of personal agents initiated by the brokerage must be kept to a minimum. If the brokerage must change personal agent assignments, the brokerage must notify the individual, and as applicable the legal or designated representative of the individual, and all current providers within 10 business days of the change. The notification must be in writing and include the name, telephone number, and address of the new personal agent, if known, or of a contact person at the brokerage.

(d) OSIPM/OHP PLUS ELIGIBILITY. If an individual loses OSIPM or OHP Plus eligibility, a personal agent must assist the individual in identifying why OSIPM or OHP Plus eligibility was lost. Whenever possible, the personal agent must assist the individual in becoming eligible for OSIPM or OHP Plus again. The personal agent must document efforts taken to assist the individual in becoming OSIPM or OHP Plus eligible.

(e) CASE MANAGEMENT CONTACT. Every individual who has an ISP must have a case management contact no less than once every three months. Individuals with significant health and safety risks as identified in the ISP must have more frequent case management contact. At least one case management contact per year must be face to face. If an individual agrees, other case management contacts may be made by telephone or by other interactive methods. The outcome of the case management contact must be recorded in the progress notes. The purpose of the case management contact is:

(A) To assure known health and safety risks are adequately addressed;

(B) To assure that the support needs of the individual have not significantly changed; and

(C) To assure that the individual is satisfied with the current supports.

(6) PARTICIPATION IN PROTECTIVE SERVICES. The brokerage and personal agent are responsible for the delivery of protective services, in cooperation with the CDDP when necessary, through the timely completion of activities necessary to address immediate health and safety concerns.

(7) CHOICE ADVISING.

(a) Choice advising regarding the provision of case management and other services must be provided to individuals who are eligible for, and desire, developmental disability services. Choice advising must be provided at least annually. Documentation of the discussion must be included in the service record for the individual.

(b) Beginning no later than July 1, 2016, in accordance with the rules for home and community-based services and settings in OAR chapter 411, division 004, an individual, or as applicable the legal or designated representative of the individual, must be advised regarding the available residential and non-residential settings, including non-disability specific settings and an option for a private unit in a residential setting. The settings options must be:

(A) Identified and documented in the ISP as described in section (10) of this rule;

(B) Based on the needs and preferences of the individual;

(C) For residential settings, the available resources of the individual for room and board; and

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the ISP.

(8) LEVEL OF CARE DETERMINATION.

(a) The brokerage must assure that an individual who is eligible for OHP Plus or OSIPM or who becomes eligible after entry into the brokerage:

(A) Receives a level of care determination prior to accessing services and prior to an initial functional needs assessment;

(B) Is offered the choice between home and community-based services or institutional care;

(C) Is provided a notice of fair hearing rights (Notification of Rights SDS 0948); and

(D) Has the level of care determination reviewed annually not more than 60 days prior to the renewal of the ISP, or at any time there is a significant change in a condition that qualified the individual for the level of care.

(b) A level of care determination may be made by a services coordinator or a personal agent.

(c) The level of care assessment must be documented in a progress note in the record for the individual.

(9) FUNCTIONAL NEEDS ASSESSMENT. The brokerage or CDDP must complete a functional needs assessment initially and at least annually for any individual who is enrolled in, or is expected to enroll in, waiver or Community First Choice state plan services.

(a) A functional needs assessment must be completed:

(A) Not more than 45 days from the date the individual submitted a completed application to the CDDP or the date the individual became eligible for OHP Plus or OSIPM;

(B) Prior to the development of an initial ISP;

(C) Within 60 days prior to the annual renewal of an ISP; and

(D) Within 45 days from the date an individual requests a functional needs re-assessment.

(b) The assessment must be conducted face to face.

(c) An individual, and as applicable the legal or designated representative of the individual, must participate in a functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-340-0060 and OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the brokerage must mail a notice of the assessment process to the individual to be assessed. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(10) INDIVIDUAL SUPPORT PLANS.

(a) An individual who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The personal agent must facilitate and develop an ISP through a person-centered service planning process.

(B) The initial ISP must be authorized by the personal agent --

(i) No more than 90 days from the date a competed application is submitted to the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made or no more than 45 days from the date the level of care determination was made.

(C) The personal agent must review and revise the ISP for an individual --

(i) Upon reassessment of functional needs as required every 12 months;

(ii) When the circumstances or needs of the individual change; or

(iii) At the request of the individual or legal representative of the individual. The revision of the ISP must be completed within 30 days from the date of the request.

(D) The brokerage must provide a written copy of the most current ISP to the individual and the legal or designated representative of the individual (as applicable).

(b) PERSON-CENTERED ISP REQUIREMENTS. The person-centered ISP must reflect the services and supports that are important for the individual to meet the needs of the individual identified through a Department approved assessment, as well as what is important to the individual with regard to preferences for the delivery of such services and supports. The written ISP must include, but not be limited to, the following:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options --

(i) Based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;

(ii) Chosen by the individual; and

(iii) Integrated in and support full access to the greater community;

(D) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work.

(i) If the individual wishes to pursue employment, a non-disability specific setting option must be presented and documented in the ISP.

(ii) Individuals working in sheltered workshops shall be encouraged to use services in integrated settings.

(E) Opportunities to engage in community life, control personal resources, and receive services in the community to the same degree of access as people not receiving home and community-based services;

(F) The strengths and preferences of the individual;

(G) The service and support needs of the individual;

(H) The goals and desired outcomes of the individual;

(I) The providers of services and supports, including unpaid supports provided voluntarily;

(J) Risk factors and measures in place to minimize risk;

(K) Individualized backup plans and strategies, when needed;

(L) People important in supporting the individual;

(M) The person responsible for monitoring the ISP;

(N) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual receiving services and the people important in supporting the individual;

(O) The written informed consent of the individual or, if applicable, the legal or designated representative of the individual;

(P) Signatures of the individual, or if applicable the legal or designated representative of the individual, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (d) of this section;

(Q) Self-directed supports; and

(R) Provisions to prevent unnecessary or inappropriate services and supports.

(c) The individual, or if applicable the legal or designated representative of the individual, decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(d) ISP SCHEDULE. The schedule of the support services ISP, developed in compliance with this rule after an individual enters a brokerage, may be adjusted with the consent of, or at the request of, an individual.

(A) An adjustment may only occur one time per individual upon ISP renewal.

(B) An ISP date adjustment must be clearly documented in the ISP.

(e) After September 1, 2018, the brokerage must only authorize services delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020 and non-residential employment service and day service settings that are consistent with OAR 411-004-0020(1), as implemented in OAR chapter 411, division 345:

(A) The setting must be integrated in and support the same degree of access to the greater community as people not receiving home and community-based services, including opportunities for individuals enrolled in or utilizing home and community-based services to:

(i) Seek employment and work in competitive integrated employment settings. Employment service settings must, at minimum, provide interaction with the general public (including opportunities to work with customers and coworkers who do not have disabilities or use home and community-based services). Non-residential day service settings must, at minimum, be used to facilitate going out into the broader community and away from a provider site;

(ii) Engage in community life;

(iii) Control personal resources; and

(iv) Receive services in the community.

(B) The setting must ensure individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

(C) The setting must optimize but not regiment individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact; and

(D) The setting must facilitate individual choice regarding services and supports, and who provides the services and supports.

(f) An ISP must not authorize any single personal support worker to be paid for more than 50 hours in a work week per individual unless --

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

(B) An exception has been granted by the brokerage or Department.

(g) ISP AUTHORIZATION.

(A) An initial and annual ISP must be authorized prior to implementation.

(B) A revision to an initial or annual ISP that involves the types of support purchased with support services funds must be authorized prior to implementation.

(C) A revision to an initial or annual ISP that does not involve the types of support purchased with support services funds does not require authorization. Documented oral agreement to the revision by the individual, or as applicable the legal or designated representative of the individual, is required prior to implementation of the revision.

(D) An ISP is authorized when:

(i) The signature of the individual, or as applicable the legal or designated representative of the individual, is present on the ISP or documentation is present explaining the reason an individual who does not have a legal or designated representative may be unable to sign the ISP.

(I) Acceptable reasons for an individual without a legal or designated representative not to sign the ISP include physical or behavioral inability to sign the ISP.

(II) Unavailability is not an acceptable reason for an individual, or as applicable the legal or designated representative of an individual, not to sign the ISP.

(III) In the case of a revision to an initial or annual ISP that is in response to immediate, unexpected change in circumstance, and is necessary to prevent injury or harm to the individual, documented oral agreement may substitute for a signature for no more than 10 business days.

(ii) The signature of the personal agent involved in the development of, or revision to, the ISP is present on the ISP; and

(iii) A designated brokerage representative has reviewed the ISP for compliance with Department rules and policy.

(E) For an individual transferring from in-home comprehensive services to a brokerage, the CDDP ISP may be used as authorization for available support services for up to 90 days.

(h) PERIODIC REVIEW OF ISP AND RESOURCES.

(A) A personal agent must facilitate and document reviews of the ISP and resources for an individual with the individual and the legal or designated representative of the individual (as applicable).

(B) At least annually, as part of preparation for a new ISP, the personal agent must:

(i) Evaluate the progress of the individual toward achieving the purposes of the ISP and assess and revise goals as needed;

(ii) Note effectiveness of the use of support services funds based on personal agent observation as well as individual satisfaction; and

(iii) Determine whether changing needs or availability of other resources has altered the need for continued use of support services funds to purchase supports.

(11) ANNUAL PLANS. An Annual Plan must be completed for individuals who do not access waiver or Community First Choice state plan services.

(a) A personal agent must complete an Annual Plan within 60 days of the entry of an individual into support services, and annually thereafter if the individual is not enrolled in any waiver or Community First Choice state plan services.

(b) A written Annual Plan must be documented as an Annual Plan or as a comprehensive progress note in the record for the individual and consist of:

(A) A review of the current living situation of the individual;

(B) A review of any personal health, safety, or behavioral concerns;

(C) A summary of the support needs of the individual; and

(D) Actions to be taken by the personal agent and others.

(12) PROFESSIONAL OR OTHER SERVICE PLANS.

(a) A Nursing Service Plan must be present when support services are authorized for the provision of the following:

(A) Community nursing services as described in OAR chapter 411, division 048;

(B) Private duty nursing services as described in OAR 411-350-0055; and

(C) Direct nursing services as described in OAR chapter 411, division 380.

(b) A Support Services Brokerage Crisis Addendum, or other document prescribed by the Department for use in these circumstances, must be attached to the ISP when an individual enrolled in a brokerage is in emergent status in a short-term, out-of-home, residential placement as part of the crisis diversion services for the individual.

(c) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160. Employment service providers, including Vocational Rehabilitation, must have a copy of the Career Development Plan.

(13) TRANSITION TO ANOTHER BROKERAGE OR TO A CDDP. At the request of an individual enrolled in brokerage services who has selected another brokerage or CDDP to provide case management and to arrange services, the brokerage must collaborate with the receiving brokerage or CDDP of the county of origin of the individual to transition case management and other authorized services.

(a) If an individual requests case management services from a CDDP, the brokerage must notify the local CDDP of the request within five business days. Planning for a transfer of case management services must begin within 10 business days of the request unless a later date is mutually agreed upon by the individual, the brokerage, and the CDDP.

(b) An individual may request case management services from another brokerage when the selected brokerage has capacity available within the limits of the contract between the brokerage and the Department.

(c) If an individual requests case management services from an available brokerage, the brokerage must notify the local CDDP of the request within five business days. Planning for a transfer of case management services to the available brokerage must begin within 10 business days of the request unless a later date is mutually agreed upon by the individual, the brokerage, and the CDDP of the county of origin of the individual.

(d) If the Department has designated and contracted funds solely for the support of the transitioning individual, the brokerage must notify the Department to consider transfer of the funds for the individual to the receiving brokerage.

(e) The ISP in place at the time of the transfer may remain in effect 90 days after entry to the new brokerage while a new ISP is developed and authorized.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1860, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2010(Temp), f. & cert. ef. 11-17-10 thru 5-16-11; SPD 10-2011, f. & cert. ef. 5-5-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0130

Using Support Services Funds to Purchase Supports

(1) Support services funds may be used to assist individuals to purchase supports described in section (8) of this rule, in accordance with an ISP when the following conditions are met:

(a) The supports are necessary for an individual to live in his or her own home or in the family home or meet individual support needs;

(b) For Community First Choice state plan services, the support addresses a need that has been determined to be necessary by a functional needs assessment;

(c) An enrolled individual meets the criteria for level of care;

(d) The individual is eligible for the services as described in section (8) of this rule;

(e) Cost-effective arrangements for obtaining the required supports, applying public, private, formal, and alternative resources available to the eligible individual are specified in the ISP for the individual;

(A) Support services funds are not intended to replace the resources available to an individual from the voluntarily provided natural supports of the individual.

(B) Support services funds are not available when the support needs of an individual may be met by alternative resources. Support services funds may be authorized only when alternative resources are unavailable, insufficient, or inadequate to meet the needs of the individual.

(f) The ISP has been authorized for implementation; and

(g) After September 1, 2018, the supports are delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020.

(2) A brokerage may use support services funds to assist individuals that do not meet the criteria in section (1)(d) of this rule when, up to the 18th birthday of the individual, the individual was receiving children's intensive in-home services as described in OAR chapter 411, division 300 or in-home supports as described in OAR chapter 411, division 308.

(3) An individual is no longer eligible to access support services funds when the individual is eligible for support services funds based on section (2)of this rule and --

(a) The individual does not apply for a disability determination and Medicaid within 10 business days of the 18th birthday of the individual;

(b) The Social Security Administration or the Presumptive Medicaid Disability Determination Team of the Department finds that the individual does not have a qualifying disability; or

(c) The individual is determined by the state of Oregon to be ineligible for OHP Plus and OSIPM.

(4) Goods and services purchased with support services funds on behalf of individuals are provided only as social benefits.

(5) POST ELIGIBILITY TREATMENT OF INCOME. Individuals with excess income must contribute to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(6) SERVICE LIMITS. The use of support services funds to purchase individual supports is limited to:

(a) The service level for an individual as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet identified needs. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State plan personal care services as described in OAR chapter 411, division 034.

(b) Other services and supports determined by a personal agent to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines; and

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(d) Payment for no more than 50 hours in a work week by a single personal support worker per individual unless --

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

(B) An exception has been granted by the brokerage or Department.

(7) AMOUNT, METHOD, AND SCHEDULE OF PAYMENT.

(a) The brokerage must disburse, or arrange for disbursement of, support services funds to qualified providers on behalf of individuals in the amount required to implement an authorized ISP. The brokerage is specifically prohibited from reimbursement of individuals or families of individuals for expenses related to services and from advancing funds to individuals or families of individuals to obtain services.

(b) The method and schedule of payment must be specified in written agreements between the brokerage and the individual or the legal or designated representative of the individual (as applicable).

(8) TYPES OF SUPPORTS. Supports eligible for purchase with support services funds must be consistent with the In-home Expenditure Guidelines and are limited to:

(a) Community First Choice state plan services. An individual who is eligible for OHP Plus and meets the Level of Care may access Community First Choice state plan services when supported by an assessed need.

(b) Transfer of Assets.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan made evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540.

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(c) Community First Choice state plan services include:

(A) Behavior support services as described in section (9) of this rule;

(B) Community nursing services as described in section (10) of this rule;

(C) Environmental modifications as described in section (11) of this rule; and

(D) Attendant care as described in section (12) of this rule;

(E) Skills training as described in section (13) of this rule;

(F) Relief care as described in section (14) of this rule;

(G) Assistive devices as described in section (15) of this rule;

(H) Assistive technology as described in section (16) of this rule;

(I) Chore services as described in section (17) of this rule;

(J) Community transportation as described in section (18) of this rule;

(K) Transition costs as described in section (19) of this rule; and

(L) Home delivered meals as described in OAR chapter 411, division 040.

(d) Individuals who are eligible for OSIPM and meet the Level of Care may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management as defined in OAR 411-340-0020;

(B) Employment services as described in section (20) of this rule that include:

(i) Supported employment — individual employment support;

(ii) Supported employment — small group employment support;

(iii) Employment path services; and

(iv) Discovery and career exploration services.

(C) Family training as described in section (21) of this rule;

(D) Special diets as described in section (22) of this rule;

(E) Environmental safety modifications as described in section (23) of this rule;

(F) Vehicle modifications as described in section (24) of this rule;

(G) Specialized medical supplies as described in section (25) of this rule; and

(H) Direct nursing services for individuals 21 years of age and over as described in OAR chapter 411, division 380.

(e) State Plan private duty nursing services under OAR chapter 410, division 132 (OHA, Private Duty Nursing Services), for individuals aged 18 through 20 that meet the clinical criteria described in OAR 411-350-0055.

(f) State Plan personal care as described in OAR chapter 411, division 034.

(9) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the family of the individual and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan, by a qualified behavior consultant as described in OAR 411-340-0160, if needed;

(C) Implementing the Behavior Support Plan with the provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of an individual;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by an individual, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of an individual at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Skills training; or

(H) Relief care.

(10) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when support services funds are used for community nursing services. A personal agent must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(11) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(P) Adaptations to control lights, heat, and stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the needs assessment and ISP for an individual.

(d) Environmental modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work as defined in OAR 411-340-0020 must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) Personal agents must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the primary residence of the individual.

(m) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding materials and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(12) ATTENDANT CARE SERVICES. Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual. Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete any IADL tasks.

(a) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(b) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(c) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(d) "Reassurance" means to offer an individual encouragement and support.

(e) "Redirection" means to divert an individual to another more appropriate activity.

(f) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(g) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(13) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a personal agent no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the personal agent must reassess or redefine the use of skills training with the individual for that particular goal.

(14) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The home of the individual;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the individual or the representative of the individual, that is a safe setting for the individual; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(15) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of assistive devices with support service funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to perceive, control, or communicate within the home and community environment in which the individual lives.

(b) Assistive devices may be purchased with support service funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices; and

(B) Assistive devices, not provided by any other funding source, to assist and enhance the independence of an individual in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a personal agent, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, and supplies furnished under OHP, the state plan, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the individual or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for an individual;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(16) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology;

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for on-going electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(17) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(18) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP of the individual:

(A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or

(B) The individual has either an assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination;

(c) Community transportation must be provided in the most cost effective manner, which meets the needs identified in the ISP for the individual.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a personal agent and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the brokerage and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation services exclude:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the individual;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the individual;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members who are not personal support workers and are not simultaneously providing other paid supports at the time of the transportation;

(J) Payment to the spouse of an individual receiving support services;

(K) Reimbursement for out-of-state travel expenses; and

(L) Mileage reimbursement for the vehicle of the supported individual.

(19) TRANSITION COSTS.

(a) Transition costs are limited to an individual transitioning to the home or community-based setting where the individual resides from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on the assessed need of an individual determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(20) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(21) FAMILY TRAINING. Family training services are provided to the family of an individual to increase the abilities of the family to care for, support, and maintain the individual in the home of the individual.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of an individual; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a personal agent, directly relate to the intellectual or developmental disability of the individual, and increase the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the brokerage is required for attendance by family members at organized conferences and workshops funded with support services funds.

(22) SPECIAL DIET. Special diets are specially prepared food or particular types of food, ordered by a physician and periodically monitored by a dietician, specific to the medical condition or diagnosis of an individual that are needed to sustain the individual in the home of the individual. Special diets are supplements and are not intended to meet the complete daily nutritional requirements of the individual. Special diet supplies must be supported by an evidence-based treatment regimen.

(23) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates, such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the home that are of general utility and are not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental safety modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work as defined in OAR 411-340-0020 must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(j) A personal agent must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental safety modifications must only be completed to the primary residence of the individual.

(n) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(o) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(24) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to the individual or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A personal agent must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(25) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services that are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(26) Educational services, such as professional instruction, formal training, and tutoring in communication, socialization, and academic skills, are not allowable expenses covered by support services funds.

(27) CONDITIONS OF PURCHASE. The brokerage must arrange for supports purchased with support services funds to be --

(a) Provided in settings and under purchasing arrangements and conditions that enable the individual to freely choose to receive supports and services from another qualified provider;

(A) Individuals who choose to combine support services funds to purchase group services must receive written instruction from the brokerage about the limits and conditions of such arrangements;

(B) Combined support services funds may not be used to purchase existing, or create new, comprehensive services;

(C) Individual support expenses must be separately projected, tracked, and expensed, including separate contracts, service agreements, and timekeeping for staff working with more than one individual; and

(D) Combined arrangements for residential supports must include a plan for maintaining an individual at home after the loss of roommates.

(b) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020;

(c) Provided in a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior --

(A) Represents a risk to health and safety of the individual or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(d) Provided in accordance with the following:

(A) Applicable state and federal wage and hour regulations in the case of personal services, training, and supervision;

(B) Applicable state or local building codes in the case of environmental modifications to the home;

(C) Oregon Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(D) OAR 411-340-0160 through 411-340-0180 governing provider qualifications and responsibilities; and

(E) The In-home Expenditure Guidelines.

(28) INDEPENDENT PROVIDER, PROVIDER ORGANIZATION, AND GENERAL BUSINESS PROVIDER AGREEMENTS AND RESPONSIBILITIES. When support services funds are used to purchase services, training, supervision, or other personal assistance for individuals, the brokerage must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected abuse;

(b) Responsibility to immediately notify the people, if any, specified by the individual of any injury, illness, accident, or unusual circumstance that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical or emotional well-being, or level of services required;

(c) Limits of payment:

(A) Support services fund payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the family of the individual, or any other source unless the payment is a financial responsibility (spend-down) of an individual under the Medically Needy Program; and

(B) The provider must bill all third party resources before using support services funds unless another arrangement is agreed upon by the brokerage and described in the ISP for an individual.

(d) The provisions of section (29) of this rule regarding sanctions that may be imposed on providers; and

(e) The requirement to maintain a drug-free workplace.

(29) PROVIDER TERMINATION.

(a) The provider enrollment for a personal support worker is terminated as described in OAR chapter 411, division 375.

(b) An independent provider who is not a personal support worker may have their provider enrollment terminated in the following circumstances:

(A) The provider has not provided any paid in-home services to an individual within the last previous 12 months;

(B) The provider informs the Department, CDDP, CIIS, or brokerage that the personal support worker is no longer providing in-home services in Oregon;

(C) The background check for a provider results in a closed case pursuant to OAR 407-007-0325;

(D) 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; or

(E) Provider payments, all or in part, for the provider have been suspended based on a credible allegation of fraud or has a conviction of for fraud pursuant to federal law under 42 CFR 455.23.

(c) Provider enrollment may be terminated when the brokerage or Department determines that, at some point after the initial qualification and authorization of the provider to provide supports purchased with support services funds, the provider has:

(A) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(B) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(C) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(D) Notwithstanding abuse as defined in OAR 407-045-0260, failed to safely and adequately provide the authorized services;

(E) Had a founded report of child abuse or substantiated adult abuse;

(F) Failed to cooperate with any Department or brokerage investigation or grant access to, or furnish, records or documentation, as requested;

(G) Billed excessive or fraudulent charges or been convicted of fraud;

(H) Made a false statement concerning conviction of crime or substantiated abuse;

(I) Falsified required documentation;

(J) Failed to comply with the provisions of section (28) of this rule or OAR 411-340-0140;

(K) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(L) Violated the requirement to maintain a drug-free work place;

(M) Failed to provide services as required;

(N) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(O) Has been excluded or debarred by the Office of the Inspector General.

(d) If the brokerage or Department makes a decision to terminate provider enrollment, the Department must issue a written notice that includes:

(A) An explanation of the reason for termination of the provider enrollment;

(B) The alleged violation as listed in subsection (b) and (c) of this section;

(C) The appeal rights of the individual, including where to file the appeal;

(D) For terminations based on substantiated abuse allegations, only the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed; and

(E) The effective date of the termination.

(e) The provider may appeal a termination within 30 days from the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(A) A provider of Medicaid services may appeal a termination by requesting an administrator review by the Director of the Department.

(B) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days from the date the termination notice was mailed to the provider.

(f) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1870, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 10-2004(Temp), f. & cert. ef. 4-30-04 thru 10-25-04; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 38-2004(Temp), f. 12-30-04, cert. ef. 1-1-05 thru 6-30-05; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0140

Using Support Services Funds for Certain Purchases Is Prohibited

(1) Effective July 28, 2009, support services funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to employees of individuals, individuals' legal representatives, employees of general business providers, or employees of provider organizations, who were hired prior to

July 28, 2009 that remain in the current position for which the employee was hired.

(3) Support services funds may not be used to pay for:

(a) Services, materials, or activities that are illegal;

(b) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(c) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(d) Individual or family vehicles;

(e) Health and medical costs that the general public normally must pay, including but not limited to:

(A) Medications;

(B) Health insurance co-payments;

(C) Dental treatments and appliances;

(D) Medical treatments;

(E) Dietary supplements, including but not limited to vitamins and experimental herbal and dietary treatments; or

(F) Treatment supplies not related to nutrition, incontinence, or infection control.

(f) Ambulance services;

(g) Legal fees;

(h) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the individual's need for personal assistance in all home and community-based settings;

(i) Individual services, training, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(j) Services, activities, materials, or equipment that are not necessary, cost-effective, or do not meet the definition of support or social benefits as defined in OAR 411-340-0020;

(k) Educational services for school-age individuals over the age of 18, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills, and post-secondary educational services, such as those provided through two- or four-year colleges for individuals of all ages;

(l) Services provided in a nursing facility, correctional institution, or hospital;

(m) Services, activities, materials, or equipment that may be obtained by the individual or the individual's family through alternative resources or natural supports;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when the individual is not present or available to receive services, including but not limited to employee paid time off, hourly "no show" charge, and contractor travel and preparation hours;

(o) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(p) Notwithstanding abuse as defined in OAR 407-045-0260, services when there is sufficient evidence to believe that an individual, or as applicable the legal or designated representative of the individual, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to accept or delegate record keeping required to use brokerage resources, or otherwise knowingly misused public funds associated with brokerage services;

(q) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need; or

(r) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized consumer safety agencies.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1880, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0150

Standards for Support Services Brokerage Administration and Operations

(1) POLICY OVERSIGHT GROUP. The brokerage must develop and implement procedures for incorporating the direction, guidance, and advice of individuals and family members of individuals in the administration of the organization.

(a) The brokerage must establish and utilize a Policy Oversight Group, of which the membership majority must be individuals with intellectual or developmental disabilities and family members of individuals with intellectual or developmental disabilities.

(b) Brokerage procedures must be developed and implemented to assure the Policy Oversight Group has the maximum authority that may be legally assigned or delegated over important program operational decisions, including such areas as program policy development, program planning and goal setting, budgeting and resource allocation, selection of key personnel, program evaluation and quality assurance, and complaint resolution.

(c) If the Policy Oversight Group is not also the governing body of the brokerage, then the brokerage must develop and implement a written procedure that describes specific steps of appeal or remediation to resolve conflicts between the Policy Oversight Group and the governing body of the brokerage.

(d) A Policy Oversight Group must develop and implement operating policies and procedures.

(2) FULL-TIME BROKERAGE DIRECTOR REQUIRED. The brokerage must employ a full-time director who is responsible for the daily operations of the brokerage in compliance with these rules and who has authority to make budget, staffing, policy, and procedural decisions for the brokerage.

(3) DIRECTOR QUALIFICATIONS. In addition to the general staff qualifications of OAR 411-340-0070(1) and (2), the brokerage director must have:

(a) A minimum of a bachelor's degree and two years' experience, including supervision, in the field of intellectual or developmental disabilities, social services, mental health, or a related field; or

(b) Six years of experience, including supervision, in the field of intellectual or developmental disabilities, social services, or mental health.

(4) FISCAL INTERMEDIARY REQUIREMENTS.

(a) A fiscal intermediary must:

(A) Demonstrate a practical understanding of laws, rules, and conditions that accompany the use of public resources;

(B) Develop and implement accounting systems that operate effectively on a large scale as well as track individual budgets;

(C) Establish and meet the time lines for payments that meet individuals' needs;

(D) Develop and implement an effective payroll system, including meeting payroll-related tax obligations;

(E) Generate service, management, and statistical information and reports required by the brokerage director and Policy Oversight Group to effectively manage the brokerage and by individuals to effectively manage supports;

(F) Maintain flexibility to adapt to changing circumstances of individuals; and

(G) Provide training and technical assistance to individuals as required and specified in the individuals' ISPs.

(b) A fiscal intermediary may not recruit, hire, supervise, evaluate, dismiss, or otherwise discipline those employed to provide services described in an individual's authorized ISP.

(c) FISCAL INTERMEDIARY QUALIFICATIONS.

(A) A fiscal intermediary may not:

(i) Be a provider of support services paid using support services funds; or

(ii) Be a family member or other representative of an individual for whom they provide fiscal intermediary services.

(B) The brokerage must obtain and maintain written evidence that:

(i) Contractors providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities; and

(ii) Employees providing fiscal intermediary services have sufficient education, training, or work experience to effectively and efficiently perform all required activities prior to hire or that the brokerage has provided requisite education, training, and experience.

(5) PERSONAL AGENT QUALIFICATIONS.

(a) Each personal agent must have knowledge of the public service system for developmental disability services in Oregon and at least:

(A) A bachelor's degree in a behavioral science, social science, or a closely related field;

(B) A bachelor's degree in any field and one year of human services related experience, such as work providing assistance to individuals and groups with issues, such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing;

(C) An associate's degree in a behavioral science, social science, or a closely related field and two years of human services related experience, such as work providing assistance to individuals and groups with issues, such as economical disadvantages, employment, abuse and neglect, substance abuse, aging, disabilities, prevention, health, cultural competencies, or housing; or

(D) Three years of human services related experience.

(b) A brokerage must submit a written variance request to the Department prior to employing a person not meeting the minimum qualifications for a personal agent set forth in subsection (a) of this section. The variance request must include:

(A) An acceptable rationale for the need to employ a person who does not meet the qualifications; and

(B) A proposed alternative plan for education and training to correct the deficiencies.

(i) The proposal must specify activities, timelines, and responsibility for costs incurred in completing the alternative plan.

(ii) A person who fails to complete the alternative plan for education and training to correct the deficiencies may not fulfill the requirements for the qualifications.

(6) PERSONAL AGENT TRAINING. The brokerage must provide or arrange for personal agents to receive training needed to provide or arrange for brokerage services, including but not limited to:

(a) Principles of self-determination;

(b) Person-centered planning processes;

(c) Identification and use of alternative support resources;

(d) Fiscal intermediary services;

(e) Basic employer and employee roles and responsibilities;

(f) Developing new resources;

(g) Major public health and welfare benefits;

(h) Constructing and adjusting individualized support plans; and

(i) Assisting individuals to judge and improve quality of personal supports.

(7) INDIVIDUAL RECORD REQUIREMENTS. The brokerage must maintain current, up-to-date records for each individual receiving services and must make these records available to the Department upon request. The individual or the individual's legal representative may access any portion of the individual's record upon request. Individual records must include, at minimum:

(a) Application and eligibility information received from the referring CDDP;

(b) An easily-accessed summary of basic information, including the individual's name, family name (if applicable), individual's legal or designated representative (if applicable), address, telephone number, date of entry into the program, date of birth, gender, marital status, individual financial resource information, and plan year anniversary date;

(c) Documents related to determining eligibility for brokerage services;

(d) Records related to receipt and disbursement of funds, including expenditure authorizations, expenditure verification, copies of CPMS expenditure reports, and verification that providers meet the requirements of OAR 411-340-0160 through 411-340-0180;

(e) Documentation, signed by the individual, or as applicable the individual's legal or designated representative, that the individual, or as applicable the individual's legal or designated representative, has been informed of responsibilities associated with the use of support services funds;

(f) Incident reports;

(g) The completed functional needs assessment and other assessments used to determine supports required, preferences, and resources;

(h) ISP and reviews. If an individual is unable to sign the ISP, the individual's record must document that the individual was informed of the contents of the ISP and that the individual's agreement to the ISP was obtained to the extent possible;

(i) Names of those who participated in the development of the ISP. If an individual was not able to participate in the development of the ISP, the individual's record must document the reason;

(j) Written service agreements. A written service agreement must be consistent with the individual's ISP and must describe, at a minimum:

(A) Type of service 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 the individual's own safety and the individual is missing while in the community under the service of a contractor or provider organization.

(k) Personal agent correspondence and notes related to resource development and plan outcomes;

(l) Progress notes. Progress notes must include documentation of the delivery of services by a personal agent to support each case service provided. Progress notes must be recorded chronologically and documented consistent with brokerage policies and procedures. All late entries must be appropriately documented. Progress notes must, at a minimum, include:

(A) The month, day, and year the services were rendered and the month, day, and year the entry was made if different from the date service was rendered;

(B) The name of the individual receiving services;

(C) The name of the brokerage, the person providing the service (i.e., the personal agent's signature and title), and the date the entry was recorded and signed;

(D) The specific services provided and actions taken or planned, if any;

(E) Place of service. Place of service means the name of the brokerage and where the brokerage is located, including the address. The place of service may be a standard heading on each page of the progress notes; and

(F) The names of other participants (including titles and agency representation, if any) in notes pertaining to meetings with or discussions about the individual.

(m) Information about individual satisfaction with personal supports and the brokerage's services.

(8) SPECIAL RECORD REQUIREMENTS FOR SUPPORT SERVICES FUND EXPENDITURES.

(a) The brokerage must develop and implement written policies and procedures concerning use of support services funds. These policies and procedures must include, but may not be limited to:

(A) Minimum acceptable records of expenditures:

(i) Itemized invoices and receipts to record purchase of any single item;

(ii) A trip log indicating purpose, date, and total miles to verify vehicle mileage reimbursement;

(iii) Itemized invoices for any services purchased from independent contractors, provider organizations, and professionals. Itemized invoices must include:

(I) The name of the individual to whom services were provided;

(II) The date of the services; and

(III) A description of the services.

(iv) Pay records, including timesheets signed by both employee and employer, to record employee services; and

(v) Documentation that services provided were consistent with an individual's authorized ISP.

(B) Procedures for confirming the receipt, and securing the use of, assistive devices, environmental safety modifications, and environmental modifications.

(i) When an assistive device is obtained for the exclusive use of an individual, the brokerage must record the purpose, final cost, and date of receipt.

(ii) The brokerage must secure use of equipment or furnishings costing more than $500 through a written agreement between the brokerage and the individual or the individual's legal representative that specifies the time period the item is to be available to the individual and the responsibilities of all parties if the item is lost, damaged, or sold within that time period.

(iii) The brokerage must ensure that projects for environmental modifications and environmental safety modifications involving renovation or new construction in an individual's home or property costing $5,000 or more per single instance or cumulatively over several modifications:

(I) Are approved by the Department before work begins and before final payment is made; and

(II) Are completed or supervised by a contractor licensed and bonded in Oregon.

(b) Any goods purchased with support services funds that are not used according to an individual's ISP or according to an agreement securing the state's use may be immediately recovered.

(c) Failure to furnish written documentation upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, immediately or within timeframes specified in the written request, may be deemed reason to recover payments or deny further assistance.

(9) QUALITY ASSURANCE.

(a) The Policy Oversight Group must develop a Quality Assurance Plan and review the plan at least twice a year. The Quality Assurance Plan must include a written statement of values, organizational outcomes, activities, and measures of progress that:

(A) Uses information from a broad range of individuals, legal or designated representatives, professionals, and other sources to determine community support needs and preferences;

(B) Involves individuals in ongoing evaluation of the quality of his or her personal supports; and

(C) Monitors:

(i) Customer satisfaction with the services of the brokerage and with individual plans in areas, such as individual access to supports, sustaining important personal relationships, flexible and unique support strategies, individual choice and control over supports, responsiveness of the brokerage to changing needs, and preferences of the individuals; and

(ii) Service outcomes in areas such as achievement of personal goals and effective use of resources.

(b) The brokerage must participate in statewide evaluation, quality assurance, and regulation activities as directed by the Department.

(10) BROKERAGE REFFERRAL TO AFFILIATED ENTITIES. When a brokerage is part of, or otherwise directly affiliated with, an entity that also provides services that an individual may purchase using private or support services funds, brokerage staff may not refer, recommend, or otherwise encourage the individual to utilize this entity to provide services. An affiliated entity may not be authorized by a brokerage to provide services. If an individual served by the brokerage was receiving services from an affiliated entity on December 31, 2015, the individual may continue to have those services provided by the affiliated entity until June 30, 2016, at which time the individual must either receive services from another service provider or receive case management from another brokerage or a CDDP. An entity is affiliated with the brokerage when the entity or the brokerage has an incident of ownership in the other.

(11) GENERAL OPERATING POLICIES AND PRACTICES. The brokerage must develop and implement such written statements of policy and procedure in addition to those specifically required by this rule as are necessary and useful to enable the brokerage to accomplish the brokerage's objectives and to meet the requirements of these rules and other applicable standards and rules.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1890, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 32-2004, f. & cert. ef. 10-25-04; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 13-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0160

Standards for Independent Providers Paid with Support Services Funds

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDER QUALIFICATIONS. Each independent provider who is not a personal support worker who is paid as a contractor or a self-employed person that is selected to provide the services and supports in OAR 411-340-0130 must:

(a) Be at least 18 years of age;

(b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Department Background Check Request form must be completed by the subject individual to show intent to work statewide;

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(B) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home support, except in the following circumstances:

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

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(e) Not be the spouse of an individual receiving services;

(f) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified the ISP, with such demonstration confirmed in writing by the individual, or as applicable the individual's legal or designated representative, and including:

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

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

(D) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the individual.

(g) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(h) Understand requirements of maintaining confidentiality and safeguarding individual information;

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

(j) If transporting an individual, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law, depending on the nature and scope of the transportation; and

(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(3) Section (2)(c) of this rule does not apply to employees of individuals, legal or designated representatives, employees of general business providers, or employees of provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(5) Independent providers, including personal support workers, are not employees of the state, CDDP, or Brokerage.

(6) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-340-0130;

(b) Have received current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the brokerage indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years' experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-340-0130.

(7) NURSE. A nurse is not a personal support worker.

(a) A nurse providing community nursing services must:

(A) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(B) Meet the qualifications described in OAR 411-048-0210; and

(C) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(b) A nurse providing direct nursing services must be an enrolled Medicaid Provider and meet the qualifications described in OAR 411-380-0080.

(c) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200 (OHA, Provider Enrollment).

(8) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; Renumbered from 309-041-1900, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-340-0170

Standards for Provider Organizations Paid with Support Services Funds

(1) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION. A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411, division 323, or licensed under OAR chapter 411, division 360 for an adult foster home, does not require additional certification or endorsement as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(a) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to ISPs; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(b) Provider organizations must assure all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with support services funds meet the standards for qualification of independent providers described in OAR 411-340-0160.

(c) Provider organizations developing new sites, owned or leased by the provider organization, that are not reviewed as a condition of the current license or certification and where individuals are regularly present and receiving services purchased with support services funds, must meet the conditions of section (2)(f) of this rule in each such site.

(2) PROVIDER ORGANIZATION CERTIFICATION. A provider organization without a current license, certification, or endorsement as described in section (1) of this rule must be certified, or applied for certification, as a provider organization according to OAR 411-340-0030 before January 1, 2016, and must be granted a certificate prior to selection for providing the services listed in OAR 411-340-0130(12), (13), (14) or (18) and paid for with support services funds. A provider organization that was certified or had applied for certification according to OAR 411-340-0030 before January 1, 2016 may also provide employment services when the organization also meets the requirements in OAR 411-345-0030. When granted after January 1, 2016, certification as set forth in OAR chapter 411 division 323, with an endorsement to these rules, is not sufficient qualification for a provider organization to deliver employment services. To be certified or to receive an endorsement under these rule:

(a) The provider organization must develop and implement policies and procedures required for administration and operation in compliance with these rules, including but not limited to:

(A) Policies and procedures required in OAR 411-340-0040, OAR 411-340-0050, OAR 411-340-0070, OAR 411-340-0080, and OAR 411-340-0090 related to abuse and unusual incidents, inspections and investigations, personnel policies and practices, records, and variances.

(B) Individual rights. The provider organization must have, and implement, written policies and procedures that protect the individual rights described in OAR 411-318-0010 and that:

(i) Provide for individual participation in selection, training, and evaluation of staff assigned to provide services to individuals;

(ii) Protect individuals during hours of service from financial exploitation that may include, but is not limited to:

(I) Staff borrowing from or loaning money to individuals;

(II) Witnessing wills in which the staff or provider organization is beneficiary; or

(III) Adding the name of the staff member or provider organization to the bank account or other personal property of the individual without approval of the individual or the legal representative of the individual (as applicable).

(C) Complaints.

(i) Complaints must be addressed in accordance with OAR 411-318-0015.

(ii) The provider organization must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(iii) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

(D) Policies and procedures appropriate to scope of service including, but not limited to, those required to meet minimum standards set forth in subsections (f) to (k) of this section and consistent with written service agreements for individuals currently receiving services.

(b) The provider organization must deliver services according to a written service agreement.

(c) The provider organization must maintain a current record for each individual receiving services. The record must include:

(A) The name, current home address, and home phone number of the individual;

(B) A current written service agreement signed and dated by the individual;

(C) Contact information for the legal or designated representative of the individual (as applicable) and any other people designated by the individual to be contacted in case of incident or emergency;

(D) Contact information for the brokerage assisting the individual to obtain services; and

(E) Records of service provided, including type of services, dates, hours, and personnel involved.

(d) Staff, contractors, or volunteers who provide services to individuals must meet independent provider qualifications in OAR 411-340-0160. Additionally, those staff, contractors, or volunteers must have current CPR and first aid certification obtained from a recognized training agency prior to working alone with an individual.

(e) The provider organization must ensure that employees, contractors, and volunteers receive appropriate and necessary training.

(f) Provider organizations that own or lease sites, provide services to individuals at those sites, and regularly have individuals present and receiving services at those sites, must meet the following minimum requirements:

(A) A written emergency plan must be developed and implemented and must include instructions for staff and volunteers in the event of fire, explosion, accident, or other emergency including evacuation of individuals served.

(B) Posting of emergency information:

(i) The telephone numbers of the local fire, police department, and ambulance service, or "911" must be posted by designated telephones; and

(ii) The telephone numbers of the provider organization director and other people to be contacted in case of emergency must be posted by designated telephones.

(C) A documented safety review must be conducted quarterly to ensure that the service site is free of hazards. Safety review reports must be kept in a central location by the provider organization for three years.

(D) The provider organization must train all individuals when the individuals begin attending the service site to leave the site in response to an alarm or other emergency signal and to cooperate with assistance to exit the site.

(i) Each provider organization must conduct an unannounced evacuation drill each month when individuals are present.

(ii) Exit routes must vary based on the location of a simulated fire.

(iii) Any individual failing to evacuate the service site unassisted within the established time limits set by the local fire authority for the site must be provided specialized training or support in evacuation procedures.

(iv) Written documentation must be made at the time of the drill and kept by the provider organization for at least two years following the drill. The written documentation must include:

(I) The date and time of the drill;

(II) The location of the simulated fire;

(III) The last names of all individuals and staff present at the time of the drill;

(IV) The amount of time required by each individual to evacuate if the individual needs more than the established time limit; and

(V) The signature of the staff conducting the drill.

(v) In sites providing services to individuals who are medically fragile or have severe physical limitations, requirements of evacuation drill conduct may be modified. The modified plan must:

(I) Be developed with the local fire authority, the individual or the individual's legal or designated representative (as applicable), and the provider organization director; and

(II) Be submitted as a variance request according to OAR 411-340-0090.

(E) The provider organization must provide necessary adaptations to ensure fire safety for sensory and physically impaired individuals.

(F) At least once every three years, the provider organization must conduct a health and safety inspection.

(i) The inspection must cover all areas and buildings where services are delivered to individuals, including administrative offices and storage areas.

(ii) The inspection must be performed by:

(I) The Oregon Occupational Safety and Health Division;

(II) The provider organization's worker's compensation insurance carrier; or

(III) An appropriate expert, such as a licensed safety engineer or consultant as approved by the Department; and

(IV) The Oregon Health Authority, Public Health Division, when necessary.

(iii) The inspection must cover:

(I) Hazardous material handling and storage;

(II) Machinery and equipment used at the service site;

(III) Safety equipment;

(IV) Physical environment; and

(V) Food handling, when necessary.

(iv) The documented results of the inspection, including recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(G) The provider organization must ensure that each service site has received initial fire and life safety inspections performed by the local fire authority or a Deputy State Fire Marshal. The documented results of the inspection, including documentation of recommended modifications or changes and documentation of any resulting action taken, must be kept by the provider for five years.

(H) Direct service staff must be present in sufficient number to meet health, safety, and service needs specified in the individual written agreements of the individuals present. When individuals are present, staff must have the following minimum skills and training:

(i) At least one staff member on duty with CPR certification at all times;

(ii) At least one staff member on duty with current First Aid certification at all times;

(iii) At least one staff member on duty with training to meet other specific medical needs identified in the individual service agreement; and

(iv) At least one staff member on duty with training to meet other specific behavior intervention needs as identified in individual service agreements.

(g) Provider organizations providing services to individuals that involve assistance with meeting health and medical needs must:

(A) Develop and implement written policies and procedures addressing:

(i) Emergency medical intervention;

(ii) Treatment and documentation of illness and health care concerns;

(iii) Administering, storing, and disposing of prescription and non-prescription drugs, including self-administration;

(iv) Emergency medical procedures, including the handling of bodily fluids; and

(v) Confidentiality of medical records;

(B) Maintain a current written record for each individual receiving assistance with meeting health and medical needs that includes:

(i) Health status;

(ii) Changes in health status observed during hours of service;

(iii) Any remedial and corrective action required and when such actions were taken if occurring during hours of service; and

(iv) A description of any restrictions on activities due to medical limitations.

(C) If providing medication administration when an individual is unable to self-administer medications and there is no other responsible person present who may lawfully direct administration of medications, the provider organization must:

(i) Have a written order or copy of the written order, signed by a physician or physician designee, before any medication, prescription or non-prescription, is administered;

(ii) Administer medications per written orders;

(iii) Administer medications from containers labeled as specified per physician written order;

(iv) Keep medications secure and unavailable to any other individual and stored as prescribed;

(v) Record administration on an individualized Medication Administration Record (MAR), including treatments and PRN, or "as needed", orders;

(vi) Not administer unused, discontinued, outdated, or recalled drugs; and

(vii) Not administer PRN psychotropic medication. PRN orders may not be accepted for psychotropic medication.

(D) Maintain a MAR (if required). The MAR must include:

(i) The name of the individual;

(ii) The brand name or generic name of the medication, including the prescribed dosage and frequency of administration as contained on physician order and medication;

(iii) Times and dates the administration or self-administration of the medication occurs;

(iv) The signature of the staff administering the medication or monitoring the self-administration of the medication;

(v) Method of administration;

(vi) Documentation of any known allergies or adverse reactions to a medication;

(vii) Documentation and an explanation of why a PRN, or "as needed", medication was administered and the results of such administration; and

(viii) An explanation of any medication administration irregularity with documentation of a review by the provider organization director.

(E) Provide safeguards to prevent adverse medication reactions, including:

(i) Maintaining information about the effects and side-effects of medications the provider organization has agreed to administer;

(ii) Communicating any concerns regarding any medication usage, effectiveness, or effects to the individual or the individual's legal or designated representative (as applicable); and

(iii) Prohibiting the use of one individual's medications by another individual or person.

(F) Maintain a record of visits to medical professionals, consultants, or therapists if facilitated or provided by the provider organization.

(h) Provider organizations that own or operate vehicles that transport individuals must:

(A) Maintain the vehicles in safe operating condition;

(B) Comply with Department of Motor Vehicles laws;

(C) Maintain insurance coverage on the vehicles and all authorized drivers;

(D) Carry a first aid kit in each vehicle; and

(E) Assign drivers who meet applicable Department of Motor Vehicles requirements to operate vehicles that transport individuals.

(i) If assisting with management of funds, the provider organization must have and implement written policies and procedures related to the oversight of the individual's financial resources that include:

(A) Procedures that prohibit inappropriately expending an individual's personal funds, theft of an individual's personal funds, using an individual's funds for staff's own benefit, commingling an individual's personal funds with the provider organization's or another individual's funds, or the provider organization becoming an individual's legal or designated representative; and

(B) The provider organization's reimbursement to the individual of any funds that are missing due to theft or mismanagement on the part of any staff of the provider organization, or of any funds within the custody of the provider organization that are missing. Such reimbursement must be made within 10 business days of the verification that funds are missing.

(j) Additional standards for assisting individuals to manage difficult behavior.

(A) The provider organization must have, and implement, a written policy concerning behavior intervention procedures. The provider organization must inform the individual, and as applicable the individual's legal or designated representative, of the behavior intervention policy and procedures prior to finalizing the individual's written service agreement.

(B) Any intervention to alter an individual's behavior must be based on positive behavioral theory and practice and must be:

(i) Approved in writing by the individual or the individual's legal or designated representative (as applicable); and

(ii) Described in detail in the individual's record.

(C) Psychotropic medications and medications for behavior must be:

(i) Prescribed by a physician through a written order; and

(ii) Monitored by the prescribing physician for desired responses and adverse consequences.

(k) Additional standards for supports that involve protective physical intervention.

(A) The provider organization must only employ protective physical intervention:

(i) As part of an individual's ISP;

(ii) As an emergency measure, but only if absolutely necessary to protect the individual or others from immediate injury; or

(iii) As a health-related protection prescribed by a physician, but only if necessary for individual protection during the time that a medical condition exists.

(B) Provider organization staff members who need to apply protective physical intervention under an individual's service agreement must be trained by a Department-approved trainer and documentation of the training must be maintained in the staff members' personnel file.

(C) Protective physical intervention in emergency situations must:

(i) Only be used until the individual is no longer a threat to self or others;

(ii) Be authorized by the provider organization director or the physician of the individual within one hour of application of the protective physical intervention;

(iii) Result in the immediate notification of the individual's legal or designated representative (as applicable); and

(iv) Prompt a review of the individual's written service agreement, initiated by the provider organization, if protective physical intervention is used more than three times in a six month period.

(D) Protective physical intervention must be designed to avoid physical injury to an individual or others and to minimize physical and psychological discomfort.

(E) All use of protective physical intervention must be documented and reported according to procedures described in OAR 411-340-0040. The report must include:

(i) The name of the individual to whom the protective physical intervention is applied;

(ii) The date, type, and length of time of the application of protective physical intervention;

(iii) The name and position of the person authorizing the use of the protective physical intervention;

(iv) The name of the staff member applying the protective physical intervention; and

(v) Description of the incident.

(l) Additional standards for supports that involve employment services are found in OAR 411-345-0160.

(3) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction includes one or more of the following actions:

(a) Conditions;

(b) Denial, revocation, or refusal to renew a certificate; or

(c) Immediate suspension of a certificate.

(4) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the provider organization. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The provider organization is not being operated in compliance with these rules.

(c) Conditions that the Department may impose on a certificate include, but are not limited to:

(A) Restricting the total number of individuals to whom a provider organization may provide services;

(B) Restricting the total number of individuals to whom a provider organization may provide services based upon the capability and capacity of the provider organization and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the provider organization may provide to individuals based upon the capability and capacity of the provider organization and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the provider organization from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the provider organization when the Department imposes conditions on the certificate of the provider organization. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The provider organization may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing.

(A) The provider organization must request a hearing within 21 days of receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, a provider organization may request an administrative review as described in section (7) of this rule. The administrative review does not diminish a provider organization's right to a hearing.

(f) The provider organization may send a written request to the Department to remove a condition if the provider organization believes the situation that warranted the condition has been remedied.

(5) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the provider organization, or any person holding five percent or greater ownership interest in the provider organization:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the provider organization fails to correct the non-compliance within 30 days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of services;

(D) Has been convicted of a misdemeanor associated with the operation of a provider organization or services;

(E) Falsifies information required by the Department to be maintained or submitted regarding individual services, provider organization finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of indi-

viduals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified provider organization, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of the certificate. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The provider organization must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION. The provider organization must request a hearing within 21 days from the receipt of the written notice of revocation.

(i) In addition to, or in-lieu of a hearing, the provider organization may request an administrative review as described in section (7) of this rule.

(ii)The administrative review does not diminish the right of the provider organization to a hearing.

(6) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the provider organization, immediately suspend a certificate without a pre-suspension hearing and the provider organization may not continue operating.

(b) HEARING. The provider organization may request a hearing in accordance with ORS chapter 183 and this rule upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

(A) The provider organization must request a hearing within 21 days from the receipt of the written notice of suspension.

(B) In addition to, or in-lieu of a hearing, the provider organization may request an administrative review as described in section (7) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish right of the provider organization to a hearing.

(7) ADMINISTRATIVE REVIEW.

(a) The provider organization, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The provider organization may submit, along with the written request for an administrative review, any additional written materials the provider organization wishes to have considered during the administrative review.

(c) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the provider organization.

(d) The provider organization may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(8) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (7) of this rule, a provider organization requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050, 427.402 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 427.400–427.410, 430.610, 430.620 & 430.662–430.695

Hist.: MHD 9-2001(Temp), f. 8-30-01, cert. ef. 9-1-01 thru 2-27-02; MHD 5-2002, f. 2-26-02 cert. ef. 2-27-02; MHD 4-2003(Temp); f. & cert. ef. 7-1-03 thru 12-27-03; Renumbered from 309-041-1910, SPD 22-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2005, f. & cert. ef. 6-23-05; SPD 17-2006, f. 4-26-06, cert. ef. 5-1-06; SPD 21-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-29-08; SPD 8-2008, f. 6-27-08, cert. ef. 6-29-08; SPD 8-2009, f. & cert. ef. 7-1-09; SPD 50-2013, f. 12-27-13, cert. ef. 12-28-13; APD 26-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 44-2014, f. 12-26-14, cert. ef. 12-28-14; APD 32-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Supported Living Settings for Adults with Intellectual or Developmental Disabilities
Adm. Order No.: APD 33-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 411-328-0625
Rules Amended: 411-328-0550, 411-328-0560, 411-328-0630, 411-328-0650, 411-328-0720, 411-328-0750, 411-328-0790
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities. These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;
- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004;
- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20;
- Incorporate direct nursing services to support an adult with complex health management support needs as described in OAR chapter 411, division 380; and
- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

When an individual resides in a dwelling that is owned, rented, or leased by an agency endorsed to provide supported living services and the same agency is authorized to provide services to the individual, the dwelling is considered a provider owned, controlled, or operated residential setting and must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;
- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;
- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;
- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;
- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;
- The setting is physically accessible to an individual;
- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;
- Each individual has privacy in his or her own unit;
- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;
- Individuals sharing units have a choice of roommates;
- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;
- Individuals may have visitors of their choosing at any time;
- Each individual has the freedom and support to control his or her own schedule and activities; and
- Each individual has the freedom and support to have access to food at any time.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-328-0550
Statement of Purpose

(1) The rules in OAR chapter 411, division 328 prescribe standards for providers that support individuals with intellectual or developmental disabilities in a supported living setting and the procedures for the certification and endorsement of supported living settings under the rules in OAR chapter 411, division 323.

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(3) Supported living provides the opportunity for an individual to live in the residence of his or her choice within the community with recognition that the needs and preferences of the individual may change over time. The levels of support for the individual are based upon individual needs and preferences as identified in a functional needs assessment and defined in an Individual Support Plan. Such services may include up to 24 hours per day of paid supports that are provided in a manner that protects the dignity of the individual.

(4) These rules ensure that providers meet basic management, programmatic, health and safety, and human rights regulations for adults receiving services funded by the Department in supported living settings. The provider is responsible for developing and implementing policies and procedures that ensure that the requirements of these rules are met and ensuring services comply with all applicable local, state, and federal laws and regulations.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0550 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0560
Definitions

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 328:

(1) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.

(2) "Board of Directors" mean the group of people formed to set policy and give directions to a service provider delivering supports to individuals with intellectual or developmental disabilities in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(3) "CDDP" means "Community Developmental Disability Program".

(4) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed program services.

(5) "Department" means the Department of Human Services.

(6) "Direct Nursing Services" mean the nursing services described in OAR chapter 411, division 380 that are determined medically necessary to support an adult with complex health management support needs in his or her home and community. Direct nursing services are provided on a shift staffing basis.

(7) "Director" means:

(a) The Director of the Department of Human Services, Office of Developmental Disability Disabilities Services, or the designee of the Director; or

(b) The Director of the Department of Human Services, Office of Licensing and Regulatory Oversight, or the designee of the Director.

(8) "Endorsement" means the authorization to provide program services issued by the Department to a certified provider that has met the qualification criteria outlined in these rules, the corresponding program rules, and the rules in OAR chapter 411, division 323.

(9) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of services in a supported living setting.

(10) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult is known as the Adult Needs Assessment (ANA).The Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank ANA may be obtained by calling (503) 945-6398 or writing to the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(11) "Individual Profile" means the written profile that describes an individual entering into a supported living setting. The profile may consist of materials or assessments generated by a provider or other related agencies, consultants, family members, or the legal or designated representative of the individual (as applicable).

(12) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-328-0625 and OAR 411-004-0040.

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

(14) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(15) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(16) "Needs Meeting" means a process in which an ISP team identifies the services and supports an individual needs to live in his or her own home and makes a determination as to the feasibility of creating such services.

(17) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(18) "OIS" means "Oregon Intervention System".

(19) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(20) "Private Duty Nursing" means the State Plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support an individual aged 18 through 20.

(21) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(22) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(23) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving home and community-based services in a provider owned, controlled,

or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(24) "Supported Living" means the endorsed setting that provides the opportunity for individuals to live in the residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(25) "These Rules" mean the rules in OAR chapter 411, division 328.

(26) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

(27) "Young Adult" means a young individual aged 18 through 20.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0560 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0625
Provider Owned, Controlled, or Operated Residential Settings

(1) When an individual resides in a dwelling that is owned, rented, or leased by an agency endorsed to provide supported living services as described in OAR 411-328-0570, and the same agency is authorized to provide services to the individual, the provider must assure that the setting complies with the qualities in OAR 411-004-0020 no later than September 1, 2018.

(2) RESIDENCY AGREEMENTS.

(a) The service provider must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The rights and responsibilities of the individual and the service provider; and

(B) The eviction process and appeal rights available to each individual.

(b) The Residency Agreement may not violate the rights of an individual as stated in OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules or the certification and endorsement rules in OAR chapter 411, division 323.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement must be reviewed and approved by the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

(3) INDIVIDUALLY-BASED LIMITATIONS.

(a) Effective July 1, 2016, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's bedroom, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Support to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement;

(F) Freedom and support to control the individual's schedule and activities; and

(G) Privacy in the individual's bedroom.

(b) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The provider must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the individually-based limitation;

(B) The positive interventions and supports used prior to any individually-based limitation;

(C) Less intrusive methods that have been tried but did not work;

(D) A clear description of the condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(G) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(H) An assurance that the interventions and support do not cause harm to the individual.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670
Hist.: APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0630
Medical Services

(1) The medical records for individuals must be kept confidential as described in OAR 411-323-0060.

(2) The provider must provide sufficient oversight and guidance to ensure that the health and medical needs of the individuals are adequately addressed.

(3) Written health and medical supports must be developed as required for an individual and integrated into a Transition Plan or ISP. The plan must be based on a functional needs assessment of the health and medically related support needs and preferences of the individual and updated annually or as significant changes occur.

(4) The provider must have and implement written policies and procedures that maintain and protect the physical health of individuals. The policies and procedures must address the following:

(a) Early detection and prevention of infectious disease;

(b) Emergency medical intervention;

(c) Treatment and documentation of illness and health care concerns; and

(d) Obtaining, administering, storing, and disposing of prescription and non-prescription drugs, including self-administration of medication.

(5) The provider must ensure an individual has a primary physician or health care provider whom the individual has chosen from among qualified providers.

(6) Provisions must be made for a secondary physician, health care provider, or clinic in the event of an emergency.

(7) The provider must ensure that an individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a health care provider. Evidence of the medical evaluation must be placed in the record for the individual and must address:

(a) Current health status;

(b) Changes in health status;

(c) Recommendations, if any, for further medical intervention;

(d) Any remedial and corrective action required and the date of action;

(e) Restrictions on activities due to medical limitations; and

(f) Prescribed medications, treatments, special diets, and therapies.

(8) The provider must monitor the health status and physical conditions of the individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm.

(9) Before the entry of an individual, the provider must obtain the most complete medical profile available for the individual, including:

(a) The results of most recent physical exam;

(b) Results of any dental evaluation;

(c) A record of immunizations;

(d) A record of known communicable diseases and allergies; and

(e) A summary of the medical history of the individual, including chronic health concerns.

(10) The provider must ensure that all medications, treatments, and therapies:

(a) Have a written order or a copy of a written order signed by a physician or qualified health care provider before any medication, prescription, or non-prescription is administered to, or self-administered by, an individual unless otherwise indicated by an ISP team in the written health and medical support section of the ISP or Transition Plan for the individual; and

(b) Be followed per written orders.

(11) PRN (as needed) orders are not allowed for psychotropic medication.

(12) The drug regimen of an individual on prescription medication must be reviewed and evaluated by a physician or physician designee no less often than every 180 days unless otherwise indicated by an ISP team in the written health and medical support section of the ISP or Transition Plan for the individual.

(13) All prescribed medications and treatments must be self-administered unless contraindicated by an ISP team or physician. For an individual who requires assistance in the administration of his or her own medication, the following must be met:

(a) The ISP team must recommend that the individual receive assistance with taking his or her own medication;

(b) There must be a written training program for the self-administration of medication unless contraindicated by the ISP team; and

(c) There must be a written record of medications and treatments that documents that the orders of a physician are being followed.

(14) The ISP for an individual who independently self-administers medication must include a plan for the periodic monitoring or review of the self-administration of medication.

(15) The provider must assist an individual with the use of a prosthetic device as ordered.

(16) DIRECT NURSING SERVICES. Direct nursing services may be provided to individuals 21 years of age and over as described in OAR chapter 411, division 380.

(a) A Nursing Service Plan must be present when Department funds are used for direct nursing services. A services coordinator must authorize the provision of direct nursing services as identified in an ISP.

(b) When direct nursing services are provided to an individual the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the direct nursing services being provided are sufficient to meet the health needs of the individual; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) A nurse providing direct nursing services must be an enrolled Medicaid Provider and meet the qualifications described in OAR 411-380-0080.

(17) PRIVATE DUTY NURSING. As defined in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and the Medicaid State Plan, private duty nursing services may be provided to a young adult aged 18 through 20 that resides in his or her home and that meets the clinical criteria described in OAR 411-350-0055 (Private Duty Nursing).

(a) A Nursing Service Plan must be present when OHA funds are used for private duty nursing services. A services coordinator must authorize the provision of private duty nursing services as identified in an ISP.

(b) When private duty nursing services are provided to a young adult the provider must:

(A) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the young adult; and

(B) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and registered nurse.

(c) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0630 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0650
Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be maintained. The interior and exterior must be well maintained and accessible according to the needs of the individuals.

(2) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(3) Each residence must have:

(a) A kitchen area for the preparation of hot meals; and

(b) A bathroom containing a properly operating toilet, hand washing sink, and a bathtub or shower.

(4) Each residence must be adequately heated and ventilated.

Stat. Auth.:ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; Renumbered from 309-041-0650 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0720
Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in OAR 411-318-0010 and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to an individual and the legal or designated representative of the individual.

(2) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination of a developmental disability service or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 430.610, 430.630 & 430.670
Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0720 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0750
Personalized Plans

(1) The decision to support an individual so that the individual may live in and maintain his or her own home requires significant involvement from the individual and the ISP team for the individual. In supported living, this process is characterized by a functional needs assessment and a series of team meetings or discussions to determine what personalized supports the individual needs to live in the chosen setting, a determination as to the feasibility of creating such supports, and the development of a written plan that describes services the individual must receive upon entry into supported living.

(2) NEEDS MEETING. An ISP team must meet to discuss the projected service needs of an individual prior to the individual receiving services in a supported living setting. The needs meeting must:

(a) Review information related to the health and medical, safety, dietary, financial, social, leisure, staff, mental health, and behavioral support needs and preferences of the individual;

(b) Include the individual, any potential providers, and other ISP team members;

(c) As part of a functional needs assessment, identify the supports required for the individual to live in his or her own home; and

(d) Discuss the selection of potential providers based on the service needs of the individual.

(3) TRANSITION PLAN. The individual, provider, and other ISP team members must participate in an entry meeting prior to the initiation of services. The outcome of the entry meeting must be a written Transition Plan that takes effect upon entry. The Transition Plan must:

(a) Address the health and medical, safety, dietary, financial, staffing, mental health, and behavioral support needs and preferences of the individual as required by the ISP team;

(b) Indicate who is responsible for providing the supports described in the Transition Plan;

(c) Be based on the list of supports identified in the functional needs assessment and consultation required by the ISP team; and

(d) Be developed and approved by the ISP team and available at the service site.

(4) INDIVIDUAL SUPPORT PLAN (ISP).

(a) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.

(b) To effectively provide services, providers must have access to the portion of ISP for which the provider is responsible for implementing.

(c) For a new or renewed ISP with an effective date of July 1, 2016 or later, the ISP must justify and document any individually-based limitations as described in OAR 411-328-0625 and OAR 411-004-0040.

(5) INDIVIDUAL PROFILE.

(a) The provider must develop a written profile within 90 days of entry. The profile is used to train new staff. The profile must include information related to the history or personal highlights, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe an individual.

(b) The profile must be composed of written information generated by the provider. The profile may include:

(A) Reports of assessments or consultations;

(B) Historical or current materials developed by the CDDP or nursing facility;

(C) Material and pictures from the family and friends of the individual;

(D) Newspaper articles; and

(E) Other relevant information.

(c) The profile must be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0750 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-328-0790

Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters supported living is subject to eligibility as described in this section.

(a) To be eligible for supported living, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020;

(E) Be an individual who is not receiving other Department-funded in-home or community living support;

(F) Have access to the financial resources to afford living expenses, such as food, utilities, rent, and other housing expenses; and

(G) Be eligible for Community First Choice state plan services.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY.

(a) Prior to or upon an entry ISP team meeting, a provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restriction on the rights of the individual (if applicable);

(I) Written documentation to explain why preferences or choices of the individual may not be honored at that time;

(J) A copy of the most recent ISP and Behavior Support Plan and assessment (if available);

(K) Information related to the lifestyle, activities, and other choices and preferences; and

(L) Documentation of financial resources.

(b) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the file for the individual and include at a minimum:

(A) A Residency Agreement as described in OAR 411-328-0625 (if applicable);

(B) The name of the individual proposed for services;

(C) The date of the entry meeting;

(D) The date determined to be the date of entry;

(E) Documentation of the participants included in the entry meeting;

(F) Documentation of the pre-entry information required by subsection (a) of this section;

(G) Documentation of the decision to serve the individual requesting services; and

(H) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.

(b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(5) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (d) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) A provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve service availability for the individual until receipt of the Final Order.

(6) EXIT MEETING.

(a) An ISP team must meet before any decision to exit an individual is made. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:

(A) The individual requests an immediate removal from services; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.

(7) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 430.610, 430.630 & 430.670

Hist.: MHD 5-1992, f. 8-21-92, cert. ef. 8-24-92; MHD 3-1997, f. & cert. ef. 2-7-97; Renumbered from 309-041-0790 by SPD 17-2009, f. & cert. ef. 12-9-09; SPD 24-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 59-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 33-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rules Amended: 411-325-0010, 411-325-0020, 411-325-0040, 411-325-0130, 411-325-0140, 411-325-0150, 411-325-0170, 411-325-0220, 411-325-0300, 411-325-0390, 411-325-0430

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities. These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004; and

- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

Under the HCB setting standards, 24-hour residential settings meet the definition of a provider owned, controlled, or operated residential setting. A provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed. A provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

By September 1, 2018, all provider owned, controlled, or operated residential settings must have all the following qualities:

- The setting is integrated in and supports the same degree of access to the greater community as people not receiving HCB services, including opportunities for individuals enrolled in or utilizing HCB services to seek employment and work in competitive integrated employment settings, engage in greater community life, control personal resources, and receive services in the greater community;

- The setting is selected by an individual, or as applicable the legal or designated representative of the individual, from among available setting options, including non-disability specific settings and an option for a private unit in a residential setting;

- The setting ensures individual rights of privacy, dignity, respect, and freedom from coercion and restraint;

- The setting optimizes, but does not regiment, individual initiative, autonomy, self-direction, and independence in making life choices including, but not limited to, daily activities, physical environment, and with whom to interact;

- The setting facilitates individual choice regarding services and supports, and who provides the services and supports;

- The setting is physically accessible to an individual;

- The unit is a specific physical place that may be owned, rented, or occupied by an individual under a legally enforceable Residency Agreement;

- Each individual has privacy in his or her own unit;

- Units have entrance doors lockable by the individual, with the individual and only appropriate staff having a key to access the unit;

- Individuals sharing units have a choice of roommates;

- Individuals have the freedom to decorate and furnish his or her own unit as agreed to within the Residency Agreement;

- Individuals may have visitors of their choosing at any time;

- Each individual has the freedom and support to control his or her own schedule and activities; and

- Each individual has the freedom and support to have access to food at any time.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-325-0010

Statement of Purpose

(1) The rules in OAR chapter 411, division 325 prescribe standards, responsibilities, and procedures for 24-hour residential settings providing

home and community-based services to individuals with intellectual or developmental disabilities.

(2) These rules incorporate the provisions for home and community-based services and settings and person-centered service planning set forth in OAR chapter 411, division 004. These rules and the rules in OAR chapter 411, division 004 ensure individuals with intellectual or developmental disabilities receive services in settings that are integrated in and support the same degree of access to the greater community as people not receiving home and community-based services.

(a) A service provider initially licensed on or after January 1, 2016 must meet the requirements in OAR chapter 411, division 004 prior to being licensed.

(b) A service provider licensed prior to January 1, 2016 must make measurable progress toward compliance with the rules in OAR chapter 411, division 004 and be in full compliance by September 1, 2018.

(3) These rules also prescribe the standards and procedures for the licensure of 24-hour residential settings. A 24-hour residential setting must also be certified and endorsed to provide home and community-based services under the rules in OAR chapter 411, division 323.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0020
Definitions

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 325:

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide home and community-based services to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in these rules.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Agency" means "provider" as defined in this rule.

(4) "Apartment" means "24-hour residential setting" as defined in this rule.

(5) "Appeal" means the process under ORS chapter 183 that a provider may use to petition a civil penalty.

(6) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing home and community-based services in a 24-hour residential setting.

(7) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.

(8) "Board of Directors" means the group of people formed to set policy and give directions to a service provider delivering supports to individuals with intellectual or developmental disabilities in a community-based service setting. A board of directors may include local advisory boards used by multi-state organizations.

(9) "CDDP" means "Community Developmental Disability Program".

(10) "Certificate" means the document issued by the Department to a provider that certifies the provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed program services.

(11) "Competency Based Training Plan" means the written description of the process of the provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:

(a) Addresses health, safety, rights, values and personal regard, and the mission of the provider; and

(b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a provider to accommodate the specific circumstances of a staff member.

(12) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(13) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential setting because the Department has determined the provider or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(14) "Department" means the Department of Human Services.

(15) "Director" means:

(a) The Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director; or

(b) The Director of the Department of Human Services, Office of Licensing and Regulatory Oversight, or the designee of the Director.

(16) "Domestic Animals" means the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.

(17) "Duplex" means "24-hour residential setting" as defined in this rule.

(18) "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:

(a) When the parent of the child cannot be identified or located after reasonable efforts;

(b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or

(c) At the request of the parent of the child or young adult student.

(19) "Endorsement" means the authorization to provide program services issued by the Department to a certified provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.

(20) "Executive Director" means the person designated by a board of directors or corporate owner responsible for the administration of services in a 24-hour residential setting.

(21) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an individual less than 18 years of age receiving, or targeted to receive, services in a 24-hour residential setting for children is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx.

(c) The functional needs assessment for an individual 16 years of age and older receiving, or targeted to receive, services in a 24-hour residential setting for adults is known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.

(d) A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(22) "Home" means "24-hour residential setting" as defined in this rule.

(23) "Individually-Based Limitation" means any limitation to the qualities outlined in OAR 411-004-0020 due to health and safety risks. An individually-based limitation is based on specific assessed need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-325-0430 and OAR 411-004-0040.

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

(25) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.

(26) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.

(27) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a provider following the enrollment of the provider as described in OAR chapter 411, division 370.

(28) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(29) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.

(30) "Nursing Services" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Nursing services differ from administrative nursing services.

(31) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(32) "OIS" means "Oregon Intervention System".

(33) "Oregon Core Competencies" means:

(a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the provider; and

(b) The associated timelines in which newly hired staff must demonstrate the competencies.(34) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(35) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(36) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(37) "Residency Agreement" means the written, legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual, when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider. The Residency Agreement provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(38) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that a provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.

(39) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen. Examples include, but are not limited to, low calorie, high fiber, diabetic, low salt, lactose free, or low fat diets. A special diet does not include a diet where extra or additional food is offered without the order of a physician but may not be eaten, such as offering prunes each morning at breakfast or including fresh fruit with each meal.

(40) "Suspension" means an immediate temporary withdrawal of the approval to operate a 24-hour residential setting after the Department determines a provider or 24-hour residential setting is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(41) "These Rules" mean the rules in OAR chapter 411, division 325.

(42) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0040

Application for Initial License

(1) At least 30 days prior to anticipated licensure, an applicant must submit an application and required non-refundable fee. The application is provided by the Department and must include all information requested by the Department.

(2) The application must identify the number of beds the residential home is presently capable of operating at the time of application, considering existing equipment, ancillary service capability, and the physical requirements as specified by these rules. For purposes of license renewal, the number of beds to be licensed may not exceed the number identified on the license to be renewed unless approved by the Department.

(3) The initial application must include --

(a) A copy of any lease agreements or contracts, management agreements or contracts, and sales agreements or contracts, relative to the operation and ownership of the home;

(b) A floor plan of the home showing the location and size of rooms, exits, smoke alarms, and extinguishers; and

(c) A copy of the standard Residency Agreement as described in OAR 411-325-0300.

(4) If a scheduled, onsite licensing inspection reveals that an applicant is not in compliance with these rules as attested to on the Licensing Onsite Inspection Checklist, the onsite licensing inspection may be rescheduled at the convenience of the Department.

(5) Applicants may not admit any individual to the home prior to receiving a written confirmation of licensure from the Department.

(6) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Department may cause initial licensure to be delayed or may deny or revoke the license.

(7) Any applicant or person with a controlling interest in an agency is considered responsible for acts occurring during, and relating to, the operation of such home for the purpose of licensing.

(8) The Department may consider the background and operating history of each applicant and each person with a controlling ownership interest when determining whether to issue a license.

(9) When an application for initial licensure is made by an applicant who owns or operates other licensed homes or facilities in Oregon, the Department may deny the license if the applicant's existing home or facility is not, or has not been, in substantial compliance with the Oregon Administrative Rules.

(10) Separate licenses are not required for separate buildings located contiguously and operated as an integrated unit by the same management.

(11) A residential home may not admit an individual whose service needs exceed the classification on the license of the home without prior written consent of the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400 - 443.455

Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0130

Food and Nutrition

(1) The provider must support the freedom of the resident to have access to his or her personal food at any time. Limitations may only be used when there is a health or safety risk, as described in OAR 411-325-0430 and OAR 411-004-0040, and when a written informed consent is obtained.

(2) Three nutritious meals and two snacks must be provided. Meals must be served daily at times consistent with those in the community.

(a) Each meal must include food from the basic food groups according to the United States Department of Agriculture (USDA) and include fresh fruit and vegetables when in season, unless otherwise specified in writing by a physician.

(b) Food preparation must include consideration of cultural and ethnic backgrounds, as well as, the food preferences of individuals. Special consideration must be given to individuals with chewing difficulties and other eating limitations.

(3) A schedule of meal times and menus for the coming week that consider individual preferences must be prepared and posted weekly in a location that is accessible to individuals and the families of the individuals. Menu substitutions in compliance with subsection (a) of this section are acceptable. If an individual misses a meal at a scheduled time, an alternative meal must be made available.

(a) There must be no more than a 14-hour span between the evening meal and breakfast unless snacks and liquids are served as supplements.

(b) Access to food beyond the required three meals and snacks are the responsibility of the individual.

(4) Food may not be used as an inducement to control the behavior of an individual.

(5) MODIFIED OR SPECIAL DIETS. For an individual with a physician or health care provider ordered modified or special diet, the service provider must:

(a) Have menus for the current week that provide food and beverages that consider the preferences of the individual and are appropriate to the modified or special diet; and

(b) Maintain documentation that identifies how modified or special diets are prepared and served to individuals.

(6) Unpasteurized milk and juice or home canned meats and fish may not be served or stored in the home.

(7) Adequate supplies of staple foods for a minimum of one week and perishable foods for a minimum of two days must be maintained on the premises.

(8) Food must be stored, prepared, and served in a sanitary manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0140
Physical Environment

(1) All floors, walls, ceilings, windows, furniture, and fixtures must be kept in good repair, clean, and free from odors. Walls, ceilings, and floors must be of such character to permit frequent washing, cleaning, or painting. The interior and exterior must be well maintained and accessible according to the needs of the individuals.

(2) The water supply and sewage disposal must meet the requirements of the current rules of the Oregon Health Authority governing domestic water supply.

(3) A public water supply must be utilized if available. If a non-municipal water source is used, a sample must be collected yearly by the service provider, sanitarian, or a technician from a certified water-testing laboratory. The water sample must be tested for coliform bacteria and action taken to ensure potability. Test records must be retained for three years.

(4) Septic tanks or other non-municipal sewage disposal systems must be in good working order. Incontinence garments must be disposed of in closed containers.

(5) The temperature within the home must be maintained within a normal comfort range. During times of extreme summer heat, the service provider must make reasonable effort to keep individuals comfortable using ventilation, fans, or air conditioning.

(6) Screening for workable fireplaces and open-faced heaters must be provided.

(7) All heating and cooling devices must be installed in accordance with current building codes and maintained in good working order.

(8) Handrails must be provided on all stairways. Yard and exterior steps must be accessible and appropriate to the needs of the individuals.

(9) Swimming pools, hot tubs, saunas, or spas must be equipped with safety barriers or devices designed to prevent accidental injury and unsupervised access.

(10) Sanitation for household pets and other domestic animals must be adequate to prevent health hazards. Proof of current rabies vaccinations and any other vaccinations that are required for the pet by a licensed veterinarian must be maintained on the premises. Pets not confined in enclosures must be under control and may not present a danger or health risk to individuals or guests.

(11) All measures necessary must be taken to prevent the entry of rodents, flies, mosquitoes, and other insects.

(12) The interior and exterior of the residence must be kept free of litter, garbage, and refuse.

(13) Any work undertaken at a residence, including but not limited to demolition, construction, remodeling, maintenance, repair, or replacement must comply with all applicable state and local building, electrical, plumbing, and zoning codes appropriate to the individuals served.

(14) Service providers must comply with all applicable legal zoning ordinances pertaining to the number of individuals receiving services at the home.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0150
General Safety

(1) All toxic materials, including but not limited to poisons, chemicals, rodenticides, and insecticides must be:

(a) Properly labeled;

(b) Stored in the original container separate from all foods, food preparation utensils, linens, and medications; and

(c) Stored in a locked area unless the Risk Tracking records for all individuals residing in the home document that there is no risk present.

(2) All flammable and combustible materials must be properly labeled, stored, and locked in accordance with state fire code.

(3) For children, knives and sharp kitchen utensils must be locked unless otherwise determined by a documented ISP team decision.

(4) Window shades, curtains, or other covering devices must be provided for all bedroom and bathroom windows to assure privacy.

(5) Hot water in bathtubs and showers may not exceed 120 degrees Fahrenheit. Other water sources, except the dishwasher, may not exceed 140 degrees Fahrenheit.

(6) Bedrooms.

(a) Bedrooms on ground level must have at least one window that opens from the inside without special tools that provides a clear opening of not less than 821 square inches, with the least dimension not less than 22 inches in height or 20 inches in width. Sill height may not be more than 44 inches from the floor level. Exterior sill heights may not be greater than 72 inches from the ground, platform, deck, or landing. There must be stairs or a ramp to ground level. Those homes previously licensed having a minimum window opening of not less than 720 square inches are acceptable unless through inspection it is deemed that the window opening dimensions present a life safety hazard.

(b) Bedrooms must have 60 square feet per individual with beds located at least three feet apart.

(c) If an individual chooses to share a bedroom with another individual, the individuals must be afforded an opportunity to have a choice of roommates.

(d) Single Action Locks.

(A) A 24-hour residential setting licensed on or after January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys.

(B) A 24-hour residential setting licensed prior to January 1, 2016 must have single action locks on the entrance doors to the bedroom for each individual, lockable by the individual, with only appropriate staff having keys by September 1, 2018.

(C) Limitations may only be used when there is a health or safety risk and when a written informed consent is obtained as described in OAR 411-325-0430 and OAR 411-004-0040.

(7) Operative flashlights, at least one per floor, must be readily available to staff in case of emergency.

(8) First-aid kits and first-aid manuals must be available to staff within each home in a designated location. First aid kits must be locked if, after evaluating any associated risk, items contained in the first aid kit present a hazard to individuals living in the home. First aid kits containing any medication including topical medications must be locked.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0170
Staffing Requirements

(1) Each residence must provide staff appropriate to the number of individuals served as follows:

(a) Each home serving five or fewer individuals must provide at a minimum one staff on the premises when individuals are present; and

(b) Each home serving five or fewer individuals in apartments must provide at a minimum one staff on the premises of the apartment complex when individuals are present; and

(c) Each home serving six or more individuals must provide a minimum of one staff on the premises for every 15 individuals during awake hours and one staff on the premises for every 15 individuals during sleeping hours, except residences licensed prior to January 1, 1990; and

(d) Each home serving children, for any number of children, must provide at a minimum one awake night staff on the premises when children are present.

(2) A home is granted an exception to the staffing requirements in sections (1)(a), (1)(b), and (1)(c) for adults to be home alone when the following conditions have been met:

(a) No more than two adults are to be left alone in the home at any time without on staff supervision;

(b) The amount of time any adult individual may be left alone may not exceed five hours within a 24-hour period and an adult individual may not be responsible for any other adult individual or child in the home or community;

(c) An adult individual may not be left home alone without staff supervision between the hours of 11:00 P.M. and 6:00 A.M.;

(d) The adult individual has a documented history of being able to do the following safety measures or there is a documented ISP team decision agreeing to an equivalent alternative practice:

(A) Independently call 911 in an emergency and give relevant information after calling 911;

(B) Evacuate the premises during emergencies or fire drills without assistance in three minutes or less;

(C) Knows when, where, and how to contact the service provider in an emergency;

(D) Before opening the door, check who is there;

(E) Answer the door appropriately;

(F) Use small appliances, sharp knives, kitchen stove, and microwave safely;

(G) Self-administer medications, if applicable;

(H) Safely adjust water temperature at all faucets; and

(I) Safely takes a shower or bathe without falling.

(e) There is a documented ISP team decision annually noting team agreement that the adult individual meets the requirements of subsection (d) of this section.

(3) If at any time an adult individual is unable to meet the requirements in section (2)(d)(A)-(I) of this rule, the service provider may not leave the adult individual alone without supervision. In addition, the service provider must notify the adult individual's services coordinator within one working day and request that the ISP team meet to address the adult individual's ability to be left alone without supervision.

(4) Each home must meet all requirements for staff ratios as specified by contract requirements.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0220
Individual Furnishings

(1) Bedroom furniture must be provided or arranged for each individual and include:

(a) A bed including a frame unless otherwise documented by an ISP team decision, a clean comfortable mattress, a waterproof mattress cover if the individual is incontinent, and a pillow;

(b) A private dresser or similar storage area for personal belongings that is readily accessible to the individual;

(c) A closet or similar storage area for clothing that is readily accessible to the individual; and

(d) Individuals must have the freedom to decorate and furnish his or her own bedroom as agreed to within the Residency Agreement.

(2) Two sets of linens must be provided or arranged for each individual and include:

(a) Sheets and pillowcases;

(b) Blankets appropriate in number and type for the season and the individual's comfort; and

(c) Towels and washcloths.

(3) Each individual must be assisted in obtaining personal hygiene items in accordance with individual needs and items must be stored in a sanitary and safe manner.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0300
Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) RESIDENCY AGREEMENTS.

(a) The service provider must enter into a written Residency Agreement with each individual specifying, at a minimum, the following:

(A) The rights and responsibilities of the individual and the service provider; and

(B) The eviction process and appeal rights available to each individual.

(b) The Residency Agreement may not violate the rights of an individual as stated in OAR 411-318-0010.

(c) The Residency Agreement may not be in conflict with any of these rules or the certification and endorsement rules in OAR chapter 411, division 323.

(d) Prior to implementing changes to the Residency Agreement, the Residency Agreement must be reviewed and approved by the Department.

(e) The provider must review and provide a copy of the Residency Agreement to each individual and the legal representative of the individual, as applicable, at the time of entry and annually or as changes occur. The reviews must be documented by having the individual, or the legal representative of the individual, sign and date a copy of the Residency Agreement. A copy of the signed and dated Residency Agreement must be maintained in the record for the individual.

(2) INDIVIDUAL RIGHTS.

(a) A provider must protect the rights of individuals described in OAR 411-318-0010 and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to an individual and the legal or designated representative of the individual.

(c) The individual rights apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(3) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(4) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(5) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for a denial, reduction, suspension, or termination or OAR 411-318-0030 for an involuntary reduction, transfer, or exit.

(c) Upon entry and request and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 443.450 & 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0390
Entry, Exit, and Transfer

(1) NON-DISCRIMINATION. An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES. An individual who enters a 24-hour residential setting is subject to eligibility as described in this section.

(a) To be eligible for services in a 24-hour residential setting, an individual must:

(A) Be an Oregon resident;

(B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care as defined in OAR 411-320-0020; and

(E) Be an individual who is not receiving other Department-funded in-home or community living support.

(b) To be eligible for Department-funded relief care, an individual must:

(A) Meet the criteria in subsection (a)(A-D) of this section;

(B) Be referred by a CDDP or Brokerage; and

(C) Not be receiving services in a supported living setting as described in OAR chapter 411, division 328.

(c) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(3) ENTRY.

(a) The Department authorizes the entry of children into 24-hour residential settings and stabilization and crisis units.

(b) The CDDP services coordinator authorizes entry into 24-hour residential settings, except in the cases of residential services for children and stabilization and crisis units.

(4) DOCUMENTATION UPON ENTRY.

(a) Prior to or upon an entry ISP team meeting, a provider must acquire the following individual information:

(A) A copy of the eligibility determination document;

(B) A statement indicating the safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of the individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if available);

(H) Copies of documents relating to the guardianship, conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age;

(J) Written documentation to explain why preferences or choices of the individual may not be honored at that time; and

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Program (if available).

(b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.

(5) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the file for the individual and include, at a minimum:

(a) A Residency Agreement as described in OAR 411-325-0300;

(b) The name of the individual proposed for services;

(c) The date of the entry meeting;

(d) The date determined to be the date of entry;

(e) Documentation of the participants included in the entry meeting;

(f) Documentation of the pre-entry information required by section (4)(a) of this rule;

(g) Documentation of the decision to serve the individual requesting services; and

(h) The written Transition Plan for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(6) VOLUNTARY TRANSFERS AND EXITS.

(a) A provider must promptly notify a services coordinator if an individual gives notice of the intent to exit or abruptly exits services.

(b) A provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(d) A provider is responsible for the provision of services until an individual exits the home.

(7) INVOLUNTARY REDUCTIONS, TRANSFERS, AND EXITS.

(a) A provider must only reduce, transfer, or exit an individual involuntarily for one or more of the following reasons:

(A) The behavior of the individual poses an imminent risk of danger to self or others;

(B) The individual experiences a medical emergency;

(C) The service needs of the individual exceed the ability of the provider;

(D) The individual fails to pay for services; or

(E) The certification or endorsement for the provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered or the license for the home is suspended, revoked, not renewed, or voluntarily surrendered.

(b) NOTICE OF INVOLUNTARY REDUCTION, TRANSFER, OR EXIT. A provider must not reduce services, transfer, or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.

(A) The written notice must be provided on the Notice of Involuntary Reduction, Transfer, or Exit form approved by the Department and include:

(i) The reason for the reduction, transfer, or exit; and

(ii) The right of the individual to a hearing as described in subsection (e) of this section.

(B) A Notice of Involuntary Reduction, Transfer, or Exit is not required when an individual requests the reduction, transfer, or exit.

(c) A provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a reduction, transfer, or exit.

(d) A provider is responsible for the provision of services until an individual exits the home.

(e) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 and OAR 411-318-0030 to dispute an involuntary reduction, transfer, or exit. If an individual requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a reduction, transfer, or exit as described in subsection (c) of this section and the individual has requested a hearing, the provider must reserve the room of the individual until receipt of the Final Order.

(8) EXIT MEETING.

(a) An ISP team must meet before any decision to exit and individual is made. Findings of the exit meeting must be recorded in the file for the individual and include, at a minimum:

(A) The name of the individual considered for exit;

(B) The date of the exit meeting;

(C) Documentation of the participants included in the exit meeting;

(D) Documentation of the circumstances leading to the proposed exit;

(E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual is requesting the exit);

(F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(G) Documentation of the proposed plan for services after the exit.

(b) Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:

(A) The individual requests an immediate move from the home; or

(B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.

(9) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative of the individual, parent, or family members, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services after the transfer.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400 - 443.455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 23-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-325-0430
Individual Support Plan

(1) An ISP must be developed and approved by an ISP team consistent with OAR 411-320-0120 and reviewed and updated as necessary within 60 days of implementation of the Transition Plan, as changes occur, and annually thereafter.

(2) To effectively provide services, providers must have access to the portion of ISP for which the provider is responsible for implementing.

(3) For a new or renewed ISP with an effective date of July 1, 2016 or later, the ISP must justify and document any individually-based limitations as described in section (5) of this rule and OAR 411-004-0040.

(4) The following information must be collected and summarized prior to the ISP meeting:

(a) Personal Focus Worksheet;

(b) Risk Tracking Record;

(c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;

(d) A Nursing Service Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record;

(e) Other documents required by the ISP team; and

(f) The functional needs assessment.

(5) INDIVIDUALLY-BASED LIMITATIONS.

(a) Effective July 1, 2016, the provider must identify any individually-based limitations to the following freedoms:

(A) Support and freedom to access the individual's personal food at any time;

(B) Visitors of the individual's choosing at any time;

(C) A lock on the individual's bedroom, lockable by the individual;

(D) Choice of a roommate, if sharing a bedroom;

(E) Support to furnish and decorate the individual's bedroom as the individual chooses in accordance with the Residency Agreement;

(F) Freedom and support to control the individual's schedule and activities; and

(G) Privacy in the individual's bedroom.

(b) An individually-based limitation to any freedom in subsection (a) of this section must be supported by a specific assessed need due to threats to the health and safety of the individual or others. The provider must incorporate and document all applicable elements identified in OAR 411-004-0040, including:

(A) The specific and individualized assessed need justifying the individually-based limitation;

(B) The positive interventions and supports used prior to any individually-based limitation;

(C) Less intrusive methods that have been tried but did not work;

(D) A clear description of the condition that is directly proportionate to the specific assessed need;

(E) Regular reassessment and review to measure the ongoing effectiveness of the individually-based limitation;

(F) Established time limits for periodic review of the individually-based limitation to determine if the individually-based limitation should be terminated or remains necessary. The individually-based limitation must be reviewed at least annually;

(G) The informed consent of the individual or, as applicable, the legal representative of the individual, including any discrepancy between the wishes of the individual and the consent of the legal representative; and

(H) An assurance that the interventions and support do not cause harm to the individual.

(6) The provider must maintain documentation of implementation of each support and services specified in the ISP for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.

Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-455
Hist.: SPD 25-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 25-2004, f. 7-30-04, cert. ef. 8-1-04; SPD 1-2012, f. & cert. ef. 1-6-12; SPD 58-2013, f. 12-27-13, cert. ef. 12-28-13; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 34-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Agency Certification and Endorsement and Medicaid Provider Enrollment Requirements
Adm. Order No.: APD 35-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0060, 411-370-0010
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals in home and community-based (HCB) settings. These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Align provider requirements associated with delivering in home attendant care and related services, and employment services, with other developmental disability services;

- Require an agency to obtain Medicaid certification and endorsement appropriate to each service delivered;

- Change the certification and endorsement periods from five to two years;

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning; and

- Incorporate the individual rights in OAR 411-318-0010 for individuals receiving HCB services.

In addition, the Department is also temporarily amending OAR 411-370-0010 to require a certified and endorsed agency to acquire a Medicaid performing provider number and meet the associated provider enrollment requirements.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-323-0010
Statement of Purpose

(1) The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide person-centered services to individuals with intellectual or developmental disabilities in a community-based service setting as described in:

(a) OAR chapter 411, division 325 for 24-hour residential program services;

(b) OAR chapter 411, division 328 for supported living program services;

(c) OAR chapter 411, division 345 for employment program services; and

(d) OAR 411-340-0130 for support services.

(2) To provide the program services described in section (1) of this rule, agencies must have:

(a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;

(b) Endorsement for each program service as described in OAR 411-323-0035;

(c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and

(d) For each licensed site or geographic location where direct services are to be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

(3) Section (2) of this rule does not apply to an agency certified, or that has applied for certification, according to OAR 411-340-0170 before January 1, 2016, until that organization requires renewal according to OAR 411-340-0030.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-323-0020
Definitions

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 323:

(1) "Agency" means a public or private community agency or organization that is approved by the Department to provide services to individuals with intellectual or developmental disabilities in a community-based service setting.

(2) "Applicant" means a person, agency, corporation, or governmental unit who applies for certification and endorsement to operate an agency providing services to individuals with intellectual or developmental disabilities in a community-based service setting.

(3) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(4) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures the accounting activities are in conformity with generally accepted accounting principles.

(5) "Board of Directors" means the group of people formed to set policy and give directions to an agency delivering supports to individuals with intellectual or developmental disabilities in a community-based service setting. A board of directors may include local advisory boards used by multistate organizations.

(6) "CDDP" means "community developmental disability program".

(7) "Certificate" means the document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services.

(8) "Condition" means a provision attached to:

(a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency; or

(b) A new or existing endorsement that limits or restricts the scope of program services or imposes additional requirements on the certified agency.

(9) "Denial" means the refusal of the Department to issue:

(a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.

(10) "Department" means the Department of Human Services.

(11) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services or Office of Licensing and Regulatory Oversight, or the designee of the Director.

(12) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program rules.

(13) "Executive Director" means the person designated by a board of directors or corporate owner of an agency that is responsible for the administration of the services provided by the agency.

(14) "Informal Conference" means the discussion between the Department and an applicant or an agency that is held prior to a hearing to address any matters pertaining to the hearing. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

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

(16) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an agency following the enrollment of the agency as described in OAR chapter 411, division 370.

(17) "Medicaid Performing Provider Number" means the numeric identifier assigned by the Department to an entity or person following the enrollment of the entity or person to deliver Medicaid funded services as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(18) "OAR Chapter 411, Division 004" means the rules adopted by the Department for home and community-based services and settings.

(19) "OIS" means "Oregon Intervention System".

(20) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(21) "Program Rules" mean the rules in:

(a) OAR chapter 411, division 325 for 24-hour residential program services;

(b) OAR chapter 411, division 328 for supported living program services;

(c) OAR chapter 411, division 345 for employment program services; and

(d) OAR chapter 411, division 340 for support services.

(22) "Program Services" mean the Department-funded person-centered services as described in:

(a) OAR chapter 411, division 325 for 24-hour residential programs;

(b) OAR chapter 411, division 328 for supported living programs;

(c) OAR chapter 411, division 345 for employment; and

(d) OAR 411-340-0130 for support services.

(23) "Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules.

(24) "Revocation" means the action taken by the Department to rescind:

(a) A certificate to operate an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules; or

(b) An endorsement for an agency to provide program services after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.

(25) "Suspension" means an immediate temporary withdrawal of the:

(a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program rules; or

(b) Endorsement for an agency to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program rules.

(26) "These Rules" mean the rules in OAR chapter 411, division 323.

(27) "Unacceptable Background Check" means an administrative process that produces information related to the background of an agency that precludes the agency from being certified or endorsed for one or more of the following reasons:

(a) Under OAR 407-007-0275, the agency or any person holding 5 percent or greater ownership interest in the agency has been found ineligible due to ORS 443.004; or

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

(28) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the agency.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-323-0030
Certification

(1) CERTIFICATION. Except for an agency with a current certification, or that has applied for certification, according to OAR 411-340-0170 before January 1, 2016, a person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be certified by the Department under these rules before establishing, conducting, maintaining, managing, or operating an agency.

(a) Certificates are not transferable.

(b) The Department issues or renews a certificate to an agency found to be in compliance with these rules and the corresponding program rules. The certificate is effective for two years from the date issued unless sooner revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) For the purpose of certification, any applicant or person with an ownership interest in an agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) A review of the agency is conducted by the Department prior to the issuance or renewal of a certificate.

(2) CURRENT AGENCY CERTIFICATION.

(a) Within two years of January 1, 2016, all agency certification shall be reviewed and placed on a two year cycle.

(b) All agencies providing program services, when issued a new certificate after January 1, 2016 are certified for two years unless the certificate is sooner revoked or suspended.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for people who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering services, including provisions for safeguarding individuals receiving services.

(3) INITIAL CERTIFICATION. Notwithstanding section (2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules, the rules in OAR chapter 411, division 004, and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to the proposed date of provision of program services to individuals. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

(A) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(B) A financial plan that includes financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; or

(C) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(c) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the expense of the agency, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the contract the agency has with the Department including, but not limited to, automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services and the divisions, officers, and employees of the Department as additionally insured on any insurance policies required by their contract with respect to agency activities being performed under the certification of the agency. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the insurance company of any insurance coverage required by their contract, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing certificate for the agency. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

(i) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(ii) A financial plan that includes audits for the last two years as described in section (5) of this rule; and

(iii) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(B) Identify the scope of program services the agency provides and provide proof of endorsement for each program service as described in OAR 411-323-0035;

(C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules; and

(D) Demonstrate proof of continued liability and operational insurance coverage as described in section (3)(d) of this rule.

(b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.

(c) If the renewal application is not submitted to the Department prior to the date the certificate expires, the agency is considered a non-certified Medicaid agency and is subject to termination of their Medicaid Agency Identification Number.

(5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must obtain an audit at least once during the biennium. On alternating years, the agency may obtain an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.

(6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency expires two years following the date of issuance.

(7) CERTIFICATE TERMINATION. The certificate automatically terminates on the date agency operation is discontinued or if there is a change in ownership.

(8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.

(9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.

(a) The agency must notify the Department in writing of any pending change in the ownership, legal entity, legal status, or management corporation of the agency.

(b) A new certificate is required upon a change in the ownership, legal entity, legal status, or management corporation of the agency. The agency must submit an application as described in section (3) of this rule to the Department at least 30 days prior to a change in ownership, legal entity, legal status, or management corporation.

(10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules or the corresponding program rules. An administrative sanction on a certificate includes one or more of the following actions:

(a) A condition as described in section (11) of this rule;

(b) Denial, revocation, or refusal to renew a certificate as described in section (12) of this rule; or

(c) Immediate suspension of a certificate as described in section (13) of this rule.

(11) CERTIFICATE CONDITIONS.

(a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to a certificate upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(c) Conditions that the Department may impose on a certificate include, but are not limited to:

(A) Restricting the total number of individuals to whom an agency may provide services;

(B) Restricting the total number of individuals to whom an agency may provide program services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF CERTIFICATE CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the certificate of the agency. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions. The request for a hearing must be in writing.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding program services, agency finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the current Centers for Medicare and Medicaid Services list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

(I) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of the immediate suspension of the certificate. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (14) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(14) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, the agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in section (14) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-323-0035
Endorsement

(1) ENDORSEMENT REQUIRED. Except for an agency with a current certification, or that has applied for certification, according to OAR 411-340-0170 before January 1, 2016, a person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be endorsed by the Department under these rules before establishing, conducting, maintaining, managing, or operating a program service.

(a) Except as described in OAR 411-340-0170(1), endorsements are not transferable or applicable to any other program service. Separate endorsements are required for each program service provided by a certified agency. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for an additional endorsement as described in section (3) of this rule.

(b) When required by the program service rules, each geographic location where program services are provided must be reported by the agency to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department issues or renews an endorsement to a certified agency found to be in compliance with these rules and the corresponding program rules. The effective date for each endorsement corresponds with the effective date for the certification of the agency unless sooner revoked or suspended.

(d) If a certified agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) For the purpose of endorsement, any applicant or person with an ownership interest in a certified agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) A review of the certified agency is conducted by the Department prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All certified agencies providing program services as of January 1, 2016 are endorsed for two years for the program services being provided, unless the endorsement is sooner revoked or suspended.

(b) A certified agency intending to provide additional program services must apply for endorsement as described in section (3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential care treatment facilities for individuals who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules, the rules in OAR chapter 411, division 004, and the corresponding program rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the certified agency intends to provide and all geographic locations where program services are to be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Each licensed site or geographic location where direct services are to be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program services that the certified agency provides and all geographic locations where program services are provided. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program rules.

(b) Only existing program services are endorsed on renewal. A certified agency requesting to provide additional program services must apply for initial endorsement as described in section (3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) A certified agency may not provide program services if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the certificate of the agency.

(5) EXISTING ENDORSEMENT — ADDING A GEOGRAPHIC LOCATION.

Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location. The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement corresponds with the effective date of the certification of the agency.

(7) ENDORSEMENT TERMINATION. Endorsement automatically terminates on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement is required upon a change of the certification of an agency. The recertified agency must submit an application for endorsement as described in section (3) of this rule to the Department at least 30 days prior to a change of the certification of the agency including, but not limited to, a change in ownership, legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules and the corresponding program service rules. An administrative sanction on an endorsement includes one or more of the following actions:

(a) A condition as described in section (10) of this rule:

(b) Denial, revocation, or refusal to renew an endorsement as described in section (11) of this rule; or

(c) Immediate suspension of an endorsement as described in section (12) of this rule.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals.

(b) The Department may attach a condition to an endorsement upon a finding that:

(A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(c) Conditions that the Department may impose on an endorsement include, but are not limited to:

(A) Restricting the total number of individuals to whom an agency may provide services;

(B) Restricting the total number of individuals to whom an agency may provide program services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the agency may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(d) NOTICE OF ENDORSEMENT CONDITIONS. The Department issues a written notice to the agency when the Department imposes conditions on the endorsement of program services. The written notice of endorsement conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a Final Order of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(e) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions. The request for a hearing must be in writing.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing. The administrative review does not diminish the right of the agency to a hearing.

(f) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(g) Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 days from the receipt of the written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of services;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding program services, agency finances, or funds belonging to the individuals;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement. The request for a hearing must be in writing.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation.

(I) In addition to, or in lieu of a hearing, an agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing.

(II) The administrative review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for a 24-hour residential setting, upon written notice from the Department of the immediate suspension of the endorsement. The request for a hearing must be in writing.

(A) Notwithstanding subsection (B) of this section, the endorsed agency must request a hearing within 21 days from the receipt of the written notice of suspension.

(i) In addition to, or in-lieu of a hearing, the agency may request an administrative review as described in section (13) of this rule. The request for an administrative review must be in writing.

(ii) The administrative review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(13) ADMINISTRATIVE REVIEW.

(a) Notwithstanding subsection (b) of this section, the agency, in addition to the right to a hearing, may request an administrative review. The request for an administrative review must be in writing.

(b) 24-HOUR RESIDENTIAL SETTINGS. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may not request an administrative review for revocation or suspension. An agency endorsed to provide services in a 24-hour residential setting as described in OAR chapter 411, division 325 may request an administrative review for imposition of conditions.

(c) The Department must receive a written request for an administrative review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrative review, any additional written materials the agency wishes to have considered during the administrative review.

(d) The determination of the administrative review is issued in writing within 10 business days from the receipt of the written request for an administrative review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The request for a hearing must be in writing. The Department must receive the written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. Unless an administrative review has been completed as described in subsection (13) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-323-0060
Policies and Procedures

(1) INDIVIDUAL RIGHTS.

(a) The agency must have and implement written policies and procedures that protect the rights of individuals described in OAR 411-318-0010and encourage and assist individuals to understand and exercise these rights.

(b) Upon entry and upon request and annually thereafter, the individual rights described in OAR 411-318-0010must be provided to an individual and the legal or designated representative of the individual.

(c) The individual rights apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(2) HEALTH. The agency must have and implement policies and procedures that maintain and protect the health of individuals.

(3) INDIVIDUAL AND FAMILY INVOLVEMENT. The agency must have and implement a written policy that addresses:

(a) Opportunities for the individual to participate in decisions regarding the operations of the agency;

(b) Opportunities for families, guardians, legal and designated representatives, and significant others of the individuals to interact; and

(c) Opportunities for individuals, families, guardians, legal and designated representatives, and significant others to participate on the Board of Directors or on committees or to review policies of the agency that directly affect the individuals receiving services from the agency.

(4) CONFIDENTIALITY OF RECORDS. The agency must have and implement written policies and procedures that ensure all records for individuals are kept confidential except as otherwise provided by applicable state and federal rule or laws.

(a) For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.

(b) Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.

(c) For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.

(5) BEHAVIOR SUPPORT. The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.

(6) PROTECTIVE PHYSICAL INTERVENTION. The agency must have and implement written policies and procedures for protective physical interventions that address the following:

(a) The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.

(b) Protective physical intervention techniques must only be applied:

(A) When the health and safety of an individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies; or

(B) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or

(C) As a health-related protection prescribed by a physician, if absolutely necessary during the conduct of a specific medical or surgical procedure, or for the protection of an individual during the time that a medical condition exists.

(7) HANDLING AND MANAGING INDIVIDUALS' MONEY. The agency must have and implement written policies and procedures for the handling and management of money for the individuals. Such policies and procedures must provide for:

(a) Safeguarding the funds for an individual;

(b) Individuals receiving and spending their own money; and

(c) Taking into account the interests and preferences of the individual.

(8) COMPLAINTS.

(a) Complaints by or on behalf of individuals must be addressed in accordance with OAR 411-318-0015.

(b) The agency must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon entry and request and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(9) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 409.050
Hist.: SPD 12-2011, f. & cert. ef. 7-1-11; SPD 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 1-2012, f. & cert. ef. 1-6-12; APD 24-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 42-2014, f. 12-26-14, cert. ef. 12-28-14; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-370-0010
Definitions

(1) "Administrator" means the director of the Department of Human Services, or the designee of the director.

(2) "Appropriate Service" means services that are required by a recipient's approved individual service or support plan that are:

(a) Consistent with the recipient's identified needs, goals, and desired outcomes;

(b) Appropriate with regard to standards of generally recognized practice, evidence based practice, and professional standards of service as effective;

(c) Not solely for the convenience of a provider of the service;

(d) The most cost effective of the alternative services that may be effectively provided to a recipient; and

(e) Coordinated with the recipient's local community developmental disability program.

(3) "Authorization" means either service or payment authorization for specified covered services given prior to services being rendered by Department staff, or the Department's designee including community developmental disability programs.

(4) "Benefit Package" means the array and type of services, as described by program-specific rules, for which the recipient is eligible.

(5) "Billing Provider" means an individual, agent, business, corporation, or other entity who, in connection with submission of claims to the Department, receives or directs payment from the Department on behalf of a performing provider and has been delegated the authority to obligate or act on behalf of the performing provider.

(6) "Claim" means a bill for services, a line item of a service, or all services for one recipient within a specified billing period. Claims include a bill submission, an invoice, or an encounter associated with requesting payment whether submitted on paper or electronically. Claim also includes any other methodology for requesting payment or as verification of an expenditure of an advanced payment that may be established in contract, provider enrollment agreement, or program-specific rules.

(7) "Client Process Monitoring System (CPMS)" means the Department's information system that tracks and documents service delivery of claims funded by the Department.

(8) "Community Developmental Disability Program (CDDP)" as defined in OAR 411-320-0020.

(9) "Community Services Programs" are services provided for recipients under the following program names, service element numbers, or descriptions:

(a) Nursing facility specialized services (DD45) as described in OAR chapter 411, division 070.

(b) Residential facilities (DD50) as described in OAR chapter 411, division 325.

(c) Supported living services (DD51) as described in OAR chapter 411, division 328.

(d) Transportation services (DD 53) as described in the applicable service element standards and procedures.

(e) Employment services (DD54) as described in OAR chapter 411, division 345.

(f) Rent subsidies (DD 56) as described in the applicable service element standards and procedures.

(g) Developmental disabilities special projects (DD 57) as described in the applicable service element standards and procedures.

(h) Children's residential facilities (DD142) as described in OAR chapter 411, division 325.

(i) Supports and services described in OAR 411-340-0130 and OAR 411-330-0110.

(j) Room and board (DD 156) as described in the applicable service element standards and procedures.

(10) "Covered Services" mean appropriate services that are funded by the legislature and applicable Department rules describing the benefit packages of community services programs provided to eligible recipients under service element standards and procedures, program-specific requirements, provider enrollment agreements, or contracts by providers required to enroll with the Department under these rules.

(11) "Date of Service" means the date the recipient receives community services program services, unless otherwise specified in the appropriate program-specific rules.

(12) "Department" means the Department of Human Services. For the purpose of these rules, Department also includes its role as a delegated designee of the Oregon Health Authority (OHA) in carrying out the OHA responsibilities as the designated single Medicaid state agency.

(13) "Express Payment and Reporting System (eXPRS)" means the Department's information system for managing the disbursement and tracking of Department funding for certain developmental disability programs.

(14) "False Claim" means a claim or encounter that a provider knowingly submits or causes to be submitted that contains inaccurate or misleading information, and that information would result, or has resulted, in an overpayment or other improper payment.

(15) "Fraud" means an intentional deception or misrepresentation made by a recipient or provider with the knowledge that the deception may result in some unauthorized benefit to himself or herself, or some other recipient or provider. Fraud includes any act that constitutes fraud or false claim under applicable federal or state law.

(16) "Medicaid" means a federal and state funded program established by Title XIX of the Social Security Act, as amended, and administered in Oregon by the Department.

(17) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an enrolled provider once enrollment of that provider is completed as described in these rules.

(18) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in these rules. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(19) "Medicaid Fraud Control Unit (MFCU)" means the unit of the Oregon Department of Justice that investigates and prosecutes billing fraud committed by Medicaid providers. MFCU also may investigate and prosecute physical, sexual, or financial abuse and neglect of residents who reside in Medicaid-funded facilities.

(20) "Medicaid Management Information System (MMIS)" means the automated claims processing and information retrieval system for handling all Medicaid transactions. The objectives of MMIS include verifying provider enrollment and client eligibility, managing health care provider claims and benefit package maintenance, and addressing a variety of Medicaid business needs.

(21) "Medicare" means the federal health insurance program for the aged and disabled administered by the Centers for Medicare and Medicaid Services under Title XVIII of the Social Security Act.

(22) "Provider" or "Performing Provider" means an individual, agency, corporate entity, or other organization that provides community services program services that is enrolled with the Department in accordance with these rules to seek payment from the Department.

(23) "Quality Improvement" means the effort to improve the level of performance of key processes, practices, or outcomes in service provision. A quality improvement program measures the level of current performance of the processes and practices, finds ways to improve the performance or outcomes, and implements new and better methods for the processes or practices. Quality improvement includes the goals of quality assurance, quality control, quality planning, and quality management.

(24) "Recipient" means an individual found eligible by the community developmental disability program and the Department to receive community services program services for individuals with developmental disabilities under OAR chapter 411, division 320.

(25) "Service Element Standards and Procedures" means the standard for a particular service element number that further describes the applicable service and details the purpose, performance requirements, special reporting requirements, and applicable rules to adhere to when providing that particular service element.

(26) "SFMA" means the Oregon Statewide Financial Management Services.

(27) "Suspension" means a sanction prohibiting a provider's participation in the Department's community services programs by deactivation of the assigned provider number for a specified period of time or until the occurrence of a specified event.

(28) "These Rules" mean the rules in OAR chapter 411, division 370.

(29) "Third Party Resource (TPR)" means a service or financial resource that, by law, is available and applicable to pay for covered services for community services programs.

(30) "United States Department of Health & Human Services (USDHHS)" means the Cabinet department of the United States government with the goal of protecting the health of all Americans and providing essential human services.

Stat. Auth.: ORS 409.050, 410.070, 411.060 & 430.640
Stats. Implemented: ORS 427.005, 427.007, 430.215, 430.610 to 430.695 & 443.400 to 443.455
Hist.: SPD 16-2011, f. & cert. ef. 7-1-11; APD 35-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Community Developmental Disability Programs (CDDPs)
Adm. Order No.: APD 36-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-320-0020, 411-320-0040, 411-320-0060, 411-320-0080, 411-320-0090, 411-320-0110, 411-320-0120
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules for Community Developmental Disability Programs (CDDPs) in OAR chapter 411, division 320 to:

Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

Implement Senate Bill 659 by prescribing a process for CDDPs to follow when a child who is not a resident of Oregon seeks services while visiting a parent, who is a resident of Oregon, for six weeks of the year or more;

Incorporate guidelines for conflict free case management to prohibit individuals from receiving case management services from an entity that is affiliated with other direct service providers;

Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;

Implement Senate Bill 97 by prescribing a process for CDDPs to follow when a previously eligible child of a military service member returns to the state after a temporary absence due to the military obligation of the parent;

Specify that individuals must meet the full criteria for the diagnosis of a developmental disability. Individuals with a "provisional," "partial," and "rule-out" diagnosis do not meet the full criteria;

Clarify that eligibility determinations for children less than 7 years of age must be based on an early childhood assessment if the assessment is within one year of intake; and

Implement changes associated with the Fair Labor Standards Act by limiting payment to no more than 50 hours in a work week per personal support worker per individual.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-320-0020

Definitions

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 320:

(1) "ABAS" means Adaptive Behavior Assessment System.

(2) "ABES" means Adaptive Behavior Evaluation Scale.

(3) "Adaptive Behavior" means the degree to which an individual meets the standards of personal independence and social responsibility expected for age and culture group. Other terms used to describe adaptive behavior include, but are not limited to, adaptive impairment, ability to function, daily living skills, and adaptive functioning. Adaptive behaviors are everyday living skills including, but not limited to, walking (mobility), talking (communication), getting dressed or toileting (self-care), going to school or work (community use), and making choices (self-direction).

(a) Adaptive behavior is measured by normed, standardized tests administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities. Adaptive behavior assessments include:

(A) Adaptive Behavior Assessment System (ABAS);

(B) Adaptive Behavior Evaluation Scale (ABES);

(C) Vineland Adaptive Behavior Scale (VABS);

(D) Scales of Independent Behavior-Revised (SIB-R); or

(E) Other assessments that are designed to measure adaptive behavior standardized and normed to a population consistent with the population of the applicant or approved by the Department of Human Services, Office of Developmental Disability Services (ODDS).

(b) DOMAIN SCORES. Adaptive behavior domain scores are identified on the following assessments of adaptive behavior:

(A) The ABAS and ABES are:

(i) Conceptual;

(ii) Practical; and

(iii) Social.

(B) The VABS are:

(i) Socialization;

(ii) Daily living skills;

(iii) Communication; and

(iv) Motor.

(C) The SIB-R are:

(i) Personal living skills;

(ii) Social interaction and communication skills;

(iii) Community living skills; and

(iv) Motor skills.

(c) COMPOSITE SCORE. The adaptive behavior composite score is the overall score which results from summing two or more domain scores on a given adaptive behavior assessment.

(d) SKILLED AREAS. Skilled areas are a particular assessed score. The skilled areas on the ABAS or ABES are the only skilled areas used for the purposes of OAR 411-320-0080 and include scaled scores in:

(A) Communication;

(B) Functional academics;

(C) Self-direction;

(D) Leisure;

(E) Social;

(F) Community use;

(G) Home and school living;

(H) Self-care;

(I) Health and safety; and

(J) Work.

(e) "Significant impairment" in adaptive behavior means:

(A) A composite score of at least two standard deviations below the norm;

(B) Two or more domain scores as identified in subsection (b) of this section are at least two standard deviations below the norm; or

(C) Two or more skilled areas as identified in subsection (d) of this section are at least two standard deviations below the norm.

(4) "Annual Review" means the annual review of the level of care determination.

(5) "CDDP" means "Community Developmental Disability Program". A CDDP is the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A CDDP operates in a specific geographic service area of the state under a contract with the Department, Local Mental Health Authority, or other entity as contracted by the Department.

(6) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities provided by a person that meets the qualifications in OAR 411-320-0030(4)(c) about:

(a) Case management;

(b) Service options;

(c) Service setting options; and

(d) Provider types.

(7) "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.

(8) "Completed Application" means an application required by the Department that:

(a) Is filled out completely, signed, and dated. An applicant who is unable to sign may sign with a mark, witnessed by another person; and

(b) Contains documentation required to make an eligibility determination as outlined in OAR 411-320-0080(1)(a)(B).

(9) "Composite Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(10) "County of Origin" means:

(a) For an adult, the county of residence for the adult; and

(b) For a child, the county where the jurisdiction of guardianship exists.

(11) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(12) "Crisis Diversion Services" mean short-term services provided for up to 90 days or on a one-time basis, directly related to resolving a crisis, and provided to, or on behalf of, an individual eligible to receive crisis supports.

(13) "Crisis Plan" means the document generated by the CDDP or Regional Crisis Diversion Program that justifies and authorizes crisis supports and expenditures for an individual receiving crisis diversion services provided under these rules.

(14) "Current Documentation" means documentation relating to the intellectual or developmental disability of an individual in regards to the functioning of the individual within the last three years. Current documentation may include, but is not limited to, an ISP, Annual Plan, Behavior Support Plan, required assessments, educational records, medical assessments related to the intellectual or developmental disability of an individual, psychological evaluations, and assessments of adaptive behavior.

(15) "Department" means the Department of Human Services.

(16) "Developmental Disability (DD)" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080;

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD); and

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(17) "Director" means the Director of the Department of Human Services, or the designee of the Director.

(18) "Domain Score" means the score identified by an assessment of adaptive behavior as described in the definition for "adaptive behavior".

(19) "Eligibility Determination" means a decision by the CDDP or by the Department regarding the eligibility of a person for developmental disability services pursuant to OAR 411-320-0080 and is either a decision that a person is eligible or ineligible for developmental disability services.

(20) "Eligibility Specialist" means an employee of the CDDP or other agency that contracts with the county or Department to determine eligibility for developmental disability services.

(21) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(22) "History" means, for the purposes of an eligibility determination as defined in this rule, necessary evidence of an intellectual disability prior to 18 years of age or an other developmental disability prior to 22 years of age, including previous assessments and medical evaluations prior to the date of eligibility determination for developmental disability services.

(23) "Home" means the primary residence of an individual that is not under contract with the Department to provide services to the individual as a certified foster home or licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(a) For a child, a home may include a foster home funded by Child Welfare.

(b) A foster home funded by Child Welfare is considered a provider owned, controlled, or operated residential setting.

(24) "IEP" means "Individualized Education Program".

(25) "Imminent Risk" means:

(a) An adult who is in crisis and shall be civilly court-committed to the Department under ORS 427.215 to 427.306 within 60 days without the use of crisis diversion services; or

(b) A child who is in crisis and shall require out-of-home placement within 60 days without the use of crisis diversion services.

(26) "Incident of Ownership" means an ownership interest, an indirect ownership interest, or a combination of direct and indirect ownership interest.

(27) "Indirect Ownership Interest" means an ownership interest in an entity that has an ownership interest in another entity. Indirect ownership interest includes an ownership interest in an entity that has an indirect ownership interest in another entity.

(28) "Informal Adaptive Behavior Assessment" means:

(a) Observations of impairment in adaptive behavior recorded in the progress notes for an individual by a services coordinator or a trained eligibility specialist with at least two years of experience working with individuals with intellectual or developmental disabilities; or

(b) A standardized measurement of adaptive behavior, such as a Vineland Adaptive Behavior Scale (VABS) or Adaptive Behavior Assessment System (ABAS), that is administered and scored by a social worker or other professional with a graduate degree and specific training and experience in individual assessment, administration, and test interpretation of adaptive behavior scales for individuals with intellectual or developmental disabilities.

(29) "Intake" means the activity of completing the DD Intake Form (SDS 0552) and necessary releases of information prior to the submission of a completed application to the CDDP.

(30) "Intellectual Disability (ID)" means significantly subaverage general intellectual functioning defined as full scale intelligence quotients (IQs) 70 and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(31) "Intellectual Functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose of measuring intelligence. For purposes of making eligibility determinations, intelligence tests do not include brief intelligence measurements.

(32) "IQ" means intelligence quotient.

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

(34) "Level of Care" means an individual meets the following institutional level of care for an intermediate care facility for individuals with intellectual or developmental disabilities:

(a) The individual has an intellectual disability or a developmental disability as defined in this rule and meets the eligibility criteria in OAR 411-320-0080 for developmental disability services; and

(b) The individual has a significant impairment in one or more areas of adaptive behavior as determined in OAR 411-320-0080.

(35) "Licensed Medical Practitioner" means any of the following licensed professionals:

(a) Medical Doctor (MD);

(b) Doctor of Osteopathic Medicine (DO);

(c) Licensed Clinical Psychologist (Ph.D or Psy.D);

(d) Nurse Practitioner (NP);

(e) Physician Assistant (PA); or

(f) Naturopathic Doctor (ND).

(36) "LMHA" means "Local Mental Health Authority".

(37) "Management Entity" means the CDDP or private corporation that operates the Regional Crisis Diversion Program, including acting as the fiscal agent for regional crisis diversion funds and resources.

(38) "Military Service" means service in the Armed Forces of the United States, as defined in ORS 341.496.

(39) "Motor Impairment" means impairment in the ability to move caused by trauma, disease, or any condition affecting the muscular-skeletal system, spinal cord, or sensory or motor nerves.

(40) "OAAPI" means the Department of Human Services, Office of Adult Abuse Prevention and Investigation.

(41) "OHP" means Oregon Health Plan.

(42) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(43) "OIS" means "Oregon Intervention System".

(44) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(45) "Owner" means a person with an ownership interest.

(46) "Ownership Interest" means the possession of equity in the capital, stock, or profits of an entity.

(47) "Qualified Professional" means, for the purposes of OAR 411-320-0080, any of the following licensed professionals trained to make a diagnosis of a specific intellectual or developmental disability:

(a) Licensed clinical psychologist (Ph.D., Psy.D.);

(b) Medical doctor (MD);

(c) Doctor of Osteopathic Medicine (DO); or

(d) Nurse Practitioner (NP).

(48) "Quality Management Strategy" means the Department Quality Assurance Plan for meeting the CMS waiver quality assurances as required and defined by 42 CFR 441.301 and 441.302 and State Plan K option quality assurances as required and defined by 42 CFR 441.585.

(49) "Region" means a group of Oregon counties defined by the Department that have a designated management entity to coordinate regional crisis and backup services and be the recipient and administrator of funds for those services.

(50) "Regional Crisis Diversion Program" means the regional coordination of the management of crisis diversion services for a group of designated counties that is responsible for the management of the following developmental disability services:

(a) Crisis intervention services;

(b) Evaluation of requests for new or enhanced services for certain groups of individuals eligible for developmental disability services; and

(c) Other developmental disability services that the counties comprising the region agree are delivered more effectively or automatically on a regional basis.

(51) "Resident" means:

(a) An individual that meets the residency requirements in OAR 461-120-0010; or

(b) A person that is absent due to military obligation, if he or she intends to return to Oregon, and Oregon remains his or her principal establishment, home of record, or permanent home during the absence.

(52) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(53) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(54) "Service Member" means a person who is in the military service or who has separated from military service in the previous 18 months through retirement, discharge, or other separation.

(55) "Service Record" means the combined information related to an individual in accordance with OAR 411-320-0070.

(56) "Services Coordinator" means an employee of a CDDP, the Department, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is the person-centered plan coordinator for the individual as defined in the Community First Choice state plan.

(57) "SIB-R" means Scales of Independent Behavior-Revised.

(58) "Significantly Subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(59) "Skilled Areas" means a particular assessed score as described in the definition for "adaptive behavior".

(60) "SSI" means Supplemental Security Income.

(61) "These Rules" mean the rules in OAR chapter 411, division 320.

(62) "U.S. Citizen" means an individual that meets the criteria in OAR 461-120-0110. A U.S. Citizen includes:

(a) An individual born in the United States, Puerto Rico, Guam, Northern Mariana Islands, Virgin Islands, American Samoa, or Swains Island;

(b) A foreign-born child less than 18 years of age residing in the United States with his or her birth or adoptive parents, at least one of whom is a U.S. citizen by birth or naturalization;

(c) An individual granted citizenship status by Immigration and Naturalization Services (INS);

(d) A qualified non-citizen as described in OAR 461-120-0125;

(e) A citizen of Puerto Rico, Guam, Virgin Islands, or Saipan, Tinian, Rota, or Pagan of the Northern Mariana Islands;

(f) A national from American Samoa or Swains Island; or

(g) An alien who is a victim of a severe form of trafficking in persons under section 107(b)(a)(A) of the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(63) "VABS" means Vineland Adaptive Behavior Scale.

(64) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-320-0200.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0040
Program Responsibilities

The CDDP must ensure the provision of the following services and system supports.

(1) ACCESS TO SERVICES.

(a) In accordance with the Civil Rights Act of 1964 (codified as 42 USC 2000d et seq.), any person may not be denied community developmental disability services on the basis of race, color, creed, gender, national origin, or duration of residence. CDDP contractors must comply with Section 504 of the Rehabilitation Act of 1973 (codified as 29 USC 794 and as implemented by 45 CFR Section 84.4) that states in part, "No qualified person must, on the basis of handicap, be excluded from participation in, be denied benefits of, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance".

(b) Any individual determined eligible for developmental disability services by the CDDP must also be eligible for other community developmental disability services unless entry to the service is subject to diagnostic or developmental disability category or age restrictions based on predetermined criteria or contract limitations.

(2) COORDINATION OF SERVICES.

(a) COMMUNITY SERVICES. Planning and implementation of services for individuals served by the CDDP must be coordinated between components of the CDDP, other local and state human service agencies, and any other providers as appropriate for the needs of the individual.

(b) NON-RESIDENT CHILDREN.

(A) The CDDP must compile and maintain a list of local providers who are qualified to provide home and community-based services in the service area of a child who is not a resident of Oregon and not eligible for developmental disability services. The CDDP must assist a parent in obtaining home and community-based services for the child if:

(i) The parent resides in Oregon;

(ii) The parent has a child who does not reside in Oregon but who visits the parent who resides in Oregon for at least six weeks each year; and

(iii) The child qualifies for home and community-based services in his or her state of residence.

(B) The CDDP must:

(i) Provide the parent with a list of local providers;

(ii) Contact the state Medicaid agency in the state of residence for the child to facilitate payment for the home and community-based services;

(iii) Assist the parent in providing any documentation required by the state of residence for the child; and

(iv) Notify the Department of the request for services.

(3) CASE MANAGEMENT SERVICES. The CDDP must provide case management services to individuals who are eligible for and desire services.

(a) The CDDP may provide case management to individuals who are waiting for a determination of eligibility and reside in the county at the time they apply.

(b) Case management may be provided directly by the CDDP or under a contract between the CDDP and a provider of case management services.

(c) If an individual is receiving services in more than one county, the county of origin must be responsible for case management services unless otherwise negotiated and documented in writing with the mutually agreed upon conditions.

(d) Case management services require an impartial point of view to fulfill the necessary functions of planning, procuring, monitoring, and protective services. Except as allowed under subsection (e) of this section, the case management program must be provided by an entity that is unaffiliated with other direct service providers for individuals. Entities are unaffiliated when neither has an incident of ownership in the other.

(A) The CDDP may provide case management and subcontract for delivery of other direct services through one or more unaffiliated organizations; or

(B) The CDDP may subcontract for delivery of case management through an unaffiliated organization and directly provide the other services or further subcontract these other direct services through unaffiliated organizations that are not already under contract to provide case management services.

(e) The CDDP or other organization that provides case management services may also provide other direct services under one or more of the following circumstances:

(A) The services were authorized by the CDDP prior to December 31, 2015.

(B) The CDDP coordinates the delivery of family support services for children less than 18 years of age living in the family home or comprehensive in-home supports for adults.

(C) The CDDP determines that an organization providing direct services is no longer able to continue providing services or the organization providing direct services is no longer willing or able to continue providing services and no other organization is able or willing to continue operations on 30 days' notice.

(D) In order to develop new or expanded direct services for geographic service areas or populations because other local organizations are unwilling or unable to provide appropriate services.

(E) The direct services and case management services provided by affiliated entities do not continue beyond June 30, 2016.

(f) If the CDDP intends to perform direct services other than family support services or comprehensive in-home support, a variance must be prior authorized by the Department.

(A) It is assumed that the CDDP provides family support services or comprehensive in-home supports described in subsection (e)(B) of this section. If the CDDP does not provide one or both of these services, the CDDP must submit a written variance request to the Department for prior approval that describes how the services are going to be provided.

(B) If the circumstances described in subsection (e)(C) of this rule exist, the CDDP must propose a plan to the Department for review, including action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(C) If the CDDP providing case management services delivers other services as allowed under subsection (e)(D) of this section, the CDDP must submit a written variance request to the Department for prior approval that

includes the action to assume responsibility for case management services and the mechanism for addressing potential conflict of interest.

(g) If the CDDP providing case management services delivers other services as allowed under subsections (e)(C) and (e)(D) of this section after June 30, 2016, the CDDP must submit a written variance request to the Department for prior approval that describes how conflict of roles are to be managed within the CDDP.

(h) If the CDDP also operates a Brokerage, the CDDP must submit a written variance request to the Department for prior approval that includes the mechanism for addressing potential conflict of interest.

(4) FAMILY SUPPORT SERVICES. The CDDP must ensure the availability of a program for family support services in accordance with OAR chapter 411, division 305.

(5) ABUSE AND PROTECTIVE SERVICES.

(a) The CDDP must assure that abuse investigations for adults with intellectual or developmental disabilities are appropriately reported and conducted by trained staff according to statute and administrative rules. When there is reason to believe a crime has been committed, the CDDP must report to law enforcement.

(b) The CDDP must report any suspected or observed abuse of a child directly to the Department or local law enforcement.

(6) FOSTER HOMES. The CDDP must recruit applicants to operate foster homes and maintain forms and procedures necessary to license or certify foster homes. The CDDP must maintain copies of the following records:

(a) Initial and renewal applications for a foster home;

(b) All inspection reports completed by the CDDP, including required annual renewal inspection and any other inspections;

(c) General information about the foster home;

(d) Documentation of references, classification information, credit check (if necessary), background check, and training for providers and substitute caregivers;

(e) Documentation of foster care exams for adult foster home providers;

(f) Correspondence;

(g) Any meeting notes;

(h) Financial records;

(i) Annual agreement or contract;

(j) Legal notices and final orders for rule violations, conditions, denials, or revocations (if any); and

(k) Copies of the annual license or certificate for the foster home.

(7) CONTRACT MONITORING. The CDDP must monitor all community developmental disability subcontractors to assure that:

(a) Services are provided as specified in the contract between the CDDP and the Department; and

(b) Services are in compliance with these rules and other applicable Department rules.

(8) INFORMATION AND REFERRAL. The CDDP must provide information and referral services to individuals, families of individuals, and interested others.

(9) AGENCY COORDINATION. The CDDP must assure coordination with other agencies to develop and manage resources within the county or region to meet the needs of individuals.

(10) SERVICE DELIVERY COMPLAINTS. The CDDP must implement procedures to address individual or family complaints regarding service delivery that have not been resolved using the complaint procedures (informal or formal) of the CDDP subcontractor. The complaint procedures must be consistent with the requirements in OAR 411-318-0015.

(11) COMPREHENSIVE IN-HOME SUPPORTS. The CDDP must ensure the availability of comprehensive in-home supports in accordance with OAR chapter 411, division 330.

(12) EMERGENCY PLANNING. The CDDP must ensure the availability of a written emergency procedure and disaster plan for meeting all civil or weather emergencies and disasters. The emergency procedure and disaster plan must be immediately available to the CDDP manager and employees. The emergency procedure and disaster plan must:

(a) Be integrated with the county emergency preparedness plan, where appropriate;

(b) Include provisions on coordination with all developmental disability service provider agencies in the county and any Department offices, as appropriate;

(c) Include provisions for identifying individuals most vulnerable; and

(d) Include any plans for health and safety checks, emergency assistance, and any other plans that are specific to the type of emergency.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0060
Individual Rights

(1) The CDDP must have and implement written policies and procedures that protect the individual rights described in OAR 411-318-0010.

(2) Upon entry into case management and upon request and annually thereafter, the individual rights described in OAR 411-318-0010 must be provided to an individual and, as applicable, the legal or designated representative of the individual.

(3) The individual rights described in OAR 411-318-0010 apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0080
Application and Eligibility Determination

(1) APPLICATION.

(a) To apply for developmental disability services:

(A) An applicant or the legal representative of the applicant must submit a completed application as defined in OAR 411-320-0020 to the CDDP in the county of origin as defined in OAR 411-320-0020;

(B) The CDDP must receive all documentation required to make an eligibility determination as defined in OAR 411-320-0020. Documentation includes, but is not limited to:

(i) School psychological or comprehensive evaluations since entry into school;

(ii) Medical assessments related to a disability, mental health condition, or physical impairment;

(iii) Psychological evaluations or comprehensive evaluations through private health insurance or other programs;

(iv) Neurological evaluations completed through any entity;

(v) Records from all residential or psychiatric facilities;

(vi) Records completed through application process for other governmental benefits; and

(vii) Administrative medical examinations and reports, as defined in OAR 410-120-0000, determined necessary and authorized by the eligibility specialist.

(C) The applicant or the legal representative of the applicant must provide documentation of U.S. citizenship as defined in OAR 411-320-0020; and

(D) The applicant must reside in Oregon or if the applicant is less than 18 years of age, the applicant and the legal representative of the applicant must reside in Oregon.

(b) The CDDP may stop the intake process if the documents listed in subsection (a)(B) of this section are not submitted within 90 days of the date that the CDDP received the signed and dated Intake Form (SDS 0552). If the CDDP stops the intake process, written notice of the information needed to determine eligibility or a withdrawal letter must be sent to the person identified on the Intake Form (SDS 0552) as the person seeking services and the legal representative of the person seeking services.

(c) The CDDP must consider an application if the criteria in subsection (a) of this section are met. If the criteria in subsection (a) of this section are not met, the CDDP shall deny the application by sending a Notification of Planned Action (SDS 0947).

(d) Upon receipt of a completed application, the CDDP must provide an applicant the Department required Notification of Rights (form SDS 0948) within 10 business days.

(e) A new application may not be required if the file for an individual has been closed for less than 12 months following a closure, denial, or termination and the individual meets all of the criteria in subsection (a) of this section.

(f) The CDDP must identify whether an applicant receives any income.

(A) The CDDP must refer all applicants not currently receiving an OHP Plus benefit package to the local Medicaid office for OHP Plus application and benefit determination.

(B) The CDDP must refer an applicant less than 18 years of age to Social Security if the CDDP identifies that the applicant may qualify for Social Security benefits.

(g) REINSTATEMENT OF ELIGIBILITY FOR CHILDREN OF SERVICE MEMBERS.

(A) WAIVER OF APPLICATION. A previously eligible child of a service member, who temporarily left Oregon due to the military service obligation of the parent outside of Oregon, does not need to submit a new application for developmental disability services upon return. Upon return to Oregon and a request to a CDDP in the county of origin, the CDDP in the county of origin shall assign a services coordinator within 10 days of the request for services.

(B) COORDINATION OF SERVICES. The services coordinator shall assist the individual in establishing eligibility for OSIPM or OHP Plus and meet face-to-face with the child and parent or guardian, within 45 days of the request for services, to provide choice advising and to review the rights of the child to a fair hearing and the service planning steps in OAR 411-320-0120.

(C) REDETERMINATION. The CDDP must follow sections (5) and (6) of this rule regarding a redetermination of eligibility. As with all redeterminations, prior to a termination of developmental disability services, the CDDP must send a notice of redetermination, afford the parent or guardian the opportunity to provide documentation that supports eligibility, and schedule a diagnostic evaluation for the child, if appropriate. Upon the reentry of the child to services, the CDDP in the county of origin shall initiate a redetermination if:

(i) The criteria used to determine eligibility for developmental disabilities services changed during the absence of the child;

(ii) There are new records related to the eligibility criteria for developmental disability services, including medical, psychological, or educational records related to an intellectual or developmental disability; or

(iii) The documents used to establish the original eligibility of the child are more than three-years-old, and medical, psychological, or educational records created during the absence of the child do not support the eligibility of the child for developmental disabilities services.

(2) ELIGIBILITY SPECIALIST. Each CDDP must identify at least one qualified eligibility specialist to act as a designee of the Department for purposes of making an eligibility determination. The eligibility specialist must meet performance qualifications and training expectations for determining developmental disability eligibility according to OAR 411-320-0030.

(3) INTELLECTUAL DISABILITY. A history of an intellectual disability as defined in OAR 411-320-0020 and significant impairment in adaptive behavior as described in OAR 411-320-0020 must be evident prior to the 18th birthday of an individual for the individual to be eligible for developmental disability services.

(a) Diagnosing an intellectual disability is done by measuring intellectual functioning and adaptive behavior as assessed by standardized tests administered by a licensed clinical or school psychologist with specific training and experience in test interpretation of intellectual functioning and adaptive behavior scales for individuals with intellectual disabilities.

(A) For individuals who have consistent and valid Full Scale IQ results of 65 and less, no assessment of adaptive behavior may be needed if current documentation supports eligibility.

(B) For individuals who have a valid Full Scale IQ or equivalent composite score results of 66-75, verification of an intellectual disability requires an assessment of adaptive behavior.

(C) A General Ability Index result must be used in place of a Full Scale IQ score to determine eligibility if a licensed clinical or school psychologist determines that the General Ability Index is a more valid measure of overall intelligence when compared to the Full Scale IQ score.

(D) A Specific Index IQ result must be used in place of a Full Scale IQ score to determine eligibility if a licensed clinical or school psychologist determines that the Specific Index IQ is a more valid measure of overall intelligence when compared to the Full Scale IQ score.

(E) If an individual is not able to participate in an intelligence test due to intellectual disability, a statement of intellectual disability must be documented by a qualified professional and an adaptive behavior assessment demonstrating a composite score of at least two standard deviations below the mean must be completed.

(b) Impairment of adaptive behavior must be directly related to an intellectual disability and cannot be primarily attributed to other conditions, including but not limited to a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition and impairment must continue, or be expected to continue, indefinitely.

(4) OTHER DEVELOPMENTAL DISABILITY. A history of an other developmental disability as defined in OAR 411-320-0020 and significant impairment in adaptive behavior as described in OAR 411-320-0020 must be evident prior to the 22nd birthday of an individual for the individual to be eligible for developmental disability services.

(a) Diagnosing an other developmental disability requires a medical or clinical diagnosis of a developmental disability by a qualified professional and significant impairment in adaptive behavior as assessed by standardized tests administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales. The individual must meet the full criteria for the diagnosis of the developmental disability. Individuals with a "provisional", "partial", and "rule-out" diagnosis do not meet the full criteria.

(A) Other developmental disabilities include autism, cerebral palsy, epilepsy, or other neurological disabling conditions that originate in and directly affect the brain.

(B) The individual must require training and support similar to that required by an individual with an intellectual disability, which means the individual has a composite or domain score that is at least two standard deviations below the mean, as measured on a standardized assessment of adaptive behavior administered by a licensed clinical or school psychologist, or a doctor of medicine or doctor of osteopathic medicine with specific training and experience in test interpretation of adaptive behavior scales.

(b) Significant impairment of adaptive behavior must be directly related to an other developmental disability and cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(c) The condition and impairment must continue, or be expected to continue, indefinitely.

(5) ELIGIBILITY FOR CHILDREN LESS THAN SEVEN YEARS OF AGE.

(a) Eligibility determinations for children less than seven years of age must be based on documentation that is no more than one year old.

(A) The documentation must include:

(i) A valid standardized-and-normed early-childhood assessment, completed by a professional with at least a master's degree and training to administer early childhood assessments, which demonstrates the functioning of the child is at least two standard deviations below the mean in two or more areas of the adaptive behavior described in paragraph (B) of this subsection; or

(ii) When a standardized-and-normed early-childhood assessment is not available or not completed within one year of the date the CDDP receives the intake form, a medical statement by a licensed medical practitioner that confirms the presence of an other developmental disability that: is a neurological condition or syndrome; originates in and directly affects the brain; and causes or is likely to cause impairment in at least two or more areas of the adaptive behavior described in paragraph (B) of this subsection.

(B) Areas of adaptive behavior include:

(i) Adaptive, self-care, or self-direction;

(ii) Receptive and expressive language or communication;

(iii) Learning or cognition;

(iv) Gross and fine motor; or

(v) Social.

(C) The impairment, condition, or syndrome cannot be primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or ADHD.

(D) The condition and impairment must continue, or be expected to continue, indefinitely.

(b) REDETERMINATION OF ELIGIBILITY.

(A) Eligibility for children less than seven years of age is always provisional.

(i) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than seven years of age using a standardized and normed early childhood assessment as described in subsection (b)(A)(i) of this section must be completed no later than the child's ninth year birthdate.

(ii) Redetermination for school aged eligibility for a child who was originally determined eligible as a child less than seven years of age using a medical statement by a licensed medical practitioner as described in subsection (b)(A)(ii) of this section must be completed no later than the child's seventh year birthdate.

(B) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(C) The CDDP must notify a child and the legal representative of the child any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(6) ELIGIBILITY FOR SCHOOL AGED CHILDREN. Eligibility for school aged children as defined in OAR 411-320-0020 is always provisional.

(a) Eligibility determinations for school aged children must be completed on children who are at least five years of age and who have had school aged testing completed.

(b) Eligibility determinations for school aged children may be completed:

(A) Up to age 18 for school aged children who are provisionally eligible based on a condition of an intellectual disability; and

(B) Up to age 22 for school aged children who are provisionally eligible based on a condition of an other developmental disability.

(c) Eligibility determinations for school aged children must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (3) of this rule; or

(B) A diagnosis and documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (4) of this rule.

(d) Eligibility determinations for school aged children must be based on documentation that is no more than three years old.

(e) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify a school aged child and the legal representative of the child any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(f) REDETERMINATION OF SCHOOL AGED CHILDREN FOR ADULT ELIGIBLITY.

(A) Redetermination of school aged children for adult eligibility must be completed:

(i) Between the ages of 16 and 18 if school aged eligibility was determined based on an intellectual disability as described in section (3) of this rule; or

(ii) Between the ages of 20 and 22 if school aged eligibility was determined based on an other developmental disability as described in section (4) of this rule.

(B) The documentation of an intellectual disability or an other developmental disability must include for individuals less than 22 years of age, information no more than three years old.

(C) If school aged eligibility was determined based on an intellectual disability as described in section (3) of this rule, an intellectual functioning assessment may be used to determine adult eligibility. An adult intellectual functioning assessment completed within the last three years is not needed if the school aged child has:

(i) More than one completed intellectual functioning assessment and all full scale IQ scores are 65 or less as described in section (3)(a)(A) of this rule;

(ii) Impairment in adaptive behavior as identified in section (3) of this rule; and

(iii) Current documentation that supports eligibility.

(D) If school aged eligibility was determined based on an other developmental disability as described in section (4) of this rule, the following criteria must be met:

(i) A current medical or clinical diagnosis of an other developmental disability is required unless all of the following are met:

(I) Documentation of an other developmental disability by a qualified professional as described in section (4) of this rule;

(II) Impairment in adaptive behavior that continues to be directly related to the other developmental disability;

(III) Current documentation that continues to support eligibility; and

(IV) No other medical or mental or emotional disorder.

(ii) If an individual has additional medical or mental or emotional disorders a new assessment may be required.

(iii) An informal adaptive behavior assessment as defined in OAR 411-320-0020 may be completed if all of the following apply:

(I) An assessment of adaptive behavior is required in order to redetermine eligibility;

(II) An assessment of adaptive behavior has already been completed by a licensed school or clinical psychologist; and

(III) The school aged child has obvious significant impairment in adaptive behavior.

(7) ELIGIBILITY FOR ADULTS.

(a) Eligibility for adults must include:

(A) Documentation of an intellectual disability and significant impairment in adaptive behavior as described in section (3) of this rule; or

(B) Documentation of an other developmental disability and significant impairment in adaptive behavior as described in section (4) of this rule.

(b) Documentation for an adult eligibility determination must include:

(A) Information no more than three years old for individuals less than 22 years of age; or

(B) Information obtained after the 17th birthday of an individual for individuals 22 years of age and older.

(c) INTELLECTUAL FUNCTIONING ASSESSMENT.

(A) An intellectual functioning assessment completed on or after the age of 16 may be used to determine adult eligibility.

(B) An adult Intellectual Functioning Assessment may not be needed if an individual has:

(i) More than one completed intellectual functioning assessment and all full scale IQ scores are 65 or less as described in section (3)(a)(A) of this rule; and

(ii) Significant impairment in adaptive behavior as identified in section (3) of this rule.

(C) An adult intellectual functioning assessment may not be needed if an individual has a diagnosis and documentation of an other developmental disability as described in section (4) of this rule.

(d) REDETERMINATION OF ELIGIBILITY.

(A) Any time there is evidence that contradicts an eligibility determination, the Department or the designee of the Department may redetermine eligibility or obtain additional information, including securing an additional evaluation for clarification purposes.

(B) The CDDP must notify an individual and if applicable the legal representative of the individual any time that a redetermination of eligibility is needed. Notification of the redetermination and the reason for the review of eligibility must be in writing and sent prior to the eligibility redetermination.

(C) In the event the eligibility of an adult requires a redetermination, the redetermination must be completed as described in subsections (a), (b), and (c) of this section.

(8) ABSENCE OF DATA IN DEVELOPMENTAL YEARS.

(a) In the absence of sufficient data during the developmental years, current data may be used if:

(A) There is no evidence of head trauma;

(B) There is no evidence or history of significant mental or emotional disorder; or

(C) There is no evidence or history of substance abuse.

(b) If there is evidence or a history of head trauma, significant mental or emotional disorder, or substance abuse, then a clinical impression by a qualified professional regarding how the functioning of the individual may be impacted by the identified condition must be obtained in order to determine if the significant impairment in adaptive behavior is directly related to a developmental disability and not primarily related to a head trauma, significant mental or emotional disorder, or substance abuse.

(9) SECURING EVALUATIONS. In the event that an eligibility specialist has exhausted all local resources to secure the necessary evaluations for an eligibility determination, the Department or the designee of the Department shall assist in obtaining additional testing if required to complete the eligibility determination.

(10) PROCESSING ELIGIBILITY DETERMINATIONS. The CDDP in the county of origin is responsible for making the eligibility determination.

(a) The CDDP must work in collaboration with the individual or the legal representative of the individual to gather historical records related to the intellectual or developmental disability of an individual during intake in order to complete an application for services.

(b) During intake, the CDDP must gather enough information and documentation in order to accept a completed application for developmental disability services within 90 days of the date of intake, except in the following circumstances:

(A) The CDDP is unable to obtain a complete application because the individual or the legal representative of the individual does not collaborate with the Eligibility Specialist or fails to execute an action necessary to obtain a completed application;

(B) There is an emergency beyond the control of the CDDP; or

(C) More time is needed to obtain additional records by the CDDP, the individual, or the legal representative of the individual.

(c) Upon receipt of the completed application, as defined in OAR 411-320-0020, the CDDP must make an eligibility determination unless the following applies and is documented in the progress notes for an individual:

(A) The individual or the legal representative of the individual voluntarily withdraws the application for the individual;

(B) The individual dies; or

(C) The individual cannot be located.

(d) The CDDP may not use the time frames established in subsection (b) of this section as:

(A) A waiting period before determining eligibility; or

(B) A reason for denying eligibility.

(11) NOTICE OF ELIGIBILITY DETERMINATION. The CDDP, within 10 days from the receipt of a completed application, must send or hand deliver a written notification (notice) of the eligibility determination. The notice must be on the following forms prescribed by the Department:

(a) The Notice of Eligibility Determination (form SDS 5103); or

(b) The Notification of Planned Action (form SDS 0947).

(12) REQUESTING A HEARING. An individual or the legal representative of an individual may request a hearing as described in OAR 411-318-0025 if the individual or the legal representative of the individual disagrees with the eligibility determination or redetermination made by the CDDP.

(13) TRANSFERABILITY OF ELIGIBILITY DETERMINATION. An eligibility determination made by one CDDP must be honored by another CDDP when an individual moves from one county to another.

(a) The receiving CDDP must notify the individual and if applicable the legal representative of the individual on forms prescribed by the Department that a transfer of services to a new CDDP has taken place within 10 days of the enrollment date identified on the Developmental Disability Enrollment Form (SDS 0337).

(b) The receiving CDDP must continue services for the individual as soon as it is determined that the individual is residing in the county of the receiving CDDP.

(c) The receiving CDDP must ensure verification of the eligibility of the individual for developmental disability services in the form of the following:

(A) Statement of an eligibility determination;

(B) Notification of eligibility determination; and

(C) Evaluations and assessments supporting eligibility.

(d) In the event that the items in subsection (c) of this section cannot be located, written documentation from the sending CDDP verifying eligibility and enrollment in developmental disability services may be used. Written verification may include documentation from the electronic payment system of the Department.

(e) If the receiving CDDP receives information that suggests the individual is not eligible for developmental disability services, the receiving CDDP may complete a redetermination. The CDDP that determined the individual was eligible for developmental disability services may be responsible for the services authorized on the basis of that eligibility determination.

(f) If an individual submits an application for developmental disability services and discloses that he or she has previously received developmental disability services in another CDDP and the termination of case management services as described in OAR 411-320-0100(3) occurred within the past 12 months, the eligibility determination from the other CDDP shall transfer as outlined in this section of the rule.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 6-2010(Temp), f. 6-29-10, cert. ef. 7-4-10 thru 12-31-10; SPD 28-2010, f. 12-29-10, cert. ef. 1-1-11; SPD 31-2011, f. 12-30-11, cert. ef. 1-1-12; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0090

Case Management Program Responsibilities

(1) AVAILABILITY. As required by these rules, the CDDP must assure the availability of a services coordinator to meet the service needs of an individual and any emergencies or crisis. The assignment of the services coordinator must be appropriately documented in the service record for an individual and the CDDP must accurately report enrollment in the Department payment and reporting systems.

(2) POLICIES AND PROCEDURES. The CDDP must adopt written procedures to assure that the delivery of services meet the standards in section (4) of this rule.

(a) The CDDP must have procedures for the ongoing involvement of individuals and their requested family member or other representative in the planning and review of consumer satisfaction with the delivery of case management or direct services provided by the CDDP.

(b) Copies of the procedures for planning and review of case management services, consumer satisfaction, and complaints must be maintained on file at the CDDP offices. The procedures must be available to:

(A) CDDP employees who work with individuals;

(B) Individuals who are receiving services from the CDDP and the families of individuals;

(C) Legal or designated representatives (as applicable) and providers of individuals; and

(D) The Department.

(3) NOTICE OF SERVICES. The CDDP must inform the individuals, and as applicable the family members and legal or designated representatives of the individuals, of the minimum case management services that are set out in section (4) of this rule.

(4) MINIMUM STANDARDS FOR CASE MANAGEMENT SERVICES.

(a) The CDDP must ensure that eligibility for services is determined as described in OAR 411-320-0080 by an eligibility specialist trained in accordance with OAR 411-320-0030.

(b) A services coordinator must maintain documentation of the referral process of an individual to a provider and if applicable, include the reason the provider preferred by the individual declined to deliver services to the individual.

(c) The CDDP must apply the principles of self-determination to provision of case management services.

(d) An Annual Plan for an individual receiving case management services through the CDDP must be developed and reviewed in accordance with OAR 411-320-0120.

(e) After September 1, 2018, the CDDP must only authorize services delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020 and non-residential employment service and day service settings that are consistent with OAR 411-004-0020(1), as implemented in OAR chapter 411, division 345. The services and settings must be authorized as described in OAR 411-320-0120.

(f) Services coordinators must monitor services and supports for all individuals enrolled in case management services through the CDDP in accordance with the standards described in OAR 411-320-0130.

(g) If an individual loses OSIPM or OHP Plus eligibility and the individual is receiving case management services through the CDDP, a services coordinator must assist the individual in identifying why OSIPM or OHP Plus eligibility was lost and whenever possible, assist the individual in reestablishing eligibility for OSIPM or OHP Plus. The services coordinator must document efforts taken to assist the individual in reestablishing OSIPM or OHP Plus eligibility in the service record for the individual.

(h) Entry, exit, reductions in benefits or services, and transfers from comprehensive services must be in accordance with OAR 411-320-0110.

(i) Crisis diversion services for an individual receiving case management services through a CDDP must be assessed, identified, planned, monitored, and evaluated by a services coordinator in accordance with OAR 411-320-0160.

(j) Abuse investigations and protective services for adults must be provided as described in OAR 407-045-0250 to 407-045-0360 and include investigating complaints of abuse, writing investigation reports, and monitoring the implementation of report recommendations.

(k) Civil commitment services must be provided in accordance with ORS 427.215 to 427.306.

(l) CHOICE ADVISING.

(A) Through choice advising, the CDDP must describe case management and other service delivery options within the geographic service area provided to all individuals receiving case management from the CDDP.

(B) Beginning no later than July 1, 2016, in accordance with the rules for home and community-based services and settings in OAR chapter 411, division 004, an individual, or as applicable the legal or designated representative of the individual, must be advised regarding the available residential and non-residential settings, including non-disability specific settings and an option for a private unit in a residential setting. The settings options must be:

(i) Identified and documented in the ISP as described in OAR 411-320-0120;

(ii) Based on the needs and preferences of the individual;

(iii) For residential settings, the available resources of the individual for room and board; and

(iv) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the ISP.

(C) Choice advising must occur at least six months before the18th birthday of a child.

(D) An individual newly determined eligible for developmental disability services must receive choice advising prior to or concurrent with the initial level of care determination.

(E) An individual moving into a county with an existing eligibility determination who is not enrolled in support services must receive choice advising within 10 days of the move or of the CDDP learning of the move.

(F) Choice advising must be provided initially and at least annually thereafter. Annual choice advising must include informing the individual of the right to request access to other available services. Documentation of the discussion must be included in the service record for the individual.

(G) If an individual is not eligible for Community First Choice state plan or waiver services, initial choice advising must inform the individual of the right to access case management from the CDDP or a Brokerage.

(m) A services coordinator must coordinate services with the child welfare (CW) caseworker assigned to a child to ensure the provision of required supports from the Department, CDDP, and CW.

(n) A services coordinator may attend IEP planning meetings or other transition planning meetings for a child when the services coordinator is invited to participate by the family or guardian of the child.

(A) The services coordinator may, to the extent resources are available, assist the family of the child in accessing critical non-educational services that the child or the family of the child may need.

(B) Upon request and to the extent possible, the services coordinator may act as a proponent for the child or the family of the child at IEP meetings.

(C) The services coordinator must participate in transition planning by attending IEP meetings or other transition planning meetings for students 16 years of age or older, or until the student is no longer enrolled in CDDP case management, to discuss the transition of the individual to adult living and work situations unless the attendance of the services coordinator is refused by the parent or guardian of the child or the individual if the individual is 18 years or older.

(o) The CDDP must ensure that all individuals eligible for and receiving developmental disability services are enrolled in the Department payment and reporting systems. The county of origin must enroll the individual into the Department payment and reporting systems for all developmental disability service providers except in the following circumstances:

(A) The Department completes the enrollment or termination form for children entering or leaving a licensed 24-hour residential setting that is directly contracted with the Department.

(B) The Department completes the Department payment and reporting systems enrollment, termination, and billing forms for children entering or leaving CIIS.

(C) The Department completes the enrollment, termination, and billing forms as part of an interagency agreement for purposes of billing for crisis diversion services by a region.

(p) When appropriate, a services coordinator must facilitate referrals to nursing facilities as described in OAR 411-070-0043.

(q) A services coordinator must coordinate and monitor the specialized services provided to an eligible individual living in a nursing facility in accordance with OAR 411-320-0150.

(r) A services coordinator must ensure that all serious events related to an individual are reported to the Department using the SERT system. The CDDP must ensure that there is monitoring and follow-up on both individual events and system trends.

(s) When a services coordinator completes a level of care determination, the services coordinator must ensure that OHP Plus and OSIPM eligible individuals are:

(A) Offered and advised of all services available for which they are eligible including, but not limited to, the choice of institutional or community based care, home and community-based waiver and Community First Choice state plan services;

(B) Provided a Notification of Rights (form SDS 0948); and

(C) Have a completed level of care determination that is reviewed annually or at any time there is a significant change in factors that contribute to the level of care assessment.

(t) A services coordinator must participate in the appointment of the health care representative of an individual as described in OAR chapter 411, division 365.

(u) A services coordinator must coordinate with other state, public, and private agencies regarding services to individuals.

(v) The CDDP must ensure that a services coordinator is available to provide or arrange for comprehensive in-home supports for adults as described in OAR chapter 411, division 330, in-home supports for children as described in OAR chapter 411, division 308, or family supports as described in OAR chapter 411, division 305 as required to meet the support needs of eligible individuals. This includes:

(A) Providing assistance in planning supports;

(B) Providing assistance in finding and arranging resources and supports;

(C) Providing education and technical assistance to make informed decisions about support needs and providers;

(D) Arranging fiscal intermediary services;

(E) Arranging employer-related supports; and

(F) Providing assistance with monitoring and improving the quality of supports.

(5) SERVICE PRIORITIES. If it becomes necessary for the CDDP to prioritize the availability of case management services, the CDDP must request and have approval of a variance prior to implementation of any alternative plan. If the CDDP is not able to reasonably anticipate the need for the variance, the CDDP has 15 business days to submit the variance request to the Department. The variance request must:

(a) Document the reason the service prioritization is necessary, including any alternatives considered;

(b) Detail the specific service priorities being proposed; and

(c) Provide assurances that the basic health and safety of individuals continues to be addressed and monitored.

(6) FAMILY RECONNECTION. The CDDP and a services coordinator must provide assistance to the Department when a family member is attempting to reconnect with an individual who was previously discharged from Fairview Training Center or Eastern Oregon Training Center or an individual who is currently receiving developmental disability services.

(a) If a family member contacts the CDDP for assistance in locating an individual, the CDDP must refer the family member to the Department. A family member may contact the Department directly.

(b) The Department shall send the family member a Department form requesting further information to be used in providing notification to the individual. The form shall include the following information:

(A) Name of requestor;

(B) Address of requestor and other contact information;

(C) Relationship to individual;

(D) Reason for wanting to reconnect; and

(E) Last time the family had contact.

(c) The Department shall determine:

(A) If the individual was previously a resident of Fairview Training Center or Eastern Oregon Training Center;

(B) If the individual is deceased or living;

(C) Whether the individual is currently or previously enrolled in Department services; and

(D) The county in which services are being provided, if applicable.

(d) Within 10 business days from the receipt of the request, the Department shall notify the family member if the individual is enrolled or no longer enrolled in Department services.

(e) If the individual is enrolled in Department services, the Department shall send the completed family information form to the individual and the services coordinator.

(f) If the individual is deceased, the Department shall follow the process for identifying the personal representative of the individual as provided for in ORS 192.526.

(A) If the personal representative and the requesting family member are the same, the Department shall inform the personal representative that the individual is deceased.

(B) If the personal representative is different from the requesting family member, the Department shall contact the personal representative for permission before sharing information about the individual with the requesting family member. The Department must make a good faith effort to find the personal representative and obtain a decision concerning the sharing of information as soon as practicable.

(g) When an individual is located, the services coordinator when the individual is enrolled in case management or the CDDP in conjunction with the personal agent when the individual is enrolled in a Brokerage, must facilitate a meeting with the individual to discuss and determine if the individual wishes to have contact with the family member.

(A) The services coordinator or the CDDP in conjunction with the personal agent, as applicable, must assist the individual in evaluating the information to make a decision regarding initiating contact, including providing the information from the form and any relevant history with the family member that may support contact or present a risk to the individual.

(B) If the individual does not have a legal or designated representative or is unable to express his or her wishes, the ISP team of the individual must be convened to review factors and choose the best response for the individual after evaluating the situation.

(h) If the individual wishes to have contact, the individual or ISP team designee may directly contact the family member to make arrangements for the contact.

(i) If the individual does not wish to have contact, the services coordinator or the CDDP in conjunction with the personal agent (as applicable) must notify the Department. The Department shall inform the family member in writing that no contact is requested.

(j) The notification to the family member regarding the decision of the individual must be within 60 business days from the receipt of the information form from the family member.

(k) The decision by the individual is not appealable.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0110
Entry and Exit Requirements

(1) ENTRY TO A DEPARTMENT-FUNDED DEVELOPMENTAL DISABILITY PROGRAM.

(a) The Department authorizes entry for children into residential programs, CIIS, and the Stabilization and Crisis Unit. A services coordinator must make referrals for entry and participate in all entry meetings for children in residential programs, CIIS, and the Stabilization and Crisis Unit.

(b) Entry to all other Department-funded programs for individuals must be coordinated and authorized by a services coordinator in accordance with these rules.

(2) HOME AND COMMUNITY-BASED SETTING OPTIONS.

(a) In accordance with ORS 427.121, a services coordinator must present at least three appropriate licensed or certified residential placement setting options, including at least two different types of licensed or certified residential settings, to an adult individual eligible to receive services in a licensed or certified residential setting prior to the initial placement of the adult individual into a licensed or certified residential setting. The services coordinator is not required to present the licensed or certified residential placement setting options if:

(A) The services coordinator demonstrates that three appropriate licensed or certified residential placement settings or two different types of licensed or certified residential placement settings are not available within the geographic area where the adult individual wishes to reside;

(B) The adult individual selects a licensed or certified residential placement setting option and waives the right to be presented with other licensed or certified residential placement setting options; or

(C) The adult individual is at imminent risk to health or safety in the current licensed or certified residential placement setting.

(b) Beginning no later than July 1, 2016, in accordance with the rules for home and community-based services and settings in OAR chapter 411, division 004, the residential or non-residential setting must be selected by an individual, or as applicable the legal or designated representative of the individual, from among available residential and non-residential setting options, including non-disability specific settings and an option for a private unit in a residential setting. The settings options must be:

(A) Identified and documented in the ISP as described in OAR 411-320-0120;

(B) Based on the needs and preferences of the individual;

(C) For residential settings, the available resources of the individual for room and board; and

(D) For employment and non-residential day services, a non-disability specific setting option must be presented and documented in the ISP.

(c) Documentation of the options made available to the individual must become part of the service record.

(3) WRITTEN INFORMATION REQUIRED. Prior to the entry of an individual into comprehensive services, a services coordinator, or the designee of the services coordinator, must provide available and sufficient written information necessary to meet the support needs of an individual to the provider for the individual.

(a) The written information must be provided in a timely manner and include:

(A) A copy of the eligibility determination document;

(B) A statement indicating safety skills, including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history of any behavioral challenges, including supervision and support needs;

(D) A medical history and information on health care supports that includes (when available):

(i) The results of the most recent physical exam;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning;

(F) A copy of the most recent needs assessment. If the needs of an individual have changed over time, the previous needs assessments must also be provided;

(G) Copies of protocols, the risk tracking record, and any support documentation (if applicable);

(H) Copies of documents relating to the guardianship or conservatorship, health care representation, power of attorney, court orders, probation and parole information, or any other legal restrictions on the rights of the individual (if applicable);

(I) Written documentation of any individually-based limitations described in OAR 411-004-0040. Individually-based limitations must be documented no later than July 1, 2017;

(J) Written documentation that the individual is participating in out-of-residence activities, including public school enrollment for individuals less than 21 years of age; and

(K) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, IEP, and mental health treatment plan (if applicable).

(b) If the individual is being admitted from the family home and the information required in subsection (a) of this section is not available, the services coordinator must ensure that the provider assesses the individual upon entry for issues of immediate health or safety.

(A) The services coordinator must document a plan to secure the information listed in subsection (a) of this section no later than 30 days after entry.

(B) The plan must include a written justification as to why the information is not available and a copy must be given to the provider at the time of entry.

(c) If the individual is being admitted from comprehensive services, the information listed in subsection (a) of this section must be made available prior to entry.

(d) If an individual is admitted to a program for crisis diversion services for a period not to exceed 30 days, subsection (a) of this section does not apply.

(4) ENTRY MEETING. Prior to entry of an individual into a Department-funded comprehensive service, the ISP team must meet to review referral material in order to determine appropriateness of placement. The members of the ISP team are determined according to OAR 411-320-0120. Findings of the entry meeting must be recorded in the service record for the individual and distributed to the ISP team members. The findings of the entry meeting must include, at a minimum:

(a) The name of the individual proposed for services;

(b) The date of the entry meeting;

(c) The date determined to be the date of entry;

(d) Documentation of the participants included in the entry meeting;

(e) Documentation of the pre-entry information required by section (3)(a) of this rule;

(f) Documentation of the decision to serve the individual requesting services; and

(g) A written Transition Plan completed by the services coordinator that is in effect for no longer than 60 days that includes all medical, behavior, and safety supports needed by the individual.

(5) TRANSFER OR EXIT FROM DEPARTMENT-FUNDED PROGRAMS.

(a) The CDDP must authorize all transfers or exits from Department-funded developmental disability services.

(b) The Department authorizes all transfers or exits from services directly contracted with the Department for 24-hour residential settings for children, CIIS, and the Stabilization and Crisis Unit.

(c) An individual considering a transfer any time after July 1, 2016, must be advised regarding the available residential and non-residential setting options described in section (2) of this rule.

(d) Prior to the transfer or exit date of an individual, the ISP team must meet to review the transfer or exit and to plan and coordinate any services necessary during or following the transfer or exit. The members of the ISP team are determined according to OAR 411-320-0120.

(6) EXIT MEETING. A meeting of the ISP team must precede any decision to exit an individual. Findings of the exit meeting must be recorded in the service record for the individual and include, at a minimum:

(a) The name of the individual considered for exit;

(b) The date of the exit meeting;

(c) Documentation of the participants included in the exit meeting;

(d) Documentation of the circumstances leading to the proposed exit;

(e) Documentation of the discussion of the strategies to prevent the exit of the individual from services, unless the individual is requesting the exit;

(f) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary, Reduction, Transfer, or Exit; and

(g) The written plan for services for the individual after the exit.

(7) TRANSFER MEETING. A meeting of the ISP team must precede any decision to transfer an individual. Findings of the transfer meeting must be recorded in the service record for the individual and include, at a minimum:

(a) The name of the individual considered for transfer;

(b) The date of the transfer meeting;

(c) Documentation of the participants included in the transfer meeting;

(d) Documentation of the circumstances leading to the proposed transfer;

(e) Documentation of the alternatives considered instead of transfer;

(f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, may not be honored;

(g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Reduction, Transfer, or Exit; and

(h) The written plan for services for the individual after transfer.

(8) ENTRY TO SUPPORT SERVICES.

(a) Referrals of eligible individuals to a Brokerage must be made in accordance with OAR 411-340-0110. Referrals must be made in accordance with Department guidelines and the Department-mandated application and referral form must be used.

(b) The CDDP of the county of origin may find an individual eligible for services from a Brokerage when:

(A) The individual is an Oregon resident who has been determined eligible for developmental disability services by the CDDP;

(B) The individual is an adult living in his or her own home or family home;

(C) At the time of initial entry to the Brokerage, the individual is not enrolled in comprehensive services;

(D) At the time of initial entry to the Brokerage, the individual is not receiving crisis diversion services from the Department because the individual does not meet one or more of the crisis risk factors listed in OAR 411-320-0160; and

(E) The individual or the legal representative of the individual has chosen to use a Brokerage for assistance with design and management of personal supports.

(c) An eligible individual must be entered into a Brokerage within 10 days of requesting support services and selecting an available Brokerage within the geographic service area of the CDDP, unless a later date is mutually agreed upon by the individual, the Brokerage, and the CDDP.

(d) The services coordinator must communicate with the Brokerage staff and provide all relevant information upon request and as needed to assist Brokerage staff in developing an ISP that best meets the support needs of the individual including:

(A) A current application or referral on the Department-mandated application or referral form;

(B) A completed level of care determination, if present;

(C) A copy of a current functional needs assessment, if present;

(D) A copy of the eligibility determination;

(E) Copies of financial eligibility information;

(F) Copies of any legal documents, such as guardianship papers, conservatorship, civil commitment status, probation, and parole;

(G) Copies of relevant progress notes; and

(H) A copy of any current plans.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695

Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SPD 27-2011, f. & cert. ef. 12-28-11; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-320-0120
Service Planning

(1) PRINCIPLES FOR SERVICE PLANNING. This rule prescribes standards for the development and implementation of an ISP or Annual Plan. An ISP or Annual Plan must:

(a) Be developed in a manner consistent with the principles of self-determination;

(b) Be developed using a person-centered planning process as defined in OAR 411-317-0000. The person-centered planning process:

(A) Is driven by the individual;

(B) Includes people chosen by the individual;

(C) Provides necessary information and supports to ensure the individual directs the process to the maximum extent possible and is enabled to make informed choices and decisions;

(D) Is timely, responsive to changing needs, occurs at times and locations convenient to the individual, and is reviewed at least annually;

(E) Reflects the cultural considerations of the individual;

(F) Uses language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the individual and, as applicable, the legal or designated representative of the individual;

(G) Includes strategies for resolving disagreement within the process, including clear conflict of interest guidelines for all planning participants, such as;

(i) Discussing the concerns of the individual and determining acceptable solutions;

(ii) Supporting the individual in arranging and conducting a person-centered service planning meeting;

(iii) Utilizing any available community conflict resolution resources; or

(iv) Referring concerns to the Office of the Long-Term Care Ombudsman.

(H) Offers choices to the individual regarding the services and supports the individual receives, and from whom, and records the alternative home and community-based settings that were considered by the individual;

(I) Provides a method for the individual, or as applicable the legal or designated representative, to request updates to the ISP, as needed;

(J) Is conducted to reflect what is important to the individual to ensure delivery of services in a manner reflecting personal preferences and ensuring health and welfare;

(K) Identifies the strengths and preferences, service and support needs, goals, and desired outcomes of the individual;

(L) May include, whether and what services are self-directed;

(M) Includes, but is not limited to, individually identified goals and preferences related to relationships, community participation, employment, income and savings, healthcare and wellness, and education;

(N) Includes risk factors and plans to minimize any identified risk factors; and

(O) Results in an ISP.

(c) Enhance the quality of life of the individual with intellectual or developmental disabilities; and

(d) Be consistent with the following principles:

(A) Personal control and family participation. While the service system reflects the value of family member participation in the planning process, adult individuals have the right to make informed choices about the level of family member participation. It is the intent of this rule to fully support the provision of education about personal control and decision-making to individuals who are receiving services.

(B) Choice and preferences. The planning process is critical in determining the preferences of an individual and the family of the individual for services and supports. The preferences of the individual and the family of the individual must serve to guide the ISP team. The active participation of the individual and input must be facilitated throughout the planning process.

(C) Barriers. The planning process is designed to identify the types of services and supports necessary to achieve the preferences of an individual and the family of the individual, identify the barriers to providing those preferred services, and develop strategies for reducing the barriers.

(D) Health and safety. The planning process must also identify strategies to assist an individual in the exercise of the rights of the individual. This may create tensions between the freedom of choice and interventions necessary to protect the individual from harm. The ISP team must carefully nurture the exercise of the rights of the individual while being equally sensitive to protecting the health and safety of the individual.

(E) Children in alternate living situations. When planning for children in 24-hour residential settings or foster care, maintaining family connections is an important consideration. The following must apply:

(i) Unless contraindicated, there must be a goal for family reunification;

(ii) The number of moves or transfers must be kept to a minimum; and

(iii) If the placement of a child is distant from the family of the child, the services coordinator must continue to seek a placement that brings the child closer to the family.

(2) LEVEL OF CARE DETERMINATION

(a) A services coordinator must assure that an individual has a level of care determination prior to accessing Community First Choice state plan or waiver services. The level of care determination must be made using a Department prescribed form. An initial ISP authorizing Community First Choice state plan or waiver services must be completed no later than the end of the month following the month in which the level of care determination was made or no later than 45 days from the level of care determination.

(b) A services coordinator must assure that a level of care determination is reviewed for every individual enrolled in a comprehensive service:

(A) Within 12 months from the previous Annual Review.

(i) This review must be completed no later than 12 months from the Diagnosis and Evaluation Coordinator (D & E Coordinator) approval date.

(ii) The annual review date may be reset for a date earlier than 12 months from the D & E Coordinator approval date, but not later than 12 months from the D & E Coordinator review date.

(B) No earlier than 60 days prior to the renewal of the ISP.

(C) Any time there is a significant change in a condition that qualified the individual for the level of care.

(c) The level of care assessment must be documented in a progress note in the service record for the individual.

(d) A level of care determination may be made by a services coordinator or a personal agent.

(3) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator or personal agent must complete a functional needs assessment initially and at least annually for each individual who has or is expected to have an ISP.

(a) The functional needs assessment must be completed:

(A) Not more than 45 days from the date that the individual submitted a completed application or the date the CDDP learns of the eligibility of the individual for OHP Plus or OSIPM;

(B) Prior to the development of an initial ISP;

(C) Within 60 days prior to the annual renewal of an ISP; and

(D) Within 45 days from the date an individual requests a new functional needs assessment.

(b) An adult who is enrolled in comprehensive in-home supports as described in OAR chapter 411, division 330 or a child who is enrolled in in-home supports as described in OAR chapter 411, division 308 must participate in a functional needs assessment and provide information necessary to complete the functional needs assessments and reassessments within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-320-0175 and OAR chapter 411, division 318.

(B) The Department may allow additional time if circumstances beyond the control of the individual prevent timely participation in the functional needs assessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(c) No fewer than 14 days prior to conducting a functional needs assessment, the CDDP must mail a notice of the assessment process to the individual to be assessed. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(4) INDIVIDUAL SUPPORT PLANS (ISP). Individuals enrolled in waiver or Community First Choice state plan services must have an authorized ISP.

(a) A services coordinator must facilitate and develop an ISP through a person-centered service planning process. The ISP must be authorized by the services coordinator no more than 90 days from the date a completed application is submitted to the CDDP according to OAR 411-320-0080, and at least annually thereafter.

(b) Upon the request for a new functional needs assessment by an individual, a services coordinator must revise the ISP for the individual as needed if a revision of the ISP is requested by the individual. The revision of the ISP must be completed within 30 days from the new functional needs assessment. The revised ISP must be developed with the individual, the legal or designated representative of the individual (as applicable), and other invited ISP team members.

(c) Not more than two weeks after authorization, the CDDP must provide a copy of the most current ISP to the individual, the legal or designated representative of the individual (as applicable), and others as identified by the individual.

(5) PERSON-CENTERED ISP REQUIREMENTS. The person-centered ISP must reflect the services and supports that are important for the individual to meet the needs of the individual identified through a Department approved assessment, as well as what is important to the individual with regard to preferences for the delivery of such services and supports.

(a) The written ISP must include, but not be limited to, the following:

(A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options --

(i) Based on the needs and preferences of the individual, and for residential settings, the available resources of the individual for room and board;

(ii) Chosen by the individual; and

(iii) Integrated in and support full access to the greater community;

(D) Opportunities to seek employment and work in competitive integrated employment settings for those individuals who desire to work:

(i) If the individual wishes to pursue employment, a non-disability specific setting option must be presented and documented in the ISP.

(ii) Individuals working in sheltered workshops shall be encouraged to use services in integrated settings.

(E) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as people not receiving home and community-based services;

(F) The strengths and preferences of the individual;

(G) The service and support needs of the individual;

(H) The goals and desired outcomes of the individual;

(I) The providers of services and supports, including unpaid supports provided voluntarily;

(J) Risk factors and measures in place to minimize risk;

(K) Individualized backup plans and strategies, when needed;

(L) People important in supporting the individual;

(M) The person responsible for monitoring the ISP;

(N) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the indi-

vidual receiving services and the people important in supporting the individual;

(O) The written informed consent of the individual or, if applicable, the legal or designated representative of the individual;

(P) Signatures of the individual, or if applicable the legal or designated representative of the individual, participants in the ISP planning process, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (b) of this section;

(Q) Self-directed supports; and

(R) Provisions to prevent unnecessary or inappropriate services and supports.

(b) The individual, or if applicable the legal or designated representative of the individual, decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to the necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(c) After September 1, 2018, the CDDP must only authorize services delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020 and non-residential employment service and day service settings that are consistent with OAR 411-004-0020(1), as implemented in OAR chapter 411, division 345.

(d) A CDDP cannot authorize services for an individual from an affiliated entity. If an individual served by the CDDP was receiving services from an affiliated entity on December 31, 2015, the individual may continue to have those services provided by the affiliated entity until June 30, 2016, at which time the individual must either receive services from another service provider or receive case management from a brokerage or another CDDP. An entity is affiliated with the CDDP when the entity or the CDDP has an incident of ownership in the other.

(e) For a new or renewed ISP with an effective date of July 1, 2016 or later, the ISP must justify and document any individually-based limitations as described in OAR 411-004-0040.

(f) A services coordinator must track the ISP timelines and coordinate the resolution of complaints and conflicts arising from ISP discussions.

(g) An ISP must be developed, implemented, and authorized as follows:

(A) FOSTER CARE AND 24-HOUR RESIDENTIAL SETTINGS.

(i) A services coordinator must attend and assure that an annual ISP meeting is held for individuals receiving services in foster care or 24-hour residential settings and any associated settings for employment.

(ii) A services coordinator must facilitate the ISP with an individual receiving services through foster care or a 24-hour residential setting and any associated setting for employment.

(iii) If a child is in a 24-hour residential setting directly contracted with the Department, the ISP for the child is coordinated by Department staff.

(iv) A services coordinator must ensure that the ISP for an individual receiving services through foster care or a 24-hour residential setting is developed and updated in accordance with Department guidelines.

(B) SUPPORTED LIVING. A services coordinator must ensure the development of an annual ISP for an adult receiving services in a supported living setting and any associated setting for employment.

(i) The services coordinator must coordinate with the individual, and as applicable the family or legal or designated representative of the individual, in the development of an annual ISP.

(ii) The ISP for an adult receiving services in a supported living setting and any associated setting for employment must include the information described in subsection (d) of this section.

(C) COMPREHENSIVE IN-HOME SUPPORTS FOR ADULTS. A services coordinator must ensure the development of an annual ISP for an individual receiving comprehensive in-home supports.

(i) The services coordinator must coordinate with the individual, and as applicable the family or legal or designated representative of the individual, in the development of an annual ISP.

(ii) The ISP for an individual receiving comprehensive in-home supports must include the information described in subsection (d) of this section and be in accordance with OAR 411-330-0050.

(iii) An ISP must not authorize any single personal support worker to be paid for more than 50 hours in a work week per individual unless:

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

(II) An exception has been granted by the CDDP or Department.

(h) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(6) ANNUAL PLANS. Individuals enrolled in developmental disability services not accessing waiver or Community First Choice state plan services must have an Annual Plan.

(a) A services coordinator must complete an Annual Plan within 60 days of the enrollment of an individual into case management services, and annually thereafter if the individual is not enrolled in any waiver or Community First Choice state plan services.

(b) An Annual Plan must be developed as follows:

(A) For an adult, a written Annual Plan must be documented as an Annual Plan or as a comprehensive progress note in the service record for the individual and consist of:

(i) A review of the current living situation of the individual;

(ii) A review of any personal health, safety, or behavioral concerns;

(iii) A summary of the support needs of the individual; and

(iv) Actions to be taken by the services coordinator and others.

(B) For a child receiving family support services, a services coordinator must coordinate with the child and the family or guardian of the child in the development of an Annual Plan. The Annual Plan for a child receiving family support services must be in accordance with OAR 411-305-0080.

(7) PLANS FOR IN-HOME SUPPORTS FOR CHILDREN. For a child receiving in-home supports, a services coordinator must coordinate with the child and the family or guardian of the child in the development of the ISP or Annual Plan. The ISP or Annual Plan for a child receiving in-home supports must be in accordance with OAR chapter 411, division 308 and sections (3) and (4) of this rule, as applicable.

(8) PLAN FORMATS. An ISP or Annual Plan developed at an annual or update meeting must be conducted in a manner specified by the Department and on forms required by the Department. In the absence of a Department-mandated form, the CDDP with the affected providers may develop an ISP format that conforms to the rules for the provider and provides for an integrated plan across the funded developmental disability service settings.

(9) PLAN UPDATES. An ISP or Annual Plan must be kept current. A services coordinator, the residential services coordinator for the Department for children in 24-hour residential settings directly contracted with the Department, and CIIS services coordinators for children served through the CIIS waiver must ensure that a current ISP or Annual Plan is authorized and maintained for each individual receiving services.

(a) The ISP or Annual Plan must be kept in the service record for an individual.

(b) ISP or Annual Plan updates must occur as required by this rule and any rules governing the operation of the service.

(c) When there is a significant change, the ISP or Annual Plan must be updated.

(10) ISP REVIEWS. An ISP must be reviewed and revised:

(a) No more than 30 days following a new functional needs assessment;

(b) At least every 12 months;

(c) When the circumstances or needs of an individual change significantly; and

(d) At the request of an individual or, as applicable, the legal representative of the individual.

(11) TRANSITION PLAN REVIEWS. A Transition Plan must be reviewed and updated as necessary to make it consistent with section (4) of this rule no more than 60 days from the date of entry to a service setting.

(12) TEAM PROCESS IN SERVICE AND SUPPORT PLANNING. This section applies to an ISP developed for an individual in comprehensive services:

(a) An ISP for an individual in comprehensive services is developed at least by the individual, the legal or designated representative of the individual (as applicable), and the services coordinator. Others may be included as a part of the ISP team at the invitation of the individual. The ISP team assigns responsibility for obtaining or providing services to meet the identified needs of the individual.

(A) Membership on the ISP team must at least conform to this rule and any relevant provider rules. An individual may include additional participants, friends, or significant others on the ISP team.

(B) The individual may raise an objection to the inclusion of a particular person or provider on the ISP team. When the individual raises objections to a person, the ISP team must respect the request of the individual. In order to assure adequate planning, provider representatives are necessary informants to the ISP team.

(b) An ISP developed by an ISP team must respect and honor individual choice in the development of a meaningful plan.

(c) In circumstances where an individual is unable to express his or her opinion or choice using words, behaviors, or other means of communication and the individual does not have a legal or designated representative, the ISP team is empowered to make a decision on behalf of the individual.

(d) No one member of an ISP team has the authority to make decisions for the ISP team.

(e) Consensus amongst ISP team members is prioritized. When consensus may not be reached, majority agreement is used. For purposes of reaching a majority agreement, a provider, family member, CDDP, or designated representative are considered as one member of the ISP team.

(f) Any objections to decisions of the ISP team by a member of the ISP team must be documented in the ISP.

(g) The legal or designated representative of an individual directing services for the individual (as applicable) may not also be a paid provider for the individual.

(h) An ISP is authorized by a services coordinator using a person-centered planning process and with agreement by the individual and the legal or designated representative of the individual (as applicable).

(i) An individual or the legal representative of the individual retains the right to consent to treatment and training and to note any specific areas of the ISP that they object to and wish to file a complaint.

(j) ISP team members must inform the services coordinator whenever there are significant needs or changes or there is a crisis or potential for a crisis. The services coordinator must reconvene the ISP team if ISP adjustments are required due to a significant change in the support needs or desired goals of an individual.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.610 - 430.695
Hist.: SPD 24-2003, f. 12-29-03, cert. ef. 1-1-04; SPD 28-2004, f. & cert. ef. 8-3-04; SPD 16-2005(Temp), f. & cert. ef. 11-23-05 thru 5-22-06; SPD 5-2006, f. 1-25-06, cert. ef. 2-1-06; SPD 9-2009, f. & cert. ef. 7-13-09; SPD 22-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 57-2013, f. 12-27-13, cert. ef. 12-28-13; APD 23-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 41-2014, f. 12-26-14, cert. ef. 12-28-14; APD 36-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: Individual Rights for Individuals Receiving Developmental Disability Services
Adm. Order No.: APD 37-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-318-0000, 411-318-0005, 411-318-0010
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the rules in OAR chapter 411, division 318 to ensure individuals receive the rights they are entitled to under the newly adopted rules in OAR chapter 411, division 004 for home and community-based (HCB) services and settings and person-centered service planning.

The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.

These rules are also being amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000; and

- Incorporate reference to newly adopted rules in OAR chapter 411, division 380 for direct nursing services for adults with intellectual or developmental disabilities.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-318-0000
Statement of Purpose and Scope

(1) The rules in OAR chapter 411, division 318 prescribe:

(a) The rights of individuals receiving developmental disability services;

(b) The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;

(c) The requirements for notification in the event a developmental disability service is denied, reduced, suspended, or terminated and the contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and

(d) The contested case hearing process for challenging an involuntary reduction, transfer, or exit.

(2) The rules in OAR chapter 411, division 318 apply to the developmental disability services and service settings described in:

(a) OAR chapter 411, division 004 for home and community-based services and settings;

(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 320 for Community Developmental Disability Programs;

(f) OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals with intellectual or developmental disabilities in community-based settings;

(g) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;

(h) OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities;

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

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

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

(l) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;

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

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

(o) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities; and

(p) OAR chapter 411, division 380 for direct nursing services for adults with intellectual or developmental disabilities.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 37-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-318-0005
Definitions

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 318:

(1) "CDDP" means "Community Developmental Disability Program".

(2) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(3) "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 the Medically Fragile Children's Services Program; or

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

(4) "Claimant" means the individual directly impacted by the action that is the subject of a hearing request.

(5) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(6) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(7) "Complaint Log" means the list of complaint-related information that is completed and maintained by a local program.

(8) "Continuing Services" means the continuation of a developmental disability service following the request for a hearing until a Final Order is issued.

(9) "DD Administrative Hearing Request" means form SDS 0443DD.

(10) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

(11) "Department" means the Department of Human Services.

(12) "Department Hearing Representative" means the person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(13) "Department Staff" means the person employed by the Department who is knowledgeable in a particular subject matter. For the purposes of the complaint process, Department staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(14) "Developmental Disability Service" means the services provided to an individual listed in OAR 411-318-0000.

(15) "Director" means the Director of the Department of Human Services or the designee of the Director, which may include Department Staff.

(16) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of an employee of the Department or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(17) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0700, which results in a Final Order.

(18) "Informal Conference" means the discussion between a claimant, the representative of the claimant, Department staff, and a Department representative that is held prior to a hearing to address any matters pertaining to the hearing, as described in OAR 411-318-0025. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.

(19) "Informal Discussion" means the conversation between an individual making a complaint, or as applicable the representative of the individual, and the designee of the Department or local program who received the complaint to address the content of the complaint. The informal discussion may result in resolution of the issue.

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

(21) "Local Program" means the local Community Developmental Disability Program, Support Services Brokerage, provider organization, CIIS Program, or other certified, licensed, or endorsed provider or agency with which the Department contracts to provide developmental disability services and is providing services to the individual with whom a complaint is associated.

(22) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual. Mechanical restraint is not:

(a) The use of acceptable infant safety products;

(b) The use of car safety systems, consistent with applicable state law for people without disabilities; or

(c) Safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(23) "Notice of Involuntary Reduction, Transfer, or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(24) "Notification of Planned Action" means form SDS 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(25) "OAH" means the Office of Administrative Hearings.

(26) "OHA" means the Oregon Health Authority.

(27) "Program Director" means the Director of a local program or the designee of the Director.

(28) "Program Staff" means a person employed by the local program who is knowledgeable in a particular subject matter. For the purposes of the complaint process, program staff may not be involved in a specific complaint prior to the receipt of the complaint or the request for a review of the complaint.

(29) "Protective Physical Intervention" is a safety intervention used in an emergency, which may or may not include physical contact with the individual.

(30) "Representative" means any adult, such as a parent, family member, guardian, legal representative, advocate, or other person, who is chosen by an individual or the legal representative of the individual to represent the individual in connection with the provision of developmental disability services or during the complaint or hearing process. The representative may not be an employee of the Department, CDDP, or Support Services Brokerage acting in official capacity. An individual or the legal representative for the individual is not required to choose a representative.

(31) "Request for Service" means:

(a) Submission of a completed application for developmental disability services as described in OAR 411-320-0080;

(b) A written request for a new developmental disability service or provider; or

(c) A written request for a change in a developmental disability service currently provided.

(32) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(33) "Safeguarding Equipment" means a device used to provide support to an individual for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(34) "Service" means "developmental disability services" as defined in this rule.

(35) "Service Funds" mean state public funds or Medicaid funds used to purchase developmental disability services.

(36) "These Rules" mean the rules in OAR chapter 411, division 318.

(37) "Written Outcome" means the written response from the Department or the local program to a complaint following a review of the complaint.

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 37-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-318-0010
Individual Rights

(1) While receiving developmental disability services, an individual has the right to:

(a) Be free from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(b) Be free from seclusion, unauthorized training or treatment, and personal, chemical, and mechanical restraints, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(c) Be assured that prescribed medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(d) Individual choice for an adult to consent to or refuse treatment unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(e) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(f) Informed, voluntary, written consent prior to participating in any experimental programs;

(g) A humane service environment that affords reasonable privacy and the ability to engage in private communications with people chosen by the individual through personal visits, mail, telephone, or electronic means;

(h) Visit with legal and designated representatives, family members, friends, advocates, and legal and medical professionals;

(i) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services, school, educational opportunities, and health care resources;

(j) For individuals less than 21 years of age, access to a free and appropriate public education, including a procedure for school attendance or refusal to attend;

(k) Not be required to perform labor, except personal housekeeping duties, without reasonable and lawful compensation;

(l) Manage his or her own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(m) Keep and use personal property and have a reasonable amount of personal storage space;

(n) Food, housing, clothing, medical and health care, supportive services, and training;

(o) Seek a meaningful life by choosing from available services and enjoying the benefits of community involvement and community integration in a manner that is most integrated, considering the preferences and age of the individual;

(p) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(q) Ongoing participation in the planning of services, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with an explanation of all service considerations in a manner that ensures meaningful individual participation, and the right to invite others chosen by the individual to participate in the plan for services;

(r) Request a change in the plan for services and a reassessment of service needs;

(s) A timely decision upon request for a change in the plan for services and a reassessment of service needs;

(t) Not be involuntarily terminated or transferred from services without prior notice, notification of available sources of necessary continued services, and exercise of a complaint procedure;

(u) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, notification of available sources of necessary continued services, and a hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(v) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), and the procedures for filing complaints, reviews, hearings, or appeals if services have been or are proposed to be terminated, suspended, reduced, or denied;

(w) Be encouraged and assisted in exercising all legal rights;

(x) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(y) Be informed of and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment;

(z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment; and

(aa) Be informed that a family member has contacted the Department to determine the location of the individual, and to be informed of the name and contact information of the family member, if known, as provided under ORS 430.212 and OAR 411-320-0090.

(2) The individual rights described in section (1) of this rule apply to all individuals eligible for or receiving a developmental disability service. A parent or guardian may place reasonable limitations on the rights of a child.

(3) In addition to the rights described in section (1) of this rule, individuals receiving home and community-based services in residential and non-residential home and community-based settings have the right to home and community-based settings with the qualities described in OAR 411-004-0020(1).

(4) In addition to the rights described in sections (1) of this rule, individuals receiving home and community-based services in provider owned, controlled, or operated residential settings have the right to provider owned, controlled, or operated residential settings with the qualities described in OAR 411-004-0020(2).

(a) For children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, the qualities described in OAR 411-004-0020(2) apply in the context of addressing any limitations beyond what are typical health and safety precautions or discretions utilized for children of the same age without disabilities.

(b) Health and safety precautions or discretions utilized for children under the age of 18, enrolled in or utilizing home and community-based services, and residing in provider owned, controlled, or operated residential settings, must be addressed through a person-centered service planning process and documented in the ISP for the child.

(c) Limitations that deviate from and are more restrictive than what is typical for children of the same age without disabilities must comply with OAR 411-004-0040.

(5) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens including, but not limited to, the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents.

(6) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(7) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(8) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by an adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

Stat. Auth.: ORS 409.050, 427.107
Stats. Implemented: ORS 183.411-471, 409.010, 427.107, 427.109
Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 37-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: General Definitions for Developmental Disabilities Services
Adm. Order No.: APD 38-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 411-317-0000
Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending the general definitions rule for developmental disabilities services.

OAR 411-317-0000 is being amended to:

Provide consistency and streamline definitions across services; and

Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-317-0000
Definitions for Developmental Disability Services

This rule, OAR 411-317-0000, defines terms frequently used in OAR chapter 411, divisions 300 to 380 for developmental disabilities services. The rules in OAR chapter 411, divisions 300 to 380 may include definitions specific to the subject matter in that division. If a word or term is defined differently than what is in this rule, the definition in that division applies, when used in that division.

(1) "24-Hour Residential Setting" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide home and community-based services to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a 24-hour residential setting licensed by the Department as described in OAR chapter 411, division 325.

(b) For a young adult aged 18 to 21 residing in a certified child foster home, "abuse" as defined in OAR 407-045-0260.

(c) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Accident" means an event that results in injury or has the potential for injury even if the injury does not appear until after the event.

(5) "Activities of Daily Living (ADL)" are the basic personal everyday activities, such as eating, using the restroom, grooming, dressing, bathing, and transferring. ADL services include, but are not limited to:

(a) Basic personal hygiene — providing or assisting with needs such as bathing (tub, bed, bath, shower), hair care, grooming, shaving, nail care, foot care, dressing, skin care, or oral hygiene;

(b) Toileting, bowel, and bladder care — assisting to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, managing menses, cleansing an individual or adjusting clothing related to toileting, emptying a catheter, drainage bag, or assistive device, ostomy care, or bowel care;

(c) Mobility, transfers, and repositioning — assisting with ambulation or transfers with or without assistive devices, turning an individual or adjusting padding for physical comfort or pressure relief, or encouraging or assisting with range-of-motion exercises;

(d) Eating — assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with adaptive utensils, cutting food, and placing food, dishes, and utensils within reach for eating; and

(e) Cognitive assistance or emotional support provided to an individual due to an intellectual or developmental disability - helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive functions.

(6) "Administration of Medication" means the act of placing a medication in or on the body of an individual by a person responsible for the care of the individual and employed by, or under contract to, the individual or as applicable the legal or designated representative of the individual or provider organization.

(7) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(8) "Adult" means an individual who is 18 years of age or older with an intellectual or developmental disability.

(9) "Advocate" means a person other than paid staff who has been selected by an individual or by the legal representative of an individual to help the individual understand and make choices in matters relating to identification of needs and choices of services, especially when rights are at risk or have been violated.

(10) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.

(11) "Alternative Resources" mean possible resources, not including developmental disability services, for the provision of supports to meet the needs of an individual. Alternative resources include, but are not limited to, private or public insurance, vocational rehabilitation services, supports available through the Oregon Department of Education, or other community supports.

(12) "Annual Plan" means the written summary a services coordinator or personal agent completes for an individual who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an Individual Support Plan and is not a plan of care for Medicaid purposes.

(13) "Assistive Devices" mean the devices, aids, controls, supplies, or appliances that are necessary to enable an individual to increase the ability of the individual to perform activities of daily living and instrumental activities of daily living or to perceive, control, or communicate with the home and community environment in which the individual lives.

(14) "Assistive Technology" means the devices, aids, controls, supplies, or appliances that are purchased to provide support for an individual and replace the need for direct interventions to enable self-direction of care and maximize independence of the individual.

(15) "Attendant Care" means assistance with activities of daily living, instrumental activities of daily living, and health-related tasks through cueing, monitoring, reassurance, redirection, set-up, hands-on, standby assistance, and reminding.

(16) "Authority" means "Oregon Health Authority".

(17) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(18) "Bedroom" means the personal space and sleeping area of an individual receiving home and community-based services in a provider owned, controlled, or operated residential setting, as agreed to in the Residency Agreement.

(19) "Behavior Consultant" means a contractor with specialized skills who conducts functional assessments and develops a Behavior Support Plan.

(20) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.

(21) "Behavior Data Summary" means the document composed by a provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.

(22) "Behavior Support Plan" means the written strategy based on person-centered planning and a functional assessment that outlines specific instructions for a primary caregiver or provider to follow in order to reduce the frequency and intensity of the challenging behaviors of an individual and to modify the behavior of the primary caregiver or provider, adjust environment, and teach new skills.

(23) "Behavior Support Services" mean the services consistent with positive behavioral theory and practice that are provided to assist with behavioral challenges due to the intellectual or developmental disability of an individual that prevents the individual from accomplishing activities of daily living, instrumental activities of daily living, health-related tasks, and provides cognitive supports to mitigate behavior. Behavior support services are provided in the home or community.

(24) "Brokerage" means "Support Services Brokerage" as defined in this rule.

(25) "Career Development Plan":

(a) Means the part of an ISP that identifies:

(A) The employment goals and objectives for an individual;

(B) The services and supports needed to achieve those goals;

(C) The people, agencies, and providers assigned to assist the individual to attain those goals;

(D) The obstacles to the individual working in an individualized job in a competitive integrated employment setting; and

(E) The services and supports necessary to overcome those obstacles.

(b) A Career Development Plan is based on person-centered planning principles.

(26) "Case Management" means the functions performed by a services coordinator or personal agent. Case management includes, but is not limited to, determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services and supports.

(27) "Case Management Contact" means a reciprocal interaction between a services coordinator or personal agent and an individual or the legal or designated representative of the individual (as applicable).

(28) "Centers for Medicare and Medicaid Services (CMS)". The Centers for Medicare and Medicaid Services is the federal agency within the United States Department of Health and Human Services responsible for the administration of Medicaid and the Health Insurance Portability and Accountability Act (HIPAA) and overseeing Medicaid programs administered by the states through survey and certification.

(29) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.

(30) "Child" means an individual under the age of 18.

(31) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, providers, services, and service settings. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated through a variety of methods, including orally, through sign language, or by other communication methods.

(32) "Choice Advising" means the impartial sharing of information to individuals with intellectual or developmental disabilities about:

(a) Case management;

(b) Service options;

(c) Service setting options; and

(d) Provider types.

(33) "Chore Services" mean the services that are needed to restore a hazardous or unsanitary situation in the home to a clean, sanitary, and safe environment.

(34) "Claimant" means the person directly impacted by an action that is the subject of a hearing request.

(35) "Client Processing Monitoring System" means the Department computerized system for enrolling and terminating services for individuals with intellectual or developmental disabilities.

(36) "Collective Bargaining Agreement" means a contract based on negotiation between organized workers and their designated employer for purposes of collective bargaining to determine wages, hours, rules, and working conditions.

(37) "Community Developmental Disability Program" is the entity that is responsible for plan authorization, delivery, and monitoring of services for individuals who are not enrolled in a Brokerage. A Community Developmental Disability Program operates in a specific geographic service area of the state under a contract with the Department, local mental health authority, or other entity as contracted by the Department.

(38) "Community First Choice (K Plan)" means the state plan amendment for Oregon authorized under section 1915(k) of the Social Security Act.

(39) "Community Nursing Services" mean the nursing services that focus on the chronic and ongoing health and safety needs of an individual. Community nursing services include an assessment, monitoring, delegation, training, and coordination of services. Community nursing services are provided according to the rules in OAR chapter 411, division 048 and the Oregon State Board of Nursing rules in OAR chapter 851.

(40) "Community Transportation" means the services that enable an individual to gain access to community-based state plan and waiver services, activities, and resources that are not medical in nature. Community transportation is provided in the area surrounding the home of the individual that is commonly used by people in the same area to obtain ordinary goods and services.

(41) "Complaint" means an oral or written expression of dissatisfaction with a developmental disability service or provider.

(42) "Complaint Investigation" means the investigation of a complaint that has been made to a proper authority that is not covered by an investigation of abuse.

(43) "Complaint Log" means a list of complaint-related information.

(44) "Comprehensive Services" means a package of services, other than support services for adults, that is provided by or under the direction of a Community Developmental Disabilities Program and that includes at least one of the following living arrangements licensed or regulated by the Department of Human Services:

(a) Twenty-four-hour residential care, including but not limited to a group home, a foster home, or a supported living program.

(b) Assistance provided to maintain an individual in his or her own home or the family home.

(45) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the provider.

(46) "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).

(47) "Continuing Services" means the continuation of a developmental disability service following the request for a hearing. Services continue until a Final Order is issued.

(48) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet the support needs of an individual. Less costly alternatives include other service settings available from the Department and the utilization of assistive devices, natural supports, environmental modifications, and alternative resources. Less costly alternatives may include resources not paid for by the Department.

(49) "County of Origin" means:

(a) For an adult, the county of residence for the adult; and

(b) For a child, the county where the jurisdiction of guardianship exists.

(50) "Crisis" means:

(a) A situation as determined by a qualified services coordinator that may result in civil court commitment under ORS 427.215 to 427.306 and for which no appropriate alternative resources are available; or

(b) Risk factors described in OAR 411-320-0160(2) are present for which no appropriate alternative resources are available.

(51) "Day" means a calendar day unless otherwise specified.

(52) "DD Administrative Hearing Request" means form SDS 0443DD.

(53) "Denial" means any rejection of a request for a developmental disability service or an increase in a developmental disability service. A denial of a Medicaid service requires a Notification of Planned Action.

(54) "Delegation" is the process by which a registered nurse authorizes a person to perform nursing tasks and confirms that authorization in writing. Delegation may occur only after a registered nurse follows all steps of the delegation process as outlined in OAR chapter 851, division 047.

(55) "Department" means Department of Human Services.

(56) "Department Hearing Representative" means a person authorized by the Department to represent the Department in a hearing as described in OAR 411-001-0500.

(57) "Department Staff" means a person employed by the Department who is knowledgeable in a particular subject matter.

(58) "Designated Representative" means:

(a) A person who is 18 years of age or older, such as a parent, family member, guardian, or advocate, who is:

(A) Chosen by an individual or the legal representative of the individual;

(B) Not a paid provider for the individual; and

(C) Authorized by the individual or, as applicable, the legal representative of the individual to serve as the representative of the individual or, as applicable, the legal representative in connection with the provision of funded supports.

(b) The power to act as a designated representative is valid until an individual modifies the authorization.

(c) An individual or the legal representative of the individual is not required to appoint a designated representative.

(59) "Developmental Disability" means a neurological condition that:

(a) Originates before an individual is 22 years of age or 18 years of age for an intellectual disability;

(b) Originates in and directly affects the brain and has continued, or is expected to continue, indefinitely;

(c) Constitutes significant impairment in adaptive behavior as diagnosed and measured by a qualified professional as described in OAR 411-320-0080;

(d) Is not primarily attributed to other conditions including, but not limited to, a mental or emotional disorder, sensory impairment, motor impairment, substance abuse, personality disorder, learning disability, or Attention Deficit Hyperactivity Disorder (ADHD); and

(e) Requires training and support similar to an individual with an intellectual disability as described in OAR 411-320-0080.

(60) "Developmental Disability Service" include the following services and settings:

(a) OAR chapter 411, division 004 for home and community-based services and settings;

(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 320 for Community Developmental Disability Programs;

(f) OAR chapter 411, division 323 for agency certification and endorsement to provide services to individuals with intellectual or developmental disabilities in community-based settings;

(g) OAR chapter 411, division 325 for 24-hour residential settings for children and adults with intellectual or developmental disabilities;

(h) OAR chapter 411, division 328 for supported living settings for adults with intellectual or developmental disabilities;

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

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

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

(l) OAR chapter 411, division 346 for foster homes for children with intellectual or developmental disabilities;

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

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

(o) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities; and

(p) OAR chapter 411, division 380 for direct nursing services for adults with intellectual or developmental disabilities.

(61) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services or Office of

Licensing and Regulatory Oversight, or the designee of the Director, which may include Department Staff.

(62) "Employer" means, for the purposes of obtaining home care services through a personal support worker, the common law employer. The common law employer is the individual or a person selected by the individual or the legal representative of the individual to act on the behalf of the individual or the legal representative of the individual to conduct the responsibilities of an employer. An employer may also be a designated representative.

(63) "Employer-Related Supports" mean the activities that assist an individual, and when applicable the legal or designated representative or family members of the individual, with directing and supervising provision of services described in the ISP for an individual. Employer-related supports may include, but are not limited to:

(a) Education about employer responsibilities;

(b) Orientation to basic wage and hour issues;

(c) Use of common employer-related tools such as service agreements; and

(d) Fiscal intermediary services.

(64) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in OAR chapter 411, division 323 and the corresponding program rules.

(65) "Entity" means a person, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), a state, or a political subdivision or instrumentality, including a municipal corporation of a state.

(66) "Entry" means admission to a Department-funded developmental disability service or setting.

(67) "Environmental Modifications" mean the physical adaptations that are necessary to ensure the health, welfare, and safety of an individual in his or her home, or that are necessary to enable the individual to function with greater independence around his or her home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(68) "Environmental Safety Modifications" mean the physical adaptations that are made to the exterior of the home of an individual as identified in the ISP for an individual to ensure the health, welfare, and safety of the individual or to enable the individual to function with greater independence around his or her home or lead to a substitution for, or decrease in, direct human assistance to the extent expenditures would otherwise be made for human assistance.

(69) "Exit" means termination or discontinuance of a Department-funded developmental disability service or setting.

(70) "Family Member" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew, or first cousin.

(71) "Family Training" means the training services that are provided to a family to increase the capacity of the family to care for, support, and maintain an individual in the family home.

(72) "Fiscal Intermediary" means a person or entity that receives and distributes funds on behalf of an employer.

(73) "Founded Report" means the determination by the Department or Law Enforcement Authority (LEA), based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.

(74) "Functional Needs Assessment" means the comprehensive assessment or reassessment appropriate to the specific program in which an individual is enrolled that:

(a) Documents physical, mental, and social functioning;

(b) Identifies risk factors and support needs; and

(c) Determines the service level.

(75) "General Business Provider" means an organization or entity selected by an individual or the legal representative of the individual and paid with Department funds that:

(a) Is primarily in business to provide the service chosen by the parent or guardian to the general public;

(b) Provides services for the child through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the child.

(76) "Good Cause" means an excusable mistake, surprise, excusable neglect (which may include neglect due to a significant cognitive or health issue), circumstances beyond the control of a claimant, reasonable reliance on the statement of Department Staff or an adverse provider relating to procedural requirements, [or due to] fraud, misrepresentation, or other misconduct of the Department or a party adverse to a claimant.

(77) "Guardian" means the parent for an individual under the age of 18 or a person or agency appointed and authorized by a court to make decisions about services for an individual.

(78) "Health Care Provider" means the person or health care facility licensed, certified, or otherwise authorized or permitted by Oregon law to administer health care in the ordinary course of business or practice of a profession. Examples of a health care provider include, but are not limited to, a registered nurse (RN), nurse practitioner (NP), licensed practical nurse (LPN), medical doctor (MD), osteopathic physician (DO), chiropractor, respiratory therapist (RT), physical therapist (PT), physician assistant (PA), dentist, or occupational therapist (OT).

(79) "Health Care Representative" means:

(a) A health care representative as defined in ORS 127.505; or

(b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.

(80) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.

(81) "Home" means the primary residence for an individual that is not under contract with the Department to provide services as a certified or licensed foster home, residential care facility, assisted living facility, nursing facility, or other residential setting. The home of an individual is not considered a provider owned, controlled, or operated residential setting.

(82) "Home and Community-Based Services" are services provided in the home or community of an individual.

(a) Home and community-based services are authorized under the following Medicaid authorities:

(A) 1915(c) — HCBS Waivers;

(B) 1915(i) — State Plan HCBS; or

(C) 1915(k) — Community First Choice (K State Plan Option).

(b) Home and community-based services are delivered through the following program areas:

(A) Department of Human Services, Aging and People with Disabilities;

(B) Department of Human Services, Office of Developmental Disabilities Services; and

(C) Oregon Health Authority.

(c) Home and community-based services may include alternative resources specifically authorized as home and community-based by the Department or Authority.

(83) "Home and Community-Based Setting" means a physical location meeting the qualities of OAR 411-004-0020 where an individual receives home and community-based services.

(84) "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.

(85) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.

(86) "Independence" means the extent to which an individual exerts control and choice over his or her own life.

(87) "Independent Provider" means a person selected by an individual, or the legal or designated representative of the individual, and paid with Department funds to directly provide services to the individual.

(88) "Individual" means a child, young adult, or an adult applying for, or determined eligible for, Department-funded developmental disability services.

(89) "Individual-Directed Goods and Services" mean the services, equipment, or supplies, not otherwise provided through other waiver or state plan services, that address an identified need in the ISP for a child. Individual-directed goods and services may include services, equipment, or supplies that improve and maintain the full membership of a child in the community.

(90) "Individualized Education Program" is the written plan of instructional goals and objectives developed in conference with an individual, the parent or legal representative of an individual (as applicable), teacher, and a representative of the public school district.

(91) "Individually-Based Limitations" means any limitation to the qualities outlined in OAR 411-004-0020(2)(c) to (2)(j), due to health and safety risks. An individually-based limitation is based on specific assessed

need and only implemented with the informed consent of the individual or, as applicable, the legal representative of the individual, as described in OAR 411-004-0040.

(92) "Individual Support Plan (ISP)" An ISP includes the written details of the supports, activities, and resources required for a child to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects services and supports that are important to meet the needs of the child identified through a functional needs assessment as well as the preferences for providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, the Community First Choice state plan, natural supports, or alternative resources.

(93) "Instrumental Activities of Daily Living (IADL)" are the activities other than activities of daily living required to continue independent living. IADL services include, but are not limited to:

(a) Light housekeeping tasks necessary to maintain an individual in a healthy and safe environment — cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and laundry;

(b) Grocery and other shopping necessary for the completion of other ADL and IADL tasks;

(c) Meal preparation and special diets;

(d) Support with participation in the community:

(A) Support with community participation — assisting an individual in acquiring, retaining, and improving skills to use available community resources, facilities, or businesses, and improving self-awareness and self-control; and

(B) Support with communication — assisting an individual in acquiring, retaining, and improving expressive and receptive skills in verbal and non-verbal language, social responsiveness, social amenities, and interpersonal skills, and the functional application of acquired reading and writing skills.

(94) "Intake" means the activity of completing the DD Intake Form (SDS 0552) and necessary releases of information prior to the submission of a completed application to the Community Developmental Disability Program.

(95) "Integration" consistent with ORS 427.005 means:

(a) Use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

(b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without disabilities participate, together with regular contact with people without disabilities; and

(c) Residence by individuals with intellectual or developmental disabilities in homes that are in proximity to community resources, together with regular contact with people without disabilities in their community.

(96) "Intellectual Disability" means significantly subaverage general intellectual functioning defined as full scale intelligence quotients (IQs) 70 and under as measured by a qualified professional and existing concurrently with significant impairment in adaptive behavior directly related to an intellectual disability as described in OAR 411-320-0080 that is manifested during the developmental period prior to 18 years of age. Individuals with a valid full scale IQ of 71-75 may be considered to have an intellectual disability if there is also significant impairment in adaptive behavior as diagnosed and measured by a licensed clinical or school psychologist as described in OAR 411-320-0080.

(97) "Involuntary Reduction" means a provider has made the decision to reduce services provided to an individual without prior approval from the individual.

(98) "Involuntary Transfer" means a provider has made the decision to transfer an individual without prior approval from the individual.

(99) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator or personal agent, and others chosen by the individual, or as applicable the legal representative of the individual, such as providers and family members.

(100) "Legal Representative" means a person who has the legal authority to act for an individual. The legal representative only has authority to act within the scope and limits of his or her authority as designated by a court or other agreement. A legal representative acting outside of his or her authority or scope must meet the definition of designated representative.

(a) For an individual under the age of 18, the legal representative is the parent, unless a court appoints another person or agency to act as the guardian; and

(b) For an individual 18 years of age or older, the legal representative is the guardian appointed by a court order or an agent legally designated as the health care representative, where the court order or the written designation provides authority for the appointed or designated person to make the decisions indicated where the term "legal representative" is used.

(101) "Licensed Independent Practitioner" means a health care professional authorized by the state of Oregon to independently diagnose and treat.

(102) "Local Mental Health Authority" is:

(a) The county court or board of county commissioners of one or more counties that operate a CDDP;

(b) The tribal council in the case of a Native American reservation;

(c) The board of directors of a public or private corporation if the county declines to operate or contract for all or part of a CDDP; or

(d) The advisory committee for the CDDP covering a geographic service area when managed by the Department.

(103) "Mandatory Reporter":

(a) Means:

(A) Any public or private official as defined in ORS 419B.005 who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official;

(B) Any public or private official as defined in ORS 430.735 who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult;

(C) Any public or private official as defined in ORS 124.050 who comes in contact with an older adult, age 65 and older, and has reasonable cause to believe the older adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the older adult; and

(D) Any public or private official as defined in ORS 441.630 who comes in contact with a resident of a nursing facility and has reasonable cause to believe the resident has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the resident.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(104) "Mechanical Restraint" means any mechanical device, material, object, or equipment attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual. Mechanical restraint is not:

(a) The use of acceptable infant safety products;

(b) The use of car safety systems, consistent with applicable state law for people without disabilities; or

(c) Safeguarding equipment when ordered by a physician or health care provider and approved by the ISP team.

(105) "Medication" means any drug, chemical, compound, suspension, or preparation in suitable form for use as a curative or remedial substance taken either internally or externally by any person.

(106) "Monitoring" means the periodic review of the implementation of services and supports identified in an Individual Support Plan or Annual Plan and the quality of services delivered by other organizations.

(107) "Natural Support" means:

(a) For a child, the parental responsibilities for the child and the voluntary resources available to the child from the relatives, friends, neighbors, and the community of the child that are not paid for by the Department.

(b) For an adult, the voluntary resources available to an adult from the relatives, friends, significant others, neighbors, roommates, and the community of the adult that are not paid for by the Department.

(108) "Notice of Involuntary Reduction, Transfer, or Exit" means form SDS 0719DD. This form is part of the AFH/DD Mandatory Written Notice of Exit or Transfer.

(109) "Notification of Planned Action" means form SDS 0947. The Notification of Planned Action is the written decision notice issued to an individual in the event that a developmental disability service is denied, reduced, suspended, or terminated.

(110) "Nurse" means a person who holds a current license from the Oregon Board of Nursing as a registered nurse or licensed practical nurse pursuant to ORS chapter 678.

(111) "Nursing Service Plan" means the written guidelines developed by a registered nurse that identifies the specific needs of an individual and the intervention or regiment to assist the individual to achieve optimal health potential. Developing the Nursing Service Plan includes establishing individual and nursing goals and determining nursing interventions to meet care objectives.

(a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and all direct nursing service needs.

(b) The Nursing Service Plan is separate from the Individual Support Plan as well as any service plans developed by other health professionals.

(112) "Nursing Tasks" mean the care or services that require the education and training of a licensed professional nurse to perform. Nursing tasks may be delegated.

(113) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(114) "Older Adult" means an adult at least 65 years of age.

(115) "Oregon Intervention System" is the system of providing training of elements of positive behavior support and non-aversive behavior intervention. The Oregon Intervention System uses principles of pro-active support and describes approved protective physical intervention techniques that are used in an emergency to maintain health and safety.

(116) "Oregon Supplemental Income Program-Medical" is Oregon Medicaid insurance coverage as described in OAR 461-001-0030 for individuals who meet the eligibility criteria described in OAR chapter 461.

(117) "Parent" means the biological parent, adoptive parent, or stepparent of a child.

(118) "Person-Centered Planning":

(a) Means a timely and formal or informal process driven by an individual, includes people chosen by the individual, ensures the individual directs the process to the maximum extent possible, and enables the individual to make informed choices and decisions consistent with 42 CFR 441.301 and 441.540.

(b) Person-centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, providers, service settings, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(119) "Personal Agent" means a person who:

(a) Is a case manager for the provision of case management services;

(b) Is the person-centered plan coordinator for an individual as defined in the Community First Choice state plan amendment;

(c) Works directly with individuals and, if applicable, the legal or designated representatives and families of individuals to provide or arrange for support services as described in OAR chapter 411, division 340;

(d) Meets the qualifications set forth in OAR 411-340-0150(5); and

(e) Is a trained employee of a brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(120) "Personal Support Worker" as defined in OAR 411-375-0010:

(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.

(121) "Plan Year" means 12 consecutive months from the start date specified on an authorized ISP or Annual Plan.

(122) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intrusive intervention possible;

(c) Ensures that abusive or demeaning interventions are never used; and

(d) Evaluates the effectiveness of behavior interventions based on objective data.

(123) "Prescription Medication" means any medication that requires a prescription from a physician before the medication may be obtained from a pharmacist.

(124) "Primary Caregiver" means:

(a) For a child, the parent, guardian, relative, or other non-paid parental figure of a child that provides direct care at the times that a paid provider is not available. In this context, the term parent or guardian may include a designated representative.

(b) For an adult, the person identified in an Individual Support Plan as providing the majority of services and support for an individual in the home of the individual.

(125) "Primary Care Provider" means the health care provider who delivers day-to-day comprehensive health care. Typically, the primary care provider acts as the first contact and principal point of continuing care for an individual within the health care system and coordinates other specialist care that the individual may need.

(126) "PRN (pro re nata)" means the administration of a medication to an individual on an 'as needed' basis.

(127) "Productivity" consistent with ORS 427.005, means regular engagement in income-producing work, preferable competitive integrated employment with supports and accommodations to the extent necessary, by an individual that is measured through improvements in income level, employment status, or job advancement or engagement by an individual in work contributing to a household or community.

(128) "Progress Note" means a written record of an action taken by provider in the delivery of a service to support an individual. A progress note may also be a recording of information related to services, support needs, or circumstances of the individual which is necessary for the effective delivery of services.

(129) "Protection" means the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(130) "Protective Physical Intervention" is a safety intervention used in an emergency, which may or may not include physical contact with the individual.

(131) "Protective Services" mean the necessary actions offered to an individual as soon as possible to prevent subsequent abuse or exploitation of the individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of the individual.

(132) "Provider" means a person, agency, organization, or business selected by an individual or legal representative that provides recognized Department-funded services and is approved by the Department or other appropriate agency to provide Department-funded services. The provider for a child may not also be the primary caregiver of the child.

(133) "Provider Organization" means an entity selected by an individual or the representative of the individual and paid with service funds that:

(a) Is primarily in business to provide supports for individuals with intellectual or developmental disabilities;

(b) Provides supports for the individual through employees, contractors, or volunteers; and

(c) Receives compensation to recruit, supervise, and pay the person who actually provides support for the individual.

(134) "Provider Owned, Controlled, or Operated Residential Setting" means:

(a) The residential provider is responsible for delivering home and community-based services to individuals in the setting and the provider:

(A) Owns the setting;

(B) Leases or co-leases the residential setting; or

(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated.

(b) A setting is not provider-owned, controlled, or operated if the individual leases directly from a third party that has no direct or indirect financial relationship with the provider.

(c) When an individual receives services in the home of a family member, the home is not considered provider-owned, controlled, or operated.

(135) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(136) "Quality Assurance" means a systematic procedure for assessing the effectiveness, efficiency, and appropriateness of services.

(137) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a primary caregiver.

(138) "Residency Agreement" means the written and legally enforceable agreement between a residential provider and an individual or the legal or designated representative of the individual when the individual is receiving home and community-based services in a provider owned, controlled, or operated residential setting. The Residency Agreement identifies the rights and responsibilities of the individual and the residential provider and provides the individual protection from eviction substantially equivalent to landlord-tenant laws.

(139) "Restraint" means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal functioning of an individual.

(140) "Review" means a request for reconsideration of a decision.

(141) "Safeguarding Equipment" means a device used to provide support to an individual for the purpose of achieving and maintaining functional body position, proper balance, and protecting the individual from injury or symptoms of existing medical conditions.

(142) "School Aged" means the age at which an individual is old enough to attend kindergarten through high school.

(143) "Scope of Work" means the written statement of all proposed work requirements for an environmental modification which may include dimensions, measurements, materials, labor, and outcomes necessary for a contractor to submit a proposal to complete such work. The scope of work is specific to the identified tasks and requirements necessary to address the needs outlined in the supplemental assessment referenced in an Individual Support Plan and relating to the activities of daily living, instrumental activities of daily living, and health-related tasks of the individual as discussed by the individual, homeowner, services coordinator or personal agent, and ISP team.

(144) "Self-Administration of Medication" means an individual manages and takes his or her own medication, identifies his or her own medication and the times and methods of administration, places the medication internally in or externally on his or her own body without staff assistance upon written order of a physician, and safely maintains the medication without supervision.

(145) "Self-Determination" means a philosophy and process by which individuals with intellectual or developmental disabilities are empowered to gain control over the selection of support services that meet their needs. The basic principles of self-determination are:

(a) Freedom. The ability for an individual, together with freely-chosen family and friends, to plan a life with necessary support services rather than purchasing a predefined program;

(b) Authority. The ability for an individual, with the help of a social support network if needed, to control resources in order to purchase support services;

(c) Autonomy. The arranging of resources and personnel, both formal and informal, that assists an individual to live a life in the community rich in community affiliations; and

(d) Responsibility. The acceptance of a valued role of an individual in the community through competitive employment, organizational affiliations, personal development, and general caring for others in the community, as well as accountability for spending public dollars in ways that are life-enhancing for the individual.

(146) "Self-Direction" means that an individual, or as applicable the legal or designated representative of the individual, has decision-making authority over services and takes direct responsibility for managing services with the assistance of a system of available supports that promotes personal choice and control over the delivery of waiver and state plan services.

(147) "Sensory Impairment" means loss or impairment of sight or hearing from any cause, including involvement of the brain.

(148) "Service Agreement":

(a) Is the written agreement consistent with an Individual Support Plan 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.

(149) "Service Element" means a funding stream to fund programs or services including, but not limited to, foster care, 24-hour residential, case management, supported living, support services, crisis diversion services, in-home comprehensive supports, or family support.

(150) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(151) "Service Record" means the combined information related to an individual.

(152) "Services" include, but are not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, or transportation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.

(153) "Services Coordinator" means an employee of the Department, Community Developmental Disability Program, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. A services coordinator acts as the proponent for individuals with intellectual or developmental disabilities and is the person-centered plan coordinator for the individual as defined in the Community First Choice state plan amendment.

(154) "Significant Other" means a person selected by an individual to be the friend of the individual.

(155) "Skills Training" means the activities intended to maximize the independence of an individual through training, coaching, and prompting the individual to accomplish activities of daily living, instrumental activities of daily living, and health-related skills.

(156) "Social Benefit" means the service or financial assistance solely intended to assist an individual with an intellectual or developmental disability to function in society on a level comparable to that of a person who does not have a disability. Social benefits are pre-authorized by a services coordinator or personal agent and provided according to the description and limits written in an Individual Support Plan.

(a) Social benefits may not:

(A) Duplicate benefits and services otherwise available to a person regardless of disability;

(B) Replace normal parental responsibilities for the services, education, recreation, and general supervision of a child;

(C) Provide financial assistance with food, clothing, shelter, and laundry needs common to a person with or without a disability; or

(D) Replace other governmental or community services available to an individual.

(b) Assistance provided as a social benefit is reimbursement for an expense previously authorized in an Individual Support Plan or prior payment in anticipation of an expense authorized in a previously authorized Individual Support Plan.

(c) Assistance provided as a social benefit may not exceed the actual cost of the support required by an individual to be supported in the home of the individual.

(157) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.

(158) "Specialized Medical Supplies" mean medical and ancillary supplies, such as:

(a) Necessary medical supplies specified in an ISP that are not available through state plan or alternative resources;

(b) Ancillary supplies necessary to the proper functioning of items necessary for life support or to address physical conditions; and

(c) Supplies necessary for the continued operation of augmentative communication devices or systems.

(159) "Staff" means paid employees who are responsible for providing services and supports to individuals and whose wages are paid in part or in full with funds sub-contracted with a community developmental disability program, support services brokerage, or contracted directly through the Department.

(160) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(161) "Supplant" means take the place of.

(162) "Support" means:

(a) For a child, the assistance that a child and a family requires, solely because of the effects of an intellectual or developmental disability of the child, to maintain or increase the age-appropriate independence of the child, achieve age-appropriate community presence and participation of the child, and to maintain the child in the family home. Support is subject to change with time and circumstances.

(b) For an adult, the assistance that an adult individual requires, solely because of the effects of an intellectual or developmental disability of the adult, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(163) "Support Services" mean the services of a Brokerage listed in OAR 411-340-0120 as well as the uniquely determined activities and purchases arranged through the Brokerage that:

(a) Complement the existing formal and informal supports that exist for an individual living in her or her own home or the family home;

(b) Are designed, selected, and managed by an individual;

(c) Are provided in accordance with the Individual Support Plan for an individual; and

(d) May include purchase of supports as a social benefit required for an individual to live in his or her own home or the family home.

(164) "Support Services Brokerage" means an entity or distinct operating unit within an existing entity that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(165) "Transfer" means movement of an individual from one service setting to a different service setting administered or operated by the same provider.

(166) "Transition Costs" mean the expenses required for an individual to make the transition from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities to a community-based home setting where the individual resides.

(167) "Transition Plan" means the Individual Support Plan describing necessary services and supports for an individual upon entry to a new service setting. The Transition Plan is approved by a services coordinator or personal agent and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for further ISP development.

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

(a) Under OAR 407-007-0275, the person applying to be an independent provider has been found ineligible due to ORS 443.004;

(b) Under OAR 407-007-0275, the person was enrolled as an independent provider 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.

(169) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, when an individual contacts the police or is contacted by the police, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(170) "Variance" means the temporary exception from a regulation or provision of the rules in OAR chapter 411 that may be granted by the Department upon written application.

(171) "Vehicle Modifications" mean the adaptations or alterations that are made to the vehicle that is the primary means of transportation for an individual in order to accommodate the service needs of the individual.

(172) "Volunteer" means any person assisting a provider without pay to support the services and supports provided to an individual.

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

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

(175) "Young Adult" means a young individual aged 18 through 20.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 409.050

Hist.: APD 22-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 40-2014, f. 12-26-14, cert. ef. 12-28-14; APD 38-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: In-Home Support for Children and Adults with Intellectual or Developmental Disabilities

Adm. Order No.: APD 39-2015(Temp)

Filed with Sec. of State: 12-31-2015

Certified to be Effective: 1-1-16 thru 6-28-16

Notice Publication Date:

Rules Amended: 411-308-0020, 411-308-0050, 411-308-0080, 411-308-0100, 411-308-0110, 411-308-0120, 411-308-0130, 411-330-0020, 411-330-0050, 411-330-0060, 411-330-0070, 411-330-0080, 411-330-0110

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily amending:

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

- OAR chapter 411, division 330 for comprehensive in-home support for adults with intellectual or developmental disabilities.

These rules are being temporarily amended to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Incorporate the most recent version of the In-Home Expenditure Guidelines;

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning;

- Implement changes associated with the Fair Labor Standards Act by limiting payment to no more than 50 hours in a work week per personal support worker per individual;

- Clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit to support an individual aged 18 through 20 in the family home;

- Incorporate direct nursing services to support an adult with complex health management support needs in his or her home and community as described in OAR chapter 411, division 380; and

- Reflect changes for provider organizations certified or applying for certification according to OAR 411-340-0030.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-308-0020
Definitions

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 308:

(1) "ADL" means "activities of daily living".

(2) "Annual Plan" means the written summary a services coordinator completes for a child who is not enrolled in waiver or Community First Choice state plan services. An Annual Plan is not an ISP and is not a plan of care for Medicaid purposes.

(3) "CDDP" means "Community Developmental Disability Program".

(4) "Children's Intensive In-Home Services" mean the services described in:

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

(b) OAR chapter 411, division 350, Medically Fragile Children Services; or

(c) OAR chapter 411, division 355, Medically Involved Children's Program.

(5) "CPMS" means the "Client Processing Monitoring System".

(6) "Crisis" means "crisis" as defined in OAR 411-320-0020.

(7) "Department" means the Department of Human Services.

(8) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director.

(9) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(10) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(11) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(12) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for in-home supports as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(13) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home for children with intellectual or developmental disabilities or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting.

(a) A family home may include a foster home funded by Child Welfare.

(b) A foster home funded by Child Welfare is considered a provider owned, controlled, or operated residential setting.

(14) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child is known as the Child Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

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

(16) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(17) "IHS Funds" means "in-home support funds". IHS funds are public funds contracted by the Department to the CDDP and managed by the CDDP to assist a family with the identification and selection of supports for a child according to an ISP or Annual Plan.

(18) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for IHS funds. Effective January 1, 2016, the Department incorporates version 4.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(19) "In-Home Support" means individualized planning and service coordination, arranging for services to be provided in accordance with an ISP or Annual Plan, and purchase of supports that are not available through other resources that are required for a child with an intellectual or developmental disability who is eligible for in-home support services to live in the family home. In-home supports are designed to:

(a) Support a child to be independent and to be engaged in a life that is fully integrated in the community.

(b) Prevent unwanted out-of-home placement and maintain family unity; and

(c) Whenever possible, reunite a family with a child who has been placed out of the family home.

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

(21) "Job Development" means "job development" as defined in OAR 411-345-0020.

(22) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(23) "OHP" means the Oregon Health Plan.

(24) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(25) "OIS" means "Oregon Intervention System".

(26) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(27) "Regional Process" means a standardized set of procedures through which the needs of a child and funding to implement supports are reviewed for approval. The regional process includes review of the potential risk of out-of-home placement, the appropriateness of the proposed supports, and cost effectiveness of the Annual Plan for the child. A child who meets the general fund eligibility under OAR 411-308-0060 may be granted access to in-home supports through the regional process.

(28) "Supported Employment — Individual Employment Support" means "supported employment — individual employment support" as defined in OAR 411-345-0020.

(29) "Supported Employment — Small Group Employment Support" means "supported employment — small group employment support" as defined in OAR 411-345-0020.

(30) "These Rules" mean the rules in OAR chapter 411, division 308.

(31) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-308-0150.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0050
Financial Limits of In-Home Support

(1) The use of IHS funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet the identified needs of the child. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State Plan personal care service hours as described in OAR chapter 411, division 034.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines;

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(d) Payment for no more than 50 hours in a work week by a single personal support worker per child unless:

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

(B) An exception has been granted by the Department.

(2) For a child who is not Medicaid Title XIX eligible:

(a) Support must be limited to:

(A) The amount of support determined to be necessary to prevent out-of-home placement that is specified in an Annual Plan and does not exceed the maximum allowable monthly plan amount published in the In-home Expenditure Guidelines in any month during the plan year; and

(B) The amount of time necessary for a child to transition into waiver or Community First Choice state plan services, if eligible.

(b) Payment rates used to establish the limits of financial assistance for a specific service in an Annual Plan must be based on the In-home Expenditure Guidelines.

Stat. Auth.: ORS 409.050 & 430.620

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0080

Required In-Home Support Services

(1) The CDDP must develop and implement an ISP or Annual Plan according to the standards described in OAR 411-320-0120.

(2) A child who is accessing waiver or Community First Choice state plan services must have an ISP authorized by the CDDP as described in OAR 411-320-0120.

(3) The CDDP must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP or Annual Plan as described in OAR 411-320-0120 prior to purchasing supports with IHS funds.

(4) For a child accessing in-home supports through general fund eligibility, the Annual Plan must include a plan to reduce or eliminate the need for in-home supports through general funds. The Annual Plan may include assisting the child to access waiver or Community First Choice state plan services, if eligible.

(5) An Annual Plan, or records supporting development of an Annual Plan, must include evidence that:

(a) When the child is not Medicaid eligible, IHS funds are used only to purchase goods or services necessary to prevent the child from out-of-home placement or to return the child from a community placement to the family home;

(b) The services coordinator has assessed the availability of other means for providing the supports before using IHS funds and other public, private, formal, and informal resources available to the child have been applied and new resources have been developed whenever possible;

(c) Basic health and safety needs and supports have been addressed including, but not limited to, identification of risks including risk of serious neglect, intimidation, and exploitation;

(d) Informed decisions by the parent or guardian regarding the nature of supports or other steps taken to ameliorate any identified risks; and

(e) Education and support for the child and the family to recognize and report abuse.

(6) The services coordinator must obtain a Nursing Service Plan when in-home supports are used to purchase services requiring the education and training of a nurse.

(7) The services coordinator must obtain a Behavior Support Plan when the Behavior Support Plan is implemented by the parent, guardian, designated representative, or providers during the plan year.

(8) In-home supports may only be provided after an ISP or Annual Plan is developed, signed, and authorized as described in OAR 411-320-0120.

(9) The services coordinator must conduct and document reviews of an ISP or Annual Plan with a family as follows:

(a) For standard eligibility, an ISP must be reviewed and revised as described in OAR 411-320-0120.

(b) For general fund eligibility, an Annual Plan must be reviewed quarterly for the continued risk of out-of-home placement and the availability of alternative resources, including eligibility for waiver and Community First Choice state plan services.

(10) When a child and family move to a different county, the originating CDDP must assist in-home support recipients by:

(a) Continuing in-home supports authorized by the ISP or Annual Plan which is current at the time of the move, if the support is available, until the transfer date agreed upon according to OAR 411-308-0070; and

(b) Transferring the unexpended portion of the in-home supports to the new CDDP of residence.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0100

Conditions for In-Home Support Purchases

(1) A CDDP must only use IHS funds to assist families to purchase supports for the purpose defined in OAR 411-308-0010 and in accordance with an ISP or Annual Plan that meets the requirements for development and content as described in OAR 411-308-0080.

(2) The CDDP must arrange for supports purchased with IHS funds to be --

(a) Provided in settings and under purchasing arrangements and conditions that enable a child to freely choose (as appropriate) to receive supports and services from a qualified provider as described in OAR 411-308-0130;

(b) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020;

(c) Provided in a manner consistent with positive behavioral theory and practice and where behavior intervention is not undertaken unless the behavior --

(A) Represents a risk to the health and safety of a child or others;

(B) Is likely to continue and become more serious over time;

(C) Interferes with community participation;

(D) Results in damage to property; or

(E) Interferes with learning, socializing, or vocation.

(d) Provided in accordance with the following:

(A) Applicable state and federal wage and hour regulations in the case of personal care services, training, and supervision;

(B) Applicable state or local building codes in the case of environmental modifications to the family home;

(C) Oregon State Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks;

(D) OAR 411-308-0130 governing provider qualifications and responsibilities; and

(E) The In-Home Expenditure Guidelines.

(3) When IHS funds are used to purchase services, training, supervision beyond basic supervision provided by a parent or guardian, or other personal care assistance for a child, the CDDP must require and document that providers are informed of:

(a) Mandatory reporter responsibility to report suspected child abuse;

(b) Responsibility to immediately notify the parent or guardian, or any other person specified by the parent or guardian, of any injury, illness, accident, or unusual circumstance involving the child that occurs when the provider is providing individual services, training, or supervision that may have a serious effect on the health, safety, physical, or emotional well-being or level of services required;

(c) Limits of payment:

(A) Payments for the agreed-upon services are considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the family or any other source.

(B) The provider must bill all third party resources before using IHS funds.

(d) The provisions of provider termination as described in OAR 411-308-0130;

(e) The requirement to maintain a drug-free workplace; and

(f) The payment process, including payroll or contractor payment schedules or timelines.

(4) The method and schedule of payment must be specified in written agreements between the CDDP and the parent or guardian.

(a) Support expenses must be separately projected, tracked, and expensed, including separate contracts, service agreements, and timekeeping for staff working with more than one eligible child.

(b) The CDDP is specifically prohibited from reimbursing a family for expenses or advancing funds to a family to obtain services. The CDDP must issue payment, or arrange a fiscal intermediary to issue payment,

directly to a qualified provider on behalf of a family after approved services described in an ISP or Annual Plan have been satisfactorily delivered.

(5) The CDDP must inform families in writing of records and procedures required in OAR 411-308-0030 regarding expenditure of IHS funds. During development of an ISP or Annual Plan, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must delineate responsibility for maintenance of records in written service agreements.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0110
Using In-Home Support Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to an employee of a parent or guardian, employee of a general business provider, or employee of a provider organization who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(3) IHS funds may not be used for:

(a) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(c) Services or activities that are carried out in a manner that constitutes abuse of a child;

(d) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(f) Purchase or lease of a vehicle;

(g) Purchase of a service animal or costs associated with the care of a service animal;

(h) Health and medical costs that the general public normally must pay including, but not limited to, the following:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(i) Ambulance service;

(j) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charges, or contractor travel and preparation hours;

(o) Services, activities, materials, or equipment that are not necessary, not in accordance with the In-home Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-317-0000;

(p) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(q) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(r) Services, activities, materials, or equipment that the CDDP determines may be reasonably obtained by a family through alternative resources or natural supports;

(s) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(t) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP or Annual Plan, refused to accept or delegate record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support; or

(u) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to or is in imminent danger of causing physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050 & 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0120
Supports Purchased with In-Home Support Funds

(1) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-308-0110, IHS funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and OSIPM or OHP Plus benefits a child qualifies for:

(a) Community First Choice state plan services. A child who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services:

(A) Behavior support services as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental modifications as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Skills training as described in section (6) of this rule;

(F) Relief care as described in section (7) of this rule;

(G) Assistive devices as described in section (8) of this rule;

(H) Assistive technology as described in section (9) of this rule;

(I) Chore services as described in section (10) of this rule;

(J) Community transportation as described in section (11) of this rule; and

(K) Transition costs as described in section (12) of this rule.

(b) Home and community-based waiver services. A child who is eligible for OSIPM and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management;

(B) Employment services as described in section (13) of this rule;

(C) Family training as described in section (14) of this rule;

(D) Environmental safety modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule; and

(F) Specialized medical supplies as described in section (17) of this rule.

(c) State Plan personal care services. A child who is eligible for OHP Plus through Title XXI, has personal care supportive needs, and does not meet the level of care as defined in OAR 411-320-0020 may access State

Plan personal care services if the child meets the eligibility criteria described in OAR chapter 411, division 034.

(2) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care; or

(G) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(4) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the assessed health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(5) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(b) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services that are funded by Child Welfare in the family home;

(F) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(G) Services provided by the family; and

(H) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(7) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed 7 consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without permission from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian, is a safe setting for the child; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than 7 consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(8) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable a child to increase the ability of the child to perform and support ADLs and IADLs or to perceive, control, or communicate within the family home and community environment in which the child lives.

(b) Assistive devices may be purchased with IHS funds when the intellectual or developmental disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or

IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(9) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(11) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child to accomplish ADL, IADL, a health-related task, or employment goal as identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child.

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(L) Reimbursement for out-of-state travel expenses; and

(M) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(12) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transition costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(13) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(15) ENVIRONMENTAL SAFETY MODIFICATIONS

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct safety or long-term benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental safety modifications must only be completed to the family home.

(n) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(o) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(16) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 4-2011(Temp), f. & cert. ef. 2-1-11 thru 7-31-11; SPD 20-2011, f. & cert. ef. 8-1-11; SPD 21-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-308-0130

Standards for Providers Paid with In-Home Support Funds

(1) PROVIDER QUALIFICATIONS.

(a) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS. An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide in-home supports must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

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

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, foster parent, or other person legally responsible for the child receiving supports;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP or Annual Plan for the child, with such demonstration confirmed in writing by the parent or guardian, including:

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

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent or guardian; and

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

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

(J) If transporting the child, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(c) Subsection (b)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(d) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(e) All providers are mandatory reporters and are required to report suspected child abuse to their local Department office or to the police in the manner described in ORS 419B.010.

(2) PROVIDER TERMINATION.

(a) PERSONAL SUPPORT WORKERS. The provider enrollment for a personal support worker is inactivated or terminated as described in OAR chapter 411, division 375.

(b) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(A) The provider enrollment for an independent provider who is not a personal support worker may be inactivated in the following circumstances:

(i) The provider has not provided any paid in-home services to an individual within the last previous 12 months;

(ii) The provider informs the Department, CDDP, CIIS, or Support Services Brokerage that the provider is no longer providing in-home services in Oregon;

(iii) The background check for the provider results in a closed case pursuant to OAR 407-007-0325;

(iv) Services provided by the provider are being investigated by adult or child protective services for suspected abuse that poses imminent danger to current or future children; or

(v) Provider payments, all or in part, for the provider have been suspended based on a credible allegation of fraud or a conviction of fraud pursuant to federal law under 42 CFR 455.23.

(B) The provider enrollment for an independent provider, who is not a personal support worker, may be terminated when the Department determines after enrollment that the independent provider has:

(i) Been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of service;

(ii) Been convicted of unlawfully manufacturing, distributing, prescribing, or dispensing a controlled substance;

(iii) Surrendered his or her professional license or had his or her professional license suspended, revoked, or otherwise limited;

(iv) Failed to safely and adequately provide the authorized services;

(v) Had a founded report of child abuse or substantiated adult abuse;

(vi) Failed to cooperate with any Department or CDDP investigation or grant access to, or furnish, records or documentation, as requested;

(vii) Billed excessive or fraudulent charges or been convicted of fraud;

(viii) Made a false statement concerning conviction of crime or substantiated abuse;

(ix) Falsified required documentation;

(x) Been suspended or terminated as a provider by the Department or Oregon Health Authority;

(xi) Violated the requirement to maintain a drug-free work place;

(xii) Failed to provide services as required;

(xiii) Failed to provide a tax identification number or social security number that matches the legal name of the independent provider, as verified by the Internal Revenue Service or Social Security Administration; or

(xiv) Has been excluded or debarred by the Office of the Inspector General.

(C) If the CDDP or Department makes a decision to terminate the provider enrollment of an independent provider who is not a personal support worker, the CDDP or Department must issue a written notice.

(i) The written notice must include:

(I) An explanation of the reason for termination of the provider enrollment;

(II) The alleged violation as listed in subsection (A) or (B) of this section;

(III) The appeal rights for the independent provider, including how to file an appeal; and

(IV) The effective date of the termination.

(ii) For terminations based on substantiated abuse allegations, the notice may only contain the limited information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, and OAR 411-020-0030, complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(D) The provider may appeal a termination within 30 days of the date the termination notice was mailed to the provider. The provider must appeal a termination separately from any appeal of audit findings and overpayments.

(i) A provider of Medicaid services may appeal a termination by requesting an administrator review.

(ii) For an appeal regarding provision of Medicaid services to be valid, written notice of the appeal must be received by the Department within 30 days of the date the termination notice was mailed to the provider.

(E) At the discretion of the Department, providers who have previously been terminated or suspended by the Department or by the Oregon Health Authority may not be authorized as providers of Medicaid services.

(3) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(4) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-308-0120;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-308-0120.

(5) COMMUNITY NURSE. A nurse providing community nursing services is not a personal support worker. The nurse must:

(a) Be enrolled in the Long-Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(b) Meet the qualifications described in OAR 411-048-0210; and

(c) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(6) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 346 for a child foster home, does not require additional certification or endorsement as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation. A provider organization that was certified or had applied for certification according to OAR 411-340-0030 prior to January 1, 2016 may also provide employment services when the organization also meets the requirements in OAR 411-345-0030. When granted after January 1, 2016, certification as set forth in OAR chapter 411 division 323, with an endorsement to OAR chapter 411 division 340, is not sufficient qualification for a provider organization to deliver employment services.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with IHS funds meet the standards for independent providers described in this rule.

(7) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with IHS funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with IHS funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractor's Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public and private transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices or specialized medical supplies, a current retail business license, including enrollment as Medicaid providers through the Oregon Health Authority if vending medical equipment; and

(g) For providers of personal emergency response systems, a current business license.

Stat. Auth.: ORS 409.050 & 430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 7-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; SPD 20-2009, f. 12-23-09, cert. ef. 12-28-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 54-2013, f. 12-27-13, cert. ef. 12-28-13; APD 21-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 39-2014, f. 12-26-14, cert. ef. 12-28-14; APD 2-2015, f. & cert. ef. 1-29-15; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0020
Definitions

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 330:

(1) "ADL" means "activities of daily living".

(2) "CDDP" means "Community Developmental Disability Program".

(3) "Clinical Criteria" means the criteria used by the Department or the Medically Fragile Children's Unit as described in OAR 411-350-0055 to assess the private duty nursing support needs of an individual aged 18 through 20.

(4) "CPMS" means "Client Process Monitoring System".

(5) "Department" means the Department of Human Services.

(6) "Director" means the Director of the Department of Human Services, or the designee of the Director.

(7) "Direct Nursing Services" mean the nursing services described in OAR chapter 411, division 380 that are determined medically necessary to support an adult with complex health management support needs in his or her home and community. Direct nursing services are provided on a shift staffing basis.

(8) "Discovery and Career Exploration" means "discovery and career exploration" as defined in OAR 411-345-0020.

(9) "Employment Path Services" means "employment path services" as defined in OAR 411-345-0020.

(10) "Employment Services" means "employment services" as defined in OAR 411-345-0020.

(11) "Employment Specialist" means "employment specialist" as defined in OAR 411-345-0020.

(12) "Family":

(a) Means a unit of two or more people that includes at least one individual with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the individual with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting the individual with an intellectual or developmental disability when the individual is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of an individual for in-home support as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(13) "Functional Needs Assessment":

(a) Means the comprehensive assessment or re-assessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for an adult enrolled in comprehensive in-home supports is known as the Adult Needs Assessment (ANA). The Department incorporates Version C of the ANA into these rules by this reference. The ANA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. Printed copies of a blank ANA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(14) "Home" means the primary residence of an individual that is not under contract with the Department to provide services to the individual as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential support program site. The home of an individual is not considered a provider owned, controlled, or operated residential setting.

(15) "Home Delivered Meals" means "Home Delivered Meals" as defined in OAR 411-040-0010.

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

(17) "ICF/ID" means an intermediate care facility for individuals with intellectual disabilities.

(18) "IHS" means "in-home support" as defined in this rule.

(19) "Immediate Family" means, for the purpose of determining whether IHS funds may be used to pay a family member to provide services, the spouse of an adult with an intellectual or developmental disability.

(20) "In-Home Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for IHS funds. Effective January 1, 2016, the Department incorporates Version 4.0 of the In-home Expenditure Guidelines into these rules by this reference. The In-home Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/adults/ss_exp_guide.pdf. A printed copy may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(21) "In-Home Support" means services that are:

(a) Required for an individual with an intellectual or developmental disability to live in the home or the family home of the individual;

(b) Designed, selected, and managed by the individual; and

(c) Provided in accordance with the ISP for the individual.

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

(23) "Job Coaching" means "Job Coaching" as defined in OAR 411-345-0020.

(24) "Job Development" means "Job Development" as defined in OAR 411-345-0020.

(25) "OHA" means the Oregon Health Authority.

(26) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(27) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(28) "Private Duty Nursing Services" mean the State Plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty

Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support an individual aged 18 through 20 in the family home.

(29) "Supported Employment — Individual Employment Support" means "supported employment — individual employment support" as defined in OAR 411-345-0020.

(30) "Supported Employment — Small Group Employment" means "supported employment — small group employment" as defined in OAR 411-345-0020.

(31) "These Rules" mean the rules in OAR chapter 411, division 330.

(32) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department as described in OAR 411-330-0170.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662-670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 8-2007(Temp), f. 6-27-07, cert. ef. 7-1-07 thru 12-28-07; SPD 20-2007, f. 12-27-07, cert. ef. 12-28-07; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 9-2012(Temp), f. & cert. ef. 7-10-12 thru 1-6-13; SPD 1-2013, f. & cert. ef. 1-4-13; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0050
Required In-Home Support Services

(1) Each CDDP must provide or arrange for the following services as required to meet the support needs of eligible individuals:

(a) Assistance to determine needs and plan supports;

(b) Assistance to find and arrange resources and supports;

(c) Education and technical assistance to make informed decisions about support needs and direct support providers;

(d) Fiscal intermediary services;

(e) Employer-related supports; and

(f) Assistance to monitor and improve the quality of personal supports.

(2) A CDDP must complete a functional needs assessment and use a person-centered planning approach to assist an individual, and as applicable the legal or designated representative of the individual, to establish outcomes, determine needs, plan for supports, and review and redesign support strategies. The planning process must address the basic health and safety needs and supports, including informed decisions by the individual regarding any identified risks.

(3) A services coordinator must facilitate and develop an ISP through a person-centered planning process as described in OAR 411-320-0120.

(4) In-home supports may only be provided after an ISP is developed, signed, and authorized as described in OAR 411-320-0120.

(5) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(6) A Nursing Service Plan must be present when IHS funds are authorized for the provision of the following:

(a) Community nursing services as described in OAR chapter 411, division 048;

(b) Private duty nursing services as described in OAR 411-350-0055; and

(c) Direct nursing services as described in OAR chapter 411, division 380.

(7) A services coordinator must review and revise the ISP as described in OAR 411-320-0120. Each new plan year begins on the anniversary date of the initial or previous ISP.

(8) For an individual moving to another service area within Oregon, the CDDP must collaborate with the receiving CDDP to transfer IHS funds designated for the individual to continue the ISP for supports.

(9) For an individual transferring from a Brokerage to in-home support, the Brokerage ISP may be used as authorization for available in-home support for up to 90 days.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0060
Assistance with Purchasing In-Home Supports

(1) A CDDP must only use IHS funds to assist an individual to purchase supports when:

(a) The services coordinator has developed a written and approved ISP that meets requirements for development and content as described in OAR 411-320-0120;

(b) For Community First Choice state plan services, the support addresses a need that has been determined to be necessary by a functional needs assessment;

(c) The ISP specifies cost-effective arrangements for obtaining the required supports and applying public, private, formal, and informal resources available to the eligible individual;

(d) The ISP identifies the resources needed to purchase the remainder of necessary supports;

(e) The ISP is the most cost-effective plan to safely meet the goals of the individual's ISP; and

(f) The support is consistent with the In-home Expenditure Guidelines.

(2) Goods and services purchased with IHS funds must be provided only as a social benefit.

(3) The method, amount, and schedule of payment must be specified in written agreements between the CDDP and the individual and the legal or designated representative of the individual (as applicable). The CDDP is specifically prohibited from:

(a) Reimbursing an individual, or as applicable the legal or designated representative or family of the individual, for expenses related to services; and

(b) Advancing funds to an individual, or as applicable the legal or designated representative or family of the individual, to obtain services.

(4) Supports purchased for an individual with IHS funds are limited to those described in OAR 411-330-0110. The CDDP must arrange for these supports to be --

(a) Provided in settings and under purchasing arrangements and conditions that enable the individual to freely choose to receive supports and services from another provider;

(b) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020;

(c) Provided in a manner consistent with positive behavioral theory and practice;

(d) Provided in accordance with the following:

(A) Applicable state and federal wage and hour regulations in the case of personal care, training, and supervision;

(B) Applicable state or local building codes in the case of environmental modifications to the home; and

(C) Oregon State Board of Nursing rules in OAR chapter 851 when services involve performance of nursing services or delegation, teaching, and assignment of nursing tasks; and

(D) The In-Home Expenditure Guidelines.

(5) SERVICE LIMITS. The use of IHS funds to purchase supports is limited to:

(a) The service level of an individual as determined by a functional needs assessment. The functional needs assessment determines the total number of hours available to meet the identified needs of the individual. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include:

(A) Attendant care;

(B) Hourly relief care;

(C) Skills training; and

(D) State Plan personal care service hours as described in OAR chapter 411, division 034.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the In-home Expenditure Guidelines;

(c) Employment services and payment for employment services are limited to:

(A) An average of 25 hours per week for any combination of job coaching, small group employment support, and employment path services; and

(B) 40 hours in any one week for job coaching if job coaching is the only service utilized.

(d) Payment for no more than 50 hours in a work week by a single personal support worker per individual unless --

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

(B) An exception has been granted by the Department.

(6) When IHS funds are used to purchase supports for individuals, the CDDP must require and document that providers are informed of:

(a) Mandatory responsibility to report suspected abuse of an adult;

(b) Responsibility to immediately notify the legal or designated representative (as applicable) of the individual, family (if services are provid-

ed to an individual in the family home), and the CDDP of injury, illness, accidents, or any unusual circumstances that may have a serious effect on the health, safety, physical, emotional well-being, or level of services required by the individual for whom services are being provided; and

(c) Limits of payment:

(A) IHS payments for the agreed-upon services must be considered full payment and the provider under no circumstances may demand or receive additional payment for these services from the individual, the legal or designated representative of the individual (as applicable), the family of the individual, or any other source.

(B) The provider must bill all third party resources before using IHS funds unless another arrangement is agreed upon by the CDDP in the ISP for the individual.

(7) USE OF IHS FUNDS PROHIBITED.

(a) Effective July 28, 2009, IHS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(b) Section (7)(a) of this rule does not apply to employees of the individual, the legal or designated representative of the individual (as applicable), or provider organizations, who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(c) IHS funds may not be used for --

(A) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

(B) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260;

(C) Materials or equipment that has been determined unsafe for the general public by recognized consumer safety agencies;

(D) Individual or family vehicles;

(E) Health and medical costs that the general public normally must pay, including but not limited to, the following:

(i) Medications;

(ii) Health insurance co-payments;

(iii) Mental health evaluation and treatment;

(iv) Dental treatments and appliances;

(v) Medical treatments;

(vi) Dietary supplements; or

(vii) Treatment supplies not related to nutrition, incontinence, or infection control;

(F) Basic or specialized food or nutrition essential to sustain the individual including, but not limited to, high caloric supplements, gluten-free supplements, diabetic, ketogenic, or other metabolic supplements;

(G) Ambulance services;

(H) Legal fees including, but not limited to, costs of representation in educational negotiations, establishing trusts, or creating guardianships;

(I) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the individual for personal assistance in all home and community-based settings;

(J) Individual support that has not been arranged according to applicable state and federal wage and hour regulations;

(K) Rate enhancements to existing employment services under OAR chapter 411, division 345;

(L) Employee wages or contractor payments for services when the individual is not present or available to receive services, such as employee paid time off, hourly "no-show" charges, and contractor preparation hours;

(M) Services, activities, materials, or equipment that are not necessary or cost-effective and do not meet the definition of in-home supports, supports, and social benefits;

(N) Educational services for school-age adults, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills;

(O) Services, activities, materials, or equipment that may be obtained by the individual through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services;

(P) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(Q) Service in circumstances where the CDDP determines there is sufficient evidence to believe that the individual, the legal or designated representative of the individual (as applicable), family, or provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to document use of IHS funds, or otherwise knowingly misused public funds associated with in-home support;

(R) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need; or

(S) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by recognized child or consumer safety agencies.

(8) The CDDP must inform an individual, and as applicable the legal or designated representative of an individual, in writing of records and procedures required in OAR 411-330-0140 regarding expenditure of IHS funds for direct assistance. During development of the ISP, the services coordinator must determine the need or preference for the CDDP to provide support with documentation and procedural requirements and must include delineations of responsibility for maintenance of records in the ISP and any other written service agreements.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0070

Standards for Independent Providers Paid with In-Home Support Funds

(1) PERSONAL SUPPORT WORKER QUALIFICATIONS. Each personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDER WHO ARE NOT PERSONAL SUPPORT WORKERS. An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person must:

(a) Be at least 18 years of age;

(b) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request Form must be completed by the subject individual to show intent to work statewide;

(A) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(B) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home support, except in the following circumstances:

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

(ii) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(c) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(e) Not be the spouse of an individual receiving services;

(f) Not be the employer of record or designated representative of the individual;

(g) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP, with such demonstration confirmed in writing by the employer including:

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

(B) Responsibility, maturity, and reputable character exercising sound judgment;

(C) Ability to communicate with the individual; and

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

(h) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(i) Understand requirements of maintaining confidentiality and safeguarding individual information;

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

(k) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services; and

(l) If transporting an individual, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation.

(3) Section (2)(c) of this rule does not apply to employees of an employer or employees of provider organizations who were hired prior to July 28, 2009 that remain in the current position for which the employee was hired.

(4) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(5) Independent providers, including personal support workers, are not employees of the state, CDDP, or Brokerage.

(6) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-330-0110;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the CDDP indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-330-0110.

(7) NURSE. A nurse is not a personal support worker.

(a) A nurse providing community nursing services must:

(A) Be enrolled in the Long Term Care Community Nursing Program as described in OAR chapter 411, division 048;

(B) Meet the qualifications described in OAR 411-048-0210; and

(C) Submit a resume to the CDDP indicating the education, skills, and abilities necessary to provide nursing services in accordance with Oregon law, including at least one year of experience with individuals with intellectual or developmental disabilities.

(b) A nurse providing direct nursing services must be an enrolled Medicaid Provider and meet the qualifications described in OAR 411-380-0080.

(c) A nurse providing private duty nursing services must be an enrolled Medicaid Provider as described in OAR 410-132-0200 (OHA, Provider Enrollment).

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0080
Standards for Provider Organizations Paid with In-Home Support Funds

(1) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, or licensed under OAR chapter 411, division 360 for an adult foster home, does not require additional certification or endorsement as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation. A provider organization that was certified or had applied for certification according to OAR 411-340-0030 prior to January 1, 2016 may also provide employment services when the organization also meets the requirements in OAR 411-345-0030. When granted after January 1, 2016, certification as set forth in OAR chapter 411 division 323, with an endorsement to OAR chapter 411 division 340, is not sufficient qualification for a provider organization to deliver employment services.

(2) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(a) Recruit, hire, supervise, and train qualified staff;

(b) Provide services according to an ISP; and

(c) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(3) A person directed by a provider organization to provide services paid for with IHS funds as an employee, contractor, or volunteer, must meet the qualifications of an independent provider outlined in OAR 411-330-0070.

Stat. Auth.: ORS 409.050 &430.662
Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670
Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-330-0110
Supports Purchased with In-Home Support Funds

(1) For an initial or annual ISP, IHS funds may be used to purchase a combination of the following waiver and state plan services when the conditions of purchase in OAR 411-330-0060 are met:

(a) An individual who is eligible for OHP Plus and meets the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services when supported by an assessed need.

(b) Transfer of Assets.

(A) As of October 1, 2014, an individual receiving medical benefits under chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540;

(B) When an individual is considered ineligible due to a disqualifying transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIPM.

(c) Community First Choice state plan services include:

(A) Behavior support services as described in section (2) of this rule;

(B) Community nursing services as described in section (3) of this rule;

(C) Environmental modifications as described in section (4) of this rule;

(D) Attendant care as described in section (5) of this rule;

(E) Skills training as described in section (6) of this rule;

(F) Relief care as described in section (7) of this rule;

(G) Assistive devices as described in section (8) of this rule;

(H) Assistive technology as described in section (9) of this rule;

(I) Chore services as described in section (10) of this rule;

(J) Community transportation as described in section (11) of this rule;

(K) Transition costs as described in section (12) of this rule; and

(L) Home delivered meals as described in OAR chapter 411, division 40.

(d) Individuals who are eligible for OSIPM and meet the level of care as defined in OAR 411-320-0020 may access Community First Choice state plan services and the following home and community-based waiver services:

(A) Case management;

(B) Employment services as described in section (13) of this rule that include:

(i) Supported employment - individual employment support;

(ii) Supported employment - small group employment support;

(iii) Employment path services; and

(iv) Discovery and career exploration services;

(C) Family training as described in section (14) of this rule;

(D) Environmental safety modifications as described in section (15) of this rule;

(E) Vehicle modifications as described in section (16) of this rule;

(F) Specialized medical supplies as described in section (17) of this rule; and

(G) Direct nursing services for individuals 21 and over as described in OAR chapter 411, division 380.

(e) State Plan private duty nursing services under OAR chapter 410, division 132 (OHA, Private Duty Nursing Services), for individuals 18 through 20 that meet the clinical criteria described in OAR 411-350-0055.

(f) State Plan personal care as described in OAR chapter 411, division 034.

(2) BEHAVIOR SUPPORT SERVICES.

(a) Behavior support services consist of:

(A) Assessing an individual or the needs of the family of the individual and the environment;

(B) Developing positive behavior support strategies, including a Behavior Support Plan, by a qualified behavior consultant as described in OAR 411-330-0070, if needed;

(C) Implementing the Behavior Support Plan with the provider or family; and

(D) Revising and monitoring the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training, modeling, and mentoring the family of an individual;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by an individual, with school, medical, or other professionals about the strategies and outcomes of the Behavior Support Plan.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of an individual at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Skills training; or

(H) Relief care.

(3) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of the provider and primary caregiver and identifying supports that minimize health risks while promoting the autonomy of an individual and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of an individual to assist in monitoring safety and well-being and to address needed changes to the ISP for the individual.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when IHS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing re-assessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(4) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for an individual whose temperature sensitivity issues create behaviors or medical conditions that put the individual or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the individual; and

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the individual and identified in the ISP for the individual;

(B) Adaptations that add to the total square footage of the home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the home; and

(D) General repair or maintenance and upkeep required for the home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the needs assessment and ISP for an individual.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the home, except for external ramps, and may not add to the square footage of the home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or be the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the primary residence of the individual.

(m) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials, manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(5) ATTENDANT CARE SERVICES.

(a) Attendant care services include direct support provided to an individual in the home of the individual or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the individual to live as independently as possible, and be based on the identified goals, preferences, and needs of the individual.

(b) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(C) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(D) "Reassurance" means to offer an individual encouragement and support.

(E) "Redirection" means to divert an individual to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that an individual may perform an activity.

(G) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(6) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for an individual to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcomes are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the individual for that particular goal.

(7) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The home of the individual;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the individual or the representative of the individual, that is a safe setting for the individual; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the individual.

(8) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device with IHS funds must be limited to the types of equipment and supplies that are not excluded under OAR 410-122-0080.

(a) Assistive devices may include the purchase of devices, aids, controls, supplies, or appliances primarily and customarily used to enable an individual to increase the ability of the individual to perform and support ADLs and IADLs or to perceive, control, or communicate within the home and community environment in which the individual lives.

(b) Assistive devices may be purchased with IHS funds when the intellectual or developmental disability of an individual otherwise prevents or limits the independence of the individual in areas identified in a functional needs assessment.

(c) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the individual and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices; and

(B) Assistive devices, not provided by any other funding source, to assist and enhance the independence of an individual in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(d) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(e) Devices must be limited to the least costly option necessary to meet the assessed need of an individual.

(f) Assistive devices must meet applicable standards of manufacture, design, and installation.

(g) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment. and supplies furnished under OHP, the state plan, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of the individual; and

(C) Directly related to the disability of the individual.

(h) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the individual or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for an individual;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(9) ASSISTIVE TECHNOLOGY Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems, including the expense necessary for the continued operation of the assistive technology.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(10) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the home is safe for the individual to traverse and enter and exit the home.

(11) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier, taxicab, or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting an individual to accomplish ADL, IADL, a health-related task, or employment goal identified in an ISP; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP of the individual:

(A) The individual has an assessed need for ADL, IADL, or health-related task during transportation; or

(B) The individual has either an assessed need for ADL, IADL, or health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost effective manner which meets the needs identified in the ISP for the individual.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicle for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation services exclude:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the individual;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the individual;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members who are not personal support workers and are not simultaneously providing other paid supports at the time of the transportation;

(J) Payment to the spouse of an individual receiving in-home support;

(K) Reimbursement for out-of-state travel expenses; and

(L) Mileage reimbursement for the vehicle of the supported individual.

(12) TRANSITION COSTS.

(a) Transition costs are limited to an individual transitioning to the home or community-based setting where the individual resides from a nursing facility, ICF/ID, or acute care hospital.

(b) Transition costs are based on an the assessed need of an individual determined during the person-centered service planning process and must support the desires and goals of the individual receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of an individual and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs, including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the individual from receiving utility services and basic household furnishings, such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(13) EMPLOYMENT SERVICES. Employment services must be:

(a) Delivered according to OAR 411-345-0025; and

(b) Provided by an employment specialist meeting the requirements described in OAR 411-345-0030.

(14) FAMILY TRAINING. Family training services are provided to the family of an individual to increase the abilities of the family to care for, support, and maintain the individual in the home of the individual.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of an individual; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the individual or the identified, specialized, medical, or behavioral support needs of the individual.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of the individual, and increase the knowledge and skills of the family to care for and maintain the individual in the home of the individual.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of an adult.

(c) Prior authorization by the CDDP is required for attendance by family members at organized conferences and workshops funded with IHS funds.

(15) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates, such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the home that are of general utility and are not for the direct safety or long-term benefit to the individual or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(f) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(g) Environmental safety modifications must be made within the existing square footage of the home and may not add to the square footage of the home.

(h) Payment to the contractor is to be withheld until the work meets specifications.

(i) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(j) A services coordinator must follow the processes outlined in the In-home Expenditure Guidelines for contractor bids and the awarding of work.

(k) All dwellings must be in good repair and have the appearance of sound structure.

(l) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(m) Environmental safety modifications must only be completed to the primary residence of the individual.

(n) Upgrades in materials that are not directly related to the health and safety needs of the individual are not paid for or permitted.

(o) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(p) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(16) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by an individual to meet the unique needs of the individual. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the individual safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to the individual or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the individual and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(17) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

Stat. Auth.: ORS 409.050 &430.662

Stats. Implemented: ORS 427.005, 427.007, 430.610, 430.620, 430.662 - 430.670

Hist.: SPD 21-2003, f. 12-22-03, cert. ef. 12-28-03; SPD 25-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 60-2013, f. 12-27-13, cert. ef. 12-28-13; APD 25-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; APD 43-2014, f. 12-26-14, cert. ef. 12-28-14; APD 39-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: ODDS: CIIS — Behavior Program, Medically Fragile Children's Services, and Medically Involved Children's Program

Adm. Order No.: APD 40-2015(Temp)

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Rules Adopted: 411-350-0055

Rules Amended: 411-300-0110, 411-300-0130, 411-300-0150, 411-300-0155, 411-300-0170, 411-350-0020, 411-350-0030, 411-350-0040, 411-350-0050, 411-350-0080, 411-350-0100, 411-355-0010, 411-355-0030, 411-355-0040, 411-355-0050

Subject: The Department of Human Services, Office of Developmental Disabilities Services (Department) is temporarily updating:

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

- OAR chapter 411, division 350 for Medically Fragile Children's Services (MFC); and

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

These rules are being temporarily updated to:

- Provide consistency across services by removing terms included in the general definitions rule, OAR 411-317-0000;

- Incorporate the adoption of the rules for home and community-based (HCB) services and settings and person-centered service planning in OAR chapter 411, division 004. The rules in OAR chapter 411, division 004 implement the regulations and expectations of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services (CMS) by providing a foundation of standards to support the network of Medicaid-funded and private pay residential and non-residential HCB services and settings and person-centered service planning; and

- Reflect changes for provider organizations certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030.

In addition, the rules for MFC services in OAR chapter 411, division 350 are being updated to clarify the authorization and administration of State Plan private duty nursing services by the Medically Fragile Children's Unit (MFCU) for children and young adults residing in the family home or a foster home.

Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

411-300-0110

Definitions

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 300:

(1) "ADL" means "activities of daily living".

(2) "Behavior Criteria" means the criteria used by the Department to evaluate the intensity of the challenges and service needs of a child and to determine eligibility for the ICF/ID Behavioral Model Waiver.

(3) "CDDP" means "Community Developmental Disability Program".

(4) "CIIS" means "children's intensive in-home services".

(5) "Daily Activity Log" means the record of services provided to a child. The content and form of a daily activity log is agreed upon by both the parent or guardian and the services coordinator and documented in the ISP for the child.

(6) "Department" means the Department of Human Services.

(7) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director.

(8) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for CIIS funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(9) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for CIIS as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(10) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home is not considered a provider owned, controlled, or operated residential setting.

(11) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child enrolled in CIIS is known as the Child Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

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

(13) "ICF/ID Behavioral Model Waiver" means the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Medicaid funds to be spent on a child living in the family home who otherwise would have to be served in an intermediate care facility for individuals with intellectual or developmental disabilities if the waiver was not available.

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

(15) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(16) "OHP" means the Oregon Health Plan.

(17) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(18) "OIS" means the "Oregon Intervention System".

(19) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(20) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and behavior criteria and made available to meet the identified support needs of a child.

(21) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who ensures the eligibility of a child for services and provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. The services coordinator acts as the proponent for children with intellectual or developmental disabilities and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(22) "These Rules" mean the rules in OAR chapter 411, division 300.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 19-2003(Temp), f. & cert. ef. 12-11-03 thru 6-7-04; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-300-0130
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment using a person-centered planning approach initially and at least annually for each child to assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry into the CIIS program;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs reassessment.

(c) The parent or guardian must participate in the functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the services coordinator must mail a notice of the assessment process to the parent or guardian. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The services coordinator must facilitate and develop an ISP through a person-centered service planning process.

(B) The ISP must be authorized by the services coordinator:

(i) No more than 90 days from the date of eligibility determination made by the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made; and

(iii) Annually thereafter.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with CIIS funds and annually thereafter that identifies --

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to, the following:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options:

(i) Based on the needs of the child and preferences of the child and the parent or guardian;

(ii) Chosen by the parent or guardian; and

(iii) Integrated in and support full access to the greater community;

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as children not receiving home and community-based services;

(E) The strengths and preferences of the child;

(F) The service and support needs of the child;

(G) The goals and desired outcomes of the child;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People important in supporting the child;

(L) The person responsible for monitoring the ISP;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the child receiving services and the people important in supporting the child;

(N) The written informed consent of the parent or guardian;

(O) Signatures of the child (as appropriate), parent or guardian, participants in the ISP planning process, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The child (as appropriate) and the parent or guardian decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to the necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(e) An ISP must be reviewed with the child (as appropriate) and parent or guardian prior to implementation. The ISP is distributed to the parent or guardian and other people involved in the ISP as described above in subsection (d).

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and behavior criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be reviewed and revised:

(A) At the request of the child or parent or guardian;

(B) When the circumstances or needs of the child change; or

(C) Upon reassessment of functional needs as required every 12 months.

(h) Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-300-0150
Scope of CIIS and Limitations

(1) CIIS are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the ICF/ID

Behavioral Model Waiver. CIIS services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) The use of CIIS funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment and behavior criteria. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include attendant care, skills training, hourly relief care, and State Plan personal care service hours as described in OAR chapter 411, division 034; and

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the Expenditure Guidelines.

(3) To be authorized and eligible for payment by the Department, all CIIS services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines;

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities; and

(i) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020.

(4) When conditions of purchase are met and provided purchases are not prohibited under OAR 411-300-0155, CIIS funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (5) of this rule;

(B) Community nursing services as described in section (6) of this rule;

(C) Environmental modifications as described in section (7) of this rule;

(D) Attendant care as described in section (8) of this rule;

(E) Skills training as described in section (9) of this rule;

(F) Relief care as described in section (10) of this rule;

(G) Assistive devices as described in section (11) of this rule;

(H) Assistive technology as described in section (12) of this rule;

(I) Chore services as described in section (13) of this rule;

(J) Community transportation as described in section (14) of this rule; and

(K) Transition costs as described in section (15).

(b) Home and community-based waiver services:

(A) Case management;

(B) Family training as described in section (16) of this rule;

(C) Environmental safety modifications as described in section (17) of this rule;

(D) Vehicle modifications as described in section (18) of this rule;

(E) Specialized medical supplies as described in section (19) of this rule;

(F) Special diet as described in section (20) of this rule; and

(G) Individual-directed goods and services as described in section (21) of this rule.

(c) State Plan personal care services as described in OAR chapter 411, division 034.

(5) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must:

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training a primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(6) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude direct nursing care.

(c) A Nursing Service Plan must be present when CIIS funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(7) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the assessed health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the family home; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and the determination by the Department of appropriateness and cost-effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinators must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the assessed health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(8) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(b) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment and behavior criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(G) Services provided by the family; and

(H) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(9) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outlined in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(10) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian as a safe setting for the child; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the child.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than seven consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(11) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may be purchased with CIIS funds when the intellectual or developmental disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(b) Assistive devices that may be purchased for the purpose described in subsection (b) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) Assistive devices must meet applicable standards of manufacture, design, and installation.

(f) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(g) Assistive devices exclude:

(A) Items that are not necessary or of direct medical benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(12) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(13) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(14) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicle for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(15) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or acute care hospital.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transition costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of a parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(16) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(17) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct safety or long-term benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(f) In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(18) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(19) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-796l, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(20) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods, vitamins, and supplements.

(21) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services or state plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(22) All CIIS authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the service needs of a child as determined by a services coordinator. Any goods purchased with CIIS funds that are not used according to an ISP may be immediately recovered by the Department.

(23) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) The child is not safely served in the family home without the expenditure;

(b) The expenditure provides supports for the emerging or changing service needs or behaviors of the child;

(c) A significant medical condition or event, as documented by a primary care provider, prevents or seriously impedes the primary caregiver from providing services; or

(d) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the parent or guardian, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(24) Payment for CIIS is made in accordance with the Expenditure Guidelines.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 20-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-300-0155

Using CIIS Funds for Certain Purchases is Prohibited

(1) Effective July 28, 2009, CIIS funds may not be used to support, in whole or in part, a provider in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.

(2) Section (1) of this rule does not apply to an employee of a parent, employee of a general business provider, or employee of a provider organization who was hired prior to July 28, 2009 that remains in the current position for which the employee was hired.

(3) CIIS funds may not be used for:

(a) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(c) Services or activities that are carried out in a manner that constitutes abuse of a child;

(d) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(f) Purchase or lease of a vehicle;

(g) Purchase of a service animal or costs associated with the care of a service animal;

(h) Health and medical costs that the general public normally must pay including, but not limited to, the following:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control.

(i) Ambulance service;

(j) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charge, or contractor travel and preparation hours;

(o) Services, activities, materials, or equipment that are not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-317-0000;

(p) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(q) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(r) Services, activities, materials, or equipment that the Department determines may be reasonably obtained by a family through alternative resources or natural supports;

(s) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(t) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP, refused to

accept or delegate record keeping required to document use of CIIS funds, or otherwise knowingly misused public funds associated with CIIS; or

(u) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; Suspended by APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-300-0170
Standards for Providers Paid with CIIS Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide CIIS must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

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

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, spouse, or other person legally responsible for the child receiving CIIS;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP for the child, with such demonstration confirmed in writing by the parent or guardian including:

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

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent or guardian; and

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

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

(J) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (a)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom CIIS are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-300-0150;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-300-0150.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-300-0150.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 346 for a child foster home, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with CIIS funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with CIIS funds must hold any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with CIIS funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Oregon Health Authority;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: SDSD 12-2002, f. 12-26-02, cert. ef. 12-28-02; SPD 13-2004, f. & cert. ef. 6-1-04; SPD 11-2009, f. 7-31-09, cert. ef. 8-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 53-2013, f. 12-27-13. cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0020
Definitions

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 350:

(1) "ADL" means "activities of daily living".

(2) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(3) "CDDP" means "Community Developmental Disability Program".

(4) "Clinical Criteria" means the criteria used by the Department to assess the nursing support needs of a child or young adult every six months or as needed for determination of the overall assessed needs of the child or young adult.

(5) "Department" means the Department of Human Services.

(6) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director.

(7) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for MFC funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(8) "Family":

(a) Means a unit of two or more people that includes at least one child with an intellectual or developmental disability where the primary caregiver is:

(A) Related to the child with an intellectual or developmental disability by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child with an intellectual or developmental disability when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for MFC services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(9) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home is not considered a provider owned, controlled, or operated residential setting.

(10) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child enrolled in MFC is known as the Child Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

(11) "Hospital Model Waiver" means the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on children aged 0 through 17 years living in the family home who otherwise would have to be served in a hospital if the waiver was not available.

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

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

(14) "Level of Care" means a child meets the following hospital level of care:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the clinical criteria; and

(b) The medical condition requires the care and treatment of services normally provided in an acute medical hospital.

(15) "MFC" means "medically fragile children". Medically fragile children have a health impairment that requires long-term, intensive, specialized services on a daily basis, who have been found eligible for MFC services by the Department.

(16) "MFC Services" include the entire array of services described in OAR 411-350-0050 provided through the Hospital Model Waiver, Community First Choice State Plan, and State Plan.

(17) "MFCU" means the "medically fragile children's unit".

(a) The MFCU is the program for MFC services administered by the Department.

(b) The MFCU also authorizes and administers State Plan private duty nursing services for young adults under OAR 410-132-0080.

(18) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(19) "OHA" means Oregon Health Authority.

(20) "OHP" means the Oregon Health Plan.

(21) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(22) "OIS" means the "Oregon Intervention System".

(23) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(24) "Private Duty Nursing" means the State Plan nursing services described in OAR chapter 410, division 132 (OHA, Private Duty Nursing Services) and OAR 411-350-0055 that are determined medically necessary to support a child or young adult in the family home or a foster home.

(25) "Service Level" means the amount of attendant care, hourly relief care, private duty nursing, or skills training services determined necessary by a functional needs assessment and clinical criteria and made available to meet the identified support needs of a child.

(26) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who ensures the eligibility of a child for services and provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. The services coordinator acts as the proponent for children with intellectual or developmental disabilities and their families

and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(27) "These Rules" mean the rules in OAR chapter 411, division 350.

(28) "Young Adult" means a young individual aged 18 through 20 who is authorized by the MFCU to receive private duty nursing as described in OAR 411-350-0055.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0110, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0030
Eligibility for MFC Services

(1) ELIGIBILITY.

(a) In order to be eligible for MFC services, a child must:

(A) Be under the age of 18;

(B) Be an Oregon resident who meets the citizenship and alien status requirements of OAR 461-120-0110;

(C) Be receiving Medicaid Title XIX benefits under OSIPM or OHP Plus. This does not include CHIP Title XXI benefits;

(D) For a child with excess income, contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620;

(E) Meet the level of care as defined in OAR 411-350-0020;

(F) Be accepted by the Department by scoring 45 or greater on the clinical criteria prior to starting services and have a status of medical need that is likely to last for more than two months and maintain a score of 45 or greater on the clinical criteria as assessed every six months;

(G) Reside in the family home; and

(H) Be safely served in the family home This includes, but is not limited to, a qualified primary caregiver demonstrating the willingness, skills, and ability to provide direct care as outlined in an ISP in a cost effective manner, as determined by a services coordinator within the limitations of OAR 411-300-0150, and participate in planning, monitoring, and evaluation of the MFC services provided.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, a child receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the requirements of the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the child was requesting these services under OSIPM. This includes, but is not limited to, the following assets:

(i) An annuity evaluated according to OAR 461-145-0022;

(ii) A transfer of property when a child retains a life estate evaluated according to OAR 461-145-0310;

(iii) A loan evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust evaluated according to OAR 461-145-0540.

(B) When a child is considered ineligible for MFC services due to a disqualifying transfer of assets, the parent or guardian and child must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the child was requesting services under OSIPM.

(2) INELIGIBILITY. A child is not eligible for MFC services if the child:

(a) Resides in a medical hospital, psychiatric hospital, school, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, residential facility, or other 24-hour residential setting;

(b) Does not require waiver services or Community First Choice state plan services as evidenced by a functional needs assessment;

(c) Receives sufficient family, government, or community resources available to provide for his or her care; or

(d) Cannot be safely served in the family home as described in section (1)(a)(H) of this rule.

(3) REDETERMINATION. The Department redetermines the eligibility of a child for MFC services using the clinical criteria at least every six months, or as the status of the child changes.

(4) TRANSITION. A child whose reassessment score on the clinical criteria is less than 45 is transitioned out of MFC services within 30 days. The child must exit from MFC services at the end of the 30 day transition period.

(a) When possible and agreed upon by the parent or guardian and the services coordinator, MFC services may be incrementally reduced during the 30 day transition period.

(b) The services coordinator must coordinate and attend a transition planning meeting prior to the end of the transition period. The transition planning meeting must include a CDDP representative if eligible for developmental disability services, the parent or guardian, and any other person at the request of the parent or guardian.

(5) EXIT.

(a) MFC services may be terminated:

(A) At the oral or written request of a parent or legal guardian to end the service relationship; or

(B) In any of the following circumstances:

(i) The child no longer meets the eligibility criteria in section (1) of this rule;

(ii) The child does not require waiver services or Community First Choice state plan services;

(iii) There are sufficient family, government, community, or alternative resources available to provide for the care of the child;

(iv) The child cannot be safely served in the family home as described in section (1)(a)(G) of this rule;

(v) The parent or guardian either cannot be located or has not responded after 30 days of repeated attempts by a services coordinator to complete ISP development and monitoring activities and does not respond to a notice of intent to terminate;

(vi) The services coordinator has sufficient evidence that the parent or guardian has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with documenting expenses of MFC funds, or otherwise knowingly misused public funds associated with MFC services;

(vii) The child is incarcerated or admitted to a medical hospital, psychiatric hospital, sub-acute facility, nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or other 24-hour residential setting and it is determined that the child is not returning to the family home or is not returning to the family home after 90 consecutive days; or

(viii) The child does not reside in Oregon.

(b) In the event MFC services are terminated, a written Notification of Planned Action must be provided as described in OAR chapter 411, division 318.

(6) WAIT LIST. If the maximum number of children allowed on the Hospital Model Waiver are enrolled and being served, the Department may place a child eligible for MFC services on a wait list. A child on the wait list may access other Medicaid-funded services or General Fund services for which the child is determined eligible.

(a) The date of the initial completed application for MFC services determines the order on the wait list. A child who previously received MFC services that currently meets the criteria for eligibility as described in section (1) of this rule is put on the wait list as of the date the original application for MFC services was complete.

(b) Children on the wait list are served on a first come, first served basis as space on the Hospital Model Waiver allows. A re-evaluation is completed prior to entry to determine current eligibility.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007, 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0120, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 8-2015, f. & cert. ef. 3-12-15; APD 10-2015(Temp), f. 4-2-15, cert. ef. 4-10-15 thru 10-6-15; APD 20-2015, f. 10-5-15, cert. ef. 10-6-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0040
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT.A services coordinator must complete a functional needs assessment using a person-centered planning approach initially and at least annually for each child to assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry into MFC services;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs reassessment.

(c) The parent or guardian must participate in the functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the services coordinator must mail a notice of the assessment process to the parent or guardian. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The services coordinator must facilitate and develop an ISP through a person-centered service planning process.

(B) The initial ISP must be authorized by the services coordinator no later than the end of the month following the month in which the level of care determination was made, and at least annually thereafter.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with MFC funds and annually thereafter that identifies --

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to, the following:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options

(i) Based on the needs of the child and preferences of the child and the parent or guardian;

(ii) Chosen by the parent or guardian; and

(iii) Integrated in, and support full access to the greater community;

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as children not receiving home and community-based services;

(E) The strengths and preferences of the child;

(F) The service and support needs of the child;

(G) The goals and desired outcomes of the child;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People important in supporting the child;

(L) The person responsible for monitoring the ISP;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the child receiving services and the people important in supporting the child;

(N) The written informed consent of the parent or guardian;

(O) Signatures of the child (as appropriate), parent or guardian, participants in the ISP planning process, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The child (as appropriate) and the parent or guardian decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to the necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(e) An ISP must be reviewed with the child (as appropriate) and parent or guardian prior to implementation. The ISP is distributed to the parent or guardian and other people involved in the ISP as described above in subsection (d).

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and clinical criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be reviewed and revised --

(A) At the request of the child or parent or guardian;

(B) When the circumstances or needs of the child change; or

(C) Upon reassessment of functional needs as required every 12 months.

(h) Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0130, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0050
Scope of MFC Services and Limitations

(1) MFC services are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the Hospital Model Waiver. MFC services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) The use of MFC funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment and clinical criteria. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include attendant care, skills training, hourly relief care, and private duty nursing.

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the Expenditure Guidelines.

(3) To be authorized and eligible for payment by the Department, all MFC services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines;

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities; and

(i) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020.

(4) When conditions of purchase are met and provided purchases are not prohibited under section (26) of this rule, MFC funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, clinical criteria, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (5) of this rule;

(B) Community nursing services as described in section (6) of this rule;

(C) Environmental modifications as described in section (7) of this rule;

(D) Attendant care as described in section (8) of this rule;

(E) Skills training as described in section (9) of this rule;

(F) Relief care as described in section (10) of this rule;

(G) Assistive devices as described in section (11) of this rule;

(H) Assistive technology as described in section (12) of this rule;

(I) Chore services as described in section (13) of this rule;

(J) Community transportation as described in section (14) of this rule; and

(K) Transition costs as described in section (15).

(b) Home and community based waiver services:

(A) Case management;

(B) Family training as described in section (16) of this rule;

(C) Environmental safety modifications as described in section (17) of this rule;

(D) Vehicle modifications as described in section (18) of this rule;

(E) Specialized medical supplies as described in section (19) of this rule;

(F) Special diet as described in section (20) of this rule; and

(G) Individual-directed goods and services as described in section (21) of this rule.

(c) State plan services, including private duty nursing as described in OAR 411-350-0055, and personal care services as described in OAR chapter 411, division 034.

(5) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must:

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, deafness) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training a primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(6) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude private duty nursing care.

(c) A Nursing Service Plan must be present when MFC funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed very six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(7) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the family home; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and the determination by the Department of appropriateness and cost effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(8) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual clues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(b) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment and clinical criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(G) Services provided by the family; and

(H) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(9) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(10) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider, chosen by the parent or guardian, as a safe setting for the child; or

(D) The community, during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the child.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than seven consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(11) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may be purchased with MFC funds when the intellectual or developmental disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(b) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(f) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(12) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(13) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(14) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child.

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(15) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility, intermediate care facility for individuals with intellectual or developmental disabilities, or acute care hospital.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(16) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the intellectual or developmental disability of the

child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the intellectual or developmental disability or medical condition of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop, costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(17) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct safety or long-term benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(f) In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may no-t be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(18) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(19) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-796l, as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(20) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods, perishables vitamins, and supplements.

(21) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services or state plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment; or

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(22) All MFC services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the service needs of a child as determined by a services coordinator. Any goods purchased with MFC funds that are not used according to an ISP may be immediately recovered by the Department.

(23) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. Exceptions associated with criteria hours may be approved for up to six months to align with the criteria redetermination. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) To prevent the hospitalization of a child;

(b) To provide initial teaching of new service needs;

(c) The child is not safely served in the family home without the expenditure;

(d) The expenditure provides supports for the emerging or changing service needs or behaviors of the child;

(e) A significant medical condition or event, as documented by a primary care provider, prevents or seriously impedes the primary caregiver from providing services; or

(f) The services coordinator determines, with a behavior consultant, that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that a caregiver, including the parent or guardian, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(24) Payment for MFC services is made in accordance with the Expenditure Guidelines.

(25) The Department may expend funds through contract, purchase order, use of credit card, payment directly to the vendor, or any other legal payment mechanism. No payments are made to families for reimbursement or to pay for services.

(26) MFC funds may not be used for --

(a) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(c) Services or activities that are carried out in a manner that constitutes abuse of a child;

(d) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(f) Purchase or lease of a vehicle;

(g) Purchase of a service animal or costs associated with the care of a service animal;

(h) Health and medical costs that the general public normally must pay including, but not limited to, the following:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control;

(i) Ambulance service;

(j) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charge, or contractor travel and preparation hours;

(o) Services, activities, materials, or equipment that are not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-317-0000;

(p) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(q) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(r) Services, activities, materials, or equipment that the Department determines may be reasonably obtained by a family through alternative resources or natural supports;

(s) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(t) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP, refused to accept or delegate record keeping required to document use of MFC funds, or otherwise knowingly misused public funds associated with MFC services; or

(u) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0140, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 28-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15; APD 8-2015, f. & cert. ef. 3-12-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0055
Private Duty Nursing

(1) Under OAR chapter 410, division 132 for OHA, private duty nursing services may be allocated to ensure medically necessary supports are provided to a child or young adult aged 0 through 20 that require the presence of an RN or LPN on an ongoing, long-term basis as determined medically necessary based on the assessed needs of the child or young adult.

(a) In addition to the services listed in OAR 411-350-0050, a child that resides in the family home may receive private duty nursing if the child scores 45 or greater on the clinical criteria prior to starting services and has a status of medical need that is likely to last for more than two months and maintains a score of 45 or greater on the clinical criteria as assessed every six months.

(b) A child that resides in a foster home may receive private duty nursing as described in section (4) of this rule if the child scores 45 or greater on the clinical criteria prior to starting services and has a status of medical need that is likely to last for more than two months and maintains a score of 45 or greater on the clinical criteria as assessed every six months.

(c) A young adult that resides in the family home or in a foster home may receive private duty nursing as described in section (4) of this rule if the child scores 45 or greater on the clinical criteria prior to starting services and has a status of medical need that is likely to last for more than two months and maintains a score of 45 or greater on the clinical criteria as assessed every six months.

(2) Private duty nursing may be provided on a shift staffing basis as necessary.

(3) Private duty nursing must be delivered by a licensed RN or LPN, as determined by the service needs of the child or young adult and documented in the ISP and Nursing Service Plan.

(4) The amount of private duty nursing available to a child or young adult is based on the acuity level of the child or young adult as measured by the clinical criteria as follows:

(a) Level 1. Score of 75 or above and on a ventilator for 20 hours or more per day = up to a maximum of 554 nursing hours per month;

(b) Level 2. Score of 70 or above = up to a maximum of 462 nursing hours per month;

(c) Level 3. Score of 65 to 69 = up to a maximum of 385 nursing hours per month;

(d) Level 4. Score of 60 to 64 = up to a maximum of 339 nursing hours per month;

(e) Level 5. Score of 50 to 59 or if a child requires ventilation for sleeping hours = up to a maximum of 293 nursing hours per month; and

(f) Level 6. Score of less than 50 = up to a maximum of 140 nursing hours per month.

Stat. Auth.: ORS 409.050
Stats. Implemented: ORS 427.005, 427.007, 430.215
Hist.: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0080
Standards for Providers Paid with MFC Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide MFC services must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

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

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, spouse, or other person legally responsible for the child receiving MFC services;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP for the child, with such demonstration confirmed in writing by the parent or guardian including:

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

(ii) Responsibility, maturity, and reputable character exercising sound judgment;

(iii) Ability to communicate with the parent or guardian; and

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold a current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

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

(J) If providing transportation, have a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (a)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom MFC services are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-350-0050;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes providing the services of a behavior consultant as described in OAR 411-350-0050.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-350-0050.

(8) NURSE. A nurse is not a personal support worker.

(a) A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(b) A nurse providing private duty nursing services must be an enrolled Medicaid provider as described in OAR 410-132-0200.

(9) DIETICIANS. Dieticians providing special diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 346 for a child foster home, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MFC funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with MFC funds must hold

any current license appropriate to operate required by the state of Oregon or federal law or regulation. Services purchased with MFC funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental accessibility consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Oregon Health Authority;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0170, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-350-0100
MFC Documentation Needs

(1) Accurate timesheets of MFC services must be dated and signed by the provider and the parent or guardian of the child after the services are provided. Timesheets must be maintained and submitted to the Department with any request for payment for services.

(2) Requests for payment for MFC services must:

(a) Include the billing form indicating prior authorization for the services;

(b) Be signed by the provider acknowledging agreement with the terms and condition of the billing form and attesting that the hours were delivered as billed; and

(c) Be signed by the parent or guardian of the child after the services were delivered, verifying that the services were delivered as billed.

(3) Documentation of MFC services provided must be provided to the services coordinator upon request or as outlined in the ISP for the child and maintained in the family home or the place of business of the provider of services. The Department does not pay for services that are not outlined in the ISP for the child or unrelated to the disability of the child.

(4) The Department retains billing forms and timesheets for at least five years from the date of service.

(5) Behavior consultants must submit the following to the Department written in clear, concrete language understandable to the parent or guardian of the child and the provider:

(a) An evaluation of the child, the concerns of the parent or guardian, the environment of the child, current communication strategies used by the child and used by others with the child, and any other disability of the child that may impact the appropriateness of strategies to be used with the child; and

(b) Any behavior plan or instructions left with the parent or guardian and the provider that describes the suggested strategies to be used with the child.

(6) NURSING SERVICE PLAN.

(a) A Nursing Service Plan must be developed within seven days of the initiation of services and submitted to the Department for approval when funds are authorized for the provision of the following:

(A) Community nursing services as described in OAR 411-350-0050; and

(B) Private duty nursing services as described in OAR 411-350-0055.

(b) The Nursing Service Plan must be reviewed, updated, and resubmitted to the Department in the following instances:

(A) Every six months;

(B) Within seven working days of a change of the nurse who writes the Nursing Service Plan;

(C) With any request for authorization of an increase in hours of service; or

(D) After any significant change of condition, such as hospital admission or change in health status.

(c) The provider must share the Nursing Service Plan with the parent or guardian.

(7) The Department must be notified by the provider or the primary caregiver within one working day of the hospitalization or death of any eligible child.

(8) Providers must maintain documentation of provided services for at least seven years from the date of service. If a provider is a nurse, the nurse must either maintain documentation of provided services for at least five years or send the documentation to the Department.

(9) Providers must furnish requested documentation immediately upon the written request from the Department, the Oregon Department of Justice Medicaid Fraud Unit, Centers for Medicare and Medicaid Services, or their authorized representatives, and within the timeframe specified in the written request. Failure to comply with the request may be considered by the Department as reason to deny or recover payments.

(10) Access to records by the Department including, but not limited to, medical, nursing, behavior, psychiatric, or financial records, to include providers and vendors providing goods and services, does not require authorization or release by the child or the parent or guardian of the child.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 427.005, 427.007 & 430.215

Hist.: MHD 21-1998(Temp), f. 11-25-98, cert. ef. 12-1-98 thru 5-29-99; MHD 3-1999, f. 5-17-99, cert. ef. 5-28-99; MHD 8-2003(Temp) f. & cert. ef. 12-11-03 thru 6-7-04; Renumbered from 309-044-0190, SPD 14-2004, f. & cert. ef. 6-1-04; SPD 1-2009, f. 2-24-09, cert. ef. 3-1-09; SPD 55-2013, f. 12-27-13, cert. ef. 12-28-13; APD 31-2014(Temp), f. & cert. ef. 8-20-14 thru 2-16-15; APD 4-2015, f. 2-13-15, cert. ef. 2-16-15: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-355-0010
Definitions

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 355:

(1) "ADL" means "activities of daily living".

(2) "Aide" means a non-licensed caregiver who may, or may not, be a certified nursing assistant.

(3) "Billing Form" means the document generated by the Department that acts as a prior authorization, contract, and payment mechanism for services.

(4) "CDDP" means "Community Developmental Disability Program".

(5) "Department" means the Department of Human Services.

(6) "Director" means the Director of the Department of Human Services, Office of Developmental Disabilities Services, or the designee of the Director.

(7) "Expenditure Guidelines" mean the guidelines published by the Department that describe allowable uses for MICP funds. The Department incorporates the Expenditure Guidelines into these rules by this reference. The Expenditure Guidelines are maintained by the Department at: http://www.oregon.gov/dhs/dd/. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(8) "Family":

(a) Means a unit of two or more people that includes at least one child where the primary caregiver is:

(A) Related to the child by blood, marriage, or legal adoption; or

(B) In a domestic relationship where partners share:

(i) A permanent residence;

(ii) Joint responsibility for the household in general, such as child-rearing, maintenance of the residence, and basic living expenses; and

(iii) Joint responsibility for supporting a child when the child is related to one of the partners by blood, marriage, or legal adoption.

(b) The term "family" is defined as described above for purposes of:

(A) Determining the eligibility of a child for MICP services as a resident in the family home;

(B) Identifying people who may apply, plan, and arrange for individual services; and

(C) Determining who may receive family training.

(9) "Family Home" means the primary residence for a child that is not under contract with the Department to provide services as a certified foster home or a licensed or certified residential care facility, assisted living facility, nursing facility, or other residential setting. A family home is not considered a provider owned, controlled, or operated residential setting.

(10) "Functional Needs Assessment":

(a) Means the comprehensive assessment or reassessment that:

(A) Documents physical, mental, and social functioning;

(B) Identifies risk factors and support needs; and

(C) Determines the service level.

(b) The functional needs assessment for a child enrolled in MICP services is known as the Child Needs Assessment (CNA). The Department incorporates Version C of the CNA into these rules by this reference. The CNA is maintained by the Department at: http://www.dhs.state.or.us/spd/tools/dd/cm/. A printed copy of a blank CNA may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-48, Salem, OR 97301.

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

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

(13) "Level of Care" means a child meets the institutional level of care for a nursing facility:

(a) The child has a documented medical condition and demonstrates the need for active treatment as assessed by the medically involved criteria; and

(b) The medical condition requires the care and treatment of services normally provided in a nursing facility.

(14) "Medically Involved Criteria" means the criteria used by the Department to evaluate the intensity of the challenges presented by a child eligible for MICP services.

(15) "MICP" means "Medically Involved Children's Program". MICP is the waiver granted by the federal Centers for Medicare and Medicaid Services that allows Title XIX funds to be spent on a child living in the family home who otherwise would have to be served in a nursing facility if the waiver program was not available.

(16) "ODDS" means the Department of Human Services, Office of Developmental Disabilities Services.

(17) "OHP" means the Oregon Health Plan.

(18) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(19) "OIS" means the "Oregon Intervention System".

(20) "OSIPM" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIPM is Oregon Medicaid insurance coverage for children who meet the eligibility criteria described in OAR chapter 461.

(21) "Service Level" means the amount of attendant care, hourly relief care, or skills training services determined necessary by a functional needs assessment and medically involved criteria and made available to meet the identified support needs of a child.

(22) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who ensures the eligibility of a child for services and provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services. The services coordinator acts as the proponent for children enrolled in the MICP and their families and is the person-centered plan coordinator for the child as defined in the Community First Choice state plan amendment.

(23) "These Rules" mean the rules in OAR chapter 411, division 355.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 417.345, 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-355-0030
Service Planning

(1) FUNCTIONAL NEEDS ASSESSMENT. A services coordinator must complete a functional needs assessment using a person-centered planning approach and assess the service needs of the child.

(a) The functional needs assessment must be conducted face-to-face with the child and the services coordinator must interview the parent or guardian, other caregivers, and when appropriate, any other person at the request of the parent or guardian.

(b) The functional needs assessment must be completed:

(A) Within 30 days of entry in to the MICP;

(B) Within 60 days prior to the annual renewal of an ISP; and

(C) Within 45 days from the date the parent or guardian requests a functional needs assessment.

(c) The parent or guardian must participate in the functional needs assessment and provide information necessary to complete the functional needs assessment and reassessment within the time frame required by the Department.

(A) Failure to participate in the functional needs assessment or provide information necessary to complete the functional needs assessment or reassessment within the applicable time frame results in the denial of a service eligibility. In the event service eligibility is denied, a written Notification of Planned Action must be provided as described in OAR 411-318-0020.

(B) The Department may allow additional time if circumstances beyond the control of the parent or guardian prevent timely participation in the functional needs assessment or reassessment or timely submission of information necessary to complete the functional needs assessment or reassessment.

(d) No fewer than 14 days prior to conducting a functional needs assessment, the services coordinator must mail a notice of the assessment process to the parent or guardian. The notice must include a description and explanation of the assessment process and an explanation of the process for appealing the results of the assessment.

(2) INDIVIDUAL SUPPORT PLAN.

(a) A child who is accessing waiver or Community First Choice state plan services must have an authorized ISP.

(A) The services coordinator must facilitate and develop an ISP through a person-centered service planning process.

(B) The ISP must be authorized by the services coordinator --

(i) No more than 90 days from the date of eligibility determination made by the CDDP according to OAR 411-320-0080; or

(ii) No later than the end of the month following the month in which the level of care determination was made; and

(iii) Annually thereafter.

(b) The services coordinator must develop, with the input of the child (as appropriate), parent or guardian, and any other person at the request of the parent or guardian, a written ISP prior to purchasing supports with MICP funds and annually thereafter that identifies --

(A) The service needs of the child;

(B) The most cost effective services for safely and appropriately meeting the service needs of the child; and

(C) The methods, resources, and strategies that address the service needs of the child.

(c) The ISP must include, but not be limited to, the following:

(A) The legal name of the child and the name of the parent or guardian of the child;

(B) The projected dates of when specific supports are to begin and end;

(C) Home and community-based service and setting options --

(i) Based on the needs of the child and preferences of the child and the parent or guardian;

(ii) Chosen by the parent or guardian; and

(iii) Integrated in and support full access to the greater community.

(D) Opportunities to engage in greater community life, control personal resources, and receive services in the greater community to the same degree of access as children not receiving home and community-based services;

(E) The strengths and preferences of the child;

(F) The service and support needs of the child;

(G) The goals and desired outcomes of the child;

(H) The providers of services and supports, including unpaid supports provided voluntarily;

(I) Risk factors and measures in place to minimize risk;

(J) Individualized backup plans and strategies, when needed;

(K) People important in supporting the child;

(L) The person responsible for monitoring the ISP;

(M) Language, format, and presentation methods appropriate for effective communication according to the needs and abilities of the child receiving services and the people important in supporting the child;

(N) The written informed consent of the parent or guardian;

(O) Signatures of the child (as appropriate), parent or guardian, participants in the ISP planning process, and all people and providers with whom the ISP was shared in its entirety, or as described below in subsection (d) of this section;

(P) Self-directed supports; and

(Q) Provisions to prevent unnecessary or inappropriate services and supports.

(d) The child (as appropriate) and the parent or guardian decides on the level of information in the ISP that is shared with providers. To effectively provide services, providers must have access to the necessary information from the ISP that the provider is responsible for implementing. A provider identified to deliver a service or support included in an ISP must acknowledge through a signature on a written agreement receipt of the necessary information.

(e) An ISP must be reviewed with the child (as appropriate) and parent or guardian prior to implementation. The ISP is distributed to the parent or guardian and other people involved in the ISP as described above in subsection (d).

(f) Changes in services authorized in the ISP must be consistent with needs identified in a functional needs assessment and medically involved criteria and documented in an amendment to the ISP that is signed by the parent or guardian and the services coordinator.

(g) An ISP must be reviewed and revised --

(A) At the request of the child or parent or guardian;

(B) When the circumstances or needs of the child change; or

(C) Upon reassessment of functional needs as required every 12 months.

(h) Each new plan year begins on the anniversary date of the initial or previous ISP.

Stat. Auth.: ORS 409.050 & 417.345

Stats. Implemented: ORS 417.345, 427.007 & 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-355-0040

Scope of MICP Services and Limitations

(1) MICP services are intended to support, not supplant, the naturally occurring services provided by a legally responsible primary caregiver and enable the primary caregiver to meet the needs of caring for a child on the MICP. MICP services are not meant to replace other available governmental or community services and supports. All services funded by the Department must be provided in accordance with the Expenditure Guidelines and based on the actual and customary costs related to best practice standards of care for children with similar disabilities.

(2) When multiple children in the same family home or setting qualify for MICP services, the same provider may provide services to all qualified children if services may be safely delivered by a single provider, as determined by the services coordinator.

(3) The use of MICP funds to purchase supports is limited to:

(a) The service level for a child as determined by a functional needs assessment. The functional needs assessment determines the total number of hours needed to meet the identified needs of the child. The total number of assessed hours may not be exceeded without prior approval from the Department. The types of services that contribute to the total number of hours used include attendant care, skills training, and state plan personal care service hours as described in OAR chapter 411, division 034; and

(b) Other services and supports determined by a services coordinator to be necessary to meet the support needs identified through a person-centered planning process and consistent with the Expenditure Guidelines.

(4) To be authorized and eligible for payment by the Department, all MICP services and supports must be:

(a) Directly related to the disability of a child;

(b) Required to maintain the health and safety of a child;

(c) Cost effective;

(d) Considered not typical for a parent or guardian to provide to a child of the same age;

(e) Required to help the parent or guardian to continue to meet the needs of caring for the child;

(f) Included in an approved ISP;

(g) Provided in accordance with the Expenditure Guidelines;

(h) Based on the actual and customary costs related to best practice standards of care for children with similar disabilities; and

(i) After September 1, 2018, delivered in a home and community-based setting that meets the qualities described in OAR 411-004-0020.

(5) When conditions of purchases are met and provided purchases are not prohibited, MICP funds may be used to purchase a combination of the following supports based upon the needs of a child as determined by a services coordinator and consistent with a functional needs assessment, initial or annual ISP, and the OSIPM or OHP Plus benefits the child qualifies for:

(a) Community First Choice state plan services:

(A) Behavior support services as described in section (6) of this rule;

(B) Community nursing services as described in section (7) of this rule;

(C) Environmental modifications as described in section (8) of this rule;

(D) Attendant care as described in section (9) of this rule;

(E) Skills training as described in section (10) of this rule;

(F) Relief care as described in section (11) of this rule;

(G) Assistive devices as described in section (12) of this rule;

(H) Assistive technology as described in section (13) of this rule;

(I) Chore services as described in section (14) of this rule;

(J) Community transportation as described in section (15) of this rule; and

(K) Transition costs as described in section (16) of this rule.

(b) Home and community-based waiver services:

(A) Case management;

(B) Family training as described in section (17) of this rule;

(C) Environmental safety modifications as described in section (18) of this rule;

(D) Vehicle modifications as described in section (19) of this rule;

(E) Specialized medical supplies as described in section (20) of this rule;

(F) Special diet as described in section (21) of this rule; and

(G) Individual-directed goods and services as described in section (22) of this rule.

(c) State Plan personal care services as described in OAR chapter 411, division 034.

(6) BEHAVIOR SUPPORT SERVICES. Behavior support services may be authorized to support a primary caregiver in their caregiving role and to respond to specific problems identified by a child, primary caregiver, or a services coordinator. Positive behavior support services are used to enable a child to develop, maintain, or enhance skills to accomplish ADLs, IADLs, and health-related tasks.

(a) A behavior consultant must:

(A) Work with the child and primary caregiver to identify:

(i) Areas of the family home life that are of most concern for the child and the parent or guardian;

(ii) The formal or informal responses the family or the provider has used in those areas; and

(iii) The unique characteristics of the child and family that may influence the responses that may work with the child.

(B) Assess the child. The assessment must include:

(i) Specific identification of the behaviors or areas of concern;

(ii) Identification of the settings or events likely to be associated with, or to trigger, the behavior;

(iii) Identification of early warning signs of the behavior;

(iv) Identification of the probable reasons that are causing the behavior and the needs of the child that are met by the behavior, including the possibility that the behavior is:

(I) An effort to communicate;

(II) The result of a medical condition;

(III) The result of an environmental cause; or

(IV) The symptom of an emotional or psychiatric disorder.

(v) Evaluation and identification of the impact of disabilities (i.e. autism, blindness, and deafness) that impact the development of strategies and affect the child and the area of concern; and

(vi) An assessment of current communication strategies.

(C) Develop a variety of positive strategies that assist the primary caregiver and the provider to help the child use acceptable, alternative actions to meet the needs of the child in the safest, most positive, and cost effective manner. These strategies may include changes in the physical and social environment, developing effective communication, and appropriate responses by the primary caregiver.

(i) When interventions in behavior are necessary, the interventions must be performed in accordance with positive behavioral theory and practice.

(ii) The least intrusive intervention possible to keep the child and others safe must be used.

(iii) Abusive or demeaning interventions must never be used.

(iv) The strategies must be adapted to the specific disabilities of the child and the style or culture of the family.

(D) Develop a written Behavior Support Plan using clear, concrete language that is understandable to the primary caregiver and the provider that describes the assessment, strategies, and procedures to be used;

(E) Develop emergency and crisis procedures to be used to keep the child, primary caregiver, and the provider safe. When interventions in the behavior of the child are necessary, positive, preventative, non-aversive interventions that conform to OIS must be utilized. The use of protective physical intervention must be part of the Behavior Support Plan for the child. When protective physical intervention is required, the protective physical intervention must only be used as a last resort and the provider must be appropriately trained in OIS;

(F) Teach the primary caregiver and the provider the strategies and procedures to be used; and

(G) Monitor and revise the Behavior Support Plan as needed.

(b) Behavior support services may include:

(A) Training the primary caregiver or provider of a child;

(B) Developing a visual communication system as a strategy for behavior support; and

(C) Communicating, as authorized by a parent or guardian through a release of information, with other professionals about the strategies and outcomes of the Behavior Support Plan as written in the Behavior Support Plan within authorized consultation hours only.

(c) Behavior support services exclude:

(A) Mental health therapy or counseling;

(B) Health or mental health plan coverage;

(C) Educational services including, but not limited to, consultation and training for classroom staff;

(D) Adaptations to meet the needs of a child at school;

(E) An assessment in a school setting;

(F) Attendant care;

(G) Relief care; or

(H) Communication or activities not directly related to the development, implementation, or revision of the Behavior Support Plan.

(7) COMMUNITY NURSING SERVICES.

(a) Community nursing services include:

(A) Nursing assessments, including medication reviews;

(B) Care coordination;

(C) Monitoring;

(D) Development of a Nursing Service Plan;

(E) Delegation and training of nursing tasks to a provider and primary caregiver;

(F) Teaching and education of a primary caregiver and provider and identifying supports that minimize health risks while promoting the autonomy of a child and self-management of healthcare; and

(G) Collateral contact with a services coordinator regarding the community health status of a child to assist in monitoring safety and well-being and to address needed changes to the ISP for the child.

(b) Community nursing services exclude private duty nursing care.

(c) A Nursing Service Plan must be present when MICP funds are used for community nursing services. A services coordinator must authorize the provision of community nursing services as identified in an ISP.

(d) After an initial nursing assessment, a nursing reassessment must be completed every six months or sooner if a change in a medical condition requires an update to the Nursing Service Plan.

(8) ENVIRONMENTAL MODIFICATIONS.

(a) Environmental modifications include, but are not limited to:

(A) An environmental modification consultation to determine the appropriate type of adaptation;

(B) Installation of shatter-proof windows;

(C) Hardening of walls or doors;

(D) Specialized, hardened, waterproof, or padded flooring;

(E) An alarm system for doors or windows;

(F) Protective covering for smoke alarms, light fixtures, and appliances;

(G) Installation of ramps, grab-bars, and electric door openers;

(H) Adaptation of kitchen cabinets and sinks;

(I) Widening of doorways;

(J) Handrails;

(K) Modification of bathroom facilities;

(L) Individual room air conditioners for a child whose temperature sensitivity issues create behaviors or medical conditions that put the child or others at risk;

(M) Installation of non-skid surfaces;

(N) Overhead track systems to assist with lifting or transferring;

(O) Specialized electric and plumbing systems that are necessary to accommodate the medical equipment and supplies necessary for the welfare of the child; and

(P) Adaptations to control lights, heat, stove.

(b) Environmental modifications exclude:

(A) Adaptations or improvements to the family home that are of general utility, such as carpeting, roof repair, and central air conditioning, unless directly related to the health and safety needs of the child and identified in the ISP for the child;

(B) Adaptations that add to the total square footage of the family home except for ramps that attach to the home for the purpose of entry or exit;

(C) Adaptations outside of the family home, excluding external ramps; and

(D) General repair or maintenance and upkeep required for the family home.

(c) Environmental modifications must be tied to supporting assessed ADL, IADL, and health-related tasks as identified in the ISP for the child.

(d) Environmental modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and the determination by the Department of appropriateness and cost effectiveness. In addition, separate environmental modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review,

(e) Environmental modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(f) Environmental modifications must be made within the existing square footage of the family home, except for external ramps, and may not add to the square footage of the family home.

(g) Payment to the contractor is to be withheld until the work meets specifications.

(h) A scope of work must be completed for each identified environmental modification project. All contractors submitting bids must be given the same scope of work.

(i) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(j) All dwellings must be in good repair and have the appearance of sound structure.

(k) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(l) Environmental modifications must only be completed to the family home.

(m) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(n) Environmental modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(o) RENTAL PROPERTY.

(A) Environmental modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(9) ATTENDANT CARE. Attendant care services include direct support provided to a child in the family home or community by a qualified personal support worker or provider organization. ADL and IADL services provided through attendant care must support the child to live as independently as appropriate for the age of the child, support the family in their primary caregiver role, and be based on the identified goals, preferences, and needs of the child. The primary caregiver is expected to be present or available during the provision of attendant care.

(a) Assistance with ADLs, IADLs, and health-related tasks may include cueing, monitoring, reassurance, redirection, set-up, hands-on, or standby assistance. Assistance may be provided through human assistance

or the use of electronic devices or other assistive devices. Assistance may also require verbal reminding to complete IADL tasks.

(A) "Cueing" means giving verbal, audio, or visual cues during an activity to help a child complete the activity without hands-on assistance.

(B) "Hands-on" means a provider physically performs all or parts of an activity because a child is unable to do so.

(C) "Monitoring" means a provider observes a child to determine if assistance is needed.

(D) "Reassurance" means to offer a child encouragement and support.

(E) "Redirection" means to divert a child to another more appropriate activity.

(F) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so that a child may perform an activity.

(G) "Stand-by" means a provider is at the side of a child ready to step in and take over the task if the child is unable to complete the task independently.

(b) Attendant care services must:

(A) Be prior authorized by the services coordinator before services begin;

(B) Be delivered through the most cost effective method as determined by the services coordinator; and

(C) Only be provided when the child is present to receive services.

(c) Attendant care services exclude:

(A) Hours that supplant parental responsibilities or other natural supports and services available from the family, community, other government or public services, insurance plans, schools, philanthropic organizations, friends, or relatives;

(B) Hours solely to allow the primary caregiver to work or attend school;

(C) Hours that exceed what is necessary to support the child based on the functional needs assessment and medically involved criteria;

(D) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members;

(E) Supports and services in the family home that are funded by Child Welfare;

(F) Educational and supportive services provided by schools as part of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act;

(G) Services provided by the family; and

(H) Home schooling.

(d) Attendant care services may not be provided on a 24-hour shift-staffing basis.

(10) SKILLS TRAINING. Skills training is specifically tied to accomplishing ADL, IADL, and other health-related tasks as identified by the functional needs assessment and ISP and is a means for a child to acquire, maintain, or enhance independence.

(a) Skills training may be applied to the use and care of assistive devices and technologies.

(b) Skills training is authorized when:

(A) The anticipated outcome of the skills training, as documented in the ISP, is measurable;

(B) Timelines for measuring progress towards the anticipated outcome are established in the ISP; and

(C) Progress towards the anticipated outcome are measured and the measurements are evaluated by a services coordinator no less frequently than every six months, based on the start date of the initiation of the skills training.

(c) When anticipated outcomes are not achieved within the timeframe outline in the ISP, the services coordinator must reassess or redefine the use of skills training with the child for that particular goal.

(d) Skills training does not replace the responsibilities of the school system.

(11) RELIEF CARE.

(a) Relief care may not be characterized as daily or periodic services provided solely to allow the primary caregiver to attend school or work. Daily relief care may be provided in segments that are sequential, but may not exceed seven consecutive days without permission from the Department. No more than 14 days of relief care in a plan year are allowed without approval from the Department.

(b) Relief care may include both day and overnight services that may be provided in:

(A) The family home;

(B) A licensed or certified setting;

(C) The home of a qualified provider chosen by the parent or guardian as a safe setting for the child; or

(D) The community during the provision of ADL, IADL, health-related tasks, and other supports identified in the ISP for the child.

(c) Relief care services are not authorized for the following:

(A) Solely to allow the primary caregiver of the child to attend school or work;

(B) For more than seven consecutive overnight stays without permission from the Department;

(C) For more than 10 days per individual plan year when provided at a camp that meets provider qualifications;

(D) For vacation, travel, and lodging expenses; or

(E) To pay for room and board.

(12) ASSISTIVE DEVICES. Assistive devices are primarily and customarily used to meet an ADL, IADL, or health-related support need. The purchase, rental, or repair of an assistive device must be limited to the types of equipment that are not excluded under OAR 410-122-0080.

(a) Assistive devices may be purchased with MICP funds when the disability of a child otherwise prevents or limits the independence of the child to assist in areas identified in a functional needs assessment.

(b) Assistive devices that may be purchased for the purpose described in subsection (a) of this section must be of direct benefit to the child and may include:

(A) Devices to secure assistance in an emergency in the community and other reminders, such as medication minders, alert systems for ADL or IADL supports, or mobile electronic devices.

(B) Assistive devices not provided by any other funding source to assist and enhance the independence of a child in performing ADLs or IADLs, such as durable medical equipment, mechanical apparatus, or electronic devices.

(c) Expenditures for assistive devices are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(d) Devices must be limited to the least costly option necessary to meet the assessed need of a child.

(e) To be authorized by a services coordinator, assistive devices must be:

(A) In addition to any assistive devices, medical equipment, or supplies furnished under OHP, private insurance, or alternative resources;

(B) Determined necessary to the daily functions of a child; and

(C) Directly related to the disability of a child.

(f) Assistive devices exclude:

(A) Items that are not necessary or of direct medical or remedial benefit to the child or do not address the underlying need for the device;

(B) Items intended to supplant similar items furnished under OHP, private insurance, or alternative resources;

(C) Items that are considered unsafe for a child;

(D) Toys or outdoor play equipment; and

(E) Equipment and furnishings of general household use.

(13) ASSISTIVE TECHNOLOGY. Assistive technology is primarily and customarily used to provide additional safety and support and replace the need for direct interventions, to enable self-direction of care, and maximize independence. Assistive technology includes, but is not limited to, motion or sound sensors, two-way communication systems, automatic faucets and soap dispensers, incontinence and fall sensors, or other electronic backup systems.

(a) Expenditures for assistive technology are limited to $5,000 per plan year without Department approval. Any single purchase costing more than $500 must be approved by the Department prior to expenditure. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(b) Payment for ongoing electronic back-up systems or assistive technology costs must be paid to providers each month after services are received.

(A) Ongoing costs do not include electricity or batteries.

(B) Ongoing costs may include minimally necessary data plans and the services of a company to monitor emergency response systems.

(14) CHORE SERVICES. Chore services may be provided only in situations where no one else is responsible or able to perform or pay for the services.

(a) Chore services include heavy household chores, such as:

(A) Washing floors, windows, and walls;

(B) Tacking down loose rugs and tiles; and

(C) Moving heavy items of furniture for safe access and egress.

(b) Chore services may include yard hazard abatement to ensure the outside of the family home is safe for the child to traverse and enter and exit the home.

(15) COMMUNITY TRANSPORTATION.

(a) Community transportation includes, but is not limited to:

(A) Community transportation provided by a common carrier or bus in accordance with standards established for these entities;

(B) Reimbursement on a per-mile basis for transporting a child; or

(C) Assistance with the purchase of a bus pass.

(b) Community transportation may only be authorized when natural supports or volunteer services are not available and one of the following is identified in the ISP for the child:

(A) The child has an assessed need for ADL, IADL, or a health-related task during transportation; or

(B) The child has either an assessed need for ADL, IADL, or a health-related task at the destination or a need for waiver funded services at the destination.

(c) Community transportation must be provided in the most cost-effective manner which meets the needs identified in the ISP for the child.

(d) Community transportation expenses exceeding $500 per month must be approved by the Department.

(e) Community transportation must be prior authorized by a services coordinator and documented in an ISP. The Department does not pay any provider under any circumstances for more than the total number of hours, miles, or rides prior authorized by the services coordinator and documented in the ISP. Personal support workers who use their own personal vehicles for community transportation are reimbursed as described in OAR chapter 411, division 375.

(f) Community transportation excludes:

(A) Medical transportation;

(B) Purchase or lease of a vehicle;

(C) Routine vehicle maintenance and repair, insurance, and fuel;

(D) Ambulance services;

(E) Costs for transporting a person other than the child;

(F) Transportation for a provider to travel to and from the workplace of the provider;

(G) Transportation that is not for the sole benefit of the child;

(H) Transportation to vacation destinations or trips for relaxation purposes;

(I) Transportation provided by family members;

(J) Transportation normally provided by schools;

(K) Transportation used for behavioral intervention or calming;

(L) Transportation normally provided by a primary caregiver for a child of similar age without disabilities;

(M) Reimbursement for out-of-state travel expenses; and

(N) Transportation services that may be obtained through other means, such as OHP or other alternative resources available to the child.

(16) TRANSITION COSTS.

(a) Transition costs are limited to a child transitioning to the family home from a nursing facility or intermediate care facility for individuals with intellectual or developmental disabilities.

(b) Transition costs are based on the assessed need of a child determined during the person-centered service planning process and must support the desires and goals of the child receiving services and supports. Final approval for transition costs must be through the Department prior to expenditure. The approval of the Department is based on the need of the child and the determination by the Department of appropriateness and cost-effectiveness.

(c) Financial assistance for transition costs is limited to:

(A) Moving and move-in costs including movers, cleaning and security deposits, payment for background or credit checks (related to housing), or initial deposits for heating, lighting, and phone;

(B) Payment of previous utility bills that may prevent the child from receiving utility services and basic household furnishings such as a bed; and

(C) Other items necessary to re-establish a home.

(d) Transition costs are provided no more than twice annually.

(e) Transitions costs for basic household furnishings and other items are limited to one time per year.

(f) Transition costs may not supplant the legal responsibility of the parent or guardian. In this context, the term parent or guardian does not include a designated representative.

(17) FAMILY TRAINING. Family training services are provided to the family of a child to increase the abilities of the family to care for, support, and maintain the child in the family home.

(a) Family training services include:

(A) Instruction about treatment regimens and use of equipment specified in an ISP;

(B) Information, education, and training about the disability, medical, and behavioral conditions of a child; and

(C) Registration fees for organized conferences and workshops specifically related to the disability of the child or the identified, specialized, medical, or behavioral support needs of the child.

(i) Conferences and workshops must be prior authorized by a services coordinator, directly relate to the disability or medical condition of a child, and increase the knowledge and skills of the family to care for and maintain the child in the family home.

(ii) Conference and workshop, costs exclude:

(I) Travel, food, and lodging expenses;

(II) Services otherwise provided under OHP or available through other resources; or

(III) Costs for a family member who is a paid provider.

(b) Family training services exclude:

(A) Mental health counseling, treatment, or therapy;

(B) Training for a paid provider;

(C) Legal fees;

(D) Training for a family to carry out educational activities in lieu of school;

(E) Vocational training for family members; and

(F) Paying for training to carry out activities that constitute abuse of a child.

(18) ENVIRONMENTAL SAFETY MODIFICATIONS.

(a) Environmental safety modifications must be made from materials of the most cost effective type and may not include decorative additions.

(b) Fencing may not exceed 200 linear feet without approval from the Department.

(c) Environmental safety modifications exclude:

(A) Large gates such as automobile gates;

(B) Costs for paint and stain;

(C) Adaptations or improvements to the family home that are of general utility and are not for the direct medical or remedial benefit to the child or do not address the underlying environmental need for the modification; and

(D) Adaptations that add to the total square footage of the family home.

(d) Environmental safety modifications must be tied to supporting ADL, IADL, and health-related tasks as identified in the ISP for the child.

(e) Environmental safety modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness.

(f) In addition, separate environmental safety modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(g) Environmental safety modifications must be completed by a state licensed contractor with a minimum of $1,000,000 liability insurance. Any modification requiring a permit must be inspected by a local inspector and certified as in compliance with local codes. Certification of compliance must be filed in the file for the contractor prior to payment.

(h) Environmental safety modifications must be made within the existing square footage of the family home and may not add to the square footage of the family home.

(i) Payment to the contractor is to be withheld until the work meets specifications.

(j) A scope of work must be completed for each identified environmental safety modification project. All contractors submitting bids must be given the same scope of work.

(k) A services coordinator must follow the processes outlined in the Expenditure Guidelines for contractor bids and the awarding of work.

(l) All dwellings must be in good repair and have the appearance of sound structure.

(m) The identified home may not be in foreclosure or the subject of legal proceedings regarding ownership.

(n) Environmental safety modifications must only be completed to the family home.

(o) Upgrades in materials that are not directly related to the health and safety needs of the child are not paid for or permitted.

(p) Environmental safety modifications are subject to Department requirements regarding material and construction practices based on industry standards for safety, liability, and durability, as referenced in building codes, materials manuals, and industry and risk management publications.

(q) RENTAL PROPERTY.

(A) Environmental safety modifications to rental property may not substitute or duplicate services otherwise the responsibility of the landlord under the landlord tenant laws, the Americans with Disabilities Act, or the Fair Housing Act.

(B) Environmental safety modifications made to a rental structure must have written authorization from the owner of the rental property prior to the start of the work.

(C) The Department does not fund work to restore the rental structure to the former condition of the rental structure.

(19) VEHICLE MODIFICATIONS.

(a) Vehicle modifications may only be made to the vehicle primarily used by a child to meet the unique needs of the child. Vehicle modifications may include a lift, interior alterations to seats, head and leg rests, belts, special safety harnesses, other unique modifications to keep the child safe in the vehicle, and the upkeep and maintenance of a modification made to the vehicle.

(b) Vehicle modifications exclude:

(A) Adaptations or improvements to a vehicle that are of general utility and are not of direct medical benefit to a child or do not address the underlying need for the modification;

(B) The purchase or lease of a vehicle; or

(C) Routine vehicle maintenance and repair.

(c) Vehicle modifications are limited to $5,000 per modification. A services coordinator must request approval for additional expenditures through the Department prior to expenditure. Approval is based on the service and support needs and goals of the child and a determination by the Department of appropriateness and cost-effectiveness. In addition, separate vehicle modification projects that cumulatively total up to over $5,000 in a plan year must be submitted to the Department for review.

(d) Vehicle modifications must meet applicable standards of manufacture, design, and installation.

(20) SPECIALIZED MEDICAL SUPPLIES. Specialized medical supplies do not cover services which are otherwise available to a child under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. 701-7961 as amended, or the Individuals with Disabilities Education Act, 20 U.S.C. 1400 as amended. Specialized medical supplies may not overlap with, supplant, or duplicate other services provided through a waiver, OHP, or Medicaid state plan services.

(21) SPECIAL DIET.

(a) A special diet is a supplement and is not intended to meet the complete, daily nutritional requirements for a child.

(b) A special diet must be ordered at least annually by a physician licensed by the Oregon Board of Medical Examiners and periodically monitored by a dietician or physician.

(c) The maximum monthly purchase for special diet supplies may not exceed $100 per month.

(d) Special diet supplies must be in support of an evidence-based treatment regimen.

(e) A special diet excludes restaurant and prepared foods and vitamins.

(22) INDIVIDUAL-DIRECTED GOODS AND SERVICES.

(a) Individual-directed goods and services provide equipment and supplies that are not otherwise available through another source, such as waiver services, OHP, or Medicaid State Plan services.

(b) Individual-directed goods and services are therapeutic in nature and must be recommended in writing by at least one licensed health professional or by a behavior consultant.

(c) Individual-directed goods and services must directly address an identified disability related need of a child in the ISP.

(d) Individual-directed goods and services must:

(A) Decrease the need for other Medicaid services;

(B) Promote inclusion of a child in the community; or

(C) Increase the safety of a child in the family home.

(e) Individual-directed goods and services may not be:

(A) Otherwise available through another source, such as waiver services or state plan services;

(B) Experimental or prohibited treatment;

(C) Goods or services that are normally purchased by a family for a typically developing child of the same age; or

(D) Purchased solely due to the inability of the parent or guardian to pay for an item or service.

(f) Individual-directed goods and services purchased must be the most cost effective option available to meet the needs of the child.

(23) The assessed supports as authorized by the Department in the ISP, dated from the initial ISP to the anniversary date, must not be exceeded. Supports may increase or decrease in direct relationship to the functional needs assessment.

(24) All MICP services authorized by the Department must be included in a written ISP in order to be eligible for payment. The ISP must use the most cost effective services for safely and appropriately meeting the assessed needs of a child as determined by a services coordinator. Any goods purchased with MICP funds that are not used according to an ISP may be immediately recovered by the Department.

(25) All requests for General Fund expenditures and expenditures exceeding limitations in the Expenditure Guidelines must be authorized by the Department. The approval of the Department is limited to 90 days unless re-authorized. A request for a General Fund expenditure or an expenditure exceeding limitations in the Expenditure Guidelines is only authorized in the following circumstances:

(a) The child is not safely served in the family home without the expenditure;

(b) The expenditure provides supports for emerging or changing service needs or behaviors of the child;

(c) A significant medical condition or event, as documented by a primary caregiver, prevents or seriously impedes the primary caregiver from providing services; or

(d) The services coordinator, and if appropriate a behavior consultant, determines that the child needs two staff present at one time to ensure the safety of the child and others. Prior to approval, the services coordinator must determine that the caregiver, including the parent or guardian, and where indicated, has been trained in behavior management and that all other feasible recommendations from the behavior consultant and the services coordinator have been implemented.

(26) Payment for MICP services is made in accordance with the Expenditure Guidelines.

(27) MICP funds may not be used for --

(a) After September 1, 2018, services delivered in a home and community-based setting that is not in compliance with the qualities of a home and community-based setting described in OAR 411-004-0020;

(b) Services, supplies, or supports that are illegal, experimental, or determined unsafe for the general public by a recognized child or consumer safety agency;

(c) Services or activities that are carried out in a manner that constitutes abuse of a child;

(d) Services from a person who engages in verbal mistreatment and subjects a child to the use of derogatory names, phrases, profanity, ridicule, harassment, coercion, or intimidation by threatening injury or withholding of services or supports;

(e) Services that restrict the freedom of movement of a child by seclusion in a locked room under any condition;

(f) Purchase or lease of a vehicle;

(g) Purchase of a service animal or costs associated with the care of a service animal;

(h) Health and medical costs that the general public normally must pay including, but not limited to, the following:

(A) Medical or therapeutic treatments;

(B) Health insurance co-payments and deductibles;

(C) Prescribed or over-the-counter medications;

(D) Mental health treatments and counseling;

(E) Dental treatments and appliances;

(F) Dietary supplements including, but not limited to, vitamins and experimental herbal and dietary treatments; or

(G) Treatment supplies not related to nutrition, incontinence, or infection control;

(i) Ambulance service;

(j) Legal fees including, but not limited to, the cost of representation in educational negotiations, establishment of trusts, or creation of guardianship;

(k) Vacation costs for transportation, food, shelter, and entertainment that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the child for personal assistance in a home and community-based setting;

(l) Services, training, support, or supervision that has not been arranged according to applicable state and federal wage and hour regulations;

(m) Any purchase that is not generally accepted by the relevant mainstream professional or academic community as an effective means to address an identified support need;

(n) Unless under certain conditions and limits specified in Department guidelines, employee wages or contractor charges for time or services when a child is not present or available to receive services including, but not limited to, employee paid time off, hourly "no show" charge, or contractor travel and preparation hours;

(o) Services, activities, materials, or equipment that are not necessary, not in accordance with the Expenditure Guidelines, not cost effective, or do not meet the definition of support or social benefit as defined in OAR 411-317-0000;

(p) Public education and services provided as part of a free and appropriate education for children and young adults under the Individuals with Disabilities Education Act;

(q) Services provided in a nursing facility, correctional institution, residential setting, or hospital;

(r) Services, activities, materials, or equipment that the Department determines may be reasonably obtained by a family through alternative resources or natural supports;

(s) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds;

(t) Services when there is sufficient evidence to believe that a parent or guardian, or a provider chosen by a family, has engaged in fraud or misrepresentation, failed to use resources as agreed upon in an ISP, refused to accept or delegate record keeping required to document use of MICP funds, or otherwise knowingly misused public funds associated with MICP; or

(u) Notwithstanding abuse as defined in ORS 419B.005, services that, in the opinion of a services coordinator, are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of a child. Examples include, but are not limited to, the failure to provide a child with adequate food, clothing, shelter, medical services, supervision, or through condoning or permitting abuse of a child by any other person. However, no child may be considered neglected for the sole reason that a family relies on treatment through prayer alone in lieu of medical treatment.

Stat. Auth.: ORS 409.050, 417.345

Stats. Implemented: ORS 417.345, 427.007, 430.215

Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 29-2013(Temp), f. & cert. ef. 7-2-13 thru 12-29-13; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15: APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

411-355-0050

Standards for Providers Paid with MICP Funds

(1) PERSONAL SUPPORT WORKERS. A personal support worker must meet the qualifications described in OAR chapter 411, division 375.

(2) INDEPENDENT PROVIDERS WHO ARE NOT PERSONAL SUPPORT WORKERS.

(a) An independent provider who is not a personal support worker who is paid as a contractor or a self-employed person and selected to provide MICP services must:

(A) Be at least 18 years of age;

(B) Have approval to work based on Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370. A subject individual as defined in OAR 407-007-0210 may be approved for one position to work with multiple individuals statewide when the subject individual is working in the same employment role. The Background Check Request form must be completed by the subject individual to show intent to work statewide;

(i) Prior background check approval for another Department provider type is inadequate to meet background check requirements for independent provider enrollment.

(ii) Background check approval is effective for two years from the date an independent provider is contracted with to provide in-home services, except in the following circumstances:

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

(II) The background check approval has ended because the Department has inactivated or terminated the provider enrollment for the independent provider.

(C) Effective July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;

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

(E) Not be the primary caregiver, parent, adoptive parent, stepparent, spouse, or other person legally responsible for the child receiving MICP services;

(F) Demonstrate by background, education, references, skills, and abilities that he or she is capable of safely and adequately performing the tasks specified in the ISP for the child, with such demonstration confirmed in writing by the parent or guardian including:

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

(ii) Responsibility, maturity, exercising sound judgment, and reputable character;

(iii) Ability to communicate with the parent or guardian;

(iv) Training of a nature and type sufficient to ensure that the provider has knowledge of emergency procedures specific to the child.

(G) Hold current, valid, and unrestricted appropriate professional license or certification where services and supervision requires specific professional education, training, and skill;

(H) Understand requirements of maintaining confidentiality and safeguarding information about the child and family;

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

(J) If providing transportation, a valid license to drive and proof of insurance, as well as any other license or certification that may be required under state and local law depending on the nature and scope of the transportation; and

(K) Sign a Medicaid provider agreement and be enrolled as a Medicaid provider prior to delivery of any services.

(b) Subsection (1)(a)(C) of this section does not apply to employees of a parent or guardian, employees of a general business provider, or employees of a provider organization, who were hired prior to July 28, 2009 and remain in the current position for which the employee was hired.

(c) If a provider is an independent contractor during the terms of a contract, the provider must maintain in force, at the expense of the provider, professional liability insurance with a combined single limit of not less than $1,000,000 for each claim, incident, or occurrence. Professional liability insurance is to cover damages caused by error, omission, or negligent acts related to the professional services.

(A) The provider must provide written evidence of insurance coverage to the Department prior to beginning work and at any time upon the request of the Department.

(B) There must be no cancellation of insurance coverage without 30 days prior written notice to the Department.

(3) All providers must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The provider must notify the Department or the designee of the Department within 24 hours.

(4) A provider must immediately notify the parent or guardian and the services coordinator of injury, illness, accident, or any unusual circumstance that may have a serious effect on the health, safety, physical, emotional well-being, or level of service required by the child for whom MICP services are being provided.

(5) All providers are mandatory reporters and are required to report suspected child abuse to the local Department office or to the police in the manner described in ORS 419B.010.

(6) Independent providers, including personal support workers, are not employees of the state, CDDP, or Support Services Brokerage.

(7) BEHAVIOR CONSULTANTS. Behavior consultants are not personal support workers. Behavior consultants may include, but are not limited to, autism specialists, licensed psychologists, or other behavioral specialists. Behavior consultants providing specialized supports must:

(a) Have education, skills, and abilities necessary to provide behavior support services as described in OAR 411-355-0040;

(b) Have current certification demonstrating completion of OIS training; and

(c) Submit a resume or the equivalent to the Department indicating at least one of the following:

(A) A bachelor's degree in special education, psychology, speech and communication, occupational therapy, recreation, art or music therapy, or a behavioral science or related field, and at least one year of experience with individuals who present difficult or dangerous behaviors; or

(B) Three years of experience with individuals who present difficult or dangerous behaviors and at least one year of that experience includes

providing the services of a behavior consultant as described in OAR 411-355-0040.

(d) Additional education or experience may be required to safely and adequately provide the services described in OAR 411-355-0040.

(8) COMMUNITY NURSE. A nurse providing community nursing services must be an enrolled Medicaid provider and meet the qualifications in OAR 411-048-0210.

(9) DIETICIANS. Dieticians providing specialized diets must be licensed according to ORS 691.415 through 691.465.

(10) PROVIDER ORGANIZATIONS WITH CURRENT LICENSE OR CERTIFICATION.

(a) A provider organization certified or applying for certification prior to January 1, 2016 according to OAR 411-340-0030, certified and endorsed as set forth in OAR chapter 411 division 323, licensed under OAR chapter 411, division 360 for an adult foster home, or certified under OAR chapter 411, division 346 for a child foster home, does not require additional certification as an organization to provide relief care, attendant care, skills training, community transportation, or behavior consultation.

(b) Current license, certification, or endorsement is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an organization and delivering services, including provisions for safeguarding individuals receiving services.

(c) Provider organizations must assure that all people directed by the provider organization as employees, contractors, or volunteers to provide services paid for with MICP funds meet the standards for independent providers described in this rule.

(11) GENERAL BUSINESS PROVIDERS. General business providers providing services to children paid with MICP funds must hold any current license appropriate to operate required by the State of Oregon or federal law or regulation. Services purchased with MICP funds must be limited to those within the scope of the license of the general business provider. Licenses for general business providers include, but are not limited to:

(a) For a home health agency, a license under ORS 443.015;

(b) For an in-home care agency, a license under ORS 443.315;

(c) For providers of environmental modifications involving building modifications or new construction, a current license and bond as a building contractor as required by either OAR chapter 812 (Construction Contractor's Board) or OAR chapter 808 (Landscape Contractors Board), as applicable;

(d) For environmental modification consultants, a current license as a general contractor as required by OAR chapter 812, including experience evaluating homes, assessing the needs of a child, and developing cost-effective plans to make homes safe and accessible;

(e) For public transportation providers, a business license, vehicle insurance in compliance with the laws of the Department of Motor Vehicles, and operators with a valid license to drive;

(f) For vendors and medical supply companies providing assistive devices, a current retail business license and, if vending medical equipment, be enrolled as Medicaid providers through the Oregon Health Authority;

(g) For providers of personal emergency response systems, a current retail business license; and

(h) For vendors and supply companies providing specialized diets, a current retail business license.

Stat. Auth.: ORS 409.050 & 417.345
Stats. Implemented: ORS 417.345, 427.007 & 430.215
Hist.: SPD 5-2008(Temp), f. & cert. ef. 4-15-08 thru 10-12-08; SPD 14-2008, f. & cert. ef 10-9-08; SPD 25-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SPD 2-2010(Temp), f. & cert. ef. 3-18-10 thru 6-30-10; SPD 5-2010, f. 6-29-10, cert. ef. 7-1-10; SPD 56-2013, f. 12-27-13, cert. ef. 12-28-13; APD 16-2015(Temp), f. 7-30-15, cert. ef. 8-1-15 thru 1-27-16; APD 22-2015, f. 12-15-15, cert. ef. 12-28-15; APD 40-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Department of Human Services, Child Welfare Programs
Chapter 413

Rule Caption: Amending rules relating to medical care for children and young adults
Adm. Order No.: CWP 26-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 12-21-15
Notice Publication Date: 11-1-2015
Rules Amended: 413-100-0400, 413-100-0410, 413-100-0420, 413-100-0435
Rules Repealed: 413-100-0457
Subject: The Department of Human Services, Office of Child Welfare Programs, is removing references to the Former Foster Care Youth (FFCY) Medical Program in its rules relating to medical coverage for children and young adults in substitute care. Effective December 1, 2015, FFCY medical will be administered by the Oregon Health Authority under OAR 410-200-0407. References to the program are being removed from OAR 413-100-0000, 413-100-0410, and 413-100-0420 and the FFCY eligibility rule, OAR 413-100-0457, is being repealed.

Additionally, the definition of "Children's Medical Unit" in OAR 413-100-0410 is being updated and a clarification is being made to OAR 413-100-0435 regarding medical coverage for children in a guardianship assistance agreement.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-100-0400
Purpose

The purpose of OAR 413-100-0400 to 413-100-0530 is to set forth policies and criteria the Department uses to determine eligibility for:

(1) Medical assistance under Title XIX of the Social Security Act for a child or young adult in substitute care and in the care and custody of the Department or another state;

(2) Medical assistance under Title XIX for a child or young adult under an adoption assistance agreement or guardianship assistance agreement through the Department or another state;

(3) General Assistance medical for a child or young adult who does not meet the eligibility criteria for Title XIX Medicaid; and

(4) Medical eligibility for children entering Oregon under an Interstate Compact for the Placement of Children (ICPC) or Interstate Compact on Adoption and Medical Assistance (ICAMA) agreement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; CWP 12-2014, f. & cert. ef. 6-12-14; CWP 26-2015, f. & cert. ef. 12-21-15

413-100-0410
Definitions

As used in OAR 413-100-0400 to 413-100-0530:

(1) "Adjudication" means the legal process by which a child or young adult is under a court's jurisdiction as a result of having engaged in delinquent behavior and not having a legal guardian that could be responsible for the child or young adult.

(2) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the ongoing needs of the child or young adult. "Adoption assistance" may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(3) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(4) "Child" means a person under 18 years of age.

(5) "Children's Medical Unit" means the unit in Child Welfare Central Office where medical eligibility is completed for children in the ICPC, ICAMA, Non-IV-E Tribal, and Karly's Law programs.

(6) "COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985 which is a federal mandate that requires employers sponsoring group health plans for twenty (20) or more employees to offer continuation of coverage to employees, their spouses, and dependent children who become unemployed.

(7) "Custody" means legal custody described in ORS 419B.373.

(8) "Department" means the Department of Human Services, Child Welfare.

(9) "Foster care" means 24 hour substitute care for children placed away from their parents or guardians and for whom the Department has placement and care responsibility. This includes but is not limited to placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-

adoptive homes. A child is in foster care in accordance with this definition regardless of whether the foster care facility is licensed and payments are made by the Department or local agency for the care of the child, whether adoption subsidy payments are being made prior to the finalization of the adoption, or whether there is Federal matching of any payments that are made.

(10) "General Assistance" means services paid using the state General Fund.

(11) "Guardianship assistance" means assistance on behalf of an eligible child or young adult to offset the costs associated with establishing the guardianship and meeting the ongoing needs of the child or young adult. "Guardianship assistance" may be in the form of a payment, medical coverage, or reimbursement of guardianship expenses.

(12) "Guardianship assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the potential guardian or guardian setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the guardian and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(13) "ICAMA" means the Interstate Compact on Adoption and Medical Assistance, which was established in 1986 to safeguard and protect the interstate interests of children covered by an adoption assistance agreement when they move or are adopted across state lines.

(14) "ICPC" means the Interstate Compact for the Placement of Children. It is an agreement among states to coordinate the transfer and placement of children across state lines. (See ORS 417.200)

(15) "Independent Living Program" or "ILP" means the services provided by the Department to an eligible foster child or former foster child.

(16) "OCCS Medical" means Title XIX and Title XXI Medical provided through the Office of Client and Community Services under the Oregon Health Authority.

(17) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(18) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(19) "Title IV-E" means Title IV-E of the Social Security Act, which provides federal payments to the states for foster care maintenance, adoption assistance, and guardianship assistance on behalf of certain eligible children and young adults.

(20) "Title XIX Medicaid" means federal and state funded medical assistance established by Title XIX of the Social Security Act.

(21) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; CWP 12-2014, f. & cert. ef. 6-12-14; CWP 26-2015, f. & cert. ef. 12-21-15

413-100-0420
Child Welfare Title XIX Medicaid Program Eligible Populations

Only the following children and young adults may be eligible for Child Welfare Title XIX Medicaid:

(1) A child or young adult in substitute care, which may include:

(a) A child or young adult in foster care.

(b) A child or young adult receiving Supplemental Security Income (SSI).

(c) A child or young adult held temporarily in a county or state juvenile detention facility.

(d) A child or young adult in a subsidized Independent Living Program.

(e) A child or young adult who returned home in a trial reunification for up to six months.

(f) A child or young adult in a pre-adoptive placement.

(g) A child or young adult on runaway status who would otherwise be in substitute care, as long as the Department retains custody of the child or young adult and the child or young adult would continue to be in substitute care and Child Welfare Title XIX Medicaid eligible if not on runaway status.

(h) A child or young adult hospitalized while under the Department's protective custody is eligible, if at the time of hospitalization, the Department's intent was to place the child or young adult in substitute care.

(i) A child or young adult from Oregon placed in substitute care in another state through ICPC and the receiving state has denied the child or young adult medical coverage.

(j) A child or young adult admitted to the hospital prior to entering substitute care and a newborn released from the hospital into substitute care. Eligibility for a child or young adult is effective on the date the Department finds the child or young adult is eligible but not earlier than the date the Department obtains custody of the child or young adult.

(k) Newborns in the following situations:

(A) A baby born to a mother receiving medical benefits under Title XIX Medicaid from the Oregon Health Authority is eligible for Title XIX Medicaid due to the mother's coverage.

(B) A baby born to a mother not receiving medical benefits under Title XIX Medicaid from the Oregon Health Authority, to ensure coverage of birth expenses if:

(i) The Department obtains custody of the baby during its hospitalization; and

(ii) Child Welfare Title XIX Medicaid coverage is entered in the Department's electronic information system effective the date of birth.

(2) A child or young adult who is the subject of an effective adoption assistance agreement administered by the Department.

(3) A child or young adult who is the subject of an effective guardianship assistance agreement administered by the Department.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; CWP 12-2004, f. & cert. ef. 7-1-04; CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; CWP 12-2014, f. & cert. ef. 6-12-14; CWP 26-2015, f. & cert. ef. 12-21-15

413-100-0435
Title XIX Medicaid Eligibility for a Child or Young Adult Receiving Adoption Assistance or Guardianship Assistance

(1) The Child Welfare Post Adoption Program will determine and maintain Child Welfare Title XIX Medicaid eligibility for the following children and young adults:

(a) A child or young adult who has exited Department custody as the result of a finalized adoption, and the child or young adult is the subject of an effective adoption assistance agreement administered by the Department. Prior to the adoption finalization the child or young adult receives medical coverage as described in OAR 413-100-0430.

(b) A child or young adult who is determined eligible for guardianship assistance and is the subject of an effective guardianship assistance agreement administered by the Department.

(c) A child or young adult who is the subject of an adoption that does not require the Department's consent and is the subject of an effective adoption assistance agreement administered by the Department.

(2) Before a child or young adult described in section (1) of this rule may receive a medical card providing Child Welfare Title XIX Medicaid services, the Child Welfare Post Adoption Program must determine the eligibility of the child or young adult for Child Welfare Title XIX Medicaid.

(3) The requirements listed in OAR 413-100-0430(3) also apply to children and young adults described in section (1) of this rule.

(4) A child or young adult described in section (1) of this rule who is the subject of a guardianship assistance agreement where Title IV-E funded payments are being made to the guardian is eligible for Child Welfare Title XIX Medicaid.

(5) A child or young adult described in section (1) of this rule who is the subject of an adoption assistance agreement where the pre-adoptive parent or adoptive parent is eligible to receive a Title IV-E funded payment is eligible for Child Welfare Title XIX Medicaid.

(6) A child or young adult described in section (1) of this rule who is the subject of an adoption assistance agreement or guardianship assistance agreement, where the child or young adult was eligible for Child Welfare Title XIX Medicaid while in substitute care but ineligible for Title IV-E foster care, will be determined eligible and provided Child Welfare Title XIX Medicaid.

(7) A child or young adult described in section (1) of this rule determined ineligible to receive Child Welfare Title XIX Medicaid will be provided General Assistance medical when:

(a) The child or young adult resides in Oregon; or

(b) The child or young adult resides outside of Oregon but in the United States or a territory or possession thereof and is not able to receive medical assistance through the state of residence.

(8) Annual redeterminations are not required for children and young adults under a finalized adoption assistance agreement or guardianship assistance agreement.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 16-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; CWP 12-2014, f. & cert. ef. 6-12-14; CWP 26-2015, f. & cert. ef. 12-21-15

Rule Caption: Amending rules relating to child welfare
Adm. Order No.: CWP 27-2015
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Rules Repealed: 413-015-0115(T), 413-015-0211(T), 413-015-0415(T), 413-015-9000(T), 413-080-0050(T), 413-080-0053(T), 413-080-0054(T), 413-090-0085(T), 413-090-0087(T)
Subject: The Department of Human Services, Office of Child Welfare Programs, is making rule changes to do the following:

- Establish requirements when a child or young adult in substitute care is missing;
- Expand implementation of Differential Response to additional counties;
- Update the BRS Rates Table.

Each change is described in detail below. Rule text showing changes is available at http://www.dhs.state.or.us/policy/childwelfare/policy_releases.htm.

When a Child or Young Adult in Substitute Care is Missing.

Temporary rules adopted on October 1, 2015 and November 24, 2015 are being permanently adopted to implement provisions of section 104 of the Preventing Sex Trafficking and Strengthening Families Act of 2014 relating to the Department's responsibilities when a child or young adult in substitute care is missing. Specifically, the amendments do the following:

State that when a child or young adult in substitute care is missing, the caseworker must:

- Make immediate efforts to locate the child or young adult; and
- Notify the court and legal parties to the case that the child or young adult is missing. (OAR 413-080-0053)

State that when a child or young adult in substitute care is located, the caseworker must:

- Determine and address the primary factors that contributed to the missing status of the child or young adult;
- Determine the child or young adult's experiences while missing;
- Determine if the child or young adult is a victim of sex trafficking or is at risk of being a victim of sex trafficking; and
- Notify the court and legal parties to the case that the child or young adult has been located. (OAR 413-080-0053).

State that monthly face-to-face contact is a required CPS (Child Protective Services) assessment activity (OAR 413-015-0415) and if a caseworker is unable to make face-to-face contact with a child or young adult because the child or young adult is missing, the caseworker must follow the protocols in OAR 413-080-0053 described above. (OAR 413-080-0054(1)(f)).

Add definitions for "monthly face-to-face contact," "sex trafficking," and "young adult." (OAR 413-080-0050(12) and (23) and OAR 413-015-0115(25) and (55)).

Clarify that reports of a missing child or young adult must be documented in the Department's electronic information system. (OAR 413-015-0211(2)(c)(D)).

Require BRS (Behavior Rehabilitation Services) providers to immediately report to the Department information about a missing child or young adult placed with a BRS program. (OAR 413-090-0087).

Differential Response Implementation.

The Department is also permanently adopting temporary amendments to OAR 413-015-9000 adopted on October 12, 2015 relating to Oregon's Differential Response (DR) system. DR is an approach to child protection that promotes partnering with parents, family, communities, and neighborhoods to keep children safe. Oregon began implementation of DR on a county-by-county basis in May 2014. The amendments specify DR implementation dates for the following counties:

- November 2, 2015 for Jackson and Josephine
- November 16, 2015, for Coos and Curry
- December 1, 2015, for Clackamas

BRS Rates

The updated BRS (Behavior Rehabilitation Services) Rates Table adopted by temporary rule on August 26, 2015 is being permanently adopted. The table is incorporated by reference and adopted as Exhibit 1 in OAR 413-090-0085 to provide the current rates at which the Department compensates BRS contractors, in accordance with Oregon Health Authority OAR 410-170-0110. The updated table changes rates, depending on type of service and placement model, as follows:

The service rate per billable care day is increased from a range of $90.34 to $134.33 to a range of $96.10 to $142.02.

The placement-related activities rate per billable care day is increased from a range of $47.19 to $51.99 to a range of $49.48 to $54.35.

The total daily rate per billable care day is increased from a range of $137.53 to $186.32 to a range of $145.58 to $196.37.

The absent day rate is increased from a range of $68.76 to $93.16 to a range of $72.79 to $98.19.

Additional non-substantive edits are being made to the rules above to make minor updates, remove unnecessary references to policy titles, and update statute and rule references.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-015-0115
Definitions

Unless the context indicates otherwise, these terms are defined for use in OAR chapter 413, division 015:

(1) "Caregiver" means a guardian, legal custodian, or other person acting in loco parentis, who exercises significant authority over and responsibility for a child.

(2) "Child" means a person under 18 years of age.

(3) "Child abuse or neglect" means any form of abuse, including abuse through neglect and abuse or neglect by a third party, of a person under age 18.

(4) "Child protective services" (CPS) means a specialized social service program that the Department provides on behalf of children who may be unsafe after a report of child abuse or neglect is received.

(5) "Child protective services assessment" (CPS assessment) means an investigation into a report of child abuse pursuant to ORS 419B.020, that includes activities and interventions to identify and analyze threats to child safety, determine if there is reasonable cause to believe child abuse or neglect occurred, and assure child safety through protective action plans, initial safety plans, or ongoing safety planning.

(6) "Child protective services supervisor" (CPS supervisor) means an employee of the Department trained in child protective services and designated as a supervisor.

(7) "Child protective services worker" (CPS worker) means an employee of the Department who has completed the mandatory Department training for child protective service workers.

(8) "Child Safety Meeting" means a meeting held at the conclusion of a CPS assessment for the purpose of developing an ongoing safety plan.

(9) "Children's Care Provider" (CCP) means a DHS-licensed Residential Care Agency, Day Treatment Program, Foster Care Agency, Therapeutic Boarding School, or Outdoor Youth Program that has assumed responsibility for all or a portion of the care of a child. The term includes the CCP's employees, agents, contractors and their employees, and volunteers.

(10) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(11) "Day Care Facility" means each of the following:

(a) A Registered Family Child Care Home, which is the residence of a provider who has a current Family Child Care Registration at that address and who provides care in the family living quarters.

(b) A Certified Family Child Care Home, which is a child care facility located in a building constructed as a single family dwelling that has certification to care for a maximum of 16 children at any one time.

(c) A Certified Child Care Center, which is certified to care for 13 or more children, or a facility that is certified to care for twelve or fewer children and located in a building constructed as other than a single family dwelling.

(d) A Listed Facility, which is a child care provider that is exempt from Office of Child Care licensing and that receives subsidy payments for child care on behalf of clients of the Department of Human Services.

(12) "Department" means the Department of Human Services, Child Welfare.

(13) "Department response" means how the Department intends to respond to information that a child is unsafe after a report of alleged abuse or neglect is received.

(14) "Designated medical professional" means (as described in ORS 418.747(9)) a physician, physician assistant, or nurse practitioner who has been designated by the local multi-disciplinary team and trained to conduct child abuse medical assessments (as defined in ORS 418.782), and who is, or who may designate another physician, physician assistant, or nurse practitioner who is, regularly available to conduct these medical assessments.

(15) "Domestic violence" means a pattern of coercive behavior, which can include physical, sexual, economic, and emotional abuse that an individual uses against a past or current intimate partner to gain power and control in a relationship.

(16) "Face-to-face" means an in-person interaction between individuals.

(17) "Former foster child" means a person under 21 years of age who was in substitute care at or after 16 years of age, including substitute care provided by federally recognized tribes, and had been in substitute care for at least 180 cumulative days after 14 years of age.

(18) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(19) "Harm" means any kind of impairment, damage, detriment, or injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning. "Harm" is the result of child abuse or neglect and may vary from mild to severe.

(20) "ICWA" means the Indian Child Welfare Act.

(21) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a child that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(22) "Initial contact" means the first face-to-face contact between a CPS worker and a family. The initial contact includes face-to-face contact with the alleged child victim, his or her siblings, parent or caregiver, and other children and adults living in the home; accessing the home environment; and gathering sufficient information on the family conditions and functioning to determine if present danger safety threats or impending danger safety threats exist.

(23) "Initial safety plan" means a documented set of actions or interventions sufficient to protect a child from an impending danger safety threat in order to allow for completion of the CPS assessment.

(24) "Moderate to high needs" means observable family behaviors, conditions, or circumstances that are occurring now; and over the next year without intervention, are likely to have a negative impact on a child's physical, sexual, psychological, cognitive, or behavioral development or functioning. The potential negative impact is not judged to be severe. While intervention is not required for the child to be safe, it is reasonable to determine that short-term, targeted services could reduce or eliminate the likelihood that the negative impact will occur.

(25) "Monthly face-to-face contact" means in-person interaction between individuals at least once each and every full calendar month.

(26) "Multi-disciplinary team" (MDT) means a county child abuse investigative team as defined in ORS 418.747.

(27) "Observable" means specific, real, can be seen and described. Observable does not include suspicion or gut feeling.

(28) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

(29) "Out of control" means family behaviors, conditions, or circumstances that can affect a child's safety are unrestrained, unmanaged, without limits or monitoring, not subject to influence or manipulation within the control of the family, resulting in an unpredictable and chaotic family environment.

(30) "Personal representative" means a person who is at least 18 years of age and is selected to be present and supportive during the CPS assessment by a child who is the victim of a person crime as defined in ORS 147.425 and is at least 15 years of age at the time of the crime. The personal representative may not be a person who is a suspect in, party or witness to, the crime.

(31) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be a child's adoptive family; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(32) "Present danger safety threat" means an immediate, significant, and clearly observable family behavior, condition, or circumstance occurring in the present tense, already endangering or threatening to endanger a child. The family behavior, condition, or circumstance is happening now and it is currently in the process of actively placing a child in peril.

(33) "Private child-caring agency" is defined in ORS 418.205, and means a "child-caring agency" that is not owned, operated, or administered by any governmental agency or unit.

(a) A "child-caring agency" means an agency or organization providing:

(A) Day treatment for disturbed children;

(B) Adoption placement services;

(C) Residential care, including but not limited to foster care or residential treatment for children;

(D) Outdoor youth programs as defined in OAR 413-215-0911; or

(E) Other similar services for children.

(b) A "child-caring agency" does not include residential facilities or foster care homes certified or licensed by the Department under ORS 443.400 to 443.455, 443.830, and 443.835 for children receiving developmental disability services.

(34) "Protective action plan" means an immediate, same day, short-term plan, lasting a maximum of ten calendar days, sufficient to protect a child from a present danger safety threat.

(35) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(36) "Protective custody" means custody authorized by ORS 419B.150.

(37) "Reasonable suspicion" means a reasonable belief given all of the circumstances, based upon specific and describable facts, that the suspicious physical injury may be the result of abuse. Explanation: The belief must be subjectively and objectively reasonable. In other words, the person subjectively believes that the injury may be the result of abuse, and the belief is objectively reasonable considering all of the circumstances. The circumstances that may give rise to a reasonable belief may include, but not be limited to, observations, interviews, experience, and training. The fact that there are possible non-abuse explanations for the injury does not negate reasonable suspicion.

(38) "Referral" means a report that has been assigned for the purpose of CPS assessment.

(39) "Report" means an allegation of child abuse or neglect provided to the Department that the screener evaluates to determine if it constitutes a report of child abuse or neglect as defined in ORS 419B.005.

(40) "Reporter" means an individual who makes a report.

(41) "Safe" means there is an absence of present danger safety threats and impending danger safety threats.

(42) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(43) "Safety services" mean the actions, assistance, and supervision provided by safety service providers to manage the identified present danger safety threats or impending danger safety threats to a child.

(44) "Safety threshold" means the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria: be imminent, be out of control, affect a vulnerable child, be specific and observable, and have potential to cause severe harm to a child. The "safety threshold" criteria are used to determine the presence of an impending danger safety threat.

(45) "School administrator" means the principal, vice principal, assistant principal, or any other person performing the duties of a principal, vice principal, or assistant principal at a school, as defined in the Teacher Standards and Practices Commission (TSPC) OAR 584-005-0005.

(46) "Screener" means a Department employee with training required to provide screening services.

(47) "Screening" means the process used by a screener to determine the Department response when information alleging abuse or neglect is received.

(48) "Severe harm" means:

(a) Significant or acute injury to a child's physical, sexual, psychological, cognitive, or behavioral development or functioning;

(b) Immobilizing impairment; or

(c) Life threatening damage.

(49) "Substance" means any controlled substance as defined by ORS 475.005, prescription medications, over-the-counter medications, or alcoholic beverages.

(50) "Suspicious physical injury" (as defined in ORS 419B.023) includes, but is not limited to:

(a) Burns or scalds;

(b) Extensive bruising or abrasions on any part of the body;

(c) Bruising, swelling, or abrasions on the head, neck, or face;

(d) Fractures of any bone in a child under the age of three;

(e) Multiple fractures in a child of any age;

(f) Dislocations, soft tissue swelling, or moderate to severe cuts;

(g) Loss of the ability to walk or move normally according to the child's developmental ability;

(h) Unconsciousness or difficulty maintaining consciousness;

(i) Multiple injuries of different types;

(j) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(k) Any other injury that threatens the physical well-being of the child.

(51) "Teacher" means (as defined in TSPC OAR 584-005-0005) a licensed or registered employee in a public school or charter school, or employed by an education service district, who has direct responsibility for instruction, coordination of educational programs, or supervision or evaluation of teachers; and who is compensated for services from public funds.

(52) "Third-party abuse" means abuse by a person who is not the child's parent, not the child's caregiver or other member of the child's household, and not a person responsible for the child's care, custody, and control. Examples of persons who could be considered as a third-party under this definition include school personnel, day-care providers, coaches, and church personnel.

(53) "Unsafe" means the presence of a present danger safety threat or an impending danger safety threat.

(54) "Vulnerable child" means a child who is unable to protect him or herself. This includes a child who is dependent on others for sustenance and protection. A "vulnerable child" is defenseless, exposed to behaviors, conditions, or circumstances that he or she is powerless to manage, and is susceptible and accessible to a threatening parent or caregiver. Vulnerability is judged according to physical and emotional development, ability to communicate needs, mobility, size, and dependence.

(55) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 409.185, 418.005, 418.747, 419B.017, 419B.024, 419B.035

Stats. Implemented: ORS 147.425, 409.185, 418.005, 418.015, 418.747, 419B.005 - 419B.050

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 17-2004, f. & cert. ef. 11-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 19-2005(Temp), f. 12-30-05, cert. ef. 1-1-06 thru 6-30-06; CWP 14-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2010(Temp), f. & cert. ef. 6-15-10 thru 12-12-10; CWP 21-2010, f. & cert. ef. 11-15-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-0205
Screening Activities

The screener must complete the following activities:

(1) Gather information. When gathering information, the screener must do both of the following:

(a) Accept reports of child abuse and neglect regardless of where the child resides or where the alleged child abuse or neglect may have occurred. If the report is about a child that does not reside in the county where the report is received, the screener must forward the completed screening report form to the local child welfare office in the county or state where the child resides. The screener must forward the screening report form on the same day the report is received and confirm that it has been successfully forwarded.

(b) Accept and handle anonymous reports of child abuse and neglect in the same manner as other reports, gather the same information from the anonymous reporter as the screener would from any other reporter, and encourage the reporter to provide identifying information.

(2) If appropriate, refer the person to community services and resources.

(3) Determine the type of information received, Child Protective Services or Family Support Services, and where and when to document the information received.

(a) Child Protective Services. This type of information is related to reports of alleged child abuse or neglect.

(A) Child Protective Services information is documented in the Department's electronic information system.

(B) The time line for screeners to complete and document their actions, and document information gathered, unless a CPS supervisor grants the screener an extension as provided in OAR 413-015-0220, is:

(i) Immediately when a "within 24 hours" response time line is assigned;

(ii) Within the same day when a "within five days" response time line is assigned; or

(iii) No later than the next working day after the screening determination is made when the report is closed at screening.

(b) Family Support Services. This type of information is not a report of alleged child abuse or neglect, and it does not include information that indicates a child is unsafe.

(A) This information is documented in the Department's electronic information system using a screening report form.

(B) The time line for screeners to complete and document their actions, and document information gathered is within two days of receiving the request for services.

(C) Family Support Services information falls within one of the categories described below:

(i) Request for Placement — Information falls within this category when:

(I) A parent or guardian requests out-of-home placement of their child due solely to obtain services for the emotional, behavioral, or mental disorder or developmental or physical disability of the child;

(II) The parent or guardian requests the Department take legal custody of their child; or

(III) The court has ordered a pre-adjudicated delinquent into the care of the Department.

(ii) Request for Independent Living Program Services — Information falls within this category when a former foster child qualifies for Independent Living Program (ILP) services, is not a participant on an open case, and requests to enroll in the Department's ILP.

(iii) Request for Post Legal Adoption and Post Guardianship Services — Information falls within this category when a family requests post legal adoption or post guardianship services, if the adoption or guardianship occurred through the Department.

(iv) Request for Voluntary Services — Information falls within this category when it does not meet the criteria in subparagraphs (i), (ii), or (iii) of this paragraph, a parent or caregiver requests assistance with a child in the home, and all of the following apply:

(I) Other community resources have been utilized and determined to be ineffective.

(II) Members of the extended family and other responsible adults who are well known to the child have been explored or utilized and determined to be unsafe, unavailable, unwilling, or ineffective as support for the family.

(III) The parent or caregiver is temporarily or will be temporarily unable to fulfill parental responsibilities due to a diagnosed medical condition or a mental health diagnosis.

(IV) The parent's or caregiver's inability to fulfill parental responsibilities is temporary and immediate, and will be alleviated with short term services or short term services will transition the family to community services.

(V) A Child Welfare program manager approves the request for voluntary services.

(4) When the screener receives Child Protective Services information, the screener must complete the screening activities described below.

(a) The screener must gather the following information, which is critical to effectively identify if there is a report of child abuse or neglect as defined in ORS 419B.005 and if the information alleges that behaviors, conditions, or circumstances could result in harm to the child:

(A) The type of alleged child abuse or neglect and the circumstances surrounding the report;

(B) How the alleged child abuse or neglect or the surrounding circumstances are reported to affect the safety of the child;

(C) Information that identifies how the child is vulnerable; and

(D) Reported parent or caregiver functioning and behavior.

(b) After gathering and documenting the information required in subsection (a) of this section, if the report is about a condition or circumstance that occurred in a Children's Care Provider (CCP) or a behavior of a CCP, the screener must complete the requirements in paragraphs (A) through (C) of this subsection. CPS screening activities for CCP referrals are complete after the completion of the activities in paragraphs (A) through (C) of this subsection and additional screening activities in this rule do not apply:

(A) Immediately pend the screening information to the Office of Adult Abuse Prevention and Investigation (OAAPI) screener's workload;

(B) Immediately send an e-mail to the OAAPI screener to let the screener know that a screening report has been assigned to the screener's workload; and

(C) When the report is new information on an open Department case:

(i) Notify the CPS supervisor;

(ii) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in the Department's electronic information system case notes; and

(iii) Complete notification on the same day the information is received.

(c) Gather information from individuals who can provide firsthand information necessary to determine the appropriate Department response. This may include individuals who have regular contact with the child, doctors, teachers, or others who have evaluated or maintain records on the child, people who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior, and those who have records or reason to know things about the parent or caregiver as a result of their involvement with or exposure to the parent or caregiver.

(d) Research Department history of every identified child, parent, caregiver, and household member for information about current or previous Department involvement relevant to the current child abuse or neglect report. If the research reveals an "unable to locate" disposition that has not been assessed, the screener must reference that assessment, the date the assessment was completed, and those allegations not able to be assessed in the current report summary.

(e) Inquire regarding possible Indian or Alaskan Native heritage (for further direction see OAR 413-015-0215(5)).

(f) Request relevant information when available and appropriate from law enforcement agencies (LEA), including domestic disturbance calls, arrests, warrants, convictions, restraining orders, probation status, and parole status.

(g) Determine the location and corresponding law enforcement jurisdiction of the family's residence and the site where the alleged child abuse or neglect may have occurred.

(h) Immediately comply with "Department Responsibilities During Screening and Assessment of a Child Abuse or Neglect Report Involving the Home of a Department Certified Foster Parent or Relative Caregiver", OAR 413-200-0404 to 413-200-0424, when information is related to a Department approved and certified home that is a foster home, relative caregiver home, or home of a pre-adoptive family.

(i) Immediately comply with the Child Welfare "Fatality Protocol" when information is related to the death of a child.

(5) Explain to reporters the information in all of the following subsections:

(a) That the Department will not disclose the identity of the reporter unless disclosure is to an LEA for purposes of investigating the report, disclosure is required because the reporter may need to testify as a witness in court, or the court orders the Department to disclose the identity of the reporter.

(b) That anyone making a report of child abuse or neglect in good faith, who has reasonable grounds to make the report, is immune from liability in respect to making the report and the contents of the report.

(c) The Department's decisions about paragraphs (A) through (C) of this subsection. If the decisions have not been made when the report is completed, the screener must notify the reporter that, if contact information is provided, diligent efforts will be made to contact him or her at a later date and inform him or her of the decisions:

(A) Whether contact with the child was made;

(B) Whether the Department determined child abuse occurred; and

(C) Whether services will be provided.

(d) If applicable, that the information reported does not meet the screening criteria to be documented and retained in the Department's electronic information system.

(e) That mandatory reporters should consider maintaining a record of their report to document compliance with ORS 419B.010 and 419B.015.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005 & 419B.020

Hist.: CWP 25-2003, f. & cert. ef. 7-1-03; CWP 14-2004, f. 7-30-04, cert. ef. 8-1-04; CWP 4-2005, f. & cert. ef. 2-1-05; CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 22-2007(Temp), f. & cert. ef. 12-3-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 5-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-0211
Additional Screening Activities

In the specific circumstances described below, the screener must complete additional activities to complete the screening process.

(1) The screener receives information on an open CPS assessment.

(a) When a screener receives duplicate information (same alleged victim, same alleged perpetrator, same allegation of child abuse or neglect, and same incident dates) on an open CPS assessment, the screener must:

(A) Inform the reporter that a new screening report will not be documented because the information has already been received;

(B) Provide the reporter with the assigned caseworker's name and phone number; and

(C) Provide contact information about the reporter and any information the screener received to the assigned caseworker.

(b) When a screener receives information that constitutes a new report of child abuse or neglect as defined in ORS 419B.005 on an open CPS assessment, the screener must:

(A) Document the information in a new screening report form; and

(B) Notify the assigned CPS worker and their supervisor of all new information received on the same day the information is received, and document this notification in the Department's electronic information system.

(c) When a screener receives information that constitutes a closed at screening on an open CPS assessment, the screener must:

(A) Document the information in a new screening report form; and

(B) Notify the assigned CPS worker and their supervisor of all new information received on the same day the information is received, and document this notification in the Department's electronic information system.

(2) The screener receives new information on an open Department case.

(a) When a screener receives new information on an open Department case, the screener must:

(A) Consult with a CPS supervisor;

(B) Notify each assigned case worker and their respective supervisors of all new information received on the same day the information is received, and document this notification in the Department's electronic information system's case notes; and

(C) Complete notification on the same day the information is received.

(b) When a screener receives a new report of child abuse or neglect, as defined in ORS 419B.005, but there is no open CPS assessment, the screener must document the information in a new screening report form.

(c) The information received by a screener on an open Department case that will not be documented in a new screening report form but must be documented in the Department's electronic information system's case notes includes:

(A) Additional information on an open case that does not meet the criteria for a new CPS assessment or closed at screening;

(B) When an in-home protective action plan, initial safety plan, or ongoing safety plan is violated, but the violation is not a new incident of child abuse or neglect;

(C) Reports of an ongoing concern in an open case, which the Department is currently addressing;

(D) Reports of a missing child or young adult; and

(E) Any requests for case information received by the screener.

(3) When a screener receives information related to the home of a Department certified foster parent or relative caregiver, the screener must notify and document that the screener has notified each assigned case worker, assigned certifier, and their respective supervisors of all information received (see "Department Responsibilities During Screening and Assessment of a Child Abuse or Neglect Report Involving the Home of a Department Certified Foster Parent or Relative Caregiver", OAR 413-200-0404 to 413-200-0424).

(4) When a screener receives information related to a minor parent as an alleged perpetrator:

(a) The screener must gather information to determine if there is a report of abuse or neglect with the minor parent as an alleged victim.

(b) If the screener determines there is a report of abuse or neglect of the child of the minor parent with the minor parent as an alleged perpetrator and another report with the minor parent as an alleged victim, the screener must document the information in the following manner to determine when to use the mother or father's name as the case name:

(A) The allegation with the minor parent as an alleged perpetrator must be documented with the mother or father of the alleged victim as the case name (the mother or father being a minor does not preclude them from being the case name); and

(B) The allegation with the minor parent as an alleged victim must be documented with the mother or father of the minor parent as the case name.

(5) When a screener receives a report of a child fatality alleged to be the result of abuse or neglect or involving a child known to the Department, the screener must:

(a) Consult with a CPS supervisor;

(b) Refer to the Child Welfare "Fatality Protocol";

(c) Complete a screening report form identifying in the Department's electronic information system that the report involves a child fatality;

(d) Notify the CPS consultant; and

(e) Complete subsections (a) through (d) of this section even when there are no siblings to the deceased child and no other children in the home where the fatality occurred.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 16-2005, f. & cert. ef. 12-1-05; CWP 3-2007, f. & cert. ef. 3-20-07; CWP 25-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; CWP 7-2008, f. 6-27-08, cert. ef. 6-28-08; CWP 15-2009, f. & cert. ef. 11-3-09; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-0415

CPS Assessment Activities

The required CPS assessment activities are outlined below. The activities are described in a logical order in these rules, but the order in which they occur is controlled by the specific circumstances in a given case.

(1) Review Records.

(a) The assigned CPS worker must:

(A) Thoroughly review the documentation in the referral;

(B) Thoroughly review the paper and electronic records maintained by the Department for historical information on the family and the child that may be useful in completing the CPS assessment;

(C) Thoroughly review available Self-Sufficiency records; and

(D) Make diligent efforts to contact another state's child welfare agency to obtain records, if any, when the CPS worker has information that the family has lived in another state.

(b) The CPS worker must review the documents to identify information related to:

(A) Present danger safety threats or impending danger safety threats;

(B) History or a pattern of abuse or neglect;

(C) Child and family support systems and protective capacity; and

(D) Worker safety.

(2) Addressing Prior Allegations That Have Not Been Assessed Because the Department was Unable to Locate the Family. The assigned CPS worker must address in the current assessment any allegations not previously assessed because the Department was unable to locate the family as follows:

(a) Discuss the prior unassessed allegations during interviews;

(b) Consider all information about prior unassessed allegations when determining child safety; and

(c) Document the consideration of prior unassessed allegations in interviews, observations, and dispositional findings.

(3) Contact Collateral Sources.

(a) The CPS worker must contact collateral sources who can clarify or supplement the information in the referral and in records already reviewed.

(A) The CPS worker must contact the assigned Self-Sufficiency worker, if any.

(B) The CPS worker may contact other collateral sources including, but not limited to:

(i) Individuals who have regular contact with the child;

(ii) Doctors or others who have evaluated or maintain records on the child;

(iii) People who are in an established personal or professional relationship with the parent or caregiver and who can judge the quality and nature of the parent or caregiver behavior and functioning; and

(iv) People who have records or information about the parent or caregiver as a result of their involvement with, or exposure to, the parent or caregiver.

(b) The CPS worker must gather information from collateral sources throughout the CPS assessment.

(c) The CPS worker must:

(A) Protect the identity of collateral sources to the extent possible.

(B) Consult with the district attorney or the assistant attorney general to obtain a court order for records from a collateral source, if the source is unable or unwilling to share information with the Department.

(4) Consult with CPS Supervisor.

(a) The CPS worker must consult with a CPS supervisor or designee:

(A) When the CPS worker has reasonable cause to believe the alleged perpetrator is an employee of any program, office, or division of the Department of Human Services or Oregon Youth Authority (OYA);

(B) When a referral involves the home of a Department certified foster parent or relative caregiver;

(C) When a referral involves allegations that child abuse or neglect occurred in a private child-caring agency;

(D) When a CPS worker receives notification from a screener that a closed at screening or new referral was created on an open CPS assessment;

(E) Prior to a decision to place a child in protective custody, or after placement if consultation before placement will delay the safety intervention;

(F) Prior to initiating court action, or after initiating court action if consultation before will delay the safety intervention;

(G) Prior to developing an initial safety plan with a Department certified foster parent or relative caregiver;

(H) When the referral involves a child fatality;

(I) When making a disposition in a complicated or sensitive situation or case; or

(J) When closing an assessment with the disposition of "unable to locate".

(b) Subject to the discretion of the CPS supervisor, the CPS worker will consult with a CPS supervisor or designee at additional key points during the assessment, such as:

(A) Before making initial contact with the family; or

(B) When a referral indicates potential danger to the worker.

(5) Contact and Work with Other Entities. The CPS worker may need to work with representatives of other entities to gather and analyze safety-related information, develop a sufficient protective action plan, initial safety plan, or ongoing safety plan, and to complete the CPS assessment.

(a) The CPS worker may, as appropriate, notify or consult with other Department of Human Services programs or other agencies, including but not limited to the Office of Vocational Rehabilitation Services and Animal Control.

(b) The CPS worker must report to or contact and work with other entities as follows:

(A) Office of Child Care. The CPS worker must notify and coordinate with the Compliance Unit of the Office of Child Care when a report involves a registered day-care home or a licensed day-care center, as required by ORS 419B.020(1).

(B) Oregon Youth Authority (OYA). The CPS worker must notify OYA when the allegation involves an OYA certified foster home.

(C) Office of Adult Abuse Prevention and Investigation (OAAPI). The CPS worker must notify the OAAPI when an allegation involves a child with intellectual or developmental disabilities in a residential group home licensed by the Office of Developmental Disabilities Services.

(D) Office of Licensing and Regulatory Oversight. The CPS worker must notify the Office of Licensing and Regulatory Oversight Children's Care Licensing Unit when the allegation involves a licensed private child-caring agency which is not a Children's Care Provider (CCP).

(E) Community Mental Health Program, Community Developmental Disabilities Program, or Adult Protective Services. The CPS worker must make a report to the Community Mental Health Program, Community Developmental Disabilities Program, or the local Adult Protective Service office when the CPS worker has reasonable cause to believe:

(i) That any person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older, with whom the CPS worker comes into contact while acting in an official capacity, has suffered abuse.

(ii) That any person with whom the CPS worker comes into contact, while acting in an official capacity, has abused a person 18 years of age or older with a mental illness, a developmental disability or a physical disability, or any person 65 years of age or older.

(F) Indian Tribes. If the CPS worker knows or has reason to know that the child is an Indian child, the CPS worker must give notice within 24 hours to the Indian child's tribe that a CPS assessment is being conducted unless the screener documented completion of this notification in the referral.

(G) Probation and Parole. The CPS worker must contact probation and parole when the allegation involves a parent or caregiver, or alleged perpetrator who is supervised by probation or parole.

(H) Law Enforcement. If the screener did not cross report, the CPS worker must contact one or more law enforcement agencies (LEA) in accordance with the protocols of the local MDT agreement and in accordance with cross reporting rules, OAR 413-015-0300 to OAR 413-015-0310. When there is a joint response involving a CPS worker and LEA staff, the CPS worker is still responsible for all of the activities necessary to complete a CPS assessment which are summarized in OAR 413-015-0400. The CPS worker must, in consultation with a CPS supervisor, determine whether to coordinate assessment activities with LEA in the following situations:

(i) Presence of danger. When the CPS worker has information that indicates that the child is unsafe right now.

(ii) Family cooperation. When the CPS worker has information that the family may not allow the CPS worker to observe the alleged victim or other children in the home.

(iii) Protective custody. When the CPS worker has information that a child may need to be placed in protective custody for the child's safety.

(iv) Child interview. When the CPS worker and the LEA officer must each interview a child, it is preferable to coordinate the interviews to reduce the number of interactions with the child.

(v) Worker safety. When the CPS worker has information that indicates the family behaviors, conditions, or circumstances could pose a danger to the CPS worker.

(vi) Crime committed. When the CPS worker suspects or receives a report that a crime may have been committed.

(I) Public or Private Schools. The CPS worker may interview a child at school when the worker believes it will be the best environment in which to assure a child's safety when making contact with the child. ORS 419B.045 provides requirements for CPS investigations that are conducted on school premises. The CPS worker must do following:

(i) Notify the school administrator that a CPS assessment must be conducted. If the school administrator is a subject of the CPS assessment, then notification is not required.

(ii) Report to the school office, provide identification, inform school personnel of the CPS assessment, and provide the name of the child to be interviewed.

(iii) Request information from school personnel regarding the disabilities of the child, if any, prior to an interview with the affected child.

(iv) Interview the child out of the presence of other persons, unless the CPS worker believes the presence of a school employee or other person would facilitate the interview. If the CPS worker believes that a school employee does not need to be present, but the school employee insists on being present during the interview, the worker may confer with the CPS supervisor for assistance in handling the situation.

(v) Discuss further actions with the child at the conclusion of the interview.

(vi) Inform school personnel when the interview has been completed.

(vii) Inform school personnel if the child is taken into protective custody.

(viii) Inform school personnel that the CPS worker will notify parents of the interview.

(ix) Contact the CPS supervisor if school officials refuse to allow the assessment to take place on school property.

(J) Multi-Disciplinary Teams (MDTs). Department district managers must develop interagency agreements regarding assessment of child abuse and neglect, as necessary, with local MDTs. Requirements for MDT protocols are set out in ORS 418.747.

(6) Obtain Interpreters and Translation. The CPS worker must obtain the services of a competent interpreter and competent written translation service for families, including hearing-impaired family members, who have limited or no means of communicating in or reading English.

(7) Determine Indian Child Welfare Act (ICWA) Status and Comply with ICWA, if Applicable. The CPS worker must initiate the process to determine the child's ICWA status and notify the Indian child's tribe if ICWA applies. To initiate this process, the CPS worker must:

(a) Assure completion of a form CF 1270, "Verification of ICWA Eligibility", to assist in determining ICWA eligibility.

(b) Contact the child's tribe when an Indian child is the subject of a CPS assessment. Federally recognized tribes must be notified within 24 hours after information alleging abuse or neglect is received by the Department.

(c) If the Indian child is enrolled or eligible for enrollment in a federally recognized tribe, notify the child's tribe if the child may be placed in protective custody.

(d) Consult with the local Department ICWA liaison, a supervisor, or the ICWA manager if the worker has questions regarding the involvement of a tribe or the ICWA status of a child.

(e) Make a diligent attempt to address the following when determining the placement resource:

(A) Contact the tribe's social services department;

(B) Search for relative resources;

(C) Search for available Indian homes; and

(D) Contact other Indian tribes and other Indian organizations with available placement resources.

(f) Unless the Indian child's tribe has established a different order of preference, comply with the ICWA placement preference, which is:

(A) Placement with a member of Indian child's extended family.

(B) Placement with a foster family that is licensed, approved or specified by the Indian child's tribe.

(C) Placement with an Indian foster home licensed or approved by an authorized non-Indian licensing authority.

(D) Placement with an institution for children approved by an Indian tribe or operated by an Indian organization which has a program suitable to meet the Indian child's needs.

(8) Determine Refugee Status and Comply with the Refugee Children Act, if applicable. During a CPS assessment, the CPS worker must consider whether the child is a refugee child. Under ORS 418.925, a "refugee child" is a "person under 18 years of age who has entered the United States and is unwilling or unable to return to the person's country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion, or whose parents entered the United States within the preceding 10 years and are or were unwilling or unable to return to their country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular group or political opinion."

(a) If it appears that a child is a refugee child, the CPS worker must ask about the child or parents' country of origin, length of time the child or parents have been in the United States, reasons why the child or parents came to the United States, and ethnic and cultural information relevant to the child's status as a refugee. The CPS worker does not have to make a legal determination that the child and parent are refugees, but if the child or the parents indicate they are refugees, then the CPS worker must proceed as if they are, until or unless it is known that they are not refugees.

(b) The CPS worker may not take a refugee child into protective custody unless, in addition to the other requirements for taking a child into custody, the CPS worker determines that:

(A) Removal is necessary to prevent imminent serious emotional or physical harm to the child; and

(B) Reasonable efforts to alleviate the harm through remedial or preventive services do not alleviate the harm, have failed, or are not practical in an emergency situation.

(c) Unless it is a voluntary placement, no refugee child may remain in placement more than five days unless there has been a judicial determination, supported by clear and convincing evidence that:

(A) Preventative or remedial services provided by the Department have failed to alleviate the need for removal; and

(B) Return to the home will likely result in psychological or physical damage to the child.

(d) When a refugee child is placed in care, the juvenile court petition must include, in addition to the information required by ORS 419B.809, the following information:

(A) A specific and detailed account of the circumstances that led the Department to conclude that the child was in imminent danger of serious emotional or physical harm;

(B) Specific actions the Department has taken or is taking to alleviate the need for removal;

(C) Assurance that the Department has complied with placement preferences listed in ORS 418.937 and listed in subsection (e) of this section; and

(D) Assurance that the Department is making or has made diligent efforts to locate and give notice to all affected refugee family members and to the Refugee Child Welfare Advisory Committee that the petition has been filed.

(e) The CPS worker must consider the refugee child's culture and tradition when making any placement decision for a refugee child and, unless shown to be inappropriate and inconsistent with the best interests of the child, place the child with the following in order of preference:

(A) Natural parents.

(B) Extended family member.

(C) Members from the same cultural heritage.

(D) Persons with knowledge and appreciation of the child's cultural heritage.

(f) The CPS worker may determine that placement under subsection (e) of this section is inappropriate and inconsistent with the best interests of the child if:

(A) The preferred placement presents a threat to the child's safety;

(B) The extreme medical, physical, or psychological needs of the child cannot be met in the placement; or

(C) There is an informed request from either of the child's biological parents not to use a placement, if the request is consistent with stability, security, and the individual needs of the child.

(g) When a juvenile court petition is filed and a refugee child is placed in care, the CPS worker must staff the case with the Refugee Child Welfare Advisory Committee (RCWAC). The CPS worker must contact the International Case Consultant for the Department to arrange a time for the staffing. In preparation for the staffing, the CPS worker must:

(A) Invite the CPS supervisor to the staffing; and

(B) Be prepared to discuss the reasons for the CPS referral, the information indicating that family members are refugees, and their country of origin.

(9) Take Photographs. The CPS worker must, during the CPS assessment, take photographs and document, as necessary, child abuse or neglect and the observable nature of any present danger safety threat or impending danger safety threat.

(a) As provided in ORS 419B.028, a law enforcement officer or the CPS worker may take photographs for the purpose of documenting the child's condition at the time of the CPS assessment.

(b) As provided in ORS 419B.028, if the CPS worker conducting a CPS assessment observes a child who has suffered suspicious physical injury and the CPS worker is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the CPS worker, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, will immediately photograph or cause to have photographed the suspicious physical injuries. Regardless of whether the child has previously been photographed or assessed during a CPS assessment, the CPS worker will photograph or cause to be photographed any suspicious injuries if the CPS worker is certain or has a reasonable suspicion the suspicious injuries are the result of abuse:

(A) During the assessment of a new allegation of abuse; and

(B) Each time, during the assessment, an injury is observed that was not previously observed by the assigned CPS worker.

(c) When a child is photographed pursuant to subsection (b) of this section:

(A) The person taking the photographs or causing to have the photographs taken must, within 48 hours or by the end of the next regular business day, whichever occurs later:

(i) Provide hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format to the designated medical professional; and

(ii) Place hard copies or prints of the photographs and, if available, copies of the photographs in an electronic format in the Department record labeled with the case name, case number, child's name, and date taken.

(B) If a county multidisciplinary team staffing of the case is held, photographs of the injury will be made available to each team member involved in the case staffing at the first meeting regarding the child's case.

(d) The CPS worker must document injuries, hazardous environments, and the observable nature of any present danger safety threat or impending danger safety threat in the assessment narrative by use of photographs, written description, or illustrations.

(e) Photographs of the anal or genital region may be taken only by medical personnel.

(10) Obtain Medical Assessment. The CPS worker must, during the CPS assessment as required in this section, facilitate a medical assessment of the child and obtain the child's medical history when necessary to assure child safety, determine treatment needs, reassure the child and family, or assist in analyzing safety-related information.

(a) When the CPS worker determines that the child is in need of a medical assessment as part of a CPS assessment, the CPS worker must consult with a CPS supervisor as soon as possible, but not at the expense of delaying medical treatment.

(b) If a person conducting an assessment under ORS 419B.020 observes a child who has suffered suspicious physical injury as defined in ORS 419B.023 and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person must, in accordance with the protocols and procedures of the county multi-disciplinary team described in ORS 418.747, ensure that:

(A) A designated medical professional conducts a medical assessment within 48 hours of the observation of the suspicious physical injury, or sooner if dictated by the child's medical needs; or

(B) An available physician, physician assistant, or nurse practitioner conducts a medical assessment if, after reasonable efforts to locate a designated medical professional, a designated medical professional is not available to conduct a medical assessment within 48 hours. The CPS worker is required to document in the Department's electronic information system efforts to locate the designated medical professional when an available physician, physician assistant, or nurse practitioner is used.

(c) The CPS worker must facilitate an assessment by a medical professional if the alleged child abuse or neglect involves injury to the anal or genital region.

(d) When there are indications of severe physical trauma to the child, the CPS worker must make arrangements to immediately transport the child to a medical facility, which may include calling 911. The CPS worker must also make arrangements for medical examination of a child for mild or moderate physical trauma.

(e) To make arrangements for the medical examination of a child, the CPS worker must do the following, unless completing the action would delay medical treatment for the child:

(A) Discuss with the parent or caregiver the need for medical examination or treatment.

(B) Ask the parent or caregiver to take the child to a medical facility for a medical examination or treatment.

(C) Request that the parent sign a form DHS 2099, "Authorization for Use and Disclosure of Information".

(D) Contact an LEA immediately and seek a juvenile court order to obtain protective custody of the child for the purpose of obtaining a medical examination or treatment when:

(i) The parent or caregiver refuses to obtain needed medical examination or treatment;

(ii) The parent or caregiver may flee with the child; or

(iii) Delaying medical examination or treatment could result in severe harm to the child.

(E) Immediately seek medical care and consultation when the child may have a life-threatening condition, or a deteriorating condition that may become life-threatening.

(F) As soon as possible and not later than 24 hours after learning of the exposure, make arrangements to have the child tested for chemical exposure to harmful substances when there is reason to believe a child has been exposed to dangerous chemicals such as those found in a chemical drug lab.

(f) When a report of suspected medical neglect of an infant with a disability and with life-threatening conditions is referred for CPS assessment, the assigned CPS worker must comply with "Investigation of Suspected Medical Neglect-Infants", OAR 413-030-0600 to 413-030-0650.

(g) When it is medically indicated to subject a child in the custody of the Department to HIV testing, the CPS worker must comply with "HIV Testing of Children in Custody and HIV Confidentiality", OAR 413-040-0400 to 413-040-0450.

(h) As provided in ORS 147.425, a child who is the victim of a person crime and is at least 15 years of age at the time of the abuse may have a personal representative present during a medical examination. If a CPS worker believes that a personal representative would compromise the CPS assessment, a CPS worker may prohibit a personal representative from being present during the medical examination.

(i) When the CPS worker is assessing a CPS allegation of medical neglect, the CPS worker must consult with a health care professional as part of the assessment.

(11) Obtain Psychological and Psychiatric Evaluations.

(a) The CPS worker must make a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child by a mental health professional to assure child safety, determine treatment needs, or assist in analyzing safety-related information when during the CPS assessment the CPS worker identifies a specific condition or behavior that requires additional professional evaluation. This includes but is not limited to:

(A) Unusual or bizarre forms of punishment;

(B) Mental illness;

(C) Suicidal ideation;

(D) Homicidal ideation; or

(E) Unusual or bizarre child or parental behavior that is indicative of emotional problems.

(b) The CPS worker must obtain consent of the parent or caregiver prior to making a referral for a psychological or psychiatric evaluation of the parent, caregiver, or child, unless the evaluation is court ordered.

(12) Make Monthly Face-to-Face Contact. The CPS worker must make a minimum of monthly face-to-face contact as described in OAR 413-080-0054.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 418.747, 418.785 & 419B.005 - 419B.050
Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 16-2007(Temp), f. & cert. ef. 10-16-07 thru 4-11-08; CWP 24-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 4-11-08; CWP 2-2008, f. & cert. ef. 4-1-08; CWP 6-2008(Temp), f. 6-27-08, cert. ef. 6-28-08 thru 12-24-08; CWP 20-2008, f. & cert. ef. 9-2-08; CWP 23-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; CWP 4-2010, f. & cert. ef. 4-2-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 13-2014(Temp), f. & cert. ef. 7-1-14 thru 12-28-14; CWP 17-2014, f. & cert. ef. 12-24-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-0460
Visitation

(1) If an out-of-home ongoing safety plan is developed, the CPS worker must arrange for visitation between the child and the child's family.

(2) The CPS worker must refer to "Visits and Other Types of Child and Family Contact", OAR 413-070-0800 to 413-070-0880.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050
Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-0470
Notifications

(1) Requirements for Providing Notifications. The CPS worker must:

(a) Unless the Department determines that disclosure is not permitted under ORS 419B.035, notify the reporter, if the reporter provided the Department with contact information, whether contact was made, whether the Department determined that child abuse or neglect occurred, and whether services will be provided.

(b) Provide the child's parents, including a non-custodial legal parent, and caregivers verbal notification of all CPS assessment dispositions (unfounded, unable to determine, or founded) and whether the Department will provide services as a result of the CPS assessment. When the child's parent is the perpetrator, the notice under subsection (c) of this section also must be provided. If notification may make a child or adult unsafe, a CPS supervisor may authorize an exception to the requirement to provide notification based on documentation supporting that conclusion.

(c) Provide perpetrators written notification of founded dispositions. This written notification must include information about the founded disposition review process as outlined in "Notice and Review of CPS Founded Dispositions", OAR 413-010-0700 to 413-010-0750. If the notification could make a child or adult unsafe, a CPS supervisor may authorize an exception to the requirement to provide notification based on documentation that supports this conclusion.

(d) Provide the Teacher Standards and Practices Commission (TSPC) notification of a completed assessment by providing TSPC with a copy of the completed CPS assessment when a teacher or school administrator, as defined in OAR 413-015-0115, is identified as an alleged perpetrator in a report. Regardless of a disposition, a copy of the report must be sent to TSPC after information related to the reporter's identity and other confidential information is removed.

(2) Documentation of Notifications. The CPS worker must document the notifications as described in this rule in the Department's electronic information system and the documentation must include:

(a) Who made the notification.

(b) To whom the notification was made.

(c) The date the notification was made.

(d) That the notifications have been attempted or made within the following time lines:

(A) Prior to completing the CPS assessment for a notification provided under subsection (1)(a) of this rule.

(B) Within five business days of supervisory approval of the CPS assessment for a notification provided under subsection (1)(b) through (1)(d) of this rule.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 409.185, 418.005, 418.015, 419B.005 - 419B.050
Hist.: CWP 3-2007, f. & cert. ef. 3-20-07; CWP 8-2009, f. 7-29-09, cert. ef. 8-3-09; CWP 1-2012(Temp), f. & cert. ef. 3-12-12 thru 9-8-12; CWP 5-2012, f. & cert. ef. 9-7-12; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-1220
Assessment of an Individual's Involvement in Safety Management

(1) To assess an individual as a safety service provider for a specific family in a protective action plan, initial safety plan, or an ongoing safety plan, the CPS worker or caseworker must take all of the following actions:

(a) Identify and contact an individual who is a prospective safety service provider.

(b) Gather information from the individual regarding his or her:

(A) Relationship with the child and the child's family; and

(B) Willingness and ability to fulfill the specific role and responsibilities of a safety service provider for the identified family.

(c) Provide the individual with information regarding the specific role and responsibility of the individual to assist in managing the child's safety.

(d) Search the Department's information system and review any historic information regarding the individual that may be useful in assessing the individual's ability to be a safety service provider.

(e) If in an individual's role as a safety service provider the individual will have contact with the child, conduct a criminal records check on the individual using LEDS, provide notice as described in "Access to Law Enforcement Data System in Local Child Welfare Offices" OAR 413-015-1100 to 413-015-1125, and review the individual's criminal history to assess the individual's ability to be a safety service provider.

(2) After the CPS worker or caseworker has considered all the information gathered pursuant to section (1) of this rule, the CPS worker or caseworker must determine the individual's suitability as a safety service provider. In making this determination, the worker must consider whether the individual is willing and able to:

(a) Assist in managing the safety of the child;

(b) Cooperate with any restrictions on contact between the child and others;

(c) Support, verbally and through actions, the protective action plan, initial safety plan, and ongoing safety plan; and

(d) Fulfill the identified role and responsibilities required of the individual in a protective action plan, initial safety plan, or an ongoing safety plan.

(3) The CPS worker or caseworker must consult with and receive approval from a supervisor prior to engaging an individual as a safety service provider whenever the individual's past behaviors, conditions, or circumstances include one of the items listed in the subsections of this section so long as those behaviors, conditions, or circumstances do not impact negatively the individual's ability to fulfill the specific role and responsibilities in managing the child's safety:

(a) A record of child abuse or neglect;

(b) A criminal history; or

(c) A history of drug or alcohol abuse.

(4) The CPS worker or caseworker must document in the Department's information system:

(a) The basis for the determination regarding whether an individual is suitable as a safety service provider; and

(b) The supervisor who provided the approval required in section (3) of this rule.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 9-2010, f. & cert. ef. 7-1-10; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-015-9000
Authority, Responsibility, and Applicability

(1) ORS 418.005 provides that, in order to establish, extend, and strengthen welfare services for the protection and care of dependent or neglected children, the Department of Human Services may make all necessary rules and regulations for administering child welfare services. Among other duties outlined by ORS 409.010, the Department is responsible for the delivery and administration of programs and services relating to children and families, including child protective services (CPS).

(2) The Department has determined that in order to effectively administer child protective services it is necessary to adopt a child abuse assessment system that allows CPS to respond differently to reports of child abuse and neglect that meet the criteria to assign for CPS assessment. This system is called "differential response" and includes two types of CPS assessments, traditional response assessments and alternative response assessments. These changes in the Department's practice will be implemented, over time, on a county-by-county basis.

(3) Only the Department local offices in those counties identified by the Department to implement the Differential Response system must comply with the requirements outlined in these rules, OAR 413-015-9000 through 413-015-9040. Those counties will be referred to as DR implementation counties and are listed in subsections (a) through (l) of this section. Department local offices in all other counties must comply with the rules in OAR chapter 413, but are not responsible for OAR 413-015-9000 through 413-015-9040.

(a) Benton County, effective April 6, 2015.

(b) Clackamas County, effective December 1, 2015.

(c) Coos County, effective November 16, 2015.

(d) Curry County, effective November 16, 2015.

(e) Jackson County, effective November 2, 2015.

(f) Josephine County, effective November 2, 2015.

(g) Klamath County, effective May 27, 2014.

(h) Lake County, effective May 27, 2014.

(i) Lane County, effective May 29, 2014.

(j) Lincoln County, effective April 6, 2015.

(k) Linn County, effective April 6, 2015.

(l) Washington County, effective April 20, 2015.

(4) Except as provided in OAR 413-015-9000 through 413-015-9040, employees in the DR implementation counties remain responsible for all other rules in OAR chapter 413.

Stat. Auth.: ORS 409.027, 409.050, 418.005, 418.598

Stats. Implemented: ORS 409.010, 409.027, 409.050, 409.185, 418.005, 418.015, 418.580, 418.598, 419B.020

Hist.: CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 10-2015, f. & cert. ef. 4-1-15; CWP 23-2015(Temp), f. & cert. ef. 10-12-15 thru 4-8-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-080-0050
Definitions

The following definitions apply to OAR 413-080-0040 to 413-080-0067:

(1) "Certified family" means an individual or individuals who hold a current Certificate of Approval from the Department to operate a home to provide care, in the home in which they reside, to a child or young adult in the care or custody of the Department.

(2) "Child" means a person under 18 years of age.

(3) "Conditions for return" means a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home initial safety plan or in-home ongoing safety plan.

(4) "Contact" means any communication between Child Welfare staff and a child, parent or guardian, foster parent or relative caregiver, provider, or other individual involved in a Child Welfare safety plan or case. "Contact" includes, but is not limited to, communication in person, by telephone, by video-conferencing, or in writing. "Contact" may occur, for instance, during a face-to-face visit; a treatment review meeting for a child, young adult, parent, or guardian; a court or Citizen Review Board hearing; or a family meeting.

(5) "Department" means the Department of Human Services, Child Welfare.

(6) "Face-to-face" means an in-person interaction between individuals.

(7) "Foster parent" means a person who operates a home that has been approved by the Department to provide care for an unrelated child or young adult placed in the home by the Department.

(8) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(9) "ICPC" means the Interstate Compact for the Placement of Children (see ORS 417.200).

(10) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a child that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family functioning.

(11) "Initial safety plan" means a documented set of actions or interventions sufficient to protect a child from an impending danger safety threat in order to allow for completion of the CPS assessment.

(12) "Monthly face-to-face contact" means in-person interaction between individuals at least once each and every full calendar month.

(13) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

(14) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(15) "Present danger safety threat" means an immediate, significant, and clearly observable family behavior, condition or circumstance occurring in the present tense, already endangering or threatening to endanger a child. The family behavior, condition, or circumstance is happening now and it is currently in the process of actively placing a child in peril.

(16) "Protective action plan" means an immediate, same day, short-term plan, lasting a maximum of ten calendar days, sufficient to protect a child from a present danger safety threat.

(17) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(18) "Provider" means a person approved by a licensed private child-caring agency to provide care for a child or young adult, or an employee of a licensed private child-caring agency approved to provide care for a child or young adult.

(19) "Relative caregiver" means a person who operates a home that has been approved by the Department to provide care for a related child or young adult who is placed in the home by the Department.

(20) "Safety service provider" means a participant in a protective action plan, initial safety plan, or ongoing safety plan whose actions, assistance, or supervision help a family in managing a child's safety.

(21) "Safety services" means the actions, assistance, and supervision provided by safety service providers to manage the identified present danger safety threats or impending danger safety threats to a child.

(22) "Screener" means a Department employee with training required to provide screening services.

(23) "Sex trafficking" means the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person under the age of 18 for the purpose of a commercial sex act or the recruitment, harboring, transportation, provision, or obtaining of a person over the age of 18 using force, fraud, or coercion for the purpose of a commercial sex act.

(24) "Social service assistant" means a Department employee with training required to provide services to assist a caseworker on an open case.

(25) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(26) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005

Stats. Implemented: ORS 418.005

Hist.: CWP 3-2004(Temp), f. & cert. ef. 3-1-04 thru 8-27-04; CWP 15-2004, f. & cert. ef. 8-25-04; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 1-2013, f. & cert. ef. 1-15-13; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 25-2015(Temp), f. & cert. ef. 11-24-15 thru 5-21-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-080-0053
When a Child or Young Adult in Substitute Care Is Missing

(1) When a caseworker receives information that a child or young adult in substitute care is missing, the caseworker must:

(a) Make immediate efforts to locate the child or young adult; and

(b) As soon as practicable, ensure the court and legal parties to the case are notified, unless notification may jeopardize the safety of the child or young adult or interfere with an investigation.

(2) When a child or young adult missing from substitute care is located, the caseworker must:

(a) Determine and, to the extent possible, address the primary factors that contributed to the missing status of the child or young adult;

(b) Determine the child or young adult's experiences when missing;

(c) Determine if the child or young adult is a sex trafficking victim or at risk of being a sex trafficking victim; and

(d) Ensure the court and legal parties to the case are notified the child or young adult has been located.

(3) Documentation.

(a) When a child or young adult in substitute care is missing, the caseworker must document the following in the Department's electronic information system:

(A) Efforts made to locate the missing child or young adult; and

(B) The notifications in subsection (b) of section (1) of this rule.

(b) When a missing child or young adult is located, the caseworker must document the following in the Department's electronic information system:

(A) The determinations and notifications made in subsections (a) to (d) of section (2) of this rule; and

(B) Any actions taken to address the primary factors that contributed to the missing status of the child or young adult.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-080-0054
Monthly Face-to-Face Contact Requirements

(1) A child or young adult in a child welfare case.

(a) Except as provided in section (2) of this rule, monthly face-to-face contact with a child or young adult in a child welfare case must be made by one of the following Department staff to ensure the safety, permanency, and well-being of the child or young adult:

(A) The primary caseworker;

(B) The caseworker's supervisor; or

(C) When designated by the caseworker's supervisor as described in OAR 413-080-0067:

(i) Another caseworker or supervisor; or

(ii) A social service assistant.

(b) During the face-to-face contact required in section (1) of this rule, Department staff must:

(A) Ensure the safety, permanency, and well-being of the child or young adult;

(B) Address issues pertinent to case planning and service delivery during the contact;

(C) Notify a supervisor when he or she determines that the ongoing safety plan or the living environment is insufficient to ensure the safety of the child or young adult to determine if a protective action plan is necessary to ensure safety; and

(D) Notify a certifier when the well-being needs of a child or young adult are not being met by a certified family, or notify the Well Being Program when the well-being needs of a child or young adult are not being met by a provider.

(c) Department staff making face-to-face contact must document in the Department's electronic information system:

(A) The date, type, and location of each contact with the child, young adult, parent, or guardian; and

(B) The issues addressed during the contact.

(d) A face-to-face contact with a child or young adult made by a social service assistant:

(A) May be reported as the required face-to-face contact no more than one time in any three-month period and no more than a four times within a year; and

(B) May not be reported as the required face-to-face contact for consecutive months.

(e) Face-to-face contact with a child or young adult in substitute care must occur in the substitute care placement every other month.

(f) When face-to face contact with a child or young adult in substitute care is not possible because the child or young adult is missing, the caseworker must comply with OAR 413-080-0053.

(2) A parent or guardian on a child welfare case.

(a) When there is an in-home ongoing safety plan, Department staff must have monthly face-to-face contact in the home with the parents or guardians living in the home with the child.

(b) A caseworker must have face-to-face contact with the child and the child's parent or guardians within five working days of learning any of the following:

(A) A condition of the ongoing safety plan has been violated.

(B) A change in the protective capacity, the family circumstances, or the composition of the household of a parent or guardian may negatively impact the ongoing safety plan.

(C) The caseworker is assigned a case that had been assigned to another caseworker (case transfer).

(c) Department staff must have monthly face-to-face contact with the parents or guardians, unless a supervisor approves an exception to contact with the non-custodial parent who has an in-home ongoing safety plan or, when there is an out-of-home ongoing safety plan, the parent or guardian is unavailable or the contact could compromise the caseworker's safety. The supervisor's exception must be documented in the Department's electronic information system and must document:

(A) The reason for the exception; and

(B) The length of time the exception is in effect, which is not longer than 90 days unless a longer period is approved by a Child Welfare Program Manager.

(3) The substitute caregiver.

(a) Department staff described in subsection (1)(a) of this rule must have monthly contact with the certified family or provider.

(b) The face-to-face contact with the child or young adult required in subsection (1)(e) of this rule must include at least one of the certified adults or providers who provide direct care for the child or young adult.

(4) A child or young adult placed through ICPC or placed internationally.

(a) When a child or young adult is placed in another state through the ICPC or placed internationally, the caseworker must request that officials from the receiving state or country have monthly face-to-face contact to monitor child safety, permanency, and well-being.

(b) When the receiving state or country's child welfare office is unwilling or unable to have monthly face-to-face contact with the child or young adult, a plan must be developed to meet this requirement.

(c) The caseworker must document in the case file the type and level of contact the receiving state or country will provide and how the contact is sufficient to confirm the safety and well-being of the child or young adult.

(d) The documentation received from the receiving state or country must be filed in the Department's electronic information system.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: CWP 1-2013, f. & cert. ef. 1-15-13; CWP 10-2014, f. 5-20-14, cert. ef. 5-27-14; CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-090-0085
Billing and Payment for Services and Placement-Related Activities

(1) Billable care day (see OAR 410-170-0020):

(a) The BRS contractor (see OAR 410-170-0020) is compensated for a billable care day services (see OAR 410-170-0020) and placement-related activities (see OAR 410-170-0020) rates on a fee-for-service basis in accordance with OAR 410-170-0110.

(b) The BRS contractor may include an overnight transitional visit by the BRS client (see OAR 410-170-0020) to another placement in its billable care days. The BRS contractor must:

(A) Receive prior approval for the transitional visit from the Department;

(B) Ensure that the transitional visit is in support of the MSP (see OAR 410-170-0020) goals related to transition;

(C) Pay the hosting placement at the established absent day rate for the sending BRS provider (see OAR 410-170-0020); and

(D) Ensure the hosting placement will not seek any reimbursement from the Department for the care of the visiting BRS client.

(2) Absent Days:

(a) The BRS contractor is compensated for an absent day at the absent day rate in order to hold a BRS program placement for a BRS client with the prior approval of the BRS client's caseworker (see OAR 410-170-0020).

(b) Notwithstanding OAR 410-170-0110(4), the BRS contractor may request prior approval from the BRS client's caseworker to be reimbursed for more than 8 but no more than 14 calendar days of home visits in a month for a BRS client. However, any additional days of home visits approved under this rule will be paid at the absent day rate.

(3) The BRS contractor may only be reimbursed for the BRS type of care (see OAR 410-170-0020) authorized in the contract with the Department.

(4) Invoice Form:

(a) The BRS contractor must submit to the Department a monthly invoice in a format acceptable to the Department, on or after the first day of the month following the month in which services and placement-related

activities were provided to the BRS client. The monthly invoice must specify the number of billable care days and absent days for each BRS client in that month.

(b) The BRS contractor must provide upon request, in a format approved by the Department, written documentation of each BRS client's location for each day claimed as a billable care day and an absent day.

(5) Billable care day and absent day rates for BRS services provided on or after July 1, 2015, are in the "BRS Rates Table", dated July 1, 2015, which is adopted as Exhibit 1 and incorporated by reference into this rule. A printed copy may be obtained from the Department.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 418.005
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.116, 411.141, 418.005, 418.015, 418.027, 418.285, 418.312, 418.315, 418.490, 418.495
Hist.: CWP 10-2013, f. 11-14-13, cert. ef. 1-1-14; CWP 15-2015(Temp), f. & cert. ef. 8-26-15 thru 2-21-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

413-090-0087
When a Child or Young Adult Placed with a BRS Program Is Missing

(1) When a child or young adult placed with a BRS program (see OAR 410-170-0020) is missing, the BRS contractor (see OAR 410-170-0020) must ensure its BRS providers immediately report information about the missing child or young adult to the Department.

(2) Documentation of the report required in section (1) of this rule is required as outlined in OAR 410-170-0030(12)(b)(B).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.116, 418.005
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.116, 411.141, 418.005, 418.015, 418.490, 418.495
Hist.: CWP 18-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 3-28-16; CWP 27-2015, f. 12-28-15, cert. ef. 1-1-16

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Rule Caption: Clarifying the definition of "relative" applicable to outgoing intercountry Convention adoptions
Adm. Order No.: CWP 28-2015(Temp)
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 413-120-0925
Subject: The Department of Human Services, Office of Child Welfare Programs, is adopting temporary amendments to clarify who is considered a "relative" for purposes of intercountry adoptions subject to The Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption (Convention) and the Intercountry Adoption Act of 2000, 42 USC 14901 to 14954 (IAA). Rule text showing changes is available at http://www.dhs.state.or.us/policy/childwelfare/implement/temp_rules.htm.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-120-0925
Adoption of a Child Emigrating from the United States (Outgoing Convention Adoption)

(1) The Department may pursue an outgoing Convention adoption provided that:

(a) It is in the best interest of the child;

(b) The child has not been abducted, sold, or trafficked in connection with the adoption; and

(c) The prospective adoptive parent meets all of the following requirements:

(A) Is one of the following:

(i) A relative as described in OAR 413-120-0000(63)(a)(A), (B) or (C);

(ii) A relative as described in OAR 413-120-0000(63)(b)(A) or (G); or

(iii) An individual with a relationship to the child or young adult's half-sibling through the half-sibling's legal or biological father or mother as described in subparagraph (i) or (ii) of this paragraph for the purpose of placing the half-siblings together.

(B) Has been assessed, approved, and trained; and

(C) Has been determined able and willing to permanently provide for the safety, well-being, and special needs of the child.

(2) An outgoing Convention adoption may involve a child who meets the requirements of one of the following subsections:

(a) The child is, or is eligible to become, a:

(A) United States citizen;

(B) Legal United States resident; or

(C) Dual United States and foreign citizen.

(b) The child is undocumented, but the foreign authorized entity of the child's birth country has determined that the Convention applies to the adoption.

(3) Adoption planning for a child that may be the subject of an outgoing Convention adoption must comply with other Department rules, including Child Welfare polices: I-AB.4 "CPS Assessment", OAR 413-015-0400 to 413-015-0485; I-F.2 "Determining the Appropriateness of Adoption as a Permanency Plan for a Child", OAR 413-110-0300 to 413-110-0360; I-E.1.1 "Search for and Engagement of Relatives", OAR 413-070-0060 to 413-070-0087; I-F.6 "Sibling Adoption Placement Planning", OAR 413-110-0100 to 413-110-0150; I-G.1.2 Identification and Consideration of Potential Adoptive Resources", OAR 413-120-0700 to 413-120-0760; I-G.1.5 "Adoption Placement Selection", OAR 413-120-0000 to 413-120-0060; and I-G.1.10 "Supervision and Support of an Adoptive Placement", OAR 413-120-0800 to 413-120-0880.

(4) Before a child may be placed in a prospective adoptive home in another Convention country the Department must meet the requirements of each of the following subsections:

(a) Make a written determination that the child is eligible for adoption, that an outgoing Convention adoption is in the child's best interests, and that placement with the prospective adoptive parents is in the best interests of the child.

(b) Complete or obtain a written child background study that includes information about the child's identity; upbringing; adoptability; ethnic, religious, and cultural background; social environment; family history; personal medical history; family medical history; and special needs.

(c) Determine that the prospective adoptive parents meet the requirements of paragraph (1)(c)(A) of this rule and document that determination.

(d) Work with the foreign authorized entity in the receiving Convention country to determine whether the prospective adoptive parents are suitable, qualified, and eligible to adopt the child. To do so the Department must meet the requirements in each of following paragraphs:

(A) Provide a copy of the child's background study to the foreign authorized entity in the receiving Convention country.

(B) Obtain from the foreign authorized entity a comprehensive home study on the prospective adoptive parents that is prepared in accordance with the laws of the receiving country; meets the standards established by the Department using the Department's Hague Home Study template; addresses the capacity of the prospective adoptive parents to meet the child's safety, permanency and well-being needs; and includes all of the following:

(i) Information on the prospective adoptive parents, including: identity, eligibility and suitability to adopt, background, family and medical history, social environment, reasons for adoption, ability to undertake an intercountry adoption, and the characteristics of a child for whom they would be qualified to care;

(ii) Confirmation that a foreign authorized entity has determined that the prospective adoptive parents are eligible and suitable to adopt and has ensured that the prospective adoptive parents have been counseled as necessary;

(iii) The results of a criminal background check; and

(iv) Information from competent references for the prospective adoptive parents.

(C) Obtain written confirmation from the foreign authorized entity that the prospective adoptive parents have completed a minimum of 10 hours of Department-approved training that includes training on all of the following:

(i) The effects of physical, emotional, and sexual abuse and neglect on a child;

(ii) The effects of drugs and alcohol on a child;

(iii) The effects of relocating a child and transition issues;

(iv) The significance of the birth family, include grief and loss issues;

(v) Openness in adoption;

(vi) Attachment process and attachment difficulties;

(vii) Positive behavior management; and

(viii) The specific needs of the child to be adopted by the prospective adoptive parents.

(D) Provide notice to the foreign authorized entity studying the prospective adoptive family and providing required training to the prospective adoptive parents that the Department does not condone the use of corporal punishment.

(E) Obtain from the foreign authorized entity a written, signed Supervision Agreement using the approved Department form that describes the responsibilities of the Department and foreign authorized entity with

regard to the child's placement with the prospective adoptive parents and includes each of the following:

(i) Requirements for face-to-face visits with the child and the prospective adoptive parents at least every 30 days. These meetings must occur in the prospective adoptive home at least once every 60 days.

(ii) Requirements for face-to-face visits in the prospective adoptive home with other individuals living in the home who can provide information about the child's safety and well-being, as well as any concerns with the placement.

(iii) Requirements for contact at least once every 30 days with professional persons who have established a relationship to the child who can provide collateral observations regarding the child's functioning and the adoptive placement.

(iv) Minimum standards for written reports to be provided every 90 days on contacts with the child, prospective adoptive family, other family members, and collateral contacts.

(v) Confirmation that the child will be authorized to enter and reside in the receiving country permanently or on the same basis as the prospective adoptive parents.

(vi) Confirmation that the foreign authorized entity consents to the adoption of the child by the prospective adoptive family.

(vii) Confirmation that the foreign authorized entity agrees that the child's adoption by the prospective adoptive family may proceed.

(e) After the child is fully free for adoption, establish proof of citizenship for the child and apply for applicable passports.

(f) Submit to the foreign authorized entity written confirmation of the reasons the Department determined that the proposed adoptive placement is in the best interests of the child.

(g) Establish a direct means for the child's collateral contacts in the receiving Convention country to communicate any health or safety concerns about the child to the Department.

(h) Counsel and inform the child, as appropriate in light of the child's age and maturity, of the effects of the adoption, consider the child's views regarding the adoption, and document the discussion and how the child's views were considered.

(i) If the child's consent to the adoption is required, counsel and inform the child about the effects of granting consent, obtain written consent from the child in a manner that assures the consent is given freely and without any inducement by compensation of any kind, and document the discussion.

(j) Determine whether the receiving Convention country requires a Hague custody declaration prior to placement of the child in the home of the prospective adoptive parents, and, if required, apply for and obtain a Hague custody declaration from the U.S. State Department, as provided in OAR 413-120-0970.

(k) Assure that the child's move to the receiving Convention country will be made under secure and appropriate circumstances and in the company of the child's prospective adoptive parents, caseworker, or with another adult.

(5) Following completion of all of requirements in section (4) of this rule and prior to the child traveling to the receiving Convention country for placement with the prospective adoptive parents, the Department must obtain an order from the court that makes findings:

(a) In support of an application for a Hague adoption certificate;

(b) That the prospective adoptive placement is in the best interests of the child;

(c) Authorizing the child to travel to the foreign country for placement with the prospective adoptive parents; and

(d) Authorizing release of the court order for purposes of affecting the child's placement.

Stat. Auth.: ORS 417.262, 417.265, 418.005
Stats. Implemented: ORS 417.262, 417.265, 418.005
Hist.: CWP 8-2010(Temp), f. & cert. ef. 6-30-10 thru 12-27-10; CWP 23-2010, f. & cert. ef. 12-28-10; CWP 9-2014, f. & cert. ef. 5-1-14; CWP 28-2015(Temp), f. 12-30-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending rules relating to child welfare programs
Adm. Order No.: CWP 29-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 413-040-0000, 413-040-0145, 413-040-0150
Subject: The Department of Human Services, Office of Child Welfare Programs, is adopting the temporary amendments described below to implement Oregon Laws 2015, chapters 216 and 796 (HB 3014 and SB 741):

OAR 413-040-0000 about definitions is amended to define "grandparent" as the legal parent of the child or young adult's legal parent, regardless of whether the parental rights of the child or young adult's legal parent have been terminated.

OAR 413-040-0145 about court notification of placement changes is amended to require the Department to file a report with the juvenile court when the Department has removed or plans to remove a child or young adult for the purpose of placing the child or young adult in a different substitute care placement in certain circumstances and to attend a court review hearing scheduled by the court.

OAR 413-040-0150 about notification of administrative reviews, permanency hearings, and review hearings is amended to require the Department to notify grandparents of any court hearing concerning the child.

Rule text showing edits is available at http://www.dhs.state.or.us/policy/childwelfare/implement/temp_rules.htm.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-040-0000
Definitions

(1) "AAICPC" means the Association of Administrators of the Interstate Compact on the Placement of Children, which is the national professional association of state administrators of the Interstate Compact on the Placement of Children, housed at the American Public Human Services Association (APHSA).

(2) "Action agreement" means a written document between the Department and a parent or guardian that identifies one or more of the services or activities provided by the Department or other community partners, in which the parent or guardian will participate to achieve an expected outcome.

(3) "Acquired Immune Deficiency Syndrome (AIDS)" is a disorder in which a person's immune system is severely suppressed. It is caused by the human immunodeficiency virus (HIV). In order for a person to be diagnosed as having AIDS, the virus, immune system suppression, and an opportunistic infection or other condition stipulated by the U.S. Centers for Disease Control must all be present. A laboratory diagnosis of a CD4 less than 200 also is an AIDS defined illness.

(4) "Age-appropriate or developmentally appropriate activities" means:

(a) Activities or items that are generally accepted as suitable for children or young adults of the same chronological age or level of maturity or that are determined to be developmentally appropriate for a child or young adult, based on the development of cognitive, emotional, physical, and behavioral capacities that are typical for an age or age group; and

(b) In the case of a specific child or young adult, activities or items that are suitable for the child or young adult based on the developmental stages attained by the child or young adult with respect to the cognitive, emotional, physical, and behavioral capacities of the child or young adult.

(5) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family.

(b) To determine the level of care payment while in substitute care with a certified family; and

(c) To determine the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(6) "Case plan" means a written goal-oriented, time-limited individualized plan for the child and the child's family, developed by the Department and the parents or guardians, to achieve the child's safety, permanency, and well-being.

(7) "Child" means a person under 18 years of age.

(8) "Compact administrator" means the person for each party to the Compact responsible for carrying out the provisions of the Compact. In Oregon, it is the Assistant Director, Children, Adults and Families, Department of Human Services.

(9) "Complete judicial review" means a hearing that results in a written order that contains the findings required under ORS 419B.476 or

includes substantially the same findings as are required under ORS 419A.116.

(10) "Concurrent permanent plan" means the alternate permanency plan whenever the child has been placed in substitute care when the goal of the permanency plan is to return the child to the parents. The "concurrent permanent plan" is developed simultaneously with the plan to return the child to the parents or legal guardians.

(11) "Conditions for return" mean a written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.

(12) "Counseling" means group and individual counseling, emotional support groups, one-on-one emotional support, AIDS education, and/or information services.

(13) "Date child entered substitute care" means the earlier of the following two dates:

(a) The date the court found the child within the jurisdiction of the court (under ORS 419B.100); or

(b) The date that is 60 days from the date of removal.

(14) "Department" means the Department of Human Services, Child Welfare.

(15) "Deputy compact administrator" means the person appointed by a compact administrator as the coordinator to assure compliance with the law.

(16) "Expected outcome" means an observable, sustained change in a parent or guardian's behavior, condition, or circumstance that, when accomplished, will increase a parent or guardian's protective capacity and reduce or eliminate an identified impending danger safety threat, and which, when accomplished, will no longer require Child Welfare intervention to manage a child's safety. It is a desired end result and takes effort to achieve.

(17) "Expert evaluation" means a written assessment prepared by a professional with specialized knowledge of a particular subject matter such as physical health, psychological health, mental health, sexual deviancy, substance abuse, and domestic violence. The assessment provides information regarding an individual's functioning in the area of the professional's specialized knowledge, and when the expert is evaluating a parent or guardian, whether the individual's functioning impacts his or her protective capacity.

(18) "Family member" means any person related to the child or young adult by blood, marriage, or adoption, including, but not limited to the parents, grandparents, stepparents, aunts, uncles, sisters, brothers, cousins, or great-grandparents. Family member also includes the registered domestic partner of a person related to the child, a child 12 years of age or older, and when appropriate, a child younger than 12 years of age. In a case involving an Indian child under the Indian Child Welfare Act (ICWA), a "family member" is defined by the law or custom of the child's tribe.

(19) "Family plan" means a written document developed at the OFDM that includes family recommendations on planning for the child and may include a permanency plan, concurrent permanent plan, placement recommendations, or service recommendations. The "family plan" also includes expectations of the parents of the child and other family members; services the Department will provide; timelines for implementation of the plan; benefits of compliance with the plan; consequences of noncompliance with the plan; and a schedule of future meetings if appropriate. The "family plan" described in ORS 417.375(1) is incorporated into the case plan to the extent that it protects the child, builds on family strengths, and is focused on achieving permanency for the child within a reasonable time.

(20) "Grandparent" for purposes of notification, visitation, contact, or communication ordered by the court under ORS 419.B876 means the legal parent of the child or young adult's legal parent, regardless of whether the parental rights of the child or young adult's legal parent have been terminated under ORS 419B.500 to 419B.524.

(21) "Guardian" means an individual who has been granted guardianship of a child through a judgment of the court.

(22) "High risk behaviors" means the following:

(a) Having shared a needle with an intravenous drug abuser since 1977;

(b) For a man, having had sex with another man or men since 1977;

(c) Having been sexually active in an area where heterosexual transmission is believed to be high;

(d) Persons with hemophilia;

(e) Having been the sexual partner of a person in one of the previous categories;

(f) Being born to a woman whose history has put her in one of these other categories.

(23) "HIV" is the acronym for human immunodeficiency virus. This is the current name for the virus which causes AIDS.

(24) "HIV Infection". People who have been tested and found to have the antibody are referred to as having HIV infection. These people are capable of transmitting the virus through risk behaviors, as described below.

(25) "HIV Positive" means that a blood test has indicated the presence of antibodies to HIV. This means that the person has been infected by the virus and the immune system has responded by producing antibodies. An exception is infants of HIV-infected mothers. They have been exposed to the mother's antibodies and carry these antibodies in their blood for a number of months after birth. A series of tests is necessary to determine if these infants are themselves infected with HIV.

(26) "ICPC approved family" means a family approved by the Interstate Compact on the Placement of Children (ICPC) deputy compact administrator or designee after reviewing a home study.

(27) "Impending danger safety threat" means a family behavior, condition, or circumstance that meets all five safety threshold criteria. A threat to a child that is not immediate, obvious, or occurring at the onset of the CPS intervention. This threat is identified and understood more fully by evaluating and understanding individual and family function.

(28) "Local Citizen Review Board (CRB)" means a board of not less than three nor more than five members appointed by the Chief Justice of the Supreme Court of the State of Oregon to review the cases of all children in the custody of the Department and placed in an out-of-home placement (ORS 419A.090-419A.094).

(29) "OFDM" means the family decision-making meeting as defined in ORS 417.365, and is a family-focused intervention facilitated by professional staff that is designed to build and strengthen the natural care giving system for the child. These meetings may include family group conferences, family unity meetings, family mediation, or other professionally recognized interventions that include extended family and rely upon the family to make decisions about planning for its children. The purpose of the family decision-making meeting is to establish a plan that provides for the safety, attachment, and permanency needs of the child. The role of the "OFDM" is described in ORS 417.365 to 417.375.

(30) "Ongoing safety plan" means a documented set of actions or interventions that manage a child's safety after the Department has identified one or more impending danger safety threats at the conclusion of a CPS assessment or anytime during ongoing work with a family.

(31) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS 416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood, unless a court finds that the putative father is not the legal father.

(32) "Permanency hearing" means the hearing that determines the permanency plan for the child. The "Permanency Hearing" is conducted by a juvenile court, another court of competent jurisdiction or by an authorized tribal court.

(33) "Permanency plan" means a written course of action for achieving safe and lasting family resources for the child or young adult. Although the plan may change as more information becomes available, the goal is to develop safe and permanent family resources with the parents, relatives, or other people who will assume legal responsibility for the child or young adult during the remaining years of dependency and be accessible and supportive to the child or young adult in adulthood.

(34) "Personal care services" means the provision of or assistance with those functional activities described in OAR 413-090-0120 consisting of mobility, transfers, repositioning, basic personal hygiene, toileting, bowel and bladder care, nutrition, medication management, and delegated nursing tasks that a child or young adult requires for his or her continued well-being.

(35) "Placement" means the arrangement for the care of a child in a foster home, relative foster home, non-paid relative home, or a child-caring agency or institution. It does not include the arrangement for care in an institute caring for the mentally ill, an institution primarily educational in character, or a hospital or other medical facility.

(36) "Protective capacity" means behavioral, cognitive, and emotional characteristics that can specifically and directly be associated with a person's ability and willingness to care for and keep a child safe.

(37) "Reasonable and prudent parent standard" means the standard, characterized by careful and sensible parental decisions that maintain the health, safety, and best interests of a child or young adult while encouraging the emotional and developmental growth of the child or young adult, that a substitute care provider shall use when determining whether to allow a child or young adult in substitute care to participate in extracurricular, enrichment, cultural, and social activities.

(38) "Receiving state" means the state to which a child is sent, brought, or caused to be sent or brought, whether by a public authority or a private person or agency, whether for placement with a state or local public authority or with a private agency or person.

(39) "Registered domestic partner" means an individual joined in a domestic partnership that is registered by a county clerk in accordance with ORS 106.300 to 106.340.

(40) "Reunification" means placement with a parent or guardian.

(41) "Safety threshold" means the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and have become an impending danger safety threat. In order to reach the "safety threshold" the behaviors, conditions, or circumstances must meet all of the following criteria: be imminent, be out of control, affect a vulnerable child, be specific and observable, and have potential to cause severe harm to a child. The "safety threshold" criteria are used to determine the presence of an impending danger safety threat.

(42) "SAIP" means Secure Adolescent Inpatient Program.

(43) "SCIP" means Secure Children's Inpatient Program.

(44) "Sending agency" means a party state or an officer or employee thereof; a subdivision of a party state or an officer or employee thereof; a court of a party state; or a person, corporation, association, charitable agency, or other entity that sends, brings, or causes to be sent or brought a child to another party state.

(45) "Sending state" means the state from which a proposed placement is made.

(46) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(47) "Substitute caregiver" means a relative caregiver, foster parent, or provider authorized to provide care to a child or young adult in the legal or physical custody of the Department.

(48) "Termination of parental rights" means that a court of competent jurisdiction has entered an order terminating the rights of the parent or parents, pursuant to ORS 419B.500 through 419B.530 or the statutes of another state. The date of the termination order determines the effective date of the termination even if an appeal of that order has been filed (ORS 419A.200).

(49) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 418.005
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 15-1998, f. & cert. ef. 7-27-98; CWP 31-2003, f. & cert. ef. 10-1-03; CWP 4-2007, f. & cert. ef. 3-20-07; CWP 21-2009, f. & cert. ef. 12-29-09; CWP 19-2015, f. & cert. ef. 10-1-15; CWP 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

413-040-0145
Court Notification of Placement Changes

(1) The Department must notify the court when a permanent foster care placement disrupts so the court can take appropriate action, including scheduling a permanency hearing.

(2) Unless section (3) of this rule applies, the Department must file a report with the juvenile court when the Department has removed or plans to remove a child or young adult from a foster home as defined in ORS 418.625 that is certified under ORS 418.635 and the removal is for the purpose of placing the child or young adult in a different substitute care placement if:

(a) The child or young adult has resided for 12 consecutive months or more in the foster home; or

(b) The child or young adult resides or resided in the foster home pursuant to a permanent foster care agreement.

(3) The Department is not required to file a report under section (2) of this rule when:

(a) The removal of the child or young adult was made following a founded allegation of abuse or neglect by the foster care provider of the child or young adult;

(b) The removal was made to address an imminent threat to the health or safety of the child or young adult pending completion of an investigation of reported abuse or neglect by the foster care provider of the child or young adult;

(c) The Department has placed the child or young adult with an individual who has been selected by the Department to be the adoptive parent, when the selection has become final after the expiration of any administrative or judicial review procedures under ORS Chapter 183; or

(d) The removal was made at the request of the foster care provider.

(4) The Department must attend a court review hearing scheduled by the court.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419B.373, 419B.376, 419B.440 - 419B.476, 419C.623 - 419C.656
Hist.: SOSCF 24-1999, f. & cert. ef. 12-14-99; SOSCF 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-6-00; SOSCF 22-2000, f. 9-6-00, cert. ef. 9-7-00; CWP 23-2003, f. & cert. ef. 5-22-03; CWP 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

413-040-0150
Participant Notification of Administrative Reviews, Permanency Hearings, and Review Hearings

(1) The local Department office shall provide correspondence information to the local CRB to assure that written notice of the review is provided to the Department, any other agency directly responsible for the care or placement of the child, the parents or their attorneys, foster parents, surrogate parents, persons granted intervener status, mature children or their attorneys, court-appointed attorney or court appointed special advocate for any child, any district attorney or attorney general actively involved in the case and other interested persons. The notice shall include advice that persons receiving a notice may participate in the hearing and be accompanied by a representative.

(2) The local Department office shall provide foster parent, pre-adoptive parent, grandparent, or relative who is actively providing care for a child, notice of any court hearing concerning the child.

Stat. Auth.: ORS 418.005
Stats. Implemented: ORS 419A.090 – 419A.122, 419B.440 – 419B.476, 419C.623 – 419C.656
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 24-1999, f. & cert. ef. 12-14-99; SOSCF 8-2000(Temp), f. 3-10-00, cert. ef. 3-10-00 thru 9-6-00; Administrative correction 9-16-00; CWP 23-2003, f. & cert. ef. 5-22-03; CWP 29-2015(Temp), f. 12-31-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending rules about adoption search and registry
Adm. Order No.: CWP 1-2016(Temp)
Filed with Sec. of State: 1-1-2016
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 413-130-0365
Rules Amended: 413-130-0000, 413-130-0300, 413-130-0310, 413-130-0320, 413-130-0330, 413-130-0340, 413-130-0350, 413-130-0355, 413-130-0360
Rules Suspended: 413-130-0400, 413-130-0420, 413-130-0430, 413-130-0440, 413-130-0450, 413-130-0455, 413-130-0460, 413-130-0480, 413-130-0490, 413-130-0500, 413-130-0510, 413-130-0520
Subject: The Department of Human Services, Office of Child Welfare Programs, is adopting temporary changes to its rules governing adoption search and registry rules to implement HB 2414 (Oregon Laws 2015, chapter 200). The bill allows the Department to add genetic siblings of adoptees to the voluntary adoption search registry and provide information regarding finalization of an adoption.

Additionally, these rules are being consolidated. Currently, the voluntary adoption registry and the assisted search program are covered in separate subdivisions. To improve organization and clarity, the rules governing the assisted search program in OAR 413-130-0400 to 413-130-0500 are being consolidated into 413-130-0300 to 413-0360. Rule text showing proposed changes is available at http://www.dhs.state.or.us/policy/childwelfare/implement/temp_rules.htm.
Rules Coordinator: Kris Skaro—(503) 945-6067

413-130-0000
Definitions

The following definitions apply to rules in OAR chapter 413, division 130.

(1) "Adoptee" pursuant to ORS 109.425 means an individual who has been adopted in the State of Oregon.

(2) "Adoption" has the meaning given in OAR 413-120-0000(1).

(3) "Adoption assistance" means assistance provided on behalf of an eligible child or young adult to offset the costs associated with adopting and meeting the on-going needs of the child or young adult. "Adoption assistance" may be in the form of payments, medical coverage, reimbursement of nonrecurring expenses, or special payments.

(4) "Adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, setting forth the assistance the Department is to provide on behalf of the child or young adult, the responsibilities of the pre-adoptive family or adoptive family and the Department, and the manner in which the agreement and amount of assistance may be modified or terminated.

(5) "Adoption assistance agreement only" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family or adoptive family of an eligible child or young adult, when the pre-adoptive family or adoptive family is not receiving an adoption assistance payment or medical coverage at the time of the agreement but may request it at a later date.

(6) "Adoption assistance base rate" means the portion of the adoption assistance payment that is negotiated with a pre-adoptive family or an adoptive family and cannot exceed the amount of the Oregon foster care base rate payment for the age of the child or young adult.

(7) "Adoption assistance payment" means a monthly payment made by the Department to the pre-adoptive family or adoptive family on behalf of an eligible child or young adult.

(8) "Adoption Assistance Review Committee" means a committee composed of local and central office Department staff with expertise in the area of adoption.

(9) "Adoptive family" means an individual or individuals who have legalized a parental relationship to the child who joined the family through a judgment of the court.

(10) "Adoptive parent" means an adult who has become a parent of a child through adoption.

(11) "Agency" means a public or private organization licensed or authorized under Oregon laws to place children for adoption.

(12) "Applicable child" has the same meaning as in OAR 413-100-0335.

(13) "Assisted search" means the work carried out to locate and make confidential contact with a sought for individual upon the application of an authorized requester.

(14) "Base rate payment" means a payment to the foster parent or relative caregiver for the costs of providing the child or young adult with the following:

(a) Food, including the special or unique nutritional needs of the child or young adult;

(b) Clothing, including purchase and replacement;

(c) Housing, including maintenance of household utilities, furnishings, and equipment;

(d) Daily supervision, including teaching and directing to ensure safety and well-being at a level appropriate for the age of the child or young adult;

(e) Personal incidentals, including personal care items, entertainment, reading materials, and miscellaneous items; and

(f) Transportation, including gas, oil, and vehicle maintenance and repair costs for local travel associated with providing the items listed above, and transportation to and from extracurricular, child care, recreational, and cultural activities.

(15) "Birth parent" means:

(a) The woman or man who is legally presumed, under the laws of this state, to be the mother or father of genetic origin of a child; and

(b) A putative father of the child if the birth mother alleges he is the father and the putative father, by written affidavit or surrender and release executed within three years of the relinquishment of the child by the birth mother or the termination of parental rights of the birth mother, acknowledges being the biological father of the child.

(16) "CANS screening" means Child and Adolescent Needs and Strengths screening, a process of gathering information on the needs and strengths of a child or young adult for one or more of the following purposes:

(a) To identify case planning, service planning, and supervision needs of the child or young adult in substitute care with a certified family;

(b) To determine the level of care payment while in substitute care with a certified family; and

(c) To determine the level of care payment included in an adoption assistance agreement or guardianship assistance agreement.

(17) "Child" means a person under 18 years of age.

(18) "Department" means the Department of Human Services, Child Welfare.

(19) "Enhanced supervision" means the additional support, direction, observation, and guidance necessary to promote and ensure the safety and well-being of a child or young adult when the child or young adult qualifies for a level of care payment.

(20) "Fee" means the maximum fixed amount that the Department or Oregon licensed adoption agency may charge for conducting an assisted search for individuals eligible to request such services, a birth father file review.

(21) "Guardian" means an individual who has been granted guardianship of the child through a judgment of the court.

(22) "Genetic and social history" means a comprehensive report, when obtainable, of the health status and medical history of the birth parents and other individuals related to the child.

(a) The "genetic and social history" may contain as much of the following as is available:

(A) Medical history.

(B) Health status.

(C) Cause of and age at death.

(D) Height, weight, eye and hair color.

(E) Ethnic origins.

(F) Religion, if any.

(b) The "genetic and social history" may include the health status and medical history of:

(A) The birth parents.

(B) A putative father, if any.

(C) Siblings to the birth parents, if any.

(D) Siblings to a putative father, if any.

(E) Other children of either birth parent, if any.

(F) Other children of a putative father, if any.

(G) Parents of the birth parents.

(H) Parents of a putative father, if any.

(23) "Health history" means a comprehensive report, when obtainable, of the health status and medical history of the child at the time of placement for adoption, including neonatal, psychological, physiological, and medical care history.

(24) "Identifying information" means names and addresses of birth parents, putative fathers, adult adoptee, and adult adoptee genetic siblings.

(25) "Independent adoption" means any adoption where the consent is given by other than the Department or a licensed adoption agency.

(26) "Legally free" means that, with respect to a child, the legal rights of all parents with legal standing have been judicially terminated, voluntarily relinquished, or otherwise terminated by operation of law, thus allowing for the child to be adopted.

(27) "Level of care payment" means the payment provided to an approved or certified family, a guardian, a pre-adoptive family, or an adoptive family based on the need for enhanced supervision of a child or young adult determined by applying the CANS algorithm to the results of the CANS screening.

(28) "Licensed adoption agency" means an:

(a) Approved child-caring agency of this state acting by authority of ORS 418.270 and OAR 413-215-0401 to 413-215-0481; and

(b) Agency or other organization that is licensed, or otherwise authorized, to provide adoption services pursuant to the laws of that state, country, or territory.

(29) "Non-identifying information" means health and social and genetic history of the adult adoptees, birth parents, putative fathers, and other specified persons.

(30) "Nonrecurring adoption assistance agreement" means a written agreement, binding on the parties to the agreement, between the Department and the pre-adoptive family of an eligible child for a one-time payment to reimburse the adoptive family for the reasonable and necessary expenses incurred in legally finalizing the adoption of a child who has been determined to have special needs.

(31) "Nonrecurring expenses" mean a one-time payment up to $2,000 per child, which the Department will pay to an adoptive family to assist with the reasonable and necessary expenses incurred in legally finalizing the adoption of an eligible child.

(32) "Parent" means the biological or adoptive mother or the legal father of the child. A legal father is a man who has adopted the child or whose paternity has been established or declared under ORS 109.070, ORS

416.400 to 416.465, or by a juvenile court. In cases involving an Indian child under the Indian Child Welfare Act (ICWA), a legal father includes a man who is a father under applicable tribal law. "Parent" also includes a putative father who has demonstrated a direct and significant commitment to the child by assuming or attempting to assume responsibilities normally associated with parenthood unless a court finds that the putative father is not the legal father.

(33) "Participating tribe" means a federally-recognized Indian tribe in Oregon with a Title IV-E agreement with the Department.

(34) "Pre-adoptive family" means an individual or individuals who:

(a) Has been selected to be the adoptive family of the child; and

(b) Is in the process of legalizing the relationship to the child through the judgment of the court.

(35) "Progeny" means the child or descendant of an individual and the individual's descendants in successive generations.

(36) "Putative father" means a man who, under the laws of this state, is not legally presumed to be the father of genetic origin of a child, but who claims or is alleged to be the father of genetic origin of the child.

(37) "Qualified alien" has the same meaning as in OAR 413-100-0210(2) and 8 USC 1641(b).

(38) "Qualified vendor attorney" means an attorney who has a price agreement with the Department to process the adoption of a child who is eligible for adoption assistance.

(39) "Registry" means a voluntary adoption registry established under ORS 109.450 and maintained by:

(a) An Oregon licensed adoption agency or successor agency; or

(b) The Department for all adoptions not arranged through an Oregon licensed adoption agency.

(40) "Requester" means an individual duly registered on a voluntary adoption registry who requests an assisted search, and who has filed an application and paid the applicable fee.

(41) "Searcher" means one of the following qualified entities that may conduct an assisted search:

(a) The Department;

(b) An Oregon licensed adoption agency; or

(c) A third party individual or entity who has been delegated to or contracted with by the Department or an Oregon licensed adoption agency.

(42) "Sibling" means one of two or more children or young adults who are related, or would be related but for a termination or other disruption of parental rights, in one of the following ways:

(a) By blood or adoption through a common parent;

(b) Through the marriage of the legal or biological parents of the children or young adults; or

(c) Through a legal or biological parent who is the registered domestic partner of the legal or biological parent of the children or young adults.

(43) "Special payment" means a payment for unanticipated short-term costs which are directly related to the special needs of the child or young adult or are essential to the welfare of the child or young adult, and are not covered by another resource available to the adoptive family.

(44) "Substitute care" means the out-of-home placement of a child or young adult who is in the legal or physical custody and care of the Department.

(45) "Successor agency" means an agency which has the adoption records of another agency because of the merger of the agencies or because an agency has ceased doing business and has given its adoptions records to the "successor agency" as provided an ORS 109.435(2).

(46) "Voluntary adoption registry" means a voluntary registry operated by the Department or licensed adoption agency:

(a) Where birth parents, putative fathers, and adult adoptees may register their willingness to the release of identifying information to each other;

(b) That provides for the disclosure of identifying information to birth parents and their genetic offspring;

(c) That provides for the transmission of non-identifying health and social and genetic history of specified persons; and

(d) That provides for the disclosure of specific identifying information under certain circumstances to Indian tribes, governmental agencies, or to an individual settling an estate.

(47) "Work Product" means any records, information, or other materials obtained or developed by the Department or licensed adoption agency during the course of the assisted search.

(48) "Young adult" means a person aged 18 through 20 years.

Stat. Auth.: ORS 418.005, 418.340

Stats. Implemented: ORS 418.005, 418.330, 418.335 & 418.340

Hist.: SCF 2-1995, f. & cert. ef. 8-21-95; SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 8-1999, f. & cert. ef. 5-17-99; SOSCF 7-2002, f. 3-28-02, cert. ef. 4-1-02; CWP 23-2005(Temp), f. 12-30-05, cert. ef. 1-1-06; CWP 16-2006, f. 6-30-06, cert. ef. 7-1-06; CWP 16-2008, f. & cert. ef. 7-1-08; CWP 6-2009(Temp), f. & cert. ef. 7-1-09 thru 12-28-09; CWP 22-2009, f. & cert. ef. 12-29-09; CWP 16-2011(Temp), f. & cert. ef. 6-30-11 thru 12-27-11; CWP 25-2011(Temp), f. 9-30-11, & cert. ef. 10-1-11 thru 12-27-11; CWP 35-2011, f. 12-27-11, cert. ef. 12-28-11; CWP 2-2014, f. 1-31-14, cert. ef. 2-1-14; CWP 11-2015(Temp), f. & cert. ef. 5-22-15 thru 11-17-15; CWP 24-2015, f. & cert. ef. 10-26-15; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0300

Purpose

The purpose of OAR 413-130-0300 to 413-130-0365 is to describe the responsibilities of the Adoption Search and Registry Program for adoptions that finalized in Oregon and the eligibility requirements that must be met in order to:

(1) Receive non-identifying information from the registry;

(2) Register to allow the release of identifying information; and

(3) Request an assisted search for certain members of an individual's birth family or the county in which the adoption was finalized.

Stat. Auth.: ORS 109.506, 418.005

Stats. Implemented: ORS 109.425 - 109.507

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 10-1998, f. 4-27-98, cert. ef. 5-1-98; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0310

Registry Eligibility for Non-Identifying Information

(1) A registry must provide genetic, social, and health history of the adoptee and birth family members, if available, to the following individuals:

(a) An adult adoptee;

(b) An adoptive parent of a minor adoptee;

(c) A guardian of a minor adoptee;

(d) A birth parent of an adoptee;

(e) Adult progeny of a deceased adoptee;

(f) A spouse of a deceased adoptee, if the spouse is the birth parent or guardian of any child of the adoptee.

(2) An eligible individual must request non-identifying information by submitting a request form provided by the registry and a $45 fee.

Stat. Auth.: ORS 109.506, 418.005

Stats. Implemented: ORS 109.425 - 109.507

Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 10-1998, f. 4-27-98, cert. ef. 5-1-98; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0320

Registry Eligibility for Identifying Information

(1) The adoption registry is a voluntary program in which birth parents, putative fathers, adoptees, and genetic siblings of adoptees may register their willingness to release identifying information to each other.

(2) The following individuals are eligible to register:

(a) An adult adoptee;

(b) An adoptive parent or guardian of a minor adoptee;

(c) An adoptive parent of a deceased adoptee;

(d) An adult genetic sibling of an adoptee;

(e) A parent or guardian of a minor genetic sibling of an adoptee;

(f) A birth parent;

(g) A parent or adult sibling of a deceased birth parent; or

(h) A putative father. A putative father may register to have his identifying information given to adult adoptee, but the registry may not give identifying information about the adoptee to the putative father.

(3) The registry must allow the adult progeny or the parent or guardian of a minor progeny of the following individuals to register:

(a) A deceased adoptee;

(b) A deceased genetic sibling of an adoptee;

(c) A deceased birth parent of an adoptee.

(4) An eligible individual must register by submitting the following to the applicable registry:

(a) A notarized affidavit on a form provided by the registry;

(b) A copy of his or her birth certificate; and

(c) A $25 fee.

(5) A registrant may cancel the registration at any time with written notice to the registry.

(6) Registration by a parent or guardian of a minor expires when the minor reaches 18 years of age. The adult adoptee must reregister for identifying information to be released to relevant individuals who are registered. The registry program may not charge a fee for reregistration.

(7) The registrant must notify the registry of any change of name or address.

(8) The registry will notify the registrants when a match is identified. A registry may recommend appropriate counseling prior to the release of information to the eligible individual.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0330
Assisted Search Program Eligibility

(1) The following individuals may request an assisted search for a birth parent, a putative father, a genetic sibling of an adoptee, or the county in which an adoption was finalized:

(a) An adult adoptee;

(b) An adoptive parent of a minor adoptee; or

(c) An adoptive parent of a deceased adoptee.

(2) The following individuals may request an assisted search for an adult adoptee:

(a) Except as provided in section (4) of this rule, a birth parent if the adult adoptee does not have any minor genetic siblings in the same adoptive family;

(b) An adult genetic sibling of an adoptee; or

(c) A parent or adult sibling of a deceased birth parent.

(3) Except as provided in section (4) of this rule, a birth parent may request a search for the county in which the adoption was finalized. At the discretion of the Department or agency, a search may be conducted.

(4) A putative father may not request an assisted search.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 10-1998, f. 4-27-98, cert. ef. 5-1-98; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0340
Assisted Search Application Requirements

(1) Individuals requesting an assisted search must submit the following:

(a) An application on an approved form to the applicable registry. The Department may disclose the applicable registry if it is unknown by the requester;

(b) Proof of registration for identifying information with the registry; and

(c) A fee of $400 for the first individual and $200 for each additional individual.

(2) Upon receipt of a completed application the registry must do all of the following:

(a) Prepare a search file.

(b) Assign the case to a searcher.

(c) Inform the requester that the case has been opened and provide periodic updates on the status of the search.

(3) Duties of the Searcher.

(a) When an individual is located, the searcher must:

(A) Make a confidential inquiry to determine if the located individual wants to establish contact with the requester;

(B) Inform the located individual about the registry program, explain that participation is voluntary and no identifying information will be released unless they have registered with the appropriate registry; and

(C) If the requester is searching because there is a serious medical condition in the individual's immediate family that is, or may be, an inheritable condition and the located individual is biologically related to the ill individual, inform the located individual.

(b) Upon completion of the search, the searcher must:

(A) Notify the registry of the results of the search; and

(B) Return or confidentially dispose of any information obtained in connection with the search.

(4) When notified of the results of a search, the registry must:

(a) Provide registration to a located individual who wants to register;

(b) Notify the requester of the results of the search;

(c) Record the results of the search;

(d) Include any information from the searcher in the search file; and

(e) If the located individual has not returned the registration materials within 90 days, the registry may, where practicable, contact the located individual one time to determine if the located individual still intends to register.

(5) Upon receipt of registration materials from the located individual, the registry must contact both the requester and the located individual to assure that communication is initiated in a way that is acceptable for each individual. The registry must only release contact information that is allowed by each registrant.

(6) The registry must complete the assisted search within 120 days from the date of assignment. If the search is not completed within 120 days, the registry must contact the requester and provide the reason for the delay and a projected completion date.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 30-2000, f. & cert. ef. 11-7-00; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0350
Standards of Conduct for a Registry

A registry must do all of the following:

(1) Maintain accurate and complete records of each search.

(2) Keep confidential all adoption file information and all work product developed during an assisted search process.

(3) Only contact adoptees, birth family members, or adoptive family members under the provisions of these rules.

(4) Act within applicable statutory and administrative rules.

(5) Not contact, exert pressure, or in any other way solicit an adoptee, adoptive parent or guardian, birth parent, or putative father to register with the registry except as allowed in relation to an assisted search.

(6) Accept fees not exceeding those described these rules.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 10-1998, f. 4-27-98, cert. ef. 5-1-98; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0355
Standards for a Searcher

Individuals or entities who perform assisted searches for a registry must do all of the following:

(1) Keep all information from sealed adoption files and information obtained during an assisted search confidential.

(2) Maintain accurate and complete records of each search.

(3) Work within the boundaries of applicable statutory and administrative rules.

(4) Avoid potential conflicts of interest in conducting a search.

(5) Provide a criminal background check demonstrating no record of criminal convictions related to maintaining the integrity or confidentiality of records or child abuse or other offenses involving minor children.

(6) Sign a statement of confidentiality that outlines potential civil and criminal penalties for any disclosure of file information to any one not expressly authorized in applicable statutes or administrative rules.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SOSCF 30-2000, f. & cert. ef. 11-7-00; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0360
Access to Registry Records

(1) A licensed adoption agency may examine adoption records maintained by the Department as part of an assisted search.

(2) The Department may examine adoption records maintained by a licensed adoption agency as part of an assisted search if the licensed adoption agency so allows.

(3) Original file contents or copies of confidential documents may not be removed from a registry.

(4) A searcher may not inspect any other files of another registry except those directly related to the file of the requester.

Stat. Auth.: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 30-2000, f. & cert. ef. 11-7-00; SOSCF 49-2001, f. 12-31-01 cert. ef. 1-1-02; CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0365
Confidentiality and Maintenance of Records

(1) All information acquired by the registry must be confidential and be disclosed only as provided in these rules or pursuant to a court order.

(2) Registry files including work product from an assisted search must be maintained permanently.

(3) If a licensed adoption agency ceases to do business, the agency must transfer the adoption records to the Department or a successor agency. If files are transferred to a successor agency, the agency must tell the Department who has the files.

Statutory Authority: ORS 109.506, 418.005
Stats. Implemented: ORS 109.425 - 109.507
Hist.: CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0400
Purpose

The State of Oregon administers the Assisted Search Program which permits a confidential search for certain adult members of an individual's birth family. This program recognizes that while some parties to adoption have a strong desire to obtain identifying information, others do not. This program is voluntary for all participants and fully recognizes the right to privacy and confidentiality of all parties to an adoption. Persons contacted under this program are directed to the voluntary adoption registry where exchange of identifying information can be authorized. Licensed Oregon adoption agencies conducting assisted search programs are subject to the policies and procedures established under these rules, whose purpose is to set forth criteria establishing eligibility standards, standards of conduct and search procedures, and fees to be paid by persons requesting assisted searches.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0420
Use of Assisted Search Program

(1) Eligible Persons: Certain persons duly registered with an Oregon voluntary adoption registry for identifying information are eligible to request an assisted search:

(a) Adult adoptee or adoptive parents of a deceased adoptee seeking the adoptee's birth parents or genetic siblings;

(b) Birth parents, adult genetic sibling(s) or the parent or adult sibling of a deceased birth parent seeking the adult adoptee.

(2) Completed searches for a birth parent where that person declines to register prevents any subsequent assisted search for the requester's biological siblings. A search for the other birth parent or registered putative father is permitted where authorized by statute.

(3) A putative father may register so that an adult adoptee may be assisted in contacting him, but putative the father is prohibited from conducting an assisted search.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 11-1998, f. 4-27-98, cert. ef. 5-1-98; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0430
Application

Requesters for assisted searches must submit an application directly to the licensed adoption agency that facilitated the adoption if that agency has met all requirements under OAR 413-130-0455 and 413-130-0460, or to the State Office for Services to Children and Families Central Adoptions Unit. The completed application shall include:

(1) Proof of registration for identifying information on the appropriate voluntary adoption registry;

(2) The applicable fee.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 11-1998, f. 4-27-98, cert. ef. 5-1-98; SOSCF 33-2000, f. & cert. ef. 11-7-00; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0440
Fees

Each application for an assisted search shall be accompanied by the following fee(s):

(1) Four hundred dollars for all initial searches for any one eligible person. This fee includes $100 which covers costs for administration of the assisted search program and $300 which represents the fixed fee for actual search.

(2) Two hundred dollars each for any subsequent assisted searches for eligible persons by the same requester.

(3) Twenty five dollars non-refundable birth parent database review if the applicant requests an assisted search for a birth father. This review shall determine if there is a father who meets the definition of the legal or putative father permitted to utilize the voluntary registry. This $25 fee will be applied towards the assisted search fees if it is determined that a search can be conducted.

(4) Once application is made for the assisted search to the licensed adoption agency or SOSCF, any fees paid are non-refundable under any circumstances, including unsuccessful location or reunion.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 33-2000, f. & cert. ef. 11-7-00; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0450
Eligibility of Search Organization

Licensed adoption agencies who perform assisted searches must meet the following requirements:

(1) Demonstrate knowledge of, and experience with, adoption and search issues including a statement of philosophy which values post adoption search consistent with ORS 109.430;

(2) Demonstrate experience providing administrative and supervisory oversight of employees and subcontractors, if applicable, including monitoring of conduct and performance;

(3) Demonstrate sufficient financial resources to insure effective work and organizational stability;

(4) Employ, or have on call as needed, sufficient capable, trained and experienced staff who meet the standards and minimum competencies outlined in OAR 413-130-0460;

(5) Be available to accept search requests within the time frame outlined in OAR 413-130-0480;

(6) Maintain signed statements of confidentiality in personnel files and provide notice of confidentiality requirements in all program policies concerning any information from sealed adoption files and any information obtained during the assisted search process;

(7) Demonstrate knowledge of available search resources to guarantee delivery of services within the fee schedule;

(8) Agree to provide current and comprehensive information regarding agency and community resources, including support groups, reading lists and other resources regarding psychological issues in adoption and potential outcomes of reunions, to certain individuals identified and contacted as a result of the search;

(9) Agree to compile statistical data on searches for periodic reports to SOSCF in a format determined by SOSCF.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 33-2000, f. & cert. ef. 11-7-00; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0455
Standards of Conduct For Licensed Agencies.

Licensed adoption agencies performing assisted searches shall:

(1) Maintain accurate and complete records of each search;

(2) Keep confidential all adoption file information furnished by SOSCF and any licensed adoption agency and all work product developed during the assisted search process;

(3) Use discretion in the search in all contacts and requests for information from public sources, and from those known to the persons involved;

(4) Act within applicable statutory and administrative rules in applicable jurisdictions;

(5) Not exert any pressure upon a sought-after person in order to effect registration on a voluntary adoption registry;

(6) Accept only such compensation for a search as is permitted by law;

(7) Avoid any potential conflicts of interest in conducting assisted searches;

(8) Not assume the role of therapist or counselor to parties contacted during the assisted search process.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 33-2000, f. & cert. ef. 11-7-00, Renumbered from 413-130-0470; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0460
Eligibility Competencies and Standards for Persons Performing Searches

Persons performing assisted searches for licensed adoption agencies or SOSCF must meet the following requirements:

(1) Demonstrate a minimum of two years of experience, either professional or volunteer, in legal and/or psychological aspects of adoption and adoption search.

(2) Demonstrate expertise, through written references, approved training and personal interviews, of the following:

(a) Sensitivity to adoption-related issues;

(b) Ability to maintain confidential files and information;

(c) Ability to work within established legal, administrative and ethical boundaries;

(d) Excellent listening and communication skills, written and verbal;

(e) Ability to work with persons from diverse backgrounds and cultures;

(f) Insight regarding personal attitudes regarding adoption, search and reunion to maintain professional neutrality.

(g) Demonstrate general and specific knowledge of search procedures and techniques to be utilized to successfully locate sought after parties.

(3) Provide a criminal background check, which demonstrates no record of criminal convictions:

(a) Related to maintaining the integrity or confidentiality of records;

(b) Related to child abuse or other offenses involving minor children.

(4) Attend continuing education/applicable training available if required by the licensed adoption agency or SOSCF in the areas of adoption, search and reunion.

(5) Sign a statement of confidentiality, which outlines potential civil and criminal penalties for any disclosure of file information to any one not expressly authorized in applicable statutes or administrative rules.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 33-2000, f. & cert. ef. 11-7-00; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0480
Search Procedures

(1) SOSCF or licensed adoption agencies, upon receipt of the application and fees, shall complete the assisted search within 120 days from the date of assignment. If the case is still active, but not completed within 120 days, the agency shall contact the requester and state the reason for the delay and a projected completion date. The licensed adoption agency, or SOSCF shall inform the requester that the case has been opened, and shall maintain reasonable contact with the requester to give periodic updates on the search.

(2) The licensed adoption agency or SOSCF shall prepare a search file, and using established search techniques in accordance with the standards of conduct established under OAR 413-130-0470, shall attempt to identify and locate the person sought under the program.

(3) Upon location of that person, the licensed adoption agency or SOSCF shall make a confidential inquiry, in person if possible, to determine if that person wishes to establish contact with the requester through the voluntary adoption registry:

(a) The licensed adoption agency or SOSCF shall inform the person that any participation he or she may have with the registry is voluntary and that no information regarding his or her identity or location will be released unless completed registration is made with the voluntary adoption registry;

(b) The agency or SOSCF shall provide information and any application materials necessary to register with the appropriate registry if contact is to be made. The application materials shall contain a statement regarding the voluntary nature of any participation in a voluntary adoption registry;

(c) The agency or SOSCF shall also provide information about agency and community resources regarding psychological issues in adoption and reunion to persons who express a wish to receive information;

(d) The agency or SOSCF shall notify the appropriate voluntary adoption registry that the person being sought has been identified and located, and has indicated that the person wishes to make contact;

(e) If the reason for the search is because there is a serious medical condition in the person's immediate genetic family that is, or may be, an inheritable condition, the person being sought shall be informed of that fact at first contact.

(4) SOSCF or the licensed adoption agency conducting the search, where practicable, shall, after 90 days, contact the person in the original contact who indicated interest in accessing the voluntary adoption registry, if that person has not returned the application materials. This second contact is to offer forms and materials to register and to determine if the person still intends to register.

(5) If, upon location, the person sought does not wish to register to establish contact through the voluntary adoption registry, the person shall be given information about the voluntary adoption registry under ORS 109.435 to 109.507.

(6) The licensed adoption agency or SOSCF shall notify the appropriate voluntary registry that the person being sought has been located and has indicated that the person does not wish the contact.

(7) If the licensed adoption agency or SOSCF is unable to identify or locate the person being sought, SOSCF or the licensed adoption agency shall notify the appropriate voluntary registry of that fact.

(8) Upon receiving notice under OAR 413-130-0480(3), (5) or (6), the voluntary adoption registry shall:

(a) Enter the information into its records;

(b) Notify the requester only that the person being sought has or has not been located; and either.

(A) Has indicated a wish to make contact and has been given information and forms necessary to register; or

(B) Has indicated a wish not to make contact.

(9) Except as otherwise provided under this rule, no contact shall be made with requesters or persons sought under the assisted search program.

(10) All search file information, including all work product developed during the course of the search, shall be incorporated into the permanent registry adoption file in the agency of origin, either SOSCF and/or a licensed Oregon adoption agency upon completion of the search.

Stat. Auth.: OL 1993, Ch. 676
Stats. Implemented: ORS 109.425 - 109.507
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 11-1998, f. 4-27-98, cert. ef. 5-1-98; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0490
Access to Records

(1) A licensed adoption agency may examine adoption records maintained by the State Office for Services to Children and Families subject to SOSCF operating procedures.

(2) No original file contents or copies of confidential documents will be removed from SOSCF Central Adoptions Unit.

(3) No file contents will be open to inspection by a licensed adoption agency other than the file directly related to the requester's file.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0500
Maintenance of Records

(1) All work product and adoption file information obtained in connection with the assisted search program under these rules is confidential. All confidential adoption records made available to a licensed adoption agency, and all work product, are the property of the agency of origin, either SOSCF or the licensed adoption agency. At the conclusion of the assisted search, all materials shall be forwarded to the agency of origin, and shall become part of the permanent adoption file. Licensed adoption agencies conducting an assisted search program shall maintain a record of each search undertaken and its outcome in a form which does not breach the confidentiality of any registrant.

(2) During an active search, licensed adoption agencies shall keep records of all actions taken on behalf of requesters, and shall furnish copies of those records upon request from SOSCF.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0510
Exclusion of Licensed Agencies

Any licensed adoption agency authorized to conduct searches per OAR 413-130-0460, shall be immediately excluded from all access to confidential adoption file information if any rules are violated, and may be subject to immediate termination for any willful unauthorized disclosure of any confidential file information. Such persons may be subject to criminal prosecution.

Stat. Auth.: HB 2004
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

413-130-0520
Advisory Committee

SOSCF may establish an advisory committee selected by SOSCF. The advisory committee may meet as needed to consider any changes or improvements to the administration of the Assisted Search Program. Membership shall reflect affected parties, including, but not limited to, adult adoptees, adoptive parents, birth parents, private adoption agency personnel and SOSCF adoptions staff.

Stat. Auth.: ORS 418.005 & 109.506
Stats. Implemented: ORS 109.425 - 109.507 & SB 1105
Hist.: SCF 6-1995, f. 12-22-95, cert. ef. 12-29-95; SOSCF 33-2000, f. & cert. ef. 11-7-00; Suspended by CWP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

Department of Human Services,
Home Care Commission
Chapter 418

Rule Caption: Homecare Choice Program
Adm. Order No.: HCC 1-2015(Temp)
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 418-040-0000, 418-040-0010, 418-040-0020, 418-040-0030, 418-040-0050, 418-040-0060, 418-040-0070, 418-040-0080, 418-040-0090, 418-040-0040
Subject: The Oregon Home Care Commission (Commission) must immediately adopt rules in OAR 418-040 to comply with a legislative mandate to establish and administer a program to enable individuals using private funds to purchase homecare services through the Commission's Registry by January 1, 2016. These rules establish a consumer-directed program that enables individuals with disabilities to access the Commission's Registry to locate and hire a provider as an employee and purchase services through the Commission. The Commission may also contract with a fiscal intermediary that would be able to pay the individual's employee on the individual's behalf, withhold and report payroll taxes, and assist consumers with meeting the legal requirements of being a household employer.
Rules Coordinator: Kimberly Colkitt-Hallman—(503) 945-6398

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 Homecare Choice program is to enable private-pay individuals to purchase in-home services through the Commission for providers registered on the Commission's statewide Registry.

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

418-040-0010
Definitions

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

(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 self-care activities that are accomplished by an individual to meet his or her daily needs, as described in OAR 418-040-0030(3)(a)(A)–(G).

(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) "Consumer-Employer" means an individual enrolled as a participant in the Homecare Choice Program who employs a provider from the Registry.

(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 411-020-0002 and 407-045-0260;

(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 provider described in OAR 411-031-0020(19)(a)(A)–(C).

(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 complex activities required to maintain a participant's immediate environment, as described in OAR 418-040-0030(3)(b)(A)–(H).

(23) "Licensed Independent Practitioner" means a health care professional authorized by the state of Oregon to independently diagnose and treat.

(24) "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.

(25) "OHA" means the Oregon Health Authority.

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

(27) "Participant" means an individual enrolled in the Homecare Choice Program.

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

(29) "Personal Support Worker" means a provider described in OAR 411-375-0010(38)(a)(A)–(D) and 410-172-0190(1)–(7).

(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 Oregon Administrative 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

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(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 cannot 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

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 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.

(3) 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.

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

(a) Activities of Daily Living (ADLs):

(A) Bathing, grooming, and personal hygiene, including, but not limited to nail care, hair care, skin care, shaving, and oral hygiene.

(B) Cognitive, emotional and behavioral support through the provision of positive interventions and strategies to promote an individual's safety and to aid in healthy coping. This includes, but is not limited to:

(i) Providing reassurance, encouragement, and verbal and physical redirection when needed for personal safety.

(ii) Reminding, cueing, or supervision to complete personal care or household tasks.

(iii) Supervision to monitor safety and well-being.

(C) Communication includes, but is not limited to, assisting an individual with:

(i) Correspondence.

(ii) Using telephones, aids, and assistive technology.

(D) Dressing and undressing.

(E) Eating and feeding.

(i) Assisting an individual with oral fluid intake and nutrition.

(ii) Eating and oral feeding includes, but is not limited to:

(I) Assisting with direct feeding.

(II) Monitoring to prevent choking or aspiration.

(III) Assisting with adaptive utensils.

(IV) Cutting food.

(V) Placing food, dishes or utensils within reach for eating.

(F) Mobility and movement, including:

(i) Ambulation.

(ii) Transfers.

(iii) Bed mobility.

(iv) Repositioning.

(v) Adjusting padding for physical comfort or pressure relief.

(vi) Range-of-motion exercises.

(G) Toileting and elimination.

(i) Toileting assistance includes:

(I) The activity of getting to and from, on and off the toilet (including bedpan, commode, or urinal).

(II) Cleansing after elimination.

(III) Adjusting clothing.

(IV) Cleaning and maintaining assistive devices.

(V) Following a toileting schedule.

(ii) Elimination assistance includes:

(I) Bladder and bowel care.

(II) Managing Menses.

(III) Catheter care.
(IV) Ostomy care.
(V) Changing incontinence supplies.
(VI) Digital stimulation only as taught by an RN or a licensed independent practitioner with the scope of authority to teach digital stimulation.
(b) Instrumental Activities of Daily Living (IADLs):
(A) Arranging for medical appointments, including, but not limited to, scheduling appointments, arranging medical transportation, accompanying a participant to appointments, and assisting with ADLs to, from, and during an appointment.
(B) Housekeeping tasks including, but not limited to, cleaning surfaces and floors, vacuuming and mopping, cleaning dishes, taking out the garbage, dusting, and making an individual's bed.
(C) Laundry.
(D) Meal preparation.
(E) Medication management including:
(i) Assisting the participant to obtain medications that have been prescribed by a licensed independent practitioner.
(ii) Ensuring the proper storage of medications.
(iii) Administering non-injectable medications to the participant. This would include giving medication to the participant as:
(I) Directed by the participant; and
(II) Ordered by a licensed independent practitioner.
(iv) Administration of a chronically needed, and regularly scheduled, subcutaneous injectable medication to a participant only:
(I) Under the delegated authority of a Registered Nurse practicing pursuant to the Nurse Practice Act; or
(II) As taught by the participant's licensed independent practitioner.
(v) Reminding, cueing, or overseeing the participant's self-administration of medications.
(vi) Transferring medications from the original containers into medication dispensers or organizers if directed by the participant or participant's representative.
(vii) Assisting the individual with the use of oxygen as prescribed by a licensed independent practitioner. This includes assuring the oxygen supply system is in good working order and promoting the participant's safe use of oxygen.
(F) Pet care.
(G) Shopping and errands.
(H) Transportation.
(c) Companionship. Companionship may include:
(A) The provision of fellowship by engaging a participant in social, physical, and mental activities. Fellowship includes, but is not limited to, engaging the participant in:
(i) Conversation;
(ii) Reading;
(iii) Games;
(iv) Hobbies;
(v) Crafts; and
(vi) Accompanying the participant during social activities and outings.
(B) The protection of a participant who requires assistance in caring for him or herself. This includes being present to monitor a participant's safety and well-being.
(d) Health related tasks performed by a Homecare Choice provider who has been trained by the participant, by the participant's representative, or by a licensed independent practitioner whose scope of authority permits the teaching or delegation of the health related task.
(e) Relief Care.
(5) 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.

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

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 411 Division 020, OAR chapter 407, division 045, OAR Chapter 943, division 045, or OAR chapter 413, division 015.
(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 411-375-0070 or 411-172-0200.

(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 411, division 020, OAR chapter 407, division 045, OAR chapter 943, division 045, or OAR chapter 413, division 015.

(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) Late arrival to work or absences from work that are not prior-scheduled with the participant and are either 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 031 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, if available.

(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

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

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 http://www.oregon.gov/dhs/spd/Pages/adv/hcc/news.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 that 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

418-040-0070
Suspension or Reduction of Homecare Choice Program Referrals

If the Commission, with the assistance of the 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

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.

(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 shall be charged a credit card transaction fee when paying for services electronically. The fee is determined by the State of Oregon's banking institution.

(C) 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.

(D) 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.

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

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

(d) Homecare Choice providers shall not claim payment for services delivered by another individual.

(e) Homecare Choice providers are responsible for the completion and accuracy of timekeeping records and all submitted claims.

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

418-040-0090
Provider Termination Administrative Review and Hearing Rights

(1) The Commission delegates authority to the Executive Director of the Oregon Home Care Commission to act on behalf of the Commission for the purposes of making decisions related to a provider's eligibility to provide services under the Homecare Choice Program. This includes:

(a) Provider enrollment;

(b) Denial or revocation of provider enrollment; and

(c) Provider sanctions, which may include, suspension of Registry referrals.

(2) When a Homecare Choice provider is terminated based on violations described in OAR 418-040-0060(1)(c)(A)–(L), the Commission shall issue a written notice to the provider.

(a) The written notice must include:

(A) The effective date of the termination.

(B) An explanation of the reason for terminating the provider enrollment.

(C) The alleged violation as listed in OAR 418-040-0080(1)(c)(A)–(L).

(D) The provider's appeal rights and where to file the appeal.

(b) For terminations based on substantiated protective services allegations, the notice may only contain the information allowed by law. In accordance with ORS 124.075, 124.085, 124.090, OAR 411-020-0030, 407-045-0330, 943-045-0330, and 413-015-0485 complainants, witnesses, the name of the alleged victim, and protected health information may not be disclosed.

(c) If an administrative review is requested by a Homecare Choice provider, the Commission shall notify the provider in writing of the outcome of the review. If the termination is upheld after review, the Commission shall provide written notice as described in OAR 418-040-0090(2)(a)(A)–(E).

(3) BURDEN OF PROOF. The Commission has the burden of proving the allegations of the complaint by a preponderance of the evidence. Evidence submitted for the administrative hearing is governed by OAR 137-003-0610.

(4) IMMEDIATE TERMINATION. The Commission may immediately terminate a provider's enrollment on the date the violation is discovered, before the outcome of the administrative review, when an alleged violation presents imminent danger to current or future participants. In order for a provider's appeal to be timely, any appeal must be filed with the Commission within 10 business days from the date of the notice.

(5) TERMINATIONS PENDING APPEAL. When a violation does not present imminent danger to current or future participants, the provider's enrollment may not be terminated during the first 10 business days of the administrative review appeal period. In order for a provider's appeal to be timely, any appeal must be filed with the Commission within 10 business days from the date of the notice. If the provider appeals in writing prior to the deadline for the appeal, the enrollment may not be terminated until the conclusion of the administrative review.

(6) TERMINATION IF NO APPEAL FILED. The decision of the Commission's Executive Director becomes final if the Homecare Choice provider does not appeal within 10 business days from the date of the notice of the decision.

(7) ADMINISTRATIVE REVIEW PROCESS. The administrative review process allows an opportunity for the Commission's Executive Director to reconsider the decision to terminate the individual's Homecare Choice provider enrollment. The appeal may include the provision of new information or evidence that may result in the decision not to proceed with termination.

(a) A written response informing the provider of the outcome of the administrative review is sent to the provider within 10 business days of the review date.

(b) The Commission or provider may request an extension of the 10-day deadline described in section (7)(a) if further information needs to be gathered to make a decision or there is difficulty in scheduling a meeting between the parties.

(8) ADMINISTRATIVE HEARING PROCESS. A Homecare Choice provider may request an administrative hearing after the conclusion of the administrative review process if the provider continues to dispute the decision to terminate his or her enrollment in the Homecare Choice Program.

(a) The request for hearing must be filed with the Commission within 30 calendar days of the date of the written notice from the Commission. The Department or the Commission will file the request with the Office of Administrative Hearings (OAH), as described in OAR chapter 137, division 003.

(b) When the Commission or the Department refers a contested case under these rules to the Office of Administrative Hearings, the referral will indicate whether the Commission is authorizing a proposed order, a proposed and final order, or a final order.

(c) Subject to approval of the Attorney General, an officer or employee of the Department or the Commission, is authorized to appear on behalf of the Commission for hearings conducted by the Office of Administrative Hearings related to provider enrollment, denial, or revocation of provider enrollment, and provider sanctions. Contested case hearings and the use of lay representation in contested case hearings related to this rule shall be in accordance with OAR chapter 411, division 001.

(d) No additional hearing rights have been granted to Homecare Choice providers by this rule other than the right to a hearing on the Commission's decision to terminate the individual's provider enrollment.

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

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Department of Human Services, Self-Sufficiency Programs Chapter 461

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Rule Caption: Increasing rates for some child care providers
Adm. Order No.: SSP 33-2015(Temp)
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 461-155-0150
Subject: OAR 461-155-0150 about child care eligibility standard, payment rates, and copayments is being amended to implement rate increases negotiated between the Department and child care providers and child care centers and funded in HB 5026 (Oregon Laws 2015, chapter 760). Specific rate changes based on location of the provider, age of the child, and type of billing are available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-155-0150
Child Care Eligibility Standard, Payment Rates, and Copayments

The following provisions apply to child care in the ERDC, JOBS, JOBS Plus, and TANF programs:

(1) The following definitions apply to the rules governing child care rates:

(a) Infant: For all providers other than licensed (registered or certified) care, a child aged newborn to 1 year. For licensed care, an infant is a child aged newborn to 2 years.

(b) Toddler: For all providers other than licensed (registered or certified) care, a child aged 1 year to 3 years. For licensed care, a toddler is a child aged 2 years to 3 years.

(c) Preschool: A child aged 3 years to 6 years.

(d) School: A child aged 6 years or older.

(e) Special Needs: A child who meets the age requirement of the program (ERDC or TANF) and who requires a level of care over and above the norm for his or her age due to a physical, behavioral, or mental disability. The need for a higher level of care must be determined by the provider and the disability must be verified by one of the following:

(A) A physician, nurse practitioner, clinical social worker, or any additional sources in OAR 461-125-0830.

(B) Eligibility for Early Intervention and Early Childhood Special Education Programs, or school-age Special Education Programs.

(C) Eligibility for SSI.

(2) The following definitions apply to the types of care specified in the child care rate charts in subsections (4)(a) through (4)(c) of this rule:

(a) The Standard Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider does not qualify for the enhanced rate allowed by subsection (b) of this section.

(b) The Enhanced Family Rate applies to child care provided in the provider's own home or in the home of the child when the provider meets the training requirements of the Oregon Registry, established by the Oregon Center for Career Development in Childhood Care and Education.

(c) The Registered Family Rate applies to child care provided in the provider's own home when the provider meets criteria established by the Office of Child Care.

(d) The Certified Family Rate applies to child care provided in a residential dwelling that is certified by the Office of Child Care as a Certified Family Home. To earn this designation, the facility must be inspected, and both provider and facility are required to meet certain standards not required of a registered family provider.

(e) The Standard Center Rate applies to child care provided in a facility that is not located in a residential dwelling and is exempt from Office of Child Care Certification rules (see OAR 414-300-0000).

(f) The Enhanced Center Rate applies to child care provided in an exempt center whose staff meet the training requirements of the Oregon Registry established by the Oregon Center for Career Development in

Childhood Care and Education. Eligibility to receive the enhanced center rate for care provided in an exempt center is subject to the following requirements:

(A) A minimum of one staff member for every 20 children in care must meet the Oregon Registry training requirements noted in subsection (b) of this section.

(B) New staff must meet the Oregon Registry training requirements within 90 days of hire, if necessary to maintain the trained staff-to-children ratio described in paragraph (A) of this subsection.

(C) There must be at least one person present where care is provided who has a current certificate in infant and child CPR and a current American Red Cross First Aid card or an equivalent.

(g) An enhanced rate will become effective not later than the second month following the month in which the Department receives verification that the provider has met the requirements of subsection (b) or (f) of this section.

(h) The Certified Center Rate applies to child care provided in a center that is certified by the Office of Child Care.

(3) The following provisions apply to child care payments:

(a) Providers not eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 158 hours per month subject to the maximum full-time monthly rate.

(b) Providers eligible for the enhanced or licensed rate will be paid at an hourly rate for children in care less than 136 hours a month, unless the provider customarily bills all families at a part-time monthly rate subject to the maximum full-time monthly rate and is designated as the primary provider for the case.

(c) At their request, providers eligible for the enhanced or licensed rate may be paid at the part-time monthly rate if they provide 63 or more hours of care in the month, customarily bill all families at a part-time monthly rate, and are designated as the primary provider for the case.

(d) Unless required by the circumstances of the client or child, the Department will not pay for care at a part-time monthly or a monthly rate to more than one provider for the same child for the same month.

(e) The Department will pay at the hourly rate for less than 63 hours of care in the month subject to the maximum full-time monthly rate.

(f) The Department will pay for up to five days each month the child is absent if:

(A) The child was scheduled to be in care and the provider bills for the amount of time the child was scheduled to be in care; and

(B) It is the provider's policy to bill all families for absent days.

(g) The Department will not pay for more than five consecutive days of scheduled care for which the child is absent.

(4) The following are the child care rates based on the type of provider, the location of the provider (shown by zip code), the age of the child, and the type of billing used (hourly or monthly): [Table not included. See Ed. Note.]

(5) Except to the extent provided otherwise in section (12) of this rule, this section establishes the ERDC eligibility standard and the client's copayment (copay).

(a) At initial certification, the ERDC eligibility standard is met for a need group (see OAR 461-110-0630) of eight or less if monthly countable income (see OAR 461-001-0000) for the need group is less than 185 percent of the federal poverty level (FPL), as described in OAR 461-155-0180(6). The eligibility standard for a need group of eight applies to any need group larger than eight.

(b) During the certification period (see OAR 461-001-0000) and at recertification the ERDC eligibility standard is met for a need group of eight or less if monthly countable income for the need group during the 12 month period is less than 85 percent state median income (SMI) or 250 percent FPL, whichever is higher, as described in OAR 461-155-0180(8) and (9). The eligibility standard for a need group of eight applies to any need group larger than eight.

(c) The minimum monthly ERDC copay is $25.

(d) For a filing group (see OAR 461-110-0310) whose countable income is at or below 50 percent of the 2007 FPL, the copay is $25 or 1.5 percent of the filing group's monthly countable income, whichever is greater.

(e) For a filing group whose countable income is over 50 percent of the 2007 FPL, the copay amount is determined with the following percentage of monthly income:

(A) Divide the filing group's countable income by the 2007 FPL, drop all digits beyond two decimal points, subtract 0.5, and multiply this difference by 0.12.

(B) Add .015 to the amount in paragraph (A) of this subsection. This sum is the percentage of monthly income used to determine the copay amount. Multiply this sum by the filing group's countable income and round to the nearest whole dollar.

(f) The 2007 federal poverty level used to determine copay amounts under subsections (d) and (e) of this section is set at the following amounts:

(6) Subject to the provisions in section (9) of this rule, the monthly limit for each child's child care payments is the lesser of the amount charged by the provider or providers and the following amounts:

(a) The monthly rate provided in section (4) of this rule.

(b) The product of the hours of care, limited by section (8) of this rule, multiplied by the hourly rate provided in section (4) of this rule.

(7) The limit in any month for child care payments on behalf of a child whose caretaker is away from the child's home for more than 30 days because the caretaker is a member of a reserve or National Guard unit that is called up for active duty is the lesser of the following:

(a) The amount billed by the provider or providers.

(b) The monthly rate established in this rule for 215 hours of care.

(8) The number of payable billed hours of care for a child is limited as follows:

(a) In the ERDC and TANF programs, the total payable hours of care in a month may not exceed the amounts in paragraphs (A) or (B) of this subsection:

(A) 125 percent of the number of child care hours authorized:

(i) Under OAR 461-160-0040(2) and (5); or

(ii) To participate in activities included in a case plan (see OAR 461-001-0025) including, for clients in the JOBS Plus program, the time the client searches for unsubsidized employment and for which the employer pays the client.

(B) The monthly rate established in section (4) of this rule multiplied by a factor of not more than 1.5, determined by dividing the number of hours billed by 215, when the client meets the criteria for extra hours under section (10) of this rule.

(b) In the ERDC program, for a client who earns less than the Oregon minimum wage, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time).

(c) In the TANF program, for a client who earns less than the Oregon minimum wage or is self-employed, the total may not exceed 125 percent of the anticipated earnings divided by the state minimum wage not to exceed 172 hours (which is full time). The limitation of this subsection is waived for the first three months of the client's employment.

(d) In the ERDC program, employed caretakers eligible under OAR 461-135-0400 may have education hours added to the authorized work hours. Education hours may not exceed authorized work hours and combined hours may not exceed 215 hours per month. Education hours are hours required to participate in coursework that leads to a certificate, degree, or job-related knowledge or skills attainment at an institution of higher education approved to receive federal financial aid.

(9) The limit in any month for child care payments on behalf of a child whose caretaker has special circumstances, defined in section (10) of this rule, is the lesser of one of the following:

(a) The amount billed by the provider or providers; or

(b) The monthly rate established in section (4) of this rule multiplied by a factor, of not more than 1.5, determined by dividing the number of hours billed by 215.

(10) The limit allowed by section (9) of this rule is authorized once the Department has determined the client has special circumstances. For the purposes of this section, a client has special circumstances when it is necessary for the client to obtain child care in excess of 215 hours in a month to perform the requirements of his or her employment or training required to keep current employment, not including self-employment. This is limited to the following situations:

(a) The commute time to and from work exceeds two hours per day.

(b) The caretaker works an overnight shift and care is necessary for both work hours and sleep hours.

(c) The caretaker works a split shift and it is not feasible to care for the child between shifts.

(d) The caretaker consistently works more than 40 hours per week.

(11) The payment available for care of a child who meets the special needs criteria described in subsection (e) of section (1) of this rule is increased in accordance with OAR 461-155-0151 if the requirements of both of the following subsections are met:

(a) The child requires significantly more direct supervision by the child care provider than normal for a child of the same age.

(b) The child is enrolled in a local school district Early Intervention or Early Childhood Special Education program or school-age Special Education Program. The enrollment required by this subsection is waived if determined inappropriate by a physician, nurse practitioner, licensed or certified psychologist, clinical social worker, or school district official.

(12) Starting May 1, 2012:

(a) The minimum monthly ERDC copay is $27.

(b) Except as stated in subsection (a) of this section, the Department adds 10 percent to the monthly client copay amount set under section (5) of this rule by multiplying the copay amount by 1.1 and rounding down to the nearest whole dollar.

(13) A provider caring for a child in a contracted child care slot with the Department will be paid the lesser of the monthly rate provided in section (4) of this rule or the amount charged by the provider.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, OL 2015, ch 698

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 412.006, 412.049, 418.485, Or Laws 2015, ch 698

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 19-1991(Temp), f. & cert. ef. 10-1-91; AFS 4-1992, f. 2-28-92, cert. ef. 3-1-92; AFS 14-1992, f. & cert. ef. 6-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 9-1994, f. 4-29-94, cert. ef. 5-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 23-1995, f. 4-20-95, cert. ef. 10-1-95; AFS 41-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 4-2000(Temp), f. 2-29-00, cert. ef. 3-1-00 thru 8-25-00; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 2-2003(Temp); f. & cert. ef. 2-7-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 13-2012(Temp), f. & cert. ef. 4-10-12 thru 10-7-10; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 31-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 35-2013, f. & cert. ef. 11-1-13 thru 3-30-14; SSP 8-2014, f. & cert. ef. 3-31-14; SSP 14-2015(Temp), f. & cert. ef. 3-23-15 thru 9-18-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 33-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending rules relating to the JOBS program
Adm. Order No.: SSP 34-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-28-15
Notice Publication Date: 11-1-2015
Rules Amended: 461-001-0025, 461-190-0211
Subject: OAR 461-190-0211 about case plan activities and standards for support service payments for the TANF JOBS program is being amended to include job skills training and short-term self-initiated training as available JOBS activities to eligible TANF clients. The rule is also amended to:

Reorganize sections to improve readability;

Remove reference to sheltered work; and

Make minor non-substantive changes to update statute and rule references, update terminology, and correct grammar and punctuation.

To align with these changes, OAR 461-001-0025 about definitions of terms, components, and activities in the JOBS, Pre-TANF, Post-TANF, and TANF programs is also being amended to:

- Define "crisis intervention" as short-term services to address an immediate crisis need;

- Remove the definitions of "microenterprise" and "teen parent" (these terms are already defined in the main definitions rule for chapter 461, OAR 461-001-0000);

- Update the definition of "self-initiated training" as up to six months of job training which may be used to extend an approved vocational training;

- Remove reference to sheltered work; and

- Make minor non-substantive changes to update statute and rule references, update terminology, correct grammar and punctuation, and reformat the rule to align with other definitions rules in chapter 461.

This makes permanent temporary rules adopted on July 1, 2015.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-001-0025
Definitions of Terms, Components, and Activities; JOBS, Pre-TANF, Post-TANF, TANF

In the JOBS, Pre-TANF, Post-TANF, and TANF programs, the following definitions apply to rules in OAR chapter 461 unless the context indicates otherwise.

(1) "Activity" means an action or set of actions to be taken by an individual, as specified in the case plan (see section (6) of this rule). An "activity" is intended to reduce barriers and:

(a) Increase the likelihood of self-sufficiency, employment, job retention, wage enhancement, and financial independence; or

(b) Promote family stability (see OAR 461-001-0000).

(2) "Adult Basic Education (ABE)"means an activity (see section (1) of this rule) in the basic education (see section (5) of this rule) component (see section (8) of this rule) that involves remedial education coursework intended to ensure functional literacy.

(3) "Assessment" means an activity of the program entry (see section (30) of this rule) component that involves gathering information to identify the strengths, interests, family circumstances, status in the JOBS program, and vocational aptitudes and preferences of the individual and to mutually determine an employment goal, the level of participation of the individual in the JOBS program, and which support services (see section (36) of this rule) are needed. This activity includes providing screenings and evaluations (if appropriate) to determine the level of participation, accommodation, and modification for the individual in the JOBS program. The screenings include, but are not limited to, physical and mental health needs, substance abuse, domestic violence, and learning needs.

(4) "Barrier" means a personal condition or circumstance that reduces the likelihood the individual will become employed or the ability of the individual to participate in an activity listed in the case plan.

(5) "Basic education" means a component of non-core activities (see section (24) of this rule) intended to ensure functional literacy for all JOBS clients. "Basic education" activities are high school attendance, English as a second language (ESL) (see section (14) of this rule) instruction, job skills training (see section (20) of this rule), adult basic education (ABE) (see section (2) of this rule) instruction, and services that result in obtaining a general equivalency diploma (GED). The component is discussed in OAR 461-190-0171 and 461-190-0181.

(6) "Case plan" (formerly also known as an employment development plan (EDP), a personal plan, or personal development plan) means a written outline, developed in partnership by the individual and case manager, with input from partners as appropriate, listing activities and goals for the individual. The "case plan" also identifies the support service payments, accommodations, and modifications to help the individual complete the plan. The DHS 1543 — Domestic Violence Assistance Agreement — is the "case plan" for individuals with safety concerns about domestic violence (see OAR 461-001-0000).

(7) "Community service program" means an activity in the unpaid employment (see section (38) of this rule) component in which the individual works without pay at a job site to enhance the likelihood the individual will become employed and perform work for the direct benefit of the community. This activity is available through nonprofit organizations or public agencies.

(8) "Component" means a set of one or more activities of the JOBS program including paid unsubsidized employment (see section (27) of this rule), paid subsidized employment (see section (26) of this rule), unpaid employment, vocational training (see section (40) of this rule), job search and readiness (see section (19) of this rule), and basic education activities.

(9) "Core activities" means federally defined countable work activities including paid unsubsidized employment; paid subsidized employment; work experience (see section (41) of this rule); on-the-job training (see section (25) of this rule); job search and readiness; community service program (see section (7) of this rule); vocational training; and providing child care services to a community service program participant (see section (31) of this rule).

(10) "Crisis intervention" means short-term services to address an immediate crisis need.

(11) "Degree Completion Initiative (DCI)" means an activity in which a limited number of TANF recipients may participate for up to 12 months

to complete an educational degree at a two- or four-year educational institution.

(12) "Drug and alcohol services" means an activity in the job search and readiness component that provides substance abuse screenings and evaluations, outpatient or resident treatment, and support groups such as AA or NA.

(13) "Employer contact" means client communication with an employer or employer's representative through a visit, phone call, or mail to request consideration for employment.

(14) "English as a second language (ESL)" means an activity in the basic education component. "ESL" classes are designed to give individuals with limited English proficiency better working skills in the language.

(15) "Fair Labor Standards Act (FLSA)" means the law that applies to subject employers with individuals working in the unpaid employment component. "FLSA" requires that individuals engaged in unpaid employment, in effect, may not "work off" their SNAP and TANF benefits at an hourly rate less than the state minimum wage.

(16) "Federally required participation rates" means the participation rates required by section 407 of the Social Security Act (42 USC 607).

(17) "High School or GED Completion Attendance" means an activity in the basic education component that involves attendance at a secondary school or in a course of study that leads to the completion of the GED.

(18) "Job search (initial or regular)" means an activity in the job search and readiness component that focuses on clients looking for and obtaining employment designed to improve skills in locating and competing for employment in the local labor market and may include writing resumes, receiving instruction in interviewing skills, and participating in group and individual "job search". There are two categories of "job search": "initial job search" and "regular job search". "Initial job search" may occur during the Pre-TANF program. "Regular job search" begins not later than the day after the Department finds the individual eligible for TANF benefits.

(19) "Job search and readiness" means a component designed to prepare individuals to compete in the local labor market. Job search (see section (18) of this rule), life skills (see section (22) of this rule), drug and alcohol services (see section (12) of this rule), mental health services (see section (23) of this rule), and rehabilitation activities (see section (32) of this rule) are the activities of the "job search and readiness" component.

(20) "Job skills training" means an activity in the basic education component designed to provide classroom training in vocational and technical skills or equivalent knowledge and abilities in a specific job area.

(21) "JOBS Plus program (JOBS Plus)" means an activity in the paid subsidized employment component that provides TANF clients with on-the-job training and pays their benefits as wages (see OAR 461-190-0401 to 461-190-0426).

(22) "Life skills" means an activity of the job search and readiness component. The activity develops employment-preparation skills and skills and attitudes that are commonly found in the workplace.

(23) "Mental health services" means an activity in the job search and readiness component that provides mental health screenings and assessments, counseling, medication management, and support groups.

(24) "Non-core activities" means federally defined countable work activities that include job skills training directly related to employment; education directly related to employment; and satisfactory school attendance at a secondary level or leading to a GED.

(25) "On-the-job training (OJT)" means an activity in the paid subsidized employment component in which an individual works for an employer for a contracted period. The employer trains the individual and is reimbursed by the Department, usually at 50 percent of the wages of the participant, for those training costs.

(26) "Paid subsidized employment" means a component in which individuals are employed in a subsidized public or private sector job. JOBS Plus (see section (21) of this rule), work supplementation (see section (42) of this rule), and on-the-job training are the activities in the "paid subsidized employment" component.

(27) "Paid unsubsidized employment" means a component in which individuals are employed full- or part-time in an unsubsidized job and receiving TANF benefits. Unsubsidized employment is a job that is not subsidized by TANF or any other public program. The UN work program (see section (39) of this rule) and microenterprise (see OAR 461-001-0000) are the activities in the paid unsubsidized employment component.

(28) "Parents as Scholars (PAS)" means a JOBS program component that assists TANF parents who are or will be undergraduates to begin or continue their education at a two- or four-year educational institution (see OAR 461-190-0199).

(29) "Program entry" means an activity that includes all the activities that prepare an individual to actively participate in the JOBS program including, but not limited to, assessment (see section (3) of this rule) and writing the initial case plan.

(30) "Progress (good or satisfactory)" means, for federal reporting purposes, an individual participating in an education or training activity makes "good progress" or "satisfactory progress" by receiving a passing grade or progressing toward completion of high school or GED completion at no less than the normal rate of a half-time student.

(31) "Providing child care services to a community service program participant" means an activity in the unpaid employment component.

(32) "Rehabilitation activities" means an activity in the job search and readiness component that provides medical or therapeutic screenings, assessments, and treatment. This activity also includes medical management and support groups.

(33) "Self-initiated training (SI)" means a JOBS program component that is training needed to be competitive in the job market. Participation in this component is limited to six months. The component may be used to extend an approved vocational training activity.

(34) "Supported work" means an activity in the unpaid employment component that gives individuals intensive staff support, skill training, intervention, and counseling that will enable them to function independently at work.

(35) "Stabilization, intervention, and other activities" means activities that are non-countable for federal participation purposes including child health and development, crisis intervention (see section (10) of this rule), domestic violence services, family stability activities, medical services, retention services, services to child welfare families, social security application, and stabilized living services.

(36) "Support services" means services that case-managed clients need to participate successfully in activities outlined in their case plan, seek and maintain employment, or remove barriers.

(37) "Transition services" means services included in an individual's case plan when the individual becomes employed or becomes ineligible for cash benefits because of an increase in income or resources.

(38) "Unpaid employment" means a component in which an individual is placed in an unpaid job to develop good work habits, training, and knowledge to obtain employment. Employment may be in the private or public sector or through a work simulation program. Work experience, community service program, providing child care services to a community service program participant, and supported work (see section (34) of this rule) are the activities of the "unpaid employment" component.

(39) "UN work program" means an activity in the paid unsubsidized employment component in which TANF clients work in unsubsidized employment and may also participate in another JOBS work site training activity.

(40) "Vocational training" means an activity and component of the JOBS program that provides JOBS participants with up to 12 months access to specific "vocational training" that will lead to a career with an appropriate wage level and opportunity for employment.

(41) "Work experience" means an activity in the unpaid employment component in which the individual works without pay at a job site to develop good work habits and basic vocational skills that enhance the likelihood the individual will become employed. "Work experience" is available through private for-profit businesses, nonprofit organizations, or public agencies.

(42) "Work supplementation" means an activity in the unpaid employment component that is up to six months of work-site training provided by an employer. The component and activity are both called "work supplementation". In "work supplementation", the Department subsidizes the wages of the participant by providing up to $200 per month to the employer.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.878, 412.006, 412.009, 412.016, 412.049
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.878, 412.001, 412.006, 412.016, 412.009, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 10-1991, f. & cert. ef. 4-19-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 40-1995, f. 12-26-95, cert. ef. 1-1-96; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; Renumbered from 461-190-0110, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 34-2011, f. 12-27-11, cert. ef. 12-29-11; SSP 18-2015(Temp), f. 6-30-15, cert. ef. 7-1-15 thru 12-27-15; SSP 34-2015, f. 12-22-15, cert. ef. 12-28-15

461-190-0211

Case Plan Activities and Standards for Support Service Payments; JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, TANF

In the JOBS, Post-TANF, Pre-TANF, REF, SFPSS, TA-DVS, and TANF programs, notwithstanding any other administrative rule in chapter 461 and subject to the limitations of state funding, the following special provisions apply:

(1) Participation in an activity (see OAR 461-001-0025) is available to the following individuals:

(a) An individual who is an adult parent, needy caretaker relative (see OAR 461-001-0000), or teen parent (see OAR 461-001-0000) receiving TANF who is not otherwise exempt (see OAR 461-130-0305) and in accordance with participation requirements in OAR 461-130-0310.

(b) An individual who is an applicant or recipient in the Pre-TANF, Post-TANF, or SFPSS program.

(c) Subject to local services and budget, an individual who is exempt from JOBS requirements as a one-parent household with a dependent child (see OAR 461-001-0000) under six months of age and has approved activities as specified in the individual's case plan (see OAR 461-001-0025).

(d) An individual who has gone over-income for the TANF program due to earnings and needs to increase activity hours to meet Post-TANF federally required participation rates (see OAR 461-001-0025).

(e) An individual who has become over-income for the TANF program due to earnings in an on-the-job training (see OAR 461-001-0000) activity is eligible to receive support services (see OAR 461-001-0025) for no more than three months, unless circumstances unique to the situation are identified and warrant the Department to approve a limited number of additional months. Eligibility for support services under this subsection is only permitted while the individual continues to participate in the on-the-job training activity.

(2) For eligible individuals, subject to the requirements and limitations in sections (1), (5), (6), and (7) of this rule, the following activities are available, and include support services payments if needed:

(a) Job search (see OAR 461-001-0025).

(b) JOBS Plus (see OAR 461-001-0025 and 461-101-0010) is limited to six months per individual, unless circumstances unique to the employment situation are identified and warrant the Department to approve a limited number of additional months.

(c) Work experience (see OAR 461-001-0025).

(d) Supported work (see OAR 461-001-0025).

(e) High School or GED Completion Attendance (see OAR 461-001-0025).

(f) Parents as Scholars (see OAR 461-001-0025).

(g) Limited family stability (see OAR 461-001-0000) activity.

(A) Drug and alcohol services (see OAR 461-001-0025).

(B) Mental health services (see OAR 461-001-0025).

(C) Attending medical appointments or services.

(D) Rehabilitation activities (see OAR 461-001-0025).

(E) Crisis Intervention (see OAR 461-001-0025).

(F) SSI application process.

(h) Vocational training (see OAR 461-001-0025).

(i) Life skills (see OAR 461-001-0025).

(j) On-the-job training.

(k) Unsubsidized employment (work).

(L) Adult Basic Education (see OAR 461-001-0025).

(m) Job skills training (see OAR 461-001-0025).

(n) Self-initiated training (see OAR 461-001-0025).

(3) The following activities do not include support services payments:

(a) Domestic Violence Intervention.

(b) Family Support & Connections.

(c) Microenterprise (see OAR 461-001-0000).

(d) Post-TANF.

(e) Program entry (see OAR 461-001-0025).

(4) Participation in an activity is based on whether an individual is Job Ready, Near Job Ready, Not Job Ready, or a teen parent.

(a) Job Ready means the individual has no barrier (see OAR 461-001-0025) or current barriers do not impact participation or employment. In addition, the individual has all of the following:

(A) Prior stable work history, either paid or unpaid.

(B) Had not voluntarily quit or been dismissed from his or her most recent employment (see OAR 461-135-0070) without good cause (see OAR 461-135-0070).

(C) Reliable or available transportation.

(D) No outstanding legal issues that would impact or prevent employment.

(E) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.

(b) Near Job Ready means the individual has minimal barriers to participation or employment and the individual is addressing the barriers. In addition, the individual has all of the following:

(A) Limited or no work history, either paid or unpaid.

(B) Reliable or available transportation.

(C) No outstanding legal issues that would impact or prevent employment, or such legal issues are identified and are being addressed.

(D) Access to reliable child care within support services limits, or does not need help to pay for child care, or does not need child care.

(c) Not Job Ready means the individual has one or more barriers to participation or employment or is in crisis, and the individual is not addressing the barriers. For example, the individual has one or more of the following:

(A) Lack of stable housing that is preventing participation in an activity or employment.

(B) Domestic violence (see OAR 461-001-0000), mental health, or alcohol and drug issues, and the individual is not addressing the issue.

(C) Medical issues that prevent participation in an activity or employment.

(D) Outstanding legal issues that would impact or prevent employment.

(E) Literacy issues that impact the ability for the individual to participate in an activity or obtain employment.

(F) Other family stability issues that need to be addressed.

(5) In approving JOBS program support services payments, the Department must consider lower cost alternatives. This rule is not intended to supplant Department funding with other funding that is available in the community. The expectation of the Department is that case managers and clients work collaboratively to seek resources that are reasonably available to the client in order to participate in activities.

(6) Payments for support services are only provided when:

(a) Necessary to participate in activities in a signed case plan;

(b) Authorized in advance; and

(c) All other provisions of this rule are met.

(7) Payments for support services are subject to the following limitations:

(a) Child Care. Payments for child care may be authorized, as limited by OAR 461-160-0040, if necessary to enable Job Ready or Near Job Ready individuals or teen parents to participate in an approved JOBS program activity specified in the individual's case plan, including a Not Job Ready individual approved by the district to complete a family stability activity. If authorized, payment for child care is:

(A) The lesser of the actual rate charged by the care provider and the rate established in OAR 461-155-0150. The Department rate for children in care less than 158 hours in a month is limited by OAR 461-155-0150.

(B) The minimum hours necessary, including meal and commute time, for the individual to participate in an approved JOBS program activity.

(b) Transportation. The Department may provide payments for a Job Ready or Near Job Ready individual or teen parent for transportation costs incurred in travel to and from an approved JOBS program activity or a Not Job Ready individual approved by the district to complete a family stability activity. Payment is made only for the cost of public transportation or the cost of fuel. Payments are subject to the following considerations:

(A) Payment for public transportation is a priority over payment for a privately owned vehicle.

(B) Payment for fuel costs for a privately-owned vehicle is only provided if the client or individual providing the transportation has a valid driver's license and vehicle insurance and either of the following is true:

(i) No public transportation is available or the client is unable to use public transportation because of a verifiable medical condition or disability for which no accommodation is available.

(ii) Public transportation is available but is more costly than the cost of fuel.

(c) Housing and Utilities. Payments for housing and utilities are not allowed.

(d) Other Payments. When the need is identified by the district and no other sources are available, the Department may provide other payments needed:

(A) To look for work.

(B) To accept a job offer.

(C) To attain a high school diploma or GED.

(D) For books and supplies to complete a district-approved vocational training.

(E) Other payments with manager approval that are not otherwise restricted by rule.

(e) None of the following payments are allowed:

(A) Non-essential items.

(B) Television, cable, and Internet.

(C) Fines, reinstatement fees, restitution, legal fees, civil fees, court costs, or other costs associated with a penalty.

(D) Purchase of a car, recreational vehicle, or motor home.

(E) Support services for exempt individuals.

(F) Pet-related costs.

(G) ERDC co-payments.

(8) The Department may require an individual to provide verification of a need for, or costs associated with, support services prior to approval and issuance of payment if verification is reasonably available.

(9) The Department may reduce, close, or deny in whole or in part a request for a support services payment in the following circumstances:

(a) The individual is disqualified for failing to comply with a case plan, unless the payment in question is necessary for the individual to demonstrate cooperation with his or her case plan.

(b) The purpose for the payment is not related to the individual's case plan.

(c) The individual disagrees with a support services payment offered or made by the Department as outlined in the individual's case plan.

(d) The individual is not determined to be a Job Ready or Near Job Ready individual under section (1) of this rule, a Not Job Ready individual in a family stability activity, or a teen parent.

Stat. Auth.:ORS 409.050, 411.060, 411.070, 411.121, 412.006, 412.009, 412.014, 412.049, 412.124, 2013 Or. Laws 722

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.121, 412.001, 412.006, 412.009, 412.014, 412.049, 412.124, 2013 Or. Laws 722

Hist.: AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 18-1998, f. & cert. ef. 10-2-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 11-2005(Temp), f. & cert. ef. 9-1-05 thru 12-31-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 19-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 30-2011(Temp), f. & cert. ef. 11-1-11 thru 4-29-12; SSP 11-2012, f. & cert. ef. 4-6-12; SSP 12-2012(Temp), f. & cert. ef. 4-6-12 thru 9-30-12; SSP 18-2012(Temp), f. & cert. ef. 5-23-12 thru 9-30-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 34-2012(Temp), f. & cert. ef. 11-6-12 thru 5-5-13; SSP 38-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 5-5-13; SSP 2-2013(Temp), f. & cert. ef. 1-23-13 thru 5-5-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 15-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 6-2014(Temp), f.& cert. ef. 3-5-14 thru 9-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 3-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 18-2015(Temp), f. 6-30-15, cert. ef. 7-1-15 thru 12-27-15; SSP 34-2015, f. 12-22-15, cert. ef. 12-28-15

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Rule Caption: Amending rules relating to medical and public assistance programs

Adm. Order No.: SSP 35-2015

Filed with Sec. of State: 12-23-2015

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Rules Adopted: 461-145-0259

Rules Amended: 461-115-0700, 461-140-0020, 461-140-0120, 461-140-0250, 461-145-0010, 461-145-0020, 461-145-0040, 461-145-0050, 461-145-0089, 461-145-0220, 461-145-0240, 461-145-0252, 461-145-0260, 461-145-0310, 461-145-0320, 461-145-0330, 461-145-0360, 461-145-0380, 461-145-0410, 461-145-0420, 461-145-0460, 461-145-0490, 461-145-0510, 461-145-0540, 461-145-0600, 461-150-0050, 461-155-0575, 461-160-0010, 461-160-0015, 461-160-0550, 461-160-0551, 461-160-0552, 461-175-0310

Subject: The Department of Human Services is making several changes to Aging and People with Disabilities (APD) medical programs. The changes:

- Remove resource limits for three of the Medicare Savings Programs (QMB-BAS, SMB, and SMF).

- Increase the amount of in-home supplement in Oregon Supplemental Income Program Medical (OSIPM) from $15 to $22 per month and clarify the type of income counted in determining eligibility for the special need.

- Clarify that in the OSIPM and QMB programs, when determining adjusted income, the $20 deduction from unearned income is not taken from income received from a program based on need and that is funded by the federal government or a nongovernmental agency.

- Clarify policy relating to treatment of Indian (Native American) benefits in APD medical programs.

These changes are described in more detail below.

Remove Resource Limits for QMB-BAS, SMB, and SMF:

The rules below are being amended to reflect that the Department is removing resource limits for three of the Medicare Savings Programs (QMB-BAS, SMB, and SMF), which are currently based on the resource limits of the Medicare Part D Low Income Subsidy ($7,280 for a need group of one and $10,930 for a 2-person need group). States are authorized to use flexibility under Section 1902(r)(2) of the Social Security Act for the purposes of simplifying administrative processes. This change will facilitate more timely eligibility determinations for DHS staff as well as make the application and redetermination process less cumbersome for applicants for and recipients of Medicare Savings Programs. Note: CMS has clarified that the Department may not eliminate resource limits for the QMB-DW program, and that is reflected in these amendments. Oregon currently has no QMB-DW clients because individuals who would qualify for QMB-DW would also qualify for OSIPM-EPD (in order to qualify for QMB-DW, one must not be eligible for any other Medicaid program).

- OAR 461-115-0700 about required verifications is being amended to remove QMB-BAS/SMB/SMF programs from the section regarding verifying resources because resources will no longer be an eligibility factor.

- OAR 461-140-0020 about availability of resources is being amended to remove the QMB-BAS/SMB/SMF programs; whether a resource is available will no longer be relevant because resources are all excluded.

- OAR 461-140-0120 about availability and treatment of lump-sum income is being amended to account for the fact that QMB-BAS/SMB/SMF programs will no longer count lump-sum income as a resource in the month after receipt.

- OAR 461-140-0250 about determining the uncompensated value of a transferred asset is being amended to remove QMB programs for two reasons: there is no longer a resource limit and because disqualifying transfers only affect eligibility for long-term-care services, not QMB programs.

- OAR 461-145-0010 about animals is being amended to state that all animals are excluded as a resource in the QMB-BAS/SMB/SMF programs.

- OAR 461-145-0020 about annuities is being amended to state that in the QMB-BAS/SMB/SMF programs, an annuity is not considered a resource, but annuity payments are counted as unearned income to the payee.

- OAR 461-145-0040 about burial arrangements and burial funds is being amended to state that these items are excluded in the QMB-BAS/SMB/SMF programs.

- OAR 461-145-0050 about burial spaces and merchandise is being amended to remove QMB-BAS/SMB/SMF programs from sections that refer to these items as countable resources.

- OAR 461-145-0089 about income and resources for corporations and other business entities in the OSIP, OSIPM, and QMB programs is being amended to remove QMB-BAS/SMB/SMF programs from sections that refer to the treatment of the equity value of an ownership interest in a corporation or business entity.

- OAR 461-145-0220 about the home has been amended to remove QMB-BAS/SMB/SMF programs from sections that refer to the home as a countable resource.

- OAR 461-145-0240 about income-producing sales contracts is being amended to remove references to QMB-BAS/SMB/SMF programs in sections which address these items as countable resources.

- OAR 461-145-0252 about the treatment of income-producing property in the OSIP, OSIPM, and QMB programs is being amend-

ed to remove QMB-BAS/SMB/SMF programs from the section about counting the equity value of income-producing property as a resource.

- OAR 461-145-0310 about life estates is being amended to remove QMB-BAS/SMB/SMF programs as life estates are resources and will no longer be an eligibility factor.

- OAR 461-145-0320 about life insurance is being amended to remove QMB-BAS/SMB/SMF programs because life insurance is a resource and will no longer be an eligibility factor.

- OAR 461-145-0330 about loans and interest on loans is being amended to remove references to QMB-BAS/SMB/SMF programs in sections which address loans as a resource and to establish new rules for how to treat payments to both a lender and a borrower.

- OAR 461-145-0360 about motor vehicles is being amended to remove QMB-BAS/SMB/SMF programs because motor vehicles are a resource and will no longer be an eligibility factor.

- OAR 461-145-0380 about pension and retirement plans is being amended to remove QMB-BAS/SMB/SMF programs from sections which refer to these items as countable resources.

- OAR 461-145-0410 about program benefits is being amended to remove associations between QMB-BAS/SMB/SMF programs and benefits that are counted as a resource.

- OAR 461-145-0420 about real property is being amended to remove QMB-BAS/SMB/SMF programs because real property is a resource.

- OAR 461-145-0460 about sale of a resource is being amended to establish new rules about how proceeds from a sale are counted, namely that they are not countable as a resource and under what conditions they are counted as income.

- OAR 461-145-0490 about Social Security benefits is being amended to remove the association between QMB-BAS/SMB/SMF programs and circumstances when these benefits are counted as a resource.

- OAR 461-145-0510 about SSI is being amended to remove any association between QMB-BAS/SMB/SMF programs and treatment of SSI as a resource.

- OAR 461-145-0540 about trusts is being amended to state that trust funds are excluded as a resource in the QMB-BAS/SMB/SMF programs and that distributions to or for the benefit of the client are treated as unearned income.

- OAR 461-145-0600 about work-related capital assets, equipment, and inventory is being amended to remove QMB-BAS/SMB/SMF programs.

- OAR 461-150-0050 about prospective eligibility and budgeting is being amended to clarify that certain monies are excluded as income and to remove the association between QMB-BAS/SMB/SMF programs and the resource provisions.

- OAR 461-160-0010 about use of resources in determining financial eligibility is being amended to establish that resources have no effect in determining eligibility for the QMB-BAS/SMB/SMF programs.

- OAR 461-160-0015 about resource limits is amended to state that in the QMB-BAS/SMB/SMF programs, all resources are excluded. (This rule is also amended to move the REF resource limit from the TANF section into its own section. Some of the terminology in the combined section is only applicable to the TANF program. Addressing REF in its own section avoids confusion.)

- OAR 461-175-0310 about the notice situation for asset transfer disqualifications is being amended to remove QMB-BAS/SMB/SMF programs because asset transfers have no effect on eligibility for those programs.

OSIPM In-Home Supplement Increase:

OAR 461-155-0575 about the in-home supplement special need in Oregon Supplemental Income Program Medical (OSIPM) is being amended to increase the amount of the payment authorized by the rule from $15 to $22 per month. The increase may be adjusted higher or lower depending on spending patterns during the last quarter of 2015. Additionally, the rule is being amended to clarify the type of income counted in determining eligibility for the special need by stating that countable income is used in determining eligibility.

OSIPM and QMB Income Deduction:

OARs 461-160-0550, 461-160-0551, and 461-160-0552 about income deductions used to determine countable adjusted income in the OSIPM and QMB programs are being amended to clarify that the $20 deduction from unearned income is not taken from income received from a program based on need and that is funded fully or in part by the federal government or a nongovernmental agency. OAR 461-160-0552 is also amended to state that the $20 deduction does not apply to in-kind support and maintenance.

Treatment of Indian (Native American) Benefits:

OAR 461-145-0260 about Indian (Native American) benefits is being amended to remove APD medical programs because APD medical policy is no longer aligned with the other programs covered in this rule. A new rule, OAR 461-145-0259, is being adopted to address this topic for APD medical programs.

In addition, non-substantive edits are being made to these rules to improve clarity and ease of reading such as updating terminology, alphabetizing programs, correcting and updating statutory and rule references, and correcting formatting and punctuation.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-115-0700
Required Verification; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and QMB programs:

(1) Except as provided in section (2) of this rule, all eligibility (see OAR 461-001-0000) factors must be verified at initial application, when there is a change to any factor, and whenever eligibility for benefits becomes questionable.

(2) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, if the total reported value of gross "liquid resources" of the financial group (see OAR 461-110-0530) is less than $400, verification of the value of "liquid resources" is only required if questionable. For the purposes of this rule, "liquid resources" include cash as well as other resources that can be converted to cash within 20 business days, except that the cash surrender value of a life insurance policy is not considered a liquid resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839
Hist.: AFS 19-1993, f. & cert. ef. 10-1-93; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-140-0020
Availability of Resources

(1) Except as provided in sections (2) to (4) of this rule:

(a) In the SNAP program, a resource owned jointly by a client and another individual is available in its entirety to the client.

(b) In all other programs, jointly-owned resources are available to members of a financial group (see OAR 461-110-0530) only to the extent they own the resource; except that in the OSIPM and QMB-DW program, jointly-owned "liquid resources" (including bank and other financial institution accounts) are assumed to be available in their entirety to the client. The client has the right to provide evidence rebutting the ownership assumption. For the purposes of this rule, "liquid resources" means cash as well as other resources that can be converted to cash within 20 business days.

(2) A resource is not available to a client in each of the following situations:

(a) The client has a legal interest in the resource, but the resource is not in the client's possession and the client is unable to gain possession of it. In the REF and REFM programs, if a resource remains in the applicant's country of origin, it is not available.

(b) The resource is jointly owned with others not in the financial group who are unwilling to sell their interest in the resource, and the client's interest is not reasonably saleable.

(c) The client verifiably lacks the competence to gain access to or use the resource and there is no legal representative available to act on the client's behalf.

(d) The client is a victim of domestic violence (see OAR 461-001-0000) and:

(A) Attempting to use the resource would subject the client to risk of domestic violence; or

(B) The client is using the resource to avoid the abusive situation.

(e) Except as provided in OAR 461-145-0540, the resource is included in an irrevocable or restricted trust and may not be used to meet the basic monthly needs of the financial group.

(f) In the OSIP, OSIPM, and QMB programs, there is a legal bar to the sale of the resource.

(3) A resource is not considered available during the time the owner does not know he or she owns the resource.

(4) If a resource is subject to an early withdrawal penalty, the amount of the penalty is not available.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-140-0120
Availability and Treatment of Lump-Sum Income

(1) Lump-sum income (see OAR 461-001-0000) is treated as follows if it is received by a member of a financial group (see OAR 461-110-0530).

(2) In the EA, REF, REFM, SNAP, and TANF programs:

(a) Lump-sum income is a resource.

(b) In the EA, REF, REFM, and TANF programs:

(A) Lump-sum income is considered available to the financial group when a member of the group receives the income and until the income becomes unavailable for a reason beyond the group's control.

(B) Lump-sum income is considered unavailable for a reason beyond the group's control if the member who received the lump-sum income:

(i) Leaves the financial group before spending any of the lump-sum income; or

(ii) Spends the lump-sum income on an immediate basic need or emergency.

(3) In the ERDC program, lump-sum income is excluded.

(4) In the GA, GAM, OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB-DW programs, lump-sum income is treated as follows:

(a) Lump-sum income not excluded is unearned income in the month of receipt, and any amount remaining in future months is a resource, except that in the OSIP and OSIPM programs retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following lump-sum income is excluded:

(A) The first $20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained in OAR 461-155-0500 and following.

(5) In the OSIP-EPD and OSIPM-EPD programs, lump-sum income is counted as a resource.

(6) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) Lump-sum income not excluded is unearned income in the month of receipt, except that retroactive SSB and SSI payments are treated in accordance with OAR 461-145-0490 and 461-145-0510.

(b) The following lump-sum income is excluded:

(A) The first $20 received in a month;

(B) The income the client turns over to the Department as reimbursement for previous assistance; and

(C) The income the client uses to pay for special need items approved by the Department. Special needs are explained in OAR 461-155-0500 and following.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-1991(Temp), f. & cert. ef. 1-2-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 5-1993, f. & cert. ef. 4-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-140-0250
Determining The Uncompensated Value of a Transferred Asset

(1) The uncompensated value of a disqualifying transfer of an asset is used in OAR 461-140-0260 to 461-140-0300 to calculate the ineligibility period of the financial group (see OAR 461-110-0530).

(2) To determine uncompensated value:

(a) In the GA, GAM, OSIP, and OSIPM programs:

(A) The value of the compensation received for the asset is subtracted from the fair market value (see OAR 461-001-0000) of the asset. This result is the uncompensated value, unless the financial group had countable (see OAR 461-001-0000) resources of less than the resource limit at the time of the first transfer. If the financial group had countable resources of less than the resource limit at the time of the first transfer, the remainder is then added to other countable resources, and the amount by which the sum exceeds the resource limit in OAR 461-160-0015 is the uncompensated value.

(B) For an annuity, unless the client verifies a lesser amount, the fair market value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular monthly payments already received, minus early withdrawals, and minus any surrender fees.

(b) In all other programs, the value of the compensation received for the resource is subtracted from the fair market value of the resource. The remainder is added to the other countable resources at the time of the transfer. The amount by which the sum exceeds the resource limit is the uncompensated value.

(c) The compensation received for a transferred asset includes:

(A) Encumbrances assumed by the buyer; and

(B) Goods or services provided to the client, limited to their true value, if there was a prior agreement to exchange the asset for the goods or services.

Stats. Implemented: ORS 409.010, 409.050, 410.020, 411.060, 411.070, 411.404, 411.632, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0010
Animals

(1) Animals that are kept as pets or raised as food for the filing group (OAR 461-110-0310) are excluded.

(2) The treatment of an animal considered income-producing property (see OAR 461-001-0000) is covered by the income-producing property rules (see OAR 461-145-0250 and 461-145-0252).

(3) In the OSIP, OSIPM, and QMB-DW programs:

(a) The fair market value (see OAR 461-001-0000) of animals that are kept or retained for sale or resale is a countable (see OAR 461-001-0000) resource.

(b) If an animal is a source of both food and income for the filing group:

(A) The fair market value of the animal remains excluded.

(B) The proceeds of any sales of the animal or its products are counted as unearned income.

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all animals are excluded as a resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0020
Annuities; Not OSIPM

(1) For the purposes of this rule:

(a) "Actuarially sound" means commercial annuities (see subsection (d) of this section) that pay principal and interest out in equal monthly installments over the actuarial life expectancy of the annuitant. For purposes of this definition, the actuarial life expectancy is established by the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration and, for transactions (including the purchase of an annuity) occurring on or after July 1, 2008, the payout period must be within three months of the actuarial life expectancy.

(b) An annuity does not include benefits that are set up and accrued in a regularly funded retirement account while an individual is working, whether maintained in the original account or used to purchase an annuity,

if the Internal Revenue Service recognizes the account as dedicated to retirement or pension purposes. (The treatment of pension and retirement plans is covered in OAR 461-145-0380.)

(c) "Child" means a biological or adoptive child who is:

(A) Under age 21; or

(B) Any age and meets the Social Security Administration criteria for blindness or disability.

(d) "Commercial annuities" means contracts or agreements (not related to employment) by which an individual receives annuitized payments on an investment for a lifetime or specified number of years.

(2) In all programs except QMB-BAS, QMB-SMB, and QMB-SMF, an annuity is counted as a resource if:

(a) The annuity does not make regular payments for a lifetime or specified number of years; or

(b) The annuity does not qualify for exclusion as a resource under subsection (4)(b)(C) of this rule.

(3) If an annuity is a countable (see OAR 461-001-0000) resource under this rule, the cash value is equal to the amount of money used to establish the annuity, plus any additional payments used to fund the annuity, plus any earnings, minus any regular payments already received, minus any early withdrawals, and minus any surrender fees.

(4) Commercial annuities and payments from such annuities are counted as follows:

(a) In all programs except OSIP and QMB, annuity payments are counted as unearned income to the payee.

(b) In the OSIP and QMB-DW program:

(A) For an individual in a nonstandard living arrangement (see OAR 461-001-0000), if an individual or the spouse (see OAR 461-001-0000) of an individual purchases or transfers an annuity prior to January 1, 2006, the transaction may be subject to the rules on asset transfers in OAR 461-140-0210 and following. For an annuity that is not disqualifying or for an individual in a standard living arrangement (see OAR 461-001-0000), the annuity payments are counted as unearned income to the payee.

(B) If an individual or the spouse of an individual purchases an annuity on or after January 1, 2006, the annuity is counted as a resource unless it is excluded under paragraph (C) of this subsection.

(C) An annuity described in paragraph (B) of this subsection is excluded as a resource if the criteria in subparagraphs (i), (ii), and (iii) of this paragraph are met, except that if an unmarried individual is the annuitant, the requirements of subparagraph (iv) of this paragraph must also be met and if the spouse of an individual is the annuitant, the requirements of subparagraph (v) of this paragraph must also be met.

(i) The annuity is irrevocable.

(ii) The annuity is actuarially sound (see subsection (1)(a) of this rule).

(iii) The annuity is issued by a business that is licensed and approved to issue commercial annuities by the state in which the annuity is purchased.

(iv) If an unmarried individual is the annuitant, the annuity must specify that upon the death of the individual, the first remainder beneficiary is either of the following:

(I) The Department, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the individual.

(II) The child (see subsection (1)(c) of this rule) of the individual, if the Department is the next remainder beneficiary (after this child), up to the amount of medical benefits provided on behalf of the individual, in the event that the child does not survive the individual.

(v) If the spouse of an individual is the annuitant, the annuity must specify that, upon the death of the spouse of the individual, the first remainder beneficiaries are either of the following:

(I) The individual, in the event that the individual survives the spouse; and the Department, in the event that theindividual does not survive the spouse, for all funds remaining in the annuity up to the amount of medical benefits provided on behalf of the individual.

(II) A child of the spouse; and the individual in the event that this child does not survive the spouse.

(D) If an annuity is excluded under paragraph (C) of this subsection, annuity payments are counted as unearned income to the payee.

(c) For OSIPM, see OAR 461-145-0022.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, only the interest portion of annuity payments is counted as unearned income to the payee.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.141, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0040

Burial Arrangements and Burial Fund

(1) The following definitions apply to this rule:

(a) "Burial arrangement" means an agreement with an entity, such as a funeral agreement (which means an arrangement made with a licensed funeral provider), burial insurance, or a burial trust designating a funeral director as the beneficiary, that makes allowance for burial costs. A "burial arrangement" does not include a burial space, which is covered in OAR 461-145-0050, or a burial fund (see subsection (b) of this section).

(b) "Burial fund" means an identifiable fund set aside for a client's burial costs. A "burial fund" does not include a burial space, which is covered in OAR 461-145-0050, or a burial arrangement (see subsection (a) of this section).

(2) Except as provided in subsection (e) of this section, a burial arrangement is treated as follows:

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one prepaid burial arrangement for each member of the filing group (see OAR 461-110-0310) is excluded.

(b) For grandfathered OSIP and OSIPM clients (see OAR 461-125-0330(2), 461-125-0370(1)(b), and 461-135-0771), up to $1,000 in combined equity value of each burial arrangement with a licensed funeral director (plus accrued interest) and life insurance policies are excluded. The amount of combined cash and equity value of all life insurance and burial arrangements that is over $1,000 is counted as a resource.

(c) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs is excluded.

(d) In all programs not listed in subsection (a) of this section and for OSIP and OSIPM clients not covered by subsection (b) of this section, a burial arrangement is treated in the manner as the program treats a burial fund under section (3) of this rule.

(e) Burial insurance that has cash surrender value is considered life insurance and is treated in accordance with OAR 461-145-0320 and, as applicable, subsection (b) of this section.

(3) A burial fund is treated as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:

(A) A burial fund may be established only from financial means such as cash, burial contracts, bank accounts, stocks, bonds, or life insurance policies.

(B) A burial fund is counted as a resource if it is commingled with assets unrelated to a burial. The amount set aside for burial must be in a separate account to be excluded from resource consideration.

(C) A burial fund may be established if the countable (see OAR 461-001-0000) resources of a client exceed allowable limits. A burial fund is excluded from the resource calculation to the extent allowed in paragraph (D) of this subsection.

(D) The following calculation determines the exclusion for a burial fund:

(i) Up to $1,500 of a burial fund may be excluded from resources for each of the following:

(I) The client.

(II) The client's spouse.

(ii) The amount in subparagraph (i) of this paragraph is reduced by the total of the following amounts:

(I) The face value of life insurance policies owned by the client that have already been excluded from resources.

(II) The amount in an irrevocable burial trust or any other irrevocable arrangement to cover burial costs.

(E) All interest earned on an excluded burial fund or increases in the value of an excluded burial arrangement if left in the fund is excluded from income.

(b) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, a burial fund is excluded as a resource.

(c) In all programs not listed in subsections (a) or (b) of this section, a burial fund is counted as a resource.

(4) There is no overpayment for the time period during which the burial arrangement or burial fund existed if a client:

(a) Cancels an excluded burial arrangement; or

(b) Uses an excluded burial fund for any purpose other than burial costs.

(5) If an asset originally used as a burial arrangement or burial fund is converted to other uses, the asset is treated under the other applicable rules.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2000, f. 3-31-00, cert. ef. 4-1-00; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0050
Burial Space and Merchandise

(1) Burial spaces include conventional grave sites, crypts, mausoleums, urns, and other repositories that are traditionally used for the remains of deceased individuals. Burial spaces also include headstones and the opening and closing of the grave.

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, the equity value (see OAR 461-001-0000) of one burial space is excluded as a resource for each member of the financial group (see OAR 461-110-0530).

(b) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the equity value of a burial space is excluded as a resource if owned by the client and designated for the client, the spouse (see OAR 461-001-0000) of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals.

(2) Burial merchandise includes, but is not limited to, caskets, liners, burial vaults, markers, and foundations. The equity value of burial merchandise is excluded as a resource if owned by the client and designated for:

(a) In the ERDC, REF, REFM, SNAP, and TANF programs, a member of the financial group.

(b) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the client, the spouse of the client, minor and adult children, siblings, parents, and the spouse of any of these individuals.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 11-2015, f. 3-13-15, cert. ef. 4-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0089
Corporations and Other Business Entities; Income and Resources, Not Self-Employment; OSIP, OSIPM, QMB

(1) For purposes of this rule:

(a) "Business entity" includes a sole proprietorship, a partnership, and an unincorporated limited liability company.

(b) "Principal" means an individual with significant authority in and responsibility for the success or failure of a corporation or "business entity" (see subsection (a) of this section), including:

(A) A sole proprietor.

(B) A general partner in a partnership.

(C) A member or manager of a limited liability company.

(D) An officer or stockholder with controlling shares in a closely-held corporation.

(2) This rule applies to an individual who has an ownership interest in:

(a) A corporation; or

(b) A business entity, but is not considered self-employed (see OAR 461-145-0915).

(3) For an individual with an ownership interest in and actively working for a corporation:

(a) The individual cannot be considered self-employed, regardless of whether or not the individual is a principal (see subsection (1)(b) of this rule). Income from actively working for the corporation is treated as earned income as provided in OAR 461-145-0130.

(b) Dividends or profits are treated as unearned income.

(c) Income not paid to an individual but retained by the corporation is not considered income of the individual.

(d) Property and resources owned by the corporation are excluded.

(e) Except for QMB-BAS, QMB-SMB, and QMB-SMF, if maintaining an ownership interest in a corporation is required for employment, the equity value (see OAR 461-001-0000) of the ownership interest is excluded; otherwise it is counted as provided in subsection (6)(a) of this rule.

(f) Except as provided in OAR 461-145-0280, a non-business expenditure, including, but not limited to, a car or housing payment, paid by the corporation that benefits the individual is treated as earned income of the individual.

(4) If the individual has an ownership interest in a business entity, is considered a principal, and is actively working in the business entity, the individual is considered self-employed (see OAR 461-145-0915).

(5) If the individual has an ownership interest in a business entity, is not considered a principal, and is actively working in the business entity:

(a) The individual's income, not including dividends or profits from the business entity, is treated as earned income as provided in OAR 461-145-0130.

(b) Dividends or profits are treated as unearned income.

(c) Except for QMB-BAS, QMB-SMB, and QMB-SMF, if maintaining an ownership in the business entity is required for employment, the equity value of the ownership interest is excluded; otherwise it is counted as provided in subsection (6)(a) of this rule.

(d) Except as provided in OAR 461-145-0280, a non-business expenditure, including, but not limited to, a car or housing payment, paid by a business entity that benefits the individual is treated as earned income of the individual.

(6) If the individual has an ownership interest in a corporation or business entity, but is not actively working in the corporation or business entity:

(a) Except for QMB-BAS, QMB-SMB, and QMB-SMF, and except as provided in OAR 461-140-0020, the equity value of an ownership interest in a corporation or business entity, such as stock in the corporation, is treated as a resource. See OAR 461-145-0520 for how to treat stock.

(b) Except as provided in OAR 461-140-0040, income of the individual from a corporation or business entity is treated as unearned income of the individual.

(c) Except as provided for in OAR 461-145-0280, a non-business expenditure, including, but not limited to, a car or housing payment, paid by a corporation or business entity that benefits the individual is treated as unearned income of the individual.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839
Hist.: SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0220
Home

(1) Home defined: A home is the place where the filing group (see OAR 461-110-0310) lives. A home may be a house, boat, trailer, mobile home, or other habitation. A home also includes the following:

(a) Land on which the home is built and contiguous property.

(A) In all programs except the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, property must meet all the following criteria to be considered contiguous property:

(i) It must not be separated from the land on which the home is built by land owned by people outside the financial group (see OAR 461-110-0530).

(ii) It must not be separated by a public right-of-way, such as a road.

(iii) It must be property that cannot be sold separately from the home.

(B) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, contiguous property is property not separated from the land on which the home is built by land owned by people outside the financial group.

(b) Other dwellings on the land surrounding the home that cannot be sold separately from the home.

(2) Exclusion of home and other property:

(a) For an individual who has an initial month (see OAR 461-001-0000) of long-term care on or after January 1, 2006:

(A) For purposes of this subsection, "child" means a biological or adoptive child who is:

(i) Under age 21; or

(ii) Any age and meets the Social Security Administration criteria for blindness or disability.

(B) The equity value (see OAR 461-001-0000) of a home is excluded if the requirements of at least one of the following subparagraphs are met:

(i) The child (see paragraph (A) of this subsection) of the individual occupies the home.

(ii) The spouse (see OAR 461-001-0000) of the individual occupies the home.

(iii) The equity in the home is $552,000 or less, and the requirements of at least one of the following sub-subparagraphs are met:

(I) The individual occupies the home.

(II) The home equity is excluded under OAR 461-145-0250.

(III) The home is listed for sale per OAR 461-145-0420.

(iv) Notwithstanding OAR 461-120-0330, the equity in the home is more than $552,000 and the individual is unable legally to convert the equity value in the home to cash.

(b) For all other filing groups, the value of a home is excluded when the home is occupied by any member of the filing group.

(c) In the SNAP program, the value of land is excluded while the group is building or planning to build their home on it, except that if the group owns (or is buying) the home they live in and has separate land they intend to build on, only the home in which they live is excluded, and the land they intend to build on is treated as real property in accordance with OAR 461-145-0420.

(3) Exclusion during temporary absence: If the value of a home is excluded under section (2) of this rule, the value of this home remains excluded in each of the following situations:

(a) In all programs except the GA, GAM, OSIP, OSIPM, and QMB-DW programs, during the temporary absence of all members of the filing group from the property, if the absence is due to illness or uninhabitability (from casualty or natural disaster), and the filing group intends to return home.

(b) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, when the individual is absent to receive care in a medical institution, if one of the following is true:

(A) The absent individual has provided evidence that the individual will return to the home. The evidence must reflect the subjective intent of the individual, regardless of the individual's medical condition. A written statement from a competent individual is sufficient to prove the intent.

(B) The home remains occupied by the individual's spouse, child, or a relative dependent on the individual for support. The child must be less than 21 years of age or, if over the age of 21, blind or an individual with a disability as defined by SSA criteria.

(c) In the REF, REFM, and TANF programs, when all members of the filing group are absent because:

(A) The members are employed in seasonal employment and intend to return to the home when the employment ends; or

(B) The members are searching for employment, and the search requires the members to relocate away from their home. If all members of the filing group are absent for this reason, the home may be excluded for up to six months from the date the last member of the filing group leaves the home to search for employment. After the six months, if a member of the filing group does not return, the home is no longer excluded.

(d) In the SNAP program, when the financial group is absent because of employment or training for future employment.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 410.080, 411.060, 411.070, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07;SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 4-2015, f. & cert. ef. 1-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0240

Income-Producing Sales Contract

(1) The equity value (see OAR 461-001-0000) of an income-producing sales contract is treated as follows:

(a) In the GA, GAM, OSIPM, and QMB-DW programs for contracts originating on or after October 1, 2012:

(A) Except for a contract resulting from the sale of a home, that is treated in accordance with paragraph (B) of this subsection, it is a countable (see OAR 461-001-0000) resource valued at the outstanding principal balance of the contract unless the individual provides convincing evidence of a lower cash value or there is a legal bar to the sale of the contract. If there is a legal bar to the sale of the contract, the equity value of the contract is a transfer of assets (OAR 461-140-0210 to 461-140-0300 regulate the effect of a transfer of assets on a client) for less than fair market value (see OAR 461-001-0000).

(B) The equity value of a contract resulting from the sale of a home is excluded if the entire principal portion of the payments received from the contract is used to purchase another home within three calendar months of receipt of the payments. Otherwise the equity value is treated in accordance with paragraph (A) of this subsection.

(b) Except as provided for in subparagraph (a) of this section, it is excluded.

(2) In all programs, income received from a sales contract is treated as provided in OAR 461-145-0460.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0252

Income-Producing Property; OSIP, OSIPM, and QMB

(1) This rule does not apply to personal or real property used in self-employment. See OAR 461-145-0915 to determine what constitutes self-employment and OAR 461-145-0600 to determine how to treat real or personal property used in self-employment.

(2) Income from income-producing property (see OAR 461-001-0000) is counted as follows:

(a) If a member of the financial group (see OAR 461-110-0530) actively manages the property 20 hours or more per week, the income is treated in the same manner as self-employment income (see OAR 461-145-0915, 461-145-0920, and 461-145-0930).

(b) If a member of the financial group does not actively manage the property 20 hours or more per week, the income is counted as unearned income with exclusions allowed only in accordance with OAR 461-145-0920.

(3) Except for QMB-BAS, QMB-SMB, and QMB-SMF, the equity value (see OAR 461-001-0000) of income-producing property is counted as a resource, subject to the following exceptions:

(a) Except as provided in OAR 461-140-0020.

(b) If the income-producing property, including houses or apartments for rent and land other than the primary residence, produces an annual countable (see OAR 461-001-0000) income of at least six percent of its equity value, the value of the property is excluded up to a maximum of $6,000.

(c) If the annual countable income drops below six percent of the equity value of the income-producing property due to circumstances beyond the client's control, the client has up to 24 months from the end of the tax year in which the earnings dropped below six percent to meet the six percent requirement.

(d) The equity value of government permits representing authority granted by a government agency to engage in income-producing activity is excluded in its entirety.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.404, 411.706, 413.085, 414.685, 414.839

Hist.: SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0259

Indian (Native American) Benefits; GA, GAM, OSIP, OSIPM, QMB

(1) In the GA and GAM programs, Indian benefits described in section (2) of this rule are counted as periodic income (see OAR 461-001-0000 and 461-140-0110) or lump-sum income (see OAR 461-001-0000 and 461-140-0120), unless the individual verifies that such benefits are excluded by the public law for state-funded programs.

(2) The following Indian (Native American) benefits are excluded from income and resources:

(a) Indian lands held jointly with the tribe, or land that may not be sold without the approval of the Bureau of Indian Affairs (BIA).

(b) Payments made under the Indian Judgment Funds Distribution Act (Public Law 93-134).

(c) Distribution of Indian Judgment Funds (Public Law 97-458).

(A) Indian judgment funds include interest and investment income accrued while the funds are held in trust.

(B) Initial purchases made with distributed judgment funds are excluded from resources.

(d) Per capita distributions of all funds held in trust by the Secretary of the Interior to members of an Indian tribe (Public Law 98-64).

(e) The following items received from a native corporation are excluded under the Alaska Native Claims Settlement Act (ANCSA) (Public Law 100-241):

(A) Cash received from a native corporation, including cash dividends on stock received from a native corporation, to the extent it does not exceed $2,000 per individual per year.

(B) Stock, including stock issued or distributed by a native corporation as a dividend or distribution on stock.

(C) A partnership interest.

(D) Land or an interest in land, including land or an interest in land received from a native corporation as a dividend or distribution on stock.

(E) An interest in a settlement trust.

(f) Up to $2000 per year received from payments from individual interests in Trust or Restricted Lands (Public Law 103-66).

(g) Distribution of Per Capita Funds to the Red Lake Band of Chippewa Indians from the proceeds of the sale of timber and lumber on the Red Lake Reservation (Public Law 85-794).

(h) Distribution of Per Capita Funds by the Blackfeet and Gros Ventre tribal governments to members, which resulted from judgment funds to the tribes (Public Law 92-254).

(i) Distribution of Claims Settlement Funds to members of the Hopi and Navajo Tribes (Public Laws 93-531 and 96-305).

(j) Receipts and distributions derived from lands held in trust for Indian tribes are excluded from the following Indian groups (Public Law 94-114):

(A) Seminole Indians.

(B) Pueblos of Zia and Jimenez.

(C) Stockbridge Munsee Indian Community.

(D) Burns Indian Colony.

(E) Assiniboine and Sioux Tribe.

(F) Bad River Band of the Lake Superior Tribe of Chippewa Indians.

(G) Blackfeet Tribe of Montana.

(H) Cherokee Nation of Oklahoma.

(I) Cheyenne River Sioux Tribe.

(J) Crow Creek Sioux Tribe.

(K) Devil's Lake Sioux Tribe.

(L) Fort Belknap Indian Community.

(M) Keweenaw Bay Indian Community.

(N) Lac Courte Oreilles Band of Lake Superior Chippewa Indians.

(O) Lower Brule Sioux Tribe.

(P) Minnesota Chippewa Tribe.

(Q) Navajo Tribe.

(R) Oglala Sioux Tribe.

(S) Rosebud Sioux Tribe.

(T) Shoshone-Bannock Tribe.

(U) Standing Rock Sioux Tribe.

(k) Judgment funds distributed per capita to, or held in trust for, members of the Sac and Fox Indian Nation (Public Law 94-189).

(l) Judgment funds distributed per capita to, or held in trust for, members of the Grand River Band of Ottawa Indians (Public Law 94-540).

(m) Judgment funds distributed per capita to members of the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation (Public Law 95-433).

(n) Receipts derived from trust lands awarded to the Pueblo of Santa Ana and distributed to members of that tribe (Public Law 95-498).

(o) Receipts derived from trust lands awarded to the Pueblo of Zia and distributed to members of that tribe (Public Law 95-499).

(p) Judgment funds distributed per capita or made available for programs for members of the Delaware Tribe of Indians and the absentee Delaware Tribe of Western Oklahoma (Public Law 96-318).

(q) Funds and distributions to members of the Passamaquoddy Tribe, the Penobscot Nation, and the Houlton Band of Maliseet Indians under the Maine Indian Claims Settlement Act (Public Law 96-420).

(r) Distributions of judgment funds to members of the San Carlos Tribe of Arizona (Public Law 97-95).

(s) Distributions of judgment funds to members of the Wyandot Tribe of Indians of Oklahoma (Public Law 97-371).

(t) Distributions of judgment funds to members of the Shawnee Tribe of Indians (Absentee Shawnee Tribe of Oklahoma, the Eastern Shawnee Tribe of Oklahoma, and the Cherokee Band of Shawnee descendants) (Public Law 97-372).

(u) Judgment funds distributed per capita or made available for programs for members of the Miami Tribe of Oklahoma and the Miami Indians of Indiana (Public Law 97-376).

(v) Distributions of judgment funds to members of the Clallam Tribe of Indians of the State of Washington (Port Gamble Indian Community, Lower Elwha Tribal Community, and the Jamestown Band of Clallam Indians) (Public Law 97-402).

(w) Judgment funds distributed per capita or made available for programs for members of the Pembina Chippewa Indians (Turtle Mountain Band, Chippewa Cree Tribe, Minnesota Chippewa Tribe, and Little Shell Band of Chippewa Indians of Montana) (Public Law 97-403).

(x) Per capita distributions of judgment funds to members of the Gros Ventre and Assiniboine Tribes of Fort Belknap Indian Community, and the Papago Tribe of Arizona (Public Law 97-408).

(y) Up to $2,000 of per capita distributions of judgment funds to members of the Confederated Tribes of the Warm Springs Reservation (Public Law 97-436).

(z) Judgment funds distributed to the Red Lake Band of Chippewa Indians (Public Law 98-123).

(aa) Funds distributed per capita or family interest payments for members of the Assiniboine Tribe of the Fort Belknap Indian Community of Montana and the Assiniboine Tribe of the Fort Peck Indian Reservation of Montana (Public Law 98-124).

(bb) Judgment funds and income therefrom distributed to members of the Shoalwater Bay Indian Tribe (Public Law 98-432).

(cc) All distributions to heirs of certain deceased Indians under the Old Age Assistance Claims Settlement Act (Public Law 98-500).

(dd) Judgment funds distributed per capita or made available for any tribal program, for members of the Wyandotte Tribe of Oklahoma and the Absentee Wyandottes (Public Law 98-602).

(ee) Per capita and dividend payment distributions of judgment funds to members of the Santee Sioux Tribe of Nebraska, the Flandreau Santee Sioux Tribe, and the Prairie Island Sioux, Lower Sioux, and Shakopee Mdewakanton Sioux Communities of Minnesota (Public Law 99-130).

(ff) Funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi (Public Law 99-146).

(gg) Distributions of claims settlement funds to members of the White Earth Band of Chippewa Indians as allottees, or their heirs (Public Law 99-264).

(hh) Payments or distributions of judgment funds, and the availability of any amount for such payments or distributions, to members of the Saginaw Chippewa Indian Tribe of Michigan (Public Law 99-346).

(ii) Judgment funds distributed per capita or held in trust for members of the Chippewas of Lake Superior and the Chippewas of the Mississippi (Public Law 99-377).

(jj) Judgment funds distributed to members of the Cow Creek Band of Umpqua Tribe of Indians (Public Law 100-139).

(kk) Per capita restitution payments made to eligible Aleuts who were relocated or interned during World War II (Public Law 100-383).

(ll) Per capita payments of claims settlement funds to members of the Coushatta Tribe of Louisiana (Public Law 100-411).

(mm) Funds distributed per capita for members of the Hoopa Valley Indian Tribe and the Yurok Indian Tribe (Public Law 100-580).

(nn) Judgment funds held in trust by the United States, including interest and investment income accruing on such funds, and judgment funds made available for programs or distributed to members of the Wisconsin Band of Potawatomi (Hannahville Indian Community and Forest County Potawatomi) (Public Law 100-581).

(oo) All funds, assets, and income from the trust fund transferred to the members of the Puyallup Tribe under the Puyallup Tribe of Indians Settlement Act of 1989 (Public Law 101-41).

(pp) Judgment funds distributed per capita, or held in trust, or made available for programs, for members of the Seminole Nation of Oklahoma, the Seminole Tribe of Florida, the Miccosukee Tribe of Indians of Florida, and the independent Seminole Indians of Florida, plus any interest and investment income accruing on the funds held in trust (Public Law 101-277).

(qq) Payments, funds, distributions, or income derived from them under the Seneca Nation Settlement Act of 1990 (Public Law 101-503).

(rr) Per capita distributions of settlement funds under the Fallon Paiute Shoshone Indian Tribes Water Rights Settlement Act of 1990 (Public Law 101-618).

(ss) Settlement funds, assets, income, payments or distributions from Trust Funds to members of the Catawba Indian Tribe under the Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993 (Public Law 103-116).

(tt) Settlement funds held in trust, including interest and investment income accruing on such funds, and payments made to members of the Confederated Tribes of the Colville Reservation under the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).

(uu) Payments made or benefits granted by the Crow Boundary Settlement Act of 1994 (Public Law 103-444).

(vv) Per capita distribution judgment funds to members of the Western Shoshone Indians (Public Law 108-270).

(ww) Payments made or granted to the Aroostook Band of Micmacs under Public Law 102-171.

(xx) Payments made from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259.

(yy) Payments from the Tribal Trust Accounting and Management Lawsuits under Public Law 111-291, section 101.

(3) Bureau of Indian Affairs (BIA) General Assistance payments are federally-funded income based on need and are counted as unearned income, regardless of whether they are paid in cash or in kind. The $20 per month general income exclusion does not apply to these payments.

(4) Individual Indian Money (IIM) accounts are treated as follows:

(a) For an account that requires BIA Authorization for withdrawal (restricted):

(A) A deposit required by the BIA is excluded as income and as a resource.

(B) A deposit not required by the BIA is counted or excluded as income in accordance with this chapter of rules based on the source of the deposit. The deposit is excluded as a resource.

(C) A withdrawal is treated in accordance with this chapter of rules based on the source of the funds withdrawn. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

(b) For an account that does not require BIA authorization for a withdrawal (unrestricted): Deposits and withdrawals are treated in accordance with this chapter of rules based on the source of the deposit or withdrawal. When funds in the account include both excluded and non-excluded funds, the Department presumes that the non-excluded funds are withdrawn first.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.020, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685, 414.839
Hist.: SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0260
Indian (Native American) Benefits; Not GA, GAM, OSIP, OSIPM, QMB

(1) The following Indian (Native American) benefits are excluded:

(a) Indian lands held jointly with the tribe, or land that may not be sold without the approval of the Bureau of Indian Affairs (BIA).

(b) Payments to Puyallup Tribe members from the trust funds established under Public Law 101-41.

(c) Payments from the Confederated Tribes of the Colville Reservation Grand Coulee Dam Settlement Act (Public Law 103-436).

(2) Payments from the BIA are treated as follows:

(a) In the SNAP program, payments from the General Assistance program are counted as unearned income.

(b) In all programs except the SNAP program, payments from the General Assistance program are excluded.

(c) The treatment of educational income is covered by OAR 461-145-0150.

(3) Payments under Public Law 92-203 (Alaska Native Claim Settlement Act) are treated as follows:

(a) In the SNAP program, the entire payment is excluded.

(b) In all programs except the SNAP program:

(A) Only the tax-exempt portion of the payment is excluded.

(B) The remainder of the payment is counted as unearned income.

(4) The following types of distributions provided under Public Law 100-241 (Alaska Native Claim Settlement Act) are excluded:

(a) Stock.

(b) A partnership interest.

(c) Land or interest in land.

(d) An interest in a settlement trust.

(e) The first $2,000 of each per-capita payment per year for each member of the financial group (see OAR 461-110-0530) who receives the payment. The amount over $2,000 paid to each member of the financial group who receives the per-capita payment is counted as lump-sum income (see OAR 461-001-0000 and 461-140-0120).

(5) The Department excludes Indian benefit payments when federal law requires an exclusion. These include payments under each of the following federal laws:

(a) The Aroostook Band of Micmacs under Public Law 102-171.

(b) Blackfeet, Cherokee, Cheyenne, Chippewa, and Sioux tribes under Public Law 94-114, when the payment is from submarginal land held in trust by the United States.

(c) Blackfeet Indians under Public Law 92-254.

(d) Grand River Ottawa Indians under Public Law 94-540.

(e) Hopi or Navajo Indians under Public Law 93-531.

(f) Passamaquoddy Tribe and Penobscott Nation, including the Holton Band of Maliseet Indians, under the Indian Claims Settlement Act (Public Law 96-420).

(g) Umpqua Tribe Cow Creek Band under Public Law 100-139.

(h) Yakima Nation Confederated Tribes and Bands of the Mescalero Reservation Apache Tribe under Public Law 95-433.

(6) Except in the SNAP program, payments received from trust or restricted lands under Public Law 93-134, Public Law 97-458, and Public Law 103-66 are excluded. In the SNAP program, payments received from trust or restricted lands under 25 USC 1408 (Public Law 93-134, Public Law 97-458, and Public Law 103-66) are treated as follows:

(a) Excluded as a resource.

(b) The first $2,000 of each per-capita payment per year for each member of the financial group who receives the payment is excluded as income.

(c) The amount over $2,000 per year paid to any member of the financial group is counted as periodic income (see OAR 461-001-0000 and 461-140-0110).

(7) Payments to Seminole Tribe members under Public Law 101-277 are treated as follows:

(a) The first $2,000 of each per-capita payment per year is excluded for each member of the financial group who receives the payment.

(b) The amount over $2,000 paid to each member of the financial group who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(8) Payments from the distribution of judgment funds to members of the Confederated Tribes of the Umatilla under Public Law 91-259 are treated as follows:

(a) The first $2,000 of each per-capita payment per year is excluded for each member of the financial group who receives the payment.

(b) The amount over $2,000 paid to each member of the financial group who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(9) Payments for assets held in trust to the Sac and Fox Tribe of Oklahoma and Sac and Fox Tribe of the Mississippi in Iowa by the Indian Claims Commission under Public Law 94-189, Section 6 (The Sac and Fox Indian Claims Agreement) are treated as follows:

(a) The first $2,000 of each per-capita payment per year is excluded for each member of the financial group who receives the payment.

(b) The amount over $2,000 paid to each member of the financial group who receives the per-capita payment is counted as lump-sum income (see OAR 461-140-0120).

(10) Payments from judgment funds held in trust by the U.S. Secretary of the Interior under Public Law 98-64 are excluded.

(11) Indian Child Welfare payments under Public Law 95-608 are excluded.

(12) Tribal payments for child care are treated as follows:

(a) Provider-direct payments are counted as the provider's earned income.

(b) All client-direct payments are excluded.

(13) Indian benefit payments distributed by the tribe and not excluded for that program by public law are counted as unearned income.

(14) Payments in the tribal-TANF program are counted in the same manner as TANF program payments under OAR 461-145-0410.

(15) Payments from the Tribal Trust Accounting and Management Lawsuits under Public Law 111-291 (section 101) are treated as follows:

(a) The payments are excluded as income in the month of receipt.

(b) The payments are excluded as a resource for the 12 calendar months following the receipt of the payment as long as they are not commingled with other funds.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.083, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 16-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 28-2012(Temp),

f. & cert. ef. 8-7-12 thru 2-3-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13: SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0310
Life Estate

(1) For all programs except OSIP, OSIPM, and all QMB programs, if a financial group (see OAR 461-110-0530) is living in real property (see OAR 461-001-0000) while a member holds a life estate (see OAR 461-001-0000) in this property, the property is treated as a home (see OAR 461-145-0220). In all other situations, a life estate is treated as real property (see OAR 461-145-0420).

(2) In the OSIP, OSIPM, and QMB-DW programs:

(a) For purposes of this section and section (3) of this rule, the value of the rights conferred by the life estate is established by the Life Estate and Remainder Interest Table of the federal Centers for Medicare and Medicaid Services, State Medicaid Manual, section 3258.9(A).

(b) A life estate owned by a member of the financial group is treated as follows:

(A) If a member of the financial group is living on the property the value of the life estate is treated as a home (see OAR 461-145-0220).

(B) If a member of the financial group is not living on the property the value of the life estate is counted as a resource. The life estate is considered unavailable if other parties with an ownership interest in the property refuse to sell their interest or refuse to purchase the life estate interest in the property.

(3) In the OSIP and OSIPM programs:

(a) A transfer for less than fair market value (see OAR 461-001-0000) in which a member of the financial group retains a life estate is a disqualifying transfer. A transfer is considered for less than fair market value if the fair market value of the transferred resource on the day prior to the transfer is greater than the sum of the value of the rights conferred by the life estate plus the compensation received for the transfer.

(b) If a member of the financial group purchases a life estate interest in the home of another individual on or after July 1, 2006, the purchase is considered a transfer of resources unless the client resides in this home for at least 12 consecutive months after the date of the purchase. The value of the transfer for a client who does not reside in the home for at least 12 consecutive months is calculated by using the purchase price of the life estate.

Stat. Auth.: ORS 411.060, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.700, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08: SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0320
Life Insurance

(1) Benefits paid on a life insurance policy are counted as unearned income in the month received and a resource if retained into the following month. The Department counts benefits as received when the insured individual dies or when the insured individual is eligible for and receives accelerated payments before death, such as when the insured individual has a terminal illness. When the payment is a lump sum due to the death of the insured individual a deduction is allowed, not to exceed $1,500, for the cost of the deceased individual's last illness and burial if these costs were not otherwise insured.

(2) Burial insurance that has cash surrender value is treated in the same manner that this rule treats life insurance.

(3) The value of a life insurance policy is treated as follows:

(a) All term insurance that has no cash surrender value is excluded.

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB-DW, the cash surrender value of the life insurance policy is excluded.

(c) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:

(A) For the purposes of this subsection, the following definitions apply:

(i) "Cash surrender value" means the equity that the policy acquires over time.

(ii) "Dividend" means a payment of surplus company earnings from the insurer.

(iii) "Dividend accumulation" means a dividend left with the insurer to accumulate interest that may be withdrawn without affecting the policy's face value or cash surrender value.

(iv) "Dividend addition" means the amount of insurance purchased with a dividend that increases the policy's death benefit and cash surrender value.

(v) "Face value" means the amount of the death benefit contracted for at the time the policy was purchased and does not include a dividend addition added after purchase of the policy.

(vi) "Viatical settlement" means an agreement allowing a third party to acquire a life insurance policy from a terminally ill individual at an agreed-upon percentage of the life insurance policy's face value.

(B) The cash surrender value of life insurance policies owned by the financial group (see 461-110-0530) is excluded if the total face value of all policies for the insured individual is less than or equal to $1,500. If the total face value of all policies for the insured individual is more than $1,500, the entire cash surrender value is counted as a resource to the owner of the policy. The total face value does not include any dividend addition. A dividend accumulation must count as a resource even if the face value of the policy that generated the dividend accumulation is excluded.

(C) The cash surrender value of a policy acquired through a viatical settlement is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 18-2010, f. & cert. ef. 7-1-10: SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0330
Loans and Interest on Loans

(1) This rule covers proceeds of loans, loan repayments, and interest earned by a lender. If the proceeds of a loan are used to purchase an asset, the asset is evaluated under the other rules in this division of rules.

(2) For purposes of this rule:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs:

(A) "Bona fide loan agreement" means an agreement that --

(i) Is enforceable under state law;

(ii) Is in effect at the time the cash proceeds are provided to the borrower; and

(iii) Includes an obligation to repay and a feasible repayment plan.

(B) "Negotiable loan agreement" means a loan agreement in which the instrument ownership and the whole amount of money expressed on its face can be transferred from one person to another (i.e., sold) at prevailing market rates.

(b) In all programs:

(A) "Reverse-annuity mortgage" means a contract with a financial institution (see OAR 461-001-0000) under which the financial institution provides payments against the equity in the home that must be repaid when the homeowner dies, sells the home, or moves.

(B) The proceeds of a home equity loan or reverse-annuity mortgage (see paragraph (A) of this subsection) are considered loans.

(3) For payments that a member of the financial group (see OAR 461-110-0530) receives as a borrower to be treated as a loan:

(a) In the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be an oral or written loan agreement, and this agreement must state when repayment of the loan is due to the lender.

(b) In programs other than the GA, GAM, OSIP, OSIPM, QMB, and SNAP programs, there must be a written loan agreement, and this agreement must be signed by the borrower and lender, dated before the borrower receives the proceeds of the loan, and state when repayment of the loan is due to the lender.

(4) Payments for a purported loan that do not meet the requirements of section (3) of this rule are counted as unearned income.

(5) When a member of a financial group receives cash proceeds as a borrower from a loan that meets the requirements of section (3) of this rule:

(a) In all programs, educational loans are treated according to OAR 461-145-0150.

(b) In the ERDC, REF, REFM, SNAP, and TANF programs, the loan is excluded. If retained after the month of receipt, the loan proceeds are treated in accordance with OAR 461-140-0070.

(c) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:

(A) If the loan is a bona fide loan agreement (see paragraph (2)(a)(A) of this rule), the money provided by the lender is not income but is counted as the borrower's resource if retained in the month following the month of receipt (notwithstanding OAR 461-140-0070).

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received and is counted as a resource if retained in the month following the month it was received.

(d) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(A) If the loan is a bona fide loan agreement, the money provided by the lender is not considered income.

(B) If the loan is not a bona fide loan agreement, the money provided by the lender is counted as income in the month received.

(6) In the OSIPM program, if a client or a spouse of a client uses funds to purchase a mortgage or to purchase or lend money for a promissory note or loan:

(a) In a transaction occurring on or after July 1, 2006:

(A) The balance of the payments owing to the client or spouse of the client is a transfer of assets for less than fair market value (see OAR 461-001-0000), unless all of the following requirements are met:

(i) The total value of the transaction is being repaid to the client or spouse of the client within three months of the client's life expectancy per that person's actuarial life expectancy as established by the Period Life Table of the Office of the Chief Actuary of the Social Security Administration.

(ii) Payments are made in equal amounts over the term of the transaction without any deferrals or balloon payments.

(iii) The contract is not cancelled upon the death of the individual receiving the payments under this transaction.

(B) If the loan results in a disqualification and the disqualification period has been served, payments against the principal and interest are treated as unearned income.

(b) In a transaction occurring before July 1, 2006, or for a transaction occurring on or after July 1, 2006, that does not result in a disqualification in subsection (a) of this section, the loan is treated as follows:

(A) Interest income is treated as unearned income.

(B) The loan is counted as a resource if:

(i) The financial group includes a client in a nonstandard living arrangement (see OAR 461-001-0000) and the client's spouse;

(ii) The transaction is on or after the date of the first continuous period of care (see OAR 461-001-0030); and

(iii) The amount of the loan plus other resources transferred exceeds the largest amount in OAR 461-160-0580(2)(f).

(C) For all other loans:

(i) If the loan is both a negotiable loan agreement (see paragraph (2)(a)(B) of this rule) and a bona fide loan agreement, the loan is counted as a resource valued at the outstanding principal balance.

(ii) If the loan does not qualify under subparagraph (i) of this paragraph, payments against the principal are counted as unearned income.

(7) In the GA, GAM, OSIP, and QMB-DW programs:

(a) Interest income is treated as unearned income.

(b) If the loan is both a negotiable loan agreement and a bona fide loan agreement, the loan is counted as a resource of the lender valued at the outstanding principal balance.

(c) If the loan does not qualify under subsection (b) of this section, the payments against the principal are counted as income to the lender.

(8) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) Interest income is treated as unearned income.

(b) Payments against the principal of all loans are excluded as income.

(9) In all programs other than the GA, GAM, OSIP, OSIPM, and QMB programs:

(a) The interest payment is counted as unearned income.

(b) The payment of principal is excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; [SSP 20-2009(Temp), f. & cert. ef. 7-29-09 thru 1-25-10; Suspended by SSP 26-2009(Temp), f. & cert. ef. 9-1-09 thru 1-25-10]; Administrative correction 2-19-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0360
Motor Vehicle

(1) The value of disability-related apparatus, optional equipment, or low mileage is not considered in determining the fair market value (see OAR 461-001-0000) of an automobile, truck, or van. The fair market value of an automobile, truck, or van is presumed to be the "average trade-in value" established in the National Automobile Dealers Association's (NADA) Used Car Guide. If the vehicle is not listed in the NADA Used Car Guide, the "average trade-in value" established in the Kelley Blue Book is used. If the vehicle is not listed in the NADA Used Car Guide and Kelley Blue Book, the "average trade-in value" established in a similar publication is used. A client may rebut the presumption with a statement from a car dealer, mechanic, or other reliable source. If the vehicle is not listed in the NADA Used Car Guide, Kelley Blue Book, or a similar publication, the estimate of the value by the client may be accepted unless it appears questionable, in which case additional evidence of the value is required.

(2) Some programs permit an exclusion for a portion of the equity value (see OAR 461-001-0000) for any licensed and unlicensed motor vehicles owned by the financial group (see OAR 461-110-0530):

(a) In the REF, REFM, SNAP, and TANF programs, this exclusion is up to $10,000.

(b) In the GA and GAM programs, this exclusion is up to $4,500.

(c) Any remaining equity in that vehicle and the total equity value of all other vehicles is counted as a resource.

(3) In the EA and ERDC programs, all motor vehicles are excluded.

(4) In the OSIP, OSIPM, and QMB-DW programs:

(a) The total value of a vehicle selected by the financial group is excluded if it is used for transportation of the client or a member of the client's household.

(b) The total equity value of any vehicle not excluded under subsection (a) of this section and all other vehicles is counted as a resource.

(5) In the OSIP-EPD and OSIPM-EPD programs, if a vehicle was purchased as an employment and independence expense (see OAR 461-001-0035) or with moneys from an approved account (see OAR 461-001-0035), the total value of the vehicle is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0380
Pension and Retirement Plans

(1) Pension and retirement plans include the following:

(a) Benefits employees receive only when they retire. These benefits can be disbursed in lump-sum or monthly payments.

(b) Benefits that employees are allowed to withdraw when they leave a job before retirement.

(c) The following retirement plans if purchased by an individual with funds from the plans authorized by section 401 of the Internal Revenue Code of 1986:

(A) Traditional Defined-Benefit Plan.

(B) Cash Balance Plan.

(C) Employee Stock Ownership Plan.

(D) Keogh Plan.

(E) Money Purchase Pension Plan.

(F) Profit-Sharing Plan.

(G) Simple 401(k).

(H) 401(k).

(d) Retirement plans purchased by an individual with funds from plans authorized by section 403 of the Internal Revenue Code of 1986 at subsections (a) or (b).

(e) The following retirement plans and annuities if purchased by an individual with funds from the plans authorized by section 408 of the Internal Revenue Code of 1986 at subsections (a), (b), (c), (k), (p), or (q), or at section 408A:

(A) Individual Retirement Annuity.

(B) Individual Retirement Account (IRA).

(C) Deemed Individual Retirement Account or Annuity under a qualified employer plan.

(D) Accounts established by employers and certain associations of employees.

(E) Simplified Employee Pension (SEP).

(F) Simple Individual Retirement Account (Simple-IRA).

(G) Roth IRA.

(f) The following retirement plans offered by governments, nonprofit organizations, or unions:

(A) 457(b) Plan.

(B) 501(c)(18) Plan.

(C) Federal Thrift Savings Plan under 5 USC 8439.

(g) In all programs except the OSIP, OSIPM, and QMB programs, an annuity purchased by an individual with funds from a plan authorized under subsection (c), (d), or (f) of this section.

(2) An annuity purchased by the spouse (see OAR 461-001-0000) of an individual with funds from a retirement plan described in subsection (1)(e) of this rule is not considered a retirement plan and is treated in accordance with 461-145-0020 and 461-145-0022.

(3) Benefits an individual receives from pension and retirement plans are treated as follows:

(a) Monthly payments are counted as unearned income.

(b) All payments not covered by subsection (a) of this section are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(4) In the OSIP, OSIPM, and QMB programs:

(a) Except for an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule:

(A) The equity value (see OAR 461-001-0000) of a pension or retirement plan is excluded as a resource if the individual is eligible for monthly or periodic payments under the terms of the plan and has applied for those payments. When an individual is permitted to choose or change a payment option, the individual must select the option that:

(i) Provides payments commencing on the earliest possible date; and

(ii) Completes payments within the actuarial life expectancy, as published in the Periodic Life Table of the Office of the Chief Actuary of the Social Security Administration, of the individual.

(B) The equity value of all pension and retirement plans not covered by paragraph (A) of this subsection that allows an individual to withdraw funds, minus any penalty for withdrawal, is counted as a resource.

(b) The equity value of an annuity purchased with funds from a retirement plan described in subsection (1)(e) of this rule is excluded as a resource if it meets the payout requirements of OAR 461-145-0022(10)(c). Otherwise, the equity value is counted as a resource.

(c) For an individual in a standard living arrangement (see OAR 461-001-0000), pension and retirement plans owned by a non-applying spouse are excluded. Dividends and interest earned on pension funds owned by a non-applying spouse are excluded as income.

(5) In the SNAP program, the value of retirement accounts identified in sections 401(a), 403(a), 403(b), 408, 408(k), 408(p), 408A, 457(b), or 501(c)(18) of the Internal Revenue Code, or in a Federal Thrift Savings Plan account are excluded resources.

(6) In all programs except the OSIP, OSIPM, QMB, and SNAP programs, the equity value of a pension and retirement plan that allows an individual to withdraw funds before retirement, minus any penalty for early withdrawal, is counted as a resource.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; [SSP 21-2009(Temp), f. & cert. ef. 7-29-09 thru 1-25-10; Suspended by SSP 26-2009(Temp), f. & cert. ef. 9-1-09 thru 1-25-10]; Administrative correction 2-19-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14 ; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0410
Program Benefits

(1) EA and TA-DVS payments are treated as follows:

(a) In the ERDC and SNAP programs, a payment made directly to the client is counted as unearned income. Dual payee and provider-direct payments are excluded.

(b) In all programs except the ERDC and SNAP programs, these payments are excluded.

(2) Payments from ERDC and TANF child care are excluded unless the client is the provider.

(3) Payments from the GAM, OCCS medical programs, OSIPM, QMB, and REFM programs are excluded.

(4) Payments from JPI (see OAR 461-135-1260) are issued as a food benefit and are excluded.

(5) SNAP payments are treated as follows:

(a) The value of an SNAP benefit is excluded in all programs except the EA program. In the EA program, the value is counted as a resource when determining the emergency food needs of the filing group (see OAR 461-110-0310 and 461-110-0370).

(b) OFSET service payments are excluded.

(6) Benefits from the GA, OSIP (except OSIP-IC), Post-TANF, REF, SFPSS, TANF, and tribal-TANF programs are treated as follows:

(a) In the EA program, these payments are counted as unearned income, except that these payments are excluded for a benefit group (see OAR 461-110-0750) whose emergent need is the result of domestic violence (see OAR 461-001-0000).

(b) In the ERDC program:

(A) Post-TANF payments are excluded.

(B) All other payments are counted as unearned income.

(c) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, these payments are excluded.

(d) In the SNAP program:

(A) These payments are treated as unearned income.

(B) An amount received as a late processing payment is treated as lump-sum income (see OAR 461-001-0000 and 461-140-0120).

(C) Payments made to correct an underpayment are treated as lump-sum income.

(D) Ongoing special needs payments for laundry allowances, special diet or meal allowance, restaurant meals, accommodation allowances, and telephone allowances are treated as unearned income. All other special needs payments are excluded as reimbursements.

(e) In all programs except the EA, ERDC, QMB-BAS, QMB-SMB, QMB-SMF, and SNAP programs:

(A) These payments are excluded in the month received, and any portion remaining following the month of receipt is counted as a resource.

(B) Payments made to correct an underpayment are excluded.

(f) In all programs:

(A) JOBS, REF, and TANF JOBS Plus support service payments are excluded.

(B) For the treatment of JOBS Plus income, see OAR 461-145-0130.

(C) REF and TANF client incentive payments are treated as follows:

(i) Except in the TANF program, the cooperation incentive payment (see OAR 461-135-0210) is counted as unearned income.

(ii) Progress and outcome incentive payments other than in-kind payments are counted as lump-sum income (see OAR 461-140-0120). All other incentives are excluded.

(7) Payments from OSIP-IC are treated as follows:

(a) In the SNAP program, these payments are counted as unearned income and assets held in a contingency fund (see OAR 411-030-0020) are counted as a resource.

(b) In all other programs, these payments and funds held in a contingency fund are excluded.

(8) Pre-TANF program payments are treated as follows:

(a) In the SNAP program, a payment for basic living expenses, made directly to the client, is counted as unearned income. All other payments are excluded.

(b) In all programs except the SNAP program, these payments are excluded.

Stat. Auth.: ORS 411.060, 411.404, 411.816, 412.014, 412.049

Stats. Implemented: ORS 411.060, 411.404, 411.700, 411.816, 412.014, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 5-1991, f. & cert. ef. 2-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1992(Temp), f. 7-31-92, cert. ef. 8-1-92; AFS 32-1992, f. 10-30-92, cert. ef. 11-1-92; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 26-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 18-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 36-2011(Temp), f. 12-27-11, cert. ef. 1-1-12 thru 6-29-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0420
Real Property

(1) For purposes of this rule, manufactured and mobile homes and floating homes and houseboats are treated in the same manner as real property (see OAR 461-001-0000).

(2) The applicant has the burden of proof of establishing the fair market value (see OAR 461-001-0000) of real property. Fair market value may be established by any methodology determined to accurately reflect the fair

market value of the real property, including the provision of an appraisal or comparative market analysis performed by an impartial individual who is certified or licensed in the applicable jurisdiction.

(3) Real property that is not income-producing or the home of the financial group (see OAR 461-110-0530) is treated as follows:

(a) In the REF, REFM, and TANF programs, the equity value (see OAR 461-001-0000) of all real property that is not excluded under a TANF Interim Assistance agreement is counted as a resource.

(b) In the EA and ERDC programs, real property is excluded.

(c) In the SNAP program, real property is treated as follows:

(A) The equity value of real property is excluded if the financial group is making a good-faith effort to sell the real property at a fair market price.

(B) The equity value of the real property is counted as a resource if the financial group refuses to make a good-faith effort to sell.

(C) The resource is excluded if selling the resource would produce a net gain to the financial group of less than $1,500.

(d) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs:

(A) The equity value of real property that was the home of the financial group is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price, unless the equity value in the home makes the client ineligible under OAR 461-145-0220(2)(a).

(B) The equity value of all other real property is excluded if the financial group is making a good-faith effort to sell the real property at a reasonable price. The equity value is counted after the real property is excluded for nine months unless the failure to sell it is for reasons beyond the reasonable control of the financial group.

(4) The treatment of real property that is income producing is covered in OAR 461-145-0250.

(5) The treatment of the home of the financial group is covered in OAR 461-145-0220.

Stat. Auth.: ORS 411.060, 411.816 & 412.049
Stats. Implemented: ORS 411.060, 411.816 & 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0460
Sale of a Resource

(1) In the ERDC program, all proceeds from the sale of a resource are excluded as income and as a resource.

(2) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) For the sale of a resource (except a home) originating prior to October 12, 2012:

(A) All proceeds received on a monthly or other periodic basis are counted as unearned income.

(B) All proceeds received on a lump-sum basis are excluded as income.

(b) For the sale of a home originating prior to October 1, 2012 all proceeds are excluded as income.

(c) For a sale of a resource (including a home) originating on or after October 1, 2012:

(A) The interest portion of proceeds is counted as unearned income.

(B) The principal portion of proceeds is excluded as income.

(3) In the REF, REFM, and TANF programs:

(a) Proceeds from the sale of an excluded resource to the extent reinvested in another excluded resource are excluded as income and as a resource.

(b) All proceeds from the sale of the resource are counted as unearned income, unless excluded in subsection (a) of this section.

(4) In all programs except the ERDC, QMB-BAS, QMB-SMB, QMB-SMF, REF, REFM, and TANF programs, proceeds from the sale of a resource are treated as follows:

(a) Proceeds from the sale of a resource (other than a home) received on a monthly or other periodic basis are counted as unearned income, except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are principal are counted as a resource.

(b) Proceeds from the sale of a resource (other than a home) received on a lump-sum basis are treated as follows, except that in the OSIPM and QMB-DW programs for a sale originating on or after October 1, 2012 all proceeds that are interest are treated as unearned income:

(A) If the proceeds are from the sale of an excluded resource, the amount reinvested in another excluded resource is excluded, and the remainder is counted as a resource.

(B) The proceeds from all other sales are counted as a resource. If the proceeds put the benefit group (see OAR 461-110-0750) over the resource limit, the proceeds are counted as periodic or lump sum income (see OAR 461-140-0110 and 461-140-0120).

(c) Proceeds from the sale of the home of the financial group (see OAR 461-110-0530) are excluded for three months if the financial group intends to use the proceeds (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds in the GA, GAM, OSIP, and QMB-DW programs) to buy another home, except as follows:

(A) In the GA, GAM, OSIPM (except for clients eligible under OAR 461-135-0771), and QMB-DW programs for a home sold on or after October 1, 2012:

(i) Principal payments, including lump-sum payments, are excluded for three full calendar months from the date of receipt if the financial group intends to use the proceeds to buy another home or for associated costs including:

(I) Downpayments;

(II) Settlement costs;

(III) Loan processing fees and points;

(IV) Moving expenses;

(V) Necessary repairs to or replacement of the new home's structure or fixtures (including roof, furnace, plumbing, built-in appliances) that are identified and documented prior to occupancy; and

(VI) Mortgage payments.

(ii) For the purposes of subparagraph (i) of this paragraph, funds that are obligated by contract during these three full calendar months are also excluded.

(iii) Interest payments are counted as unearned income.

(B) For clients eligible for OSIPM under OAR 461-135-0771, the proceeds from the sale of the financial group's home, if the financial group intends to use them to buy another home (subparagraphs (A)(i) and (A)(ii) of this subsection set out the scope of use of excluded proceeds), are treated as follows:

(i) For a home sold prior to October 1, 2012, the proceeds are excluded for 12 full calendar months.

(ii) For a home sold on or after October 1, 2012:

(I) Principal payments, including lump-sum payments, are excluded for 12 full calendar months from the date of receipt.

(II) Interest payments are counted as unearned income.

(d) The proceeds from the sale of a home that are not reinvested in another home are counted as a resource, except as follows:

(A) In the GA and GAM programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump sum income.

(B) In the GA, GAM, OSIPM, and QMB-DW programs for a home sold on or after October 1, 2012:

(i) Principal is counted as a resource, except that in the GA and GAM programs, if the proceeds put the benefit group over the resource limit, they are counted as periodic or lump sum income.

(ii) Interest payments are counted as unearned income.

(C) In the SNAP program, the proceeds are treated as lump-sum income (see OAR 461-001-0000) under OAR 461-140-0120.

(e) In the SNAP program:

(A) Interest received monthly or on another periodic basis from the sale of a home is counted as unearned income.

(B) If a self-employed client sells a work-related asset, including equipment and inventory, the proceeds of the sale are treated as self-employment income (see OAR 461-145-0910).

(5) Costs of the type excluded under OAR 461-145-0920 are subtracted from proceeds counted as income under this rule.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.070, 410.080, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-2001, f. & cert. ef. 6-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0490
Social Security Benefits

Except for SSI (see OAR 461-145-0510) and death benefits remaining after burial costs (see OAR 461-145-0500), Social Security benefits are treated as follows:

(1) Monthly payments are counted as unearned income.

(2) Except as provided in sections (3) and (4) of this rule, all payments other than monthly payments are counted as periodic or lump-sum income (see OAR 461-140-0110 and 461-140-0120).

(3) In the SNAP program, the representative payee fee paid by an individual who is required by the Social Security Administration to receive payments through a representative payee is excluded. The amount of the exclusion is limited to the amount authorized by the Social Security Administration.

(4) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and all QMB programs:

(a) For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(b) Retroactive payments are counted as unearned income in the month of receipt except as provided in subsection (c) of this section.

(c) When retroactive payments are made through the representative payee of an individual who is required to have a representative payee because of drug addiction or alcoholism, the retroactive payments may be required to be made in installments. If the payments are made in installments, the total of the benefits to be paid in installments is considered unearned income in the month in which the first installment is made.

(d) Except for the QMB-BAS, QMB-SMB, and QMB-SMF programs, any remaining amount from a retroactive payment after the month of receipt is excluded as a resource for nine calendar months following the month in which the payment is received. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0510
SSI

(1) In the ERDC, GA, GAM, and SNAP programs, if an individual is required by law to receive an SSI benefit through a representative payee, the representative's fee is excluded.

(2) In the ERDC, GA, and GAM programs:

(a) A monthly SSI payment is counted as unearned income.

(b) Lump-sum SSI payments are counted according to OAR 461-140-0120.

(3) In the OSIP (except OSIP-EPD), OSIPM (except OSIPM-EPD), and QMB-DW programs, a retroactive SSI payment is excluded for nine months after the month of receipt. After the nine-month period, any remaining amount is a countable (see OAR 461-001-0000) resource. For the purposes of this section, a payment is retroactive if it is issued in any month after the calendar month for which it is intended.

(4) In the REF, REFM, and TANF programs:

(a) SSI monthly and lump-sum payments are excluded if the recipient will be removed from the financial group (see OAR 461-110-0530) the month following receipt of the payment.

(b) An SSI lump-sum payment is excluded in the month received and the next month.

(5) In the SNAP program:

(a) A monthly SSI payment is counted as unearned income.

(b) A lump-sum SSI payment is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-2001, f. 8-31-01, cert. ef. 9-1-01; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0540
Trusts

(1) This section applies to all trust funds (see OAR 461-001-0000) in the REF, REFM, SNAP, and TANF programs. It also applies to GA, GAM, OSIP, OSIPM, and QMB-DW for trust funds established before October 1, 1993:

(a) Trust funds are counted as a resource if the fund is legally available for use by a member of the financial group (see OAR 461-110-0530) for items covered by program benefits. In the OSIP, OSIPM, and QMB-DW programs, the amount of the trust that is considered legally available is the maximum amount that could be distributed to the beneficiary under the terms of the trust, regardless of whether the trustee exercises his or her authority to actually make a distribution.

(b) Trust funds are excluded if the fund is not available for use by a member of the financial group. The financial group must try to remove legal restrictions on the trust, unless that would cause an expense to the group.

(c) The part of the fund available for use for medical expenses covered by the medical program for which the financial group is eligible is counted.

(2) In the ERDC program, all trust funds are excluded.

(3) In the OSIP, OSIPM, and QMB-DW programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) to (11) of this rule. In the GA and GAM programs, trust funds established on or after October 1, 1993, are treated in accordance with sections (5) to (9) of this rule.

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(a) All trust funds are excluded as a resource.

(b) A payment made from the trust to or for the benefit of the client is counted as unearned income.

(5) A trust is considered established if the financial group used their resources to form all or part of the trust and if any of the following established a trust, other than by a will:

(a) The client.

(b) The client's spouse.

(c) Any other person, including a court or administrative body, with legal authority to act in place of or on behalf of the client or the client's spouse.

(d) Any other person, including a court or administrative body, acting at the direction or upon the request of the client or the client's spouse.

(6) If the trust contains resources or income of another person, only the share attributable to the client is considered available.

(7) Except as provided in section (10) of this rule, the following factors are ignored when determining how to treat a trust:

(a) The purpose for which the trust was established.

(b) Whether or not the trustees have or exercise any discretion under the trust.

(c) Any restrictions on when or if distributions may be made from the trust.

(d) Any restrictions on the use of distributions from the trust.

(8) If the trust is revocable, it is treated as follows:

(a) In all programs except the QMB-BAS, QMB-SMB, and QMB-SMF programs:

(A) The total value of the trust is considered a resource available to the client.

(B) A payment made from the trust to or for the benefit of the client is excluded as income.

(b) A payment from the trust other than to or for the benefit of the client is considered a transfer of assets covered by OAR 461-140-0210 and following.

(9) If the trust is irrevocable, it is treated as follows:

(a) If, under any circumstances, the funds transferred into the trust are unavailable to the client and the trustee has no discretion to distribute the funds to or for the benefit of the client, the client is subject to a transfer-of-resources penalty as provided in OAR 461-140-0210 and following.

(b) If, under any circumstances, payments could be made to or on behalf of the client, the share of the trust from which the payment could be made is considered a resource. A payment from the trust other than one to or for the benefit of the client is considered a transfer of assets that may be covered by OAR 461-140-0210.

(c) If, under any circumstances, income is generated by the trust and could be paid to the client, the income is unearned income. Payments made for any reason other than to or for the benefit of the client are considered a transfer of assets subject to disqualification per OAR 461-140-0210.

(d) If any change in circumstance makes assets (income or resources) from the trust unavailable to the client, the change is a disqualifying transfer as of the date of the change.

(10) Notwithstanding the provisions in sections (1), (3), and (5) to (9) of this rule, the following trusts are not considered in determining eligibility (see OAR 461-001-0000) for OSIPM and QMB-DW:

(a) A trust containing the assets of a client determined to have a disability that meets the SSI criteria that was created before the client reached age 65, if the trust was established by one of the following and the state will receive all funds remaining in the trust upon the death of the client, up to the amount of medical benefits provided on behalf of the client:

(A) The client's parent (see OAR 461-001-0000).

(B) The client's grandparent.

(C) The client's legal guardian or conservator.

(D) A court.

(b) A trust established between October 1, 1993 and March 31, 1995 for the benefit of the client and containing only the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical benefits provided on behalf of the client. The trust is the total income in excess of the income standard for OSIPM. The remaining income not deposited into the trust is available for the following deductions in the order they appear prior to applying the patient liability:

(A) Personal-needs allowance.

(B) Community spouse monthly maintenance needs allowance.

(C) Medicare and other private medical insurance premiums.

(D) Other incurred medical.

(c) A trust established on or after April 1, 1995 for the benefit of the client whose income is above 300 percent of the full SSI standard and containing the current and accumulated income of the client. The accumulated amount remaining in the trust must be paid directly to the state upon the death of the client up to the amount of medical assistance provided on behalf of the client. The trust contains all of the client's income. The income deposited into the trust is distributed monthly in the following order with excess amounts treated as income to the individual subject to the rules on transfer of assets in division 140 of this chapter of rules:

(A) Personal needs allowance and applicable room and board standard.

(B) Reasonable administrative costs of the trust, not to exceed a total of $50 per month, including the following:

(i) Trustee fees.

(ii) A reserve for administrative fees and costs of the trust, including bank service charges, copy charges, postage, accounting and tax preparation fees, future legal expenses, and income taxes attributable to trust income.

(iii) Conservatorship and guardianship fees and costs.

(C) Community spouse and family monthly maintenance needs allowance.

(D) Medicare and other private medical insurance premiums.

(E) Other incurred medical costs as allowed under OAR 461-160-0030 and 461-160-0055.

(F) Contributions to reserves or payments for child support, alimony, and income taxes.

(G) Monthly contributions to reserves or payments for the purchase of an irrevocable burial plan with a maximum value of $5,000.

(H) Contributions to a reserve or payments for home maintenance if the client meets the criteria of OAR 461-155-0660 or OAR 461-160-0630.

(I) Patient liability not to exceed the cost of home and community-based care (see OAR 461-001-0030) or nursing facility services.

(11) This section of the rule applies to a trust signed on or after July 1, 2006.

(a) Notwithstanding the provisions of sections (1), (3), and (5) to (9) of this rule, a trust that meets the requirements of subsection (b) of this section is not considered in determining eligibility for OSIPM and QMB-DW, except that if the client is age 65 or older when the trust is funded or a transfer is made to the trust, the transfer may constitute a disqualifying transfer of assets under OAR 461-140-0210 and following.

(b) This section of the rule applies to a trust that meets all of the following conditions:

(A) The trust is established and managed by a non-profit association.

(B) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts.

(C) The trust is established by the client, client's parent, grandparent, or legal guardian or a court for clients who have disabilities.

(D) Upon the death of the beneficiary or termination of the trust, the trust pays to the state an amount equal to the total medical assistance paid on behalf of the beneficiary under the State plan for Medicaid. The amount paid to the state may be reduced by administrative costs directly related to administering the sub-trust account of the beneficiary.

(E) The trust contains the resources or income of a client who has a disability that meets the SSI criteria.

(12) In the GA, GAM, OSIP, OSIPM, and QMB-DW programs, the provisions of this rule may be waived for an irrevocable trust if the Department determines that denial of benefits would create an undue hardship on the client if, among other things:

(a) The absence of the services requested may result in a life-threatening situation.

(b) The client was a victim of fraud or misrepresentation.

Stat. Auth.: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685
Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 18-1993(Temp), f. & cert. ef. 10-1-93; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 6-1994, f. & cert. ef. 4-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 18-2002(Temp), f. & cert. ef, 11-19-02 thru 5-18-03; SSP 11-2003, f. & cert. ef. 5-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 16-2006(Temp), f. 12-29-06, cert. ef. 1-1-07 thru 3-31-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0600
Work-Related Capital Assets, Equipment, and Inventory

(1) As used in this rule:

(a) "Inventory" means goods that are in stock and available for sale to prospective customers.

(b) "Work-related equipment" means property essential to the employment or self-employment of a financial group (see OAR 461-110-0530) member. Examples are a tradesman's tools, a farmer's machinery, and equipment used to maintain an income-producing vehicle.

(2) A capital asset (see OAR 461-001-0000), other than work-related equipment (see section (1) of this rule) and inventory (see section (1) of this rule), is treated as follows:

(a) In the ERDC and GA programs, the equity value (see OAR 461-001-0000) of a capital asset is treated according to the rules for the asset.

(b) In the SNAP program, a capital asset used in a business is excluded as follows:

(A) Non-farm assets are excluded as long as the financial group is actively engaged in self-employment activities.

(B) Farm assets are excluded until one year after the date the individual quit self-employment as a farmer.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component (see OAR 461-190-0197) of the JOBS program, the value of a capital asset is excluded.

(B) For all other clients, the value of a capital asset is counted according to the rules in this division of rules.

(d) In the OSIP, OSIPM, and QMB-DW programs, a capital asset is excluded.

(3) Work-related equipment is treated as follows:

(a) In the EA, ERDC, OSIP, OSIPM, QMB-DW, and SNAP programs, the equity value of work-related equipment is excluded.

(b) In the GA program, the value of equipment needed by an individual who has a disability or is blind to complete a plan for self-support (see OAR 461-135-0708) is excluded as long as the plan is in effect. For all other equipment, the equity value of the equipment is counted as a resource, except as provided at OAR 461-145-0250.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the equity value of the equipment is excluded.

(B) For all other clients, the equity value of the equipment is treated as a resource.

(4) Inventory is treated as follows:

(a) In the EA, ERDC, OSIP, OSIPM, QMB-DW, and SNAP programs, inventory is excluded as long as the client is engaged in self-employment activities.

(b) In the GA program, the value of inventory needed by an individual who has a disability or is blind to complete a plan for self-support is excluded, as long as the plan is in effect. For all other inventory, the equity value of the inventory is counted as a resource.

(c) In the REF, REFM, and TANF programs:

(A) For a self-employed client participating in the microenterprise component of the JOBS program, the wholesale value of inventory remaining at the end of the semi-annual period covered in each income statement (see OAR 461-190-0197), less encumbrances, is counted as a resource.

(B) For all other clients, the wholesale value of inventory remaining at the end of a month, less encumbrances, is counted as a resource.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.117, 411.404, 411.816, 412.014, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-150-0050

Prospective Eligibility and Budgeting; GA, GAM, OSIP, OSIPM, QMB

In the GA, GAM, OSIP, OSIPM, and all QMB programs, the Department uses prospective eligibility (see OAR 461-001-0000) and budgeting (see OAR 461-001-0000) as follows:

(1) In the GA, GAM, OSIP (except OSIP-IC), OSIPM (except OSIPM-IC), and all QMB programs:

(a) For the initial month (see OAR 461-001-0000), the Department uses prospective eligibility and budgeting. Money received from a nonrecurring source before the date of application is excluded as income.

(b) Except for QMB-BAS, QMB-SMB, and QMB-SMF, if any money remains from a non-recurring source after the date of application, it is counted as a resource.

(c) For each ongoing month (see OAR 461-001-0000) the Department uses prospective eligibility and budgeting.

(2) In the OSIP-IC and OSIPM-IC programs, the budget month (see OAR 461-001-0000) is the initial month of eligibility.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.010, 410.070, 410.080, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 11-2001, f. 6-29-01, cert. ef. 7-1-01; SSP 10-2003(Temp) f. & cert. ef. 5-1-03 thru 9-30-03; SSP 26-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-155-0575

Special Need; In-home Supplement; OSIPM

In the OSIPM program:

(1) The Department may provide a monthly supplementary payment for an individual who meets the requirements of all of the following subsections:

(a) The individual must receive SSI as his or her only source of countable (see OAR 461-001-0000) income.

(b) The individual must receive home and community-based care (see OAR 461-001-0030) in-home services or State Plan Personal Care Services authorized under OAR chapter 411, division 034.

(2) An individual eligible under section (1) of this rule receives a $22 monthly payment. The payment is considered reimbursement for uncovered assistance needs.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 413.085, 414.685

Hist.: SSP 11-2011(Temp), f. 3-31-11, cert. ef. 4-1-11 thru 9-28-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 21-2011(Temp), f. & cert. ef. 7-15-11 thru 1-11-12; SSP 31-2011(Temp), f. & cert. ef. 12-1-11 thru 1-11-12; Administrative correction, 2-6-12; SSP 33-2012(Temp), f. 10-31-12, cert. ef. 11-1-12 thru 4-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 18-2013(Temp), f. 7-31-13, cert. ef. 8-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0010

Use of Resources in Determining Financial Eligibility

Countable (see OAR 461-001-0000) resources are used to determine eligibility (see OAR 461-001-0000) as follows:

(1) In the EA program, the countable resources of a financial group (see OAR 461-110-0530) are used to reduce benefits.

(2) In the GA, GAM, QMB-DW, REF, SNAP, and TANF programs, a need group (see OAR 461-110-0630) is not eligible for benefits if the financial group has countable resources above the resource limit (see OAR 461-160-0015).

(3) In the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs, a need group (see OAR 461-110-0630) is not eligible for benefits if the financial group has countable resources above the resource limit (see OAR 461-160-0015).

(a) When a child (see OAR 461-001-0000) is applying, the parental resources (see subsection (b) of this section) are deemed available to the child. The amount deemed available to the child is the amount the parental resources exceed the resource limit (see OAR 461-160-0015) of:

(A) A one person need group, if one parent (see OAR 461-001-0000) lives in the child's household; or

(B) A two person need group, if two parents (or one parent and the spouse (see OAR 461-001-0000) of that parent) live in the child's household.

(b) As used in this section, "parental resources" means the countable resources of:

(A) Each parent in the child's financial group, and

(B) Each spouse of a parent in the child's financial group.

(c) If more than one child is applying, the value of the deemed resources is divided evenly between the applying children.

(d) The parental resources are not deemed available to an ineligible child.

(e) The value of the parental resources is subject to deeming whether or not those resources are available to the child.

(4) In the OSIP-EPD and OSIPM-EPD programs:

(a) A need group is not eligible for benefits if the financial group has countable resources above the resource limit (see OAR 461-160-0015).

(b) Any money in an approved account (see OAR 461-001-0035) is excluded during the determination of eligibility.

(c) Assets purchased from moneys in an approved account are excluded, provided they meet the requirements of OAR 461-145-0025.

(d) Assets purchased as employment and independence expenses (see OAR 461-001-0035) are excluded, provided they meet the requirements of OAR 461-145-0025.

(5) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all resources are excluded and have no effect on eligibility (see OAR 461-160-0015).

Stat. Auth.: ORS 411.060, 411.070, 411.400, 411.404, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.400, 411.404, 411.816, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1991(Temp), f. & cert. ef. 7-1-91; AFS 16-1991, f. 8-27-91, cert. ef. 9-1-91; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 9-2013(Temp), f. & cert. ef. 4-10-13 thru 10-7-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0015

Resource Limits

(1) In the EA program, all countable (see OAR 461-001-0000) resources must be used to meet the emergent need.

(2) In the ERDC and REFM programs, there is no resource limit.

(3) In the GA, GAM, OSIP, and OSIPM programs, the resource limit is as follows:

(a) $2,000 for a one-person need group (see OAR 461-110-0630) and $3,000 for a two-person need group.

(b) $1,000 for an OSIP need group eligible under OAR 461 135 0771. The total cash resources may not exceed $500 for a one-person need group or $1,000 for a two-person need group.

(c) $5,000 for the OSIP-EPD and OSIPM-EPD programs (see OAR 461-001-0035 and 461-145-0025 for funds that may be excluded as approved accounts).

(4) In the QMB-BAS, QMB-SMB, and QMB-SMF programs, all resources are excluded.

(5) In the QMB-DW program, the resource limit is amended in January of each year based on the low income subsidy for Medicare Part D as published by the Health Resources and Services Administration of the U.S. Department of Health and Human Services. Effective January 1, 2015 the resource limit is $7,280 for a one-person need group and $10,930 for a need group containing two or more individuals.

(6) In the REF program, the resource limit is:

(a) $2,500 for any of the following:

(A) A new REF applicant for benefits.

(B) REF need group that has at least one mandatory (see OAR 461-130-0305) participant in an employment program who is:

(i) Receiving REF and not progressing in a required activity of an open case plan; or

(ii) Serving a current employment program disqualification (see OAR 461-130-0330).

(b) $10,000 for a need group not covered under subsection (a) of this section.

(7) In the SNAP program, the resource limit is:

(a) $3,250 for a financial group (see OAR 461-110-0530) with at least one member who is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015).

(b) $2,250 for all other financial groups.

(8) In the TANF program, the resource limit is:

(a) $2,500 for any of the following:

(A) A new TANF applicant for benefits.

(B) TANF need group that does not have at least one caretaker relative (see OAR 461-001-0000) or parent (see OAR 461-001-0000) who is receiving TANF.

(C) TANF need group that has at least one JOBS participant who is:

(i) Receiving TANF and not progressing in an activity (see OAR 461-001-0025) of an open JOBS case plan (see OAR 461-001-0025); or

(ii) Serving a current JOBS disqualification (see OAR 461-130-0330).

(b) $10,000 for a need group not covered under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.083, 411.404, 411.706, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.083, 411.404, 411.704, 411.706, 411.816, 411.837, 412.049, 413.085, 414.685, 414.839

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 20-1991, f. & cert. ef. 10-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 10-1998, f. 6-29-98, cert. ef. 7-1-98; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 16-1999, f. 12-29-99, cert. ef. 1-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 17-2003, f. & cert. ef. 7-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-1; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 27-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 26-2014(Temp), f. & cert. ef. 10-1-14 thru 3-30-15; SSP 4-2015, f. & cert. ef. 1-1-15; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0550

Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are No Children in the Household Group

(1) For purposes of this rule:

(a) "Child" means an unmarried individual, living with a natural or adoptive parent, and is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.

(b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for all individuals in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive home and community-based care (see OAR 461-001-0030); and

(d) Do not have at least one child (see subsection (1)(a) of this rule) in the household group (see OAR 461-110-0210).

(3) For an individual described in section (2) of this rule who is married to a spouse (see OAR 461-001-0000) who is ineligible (see subsection (1)(b) of this rule), the Department calculates the adjusted income of the individual under subsections (4)(a) through (4)(e) of this rule first. If the individual's adjusted income is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250, the individual is not eligible for OSIPM.

(4) To determine adjusted income for individuals described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) One standard deduction of $20 from unearned income.

(A) This deduction may be taken from earned income if the individual has less than $20 in unearned income.

(B) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.

(b) One standard earned income deduction of:

(A) $65 for OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA clients who are not blind; or

(B) $85 for OSIP-AB and OSIPM-AB clients who are blind.

(c) An income deduction for documented impairment-related work expenses or blind work expenses.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 1-1999(Temp), f. & cert. ef. 2-1-99 thru 7-31-99; AFS 7-1999, f. 4-27-99, cert. ef. 5-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0551

Income Deductions; Non-SSI OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) in the Community When There Are Children in the Household Group

(1) For purposes of this rule:

(a) A "child" is an unmarried individual, living with a natural or adoptive parent, and is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full-time secondary, postsecondary, or vocational-technical training designed to prepare the individual for employment.

(b) "Ineligible" means an individual who is not eligible to receive either SSI or TANF benefits.

(2) This rule is used to determine adjusted income (see OAR 461-001-0000) for clients in the OSIP (except OSIP-EPD) and OSIPM (except OSIPM-EPD) programs who:

(a) Live in the community;

(b) Are not assumed eligible (see OAR 461-135-0010);

(c) Do not receive home and community-based care (see OAR 461-001-0030); and

(d) Have at least one child (see section (1) of this rule) in the household group (see OAR 461-110-0210).

(3) For an individual described in section (2) of this rule who is married to a spouse (see OAR 461-001-0000) who is ineligible (see section (1) of this rule), the Department calculates the adjusted income of the individual under sections (4)(b) through (f) of this rule first. If the individual's adjusted income is greater than the OSIPM program adjusted income standard for a need group of one under OAR 461-155-0250, the individual is not eligible for OSIPM.

(4) To determine adjusted income for clients described in section (2) of this rule, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) An allocation as described below:

(A) When an adult is applying, income is allocated (see paragraph (C) of this subsection) from an ineligible spouse included in the financial group to each ineligible child of the couple.

(B) When a child is applying:

(i) Income from ineligible parents is first allocated to each ineligible child in the household.

(ii) Second, the remaining income from subparagraph (i) of this paragraph is reduced as provided in subsections (b) through (f) of this section.

(iii) Third, the remaining income is reduced by the non-SSI OSIP and OSIPM adjusted income standard of the:

(I) Couple if both parents live with the child; or

(II) Individual if only one ineligible parent lives with the child.

(iv) Fourth, the remainder is deemed equally to each child applicant in the household.

(v) The income deemed to the child is added to the other income of the child and deductions are taken as described in subsections (b) through (f) of this section to calculate the child's adjusted income.

(C) The maximum amount of each allocation under paragraphs (A) and (B) of this subsection is the difference between the couple and the individual SSI Standard. The allocation for paragraphs (A) and (B) of this subsection is reduced by the other countable income of each ineligible child. An allocation is taken from unearned income first, and any remaining allocation is then taken from earned income.

(b) One standard deduction of $20 from unearned income. This deduction may be taken from earned income if the client has less than $20 in unearned income.

(c) One standard earned income deduction of:

(A) $65 for clients in the OSIP-AD, OSIP-OAA, OSIPM-AD, and OSIPM-OAA programs; or

(B) $85 for clients in the OSIP-AB and OSIPM-AB programs.

(d) An income deduction for documented impairment-related work expenses or blind work expenses.

(e) One half of the remaining earned income.

(f) Deductions under a plan for self-support for clients in the OSIP-AB, OSIP-AD, OSIPM-AB, and OSIPM-AD programs.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.083, 411.404, 411.706, 413.085, 414.685

Hist.: SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0552

Income Deductions; Qualified Medicare Beneficiaries Programs

(1) This rule is used to determine adjusted income (see OAR 461-001-0000) for the Qualified Medicare Beneficiaries programs: QMB-BAS and QMB-SMB (including SMF) programs.

(2) To determine adjusted income, deductions from the countable (see OAR 461-001-0000) income of the financial group (see OAR 461-110-0530) are made in the following order:

(a) One standard deduction of $20 from unearned income.

(A) This deduction may be taken from earned income if the individual has less than $20 in unearned income.

(B) This deduction does not apply to in-kind support and maintenance.

(C) This deduction does not apply to a benefit based on need that is totally or partially funded by the federal government or by a nongovernmental agency.

(b) One standard earned income deduction of:

(A) $65 for an individual who is not blind; or

(B) $85 for an individual who is blind.

(c) An income deduction for documented impairment-related work expenses or blind work expenses for an individual under age 65.

(d) One half of the remaining earned income.

(e) Deductions under a plan for self-support for an individual less than the age of 65.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 413.085, 414.685

Stats. Implemented: ORS 409.050, 410.070, 411.060, 411.070, 411.404, 413.085, 414.685, 414.839

Hist.: SSP 23-2008, f. & cert. ef. 10-1-08; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

461-175-0310

Notice Situation; Resource Transfer Disqualification

(1) When the Department proposes to disqualify a filing group (see OAR 461-110-0310) because of a disqualifying transfer of assets (see OAR 461-140-0210), the following notice is sent:

(a) For new applicants, a basic decision notice (see OAR 461-001-0000).

(b) For ongoing clients, a timely continuing benefit decision notice (see OAR 461-001-0000).

(2) A notice required by this rule includes the amount of uncompensated value used in the eligibility determination and the period of ineligibility caused by the transfer.

(3) In the GA, GAM, OSIP, and OSIPM programs, the notice must also include:

(a) The action that resulted in the disqualification; and

(b) Information that the individual, or the facility in which the individual resides (on behalf of the individual), may apply for a waiver of the disqualification on the basis of undue hardship.

Stat. Auth.: ORS 409.050, 410.070, 411.060, 411.070, 411.816, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 410.070, 411.060, 411.070, 411.095, 411.816, 412.049, 413.085, 414.685

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 35-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Amending rules relating to the Employment Related Day Care (ERDC) program

Adm. Order No.: SSP 36-2015

Filed with Sec. of State: 12-23-2015

Certified to be Effective: 1-1-16

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Rules Amended: 461-001-0000, 461-135-0400, 461-135-0405, 461-135-0407, 461-145-0910, 461-160-0040, 461-160-0300, 461-170-0150, 461-170-0160, 461-175-0222, 461-175-0300

Rules Repealed: 461-001-0000(T), 461-125-0830(T), 461-135-0405(T), 461-135-0407(T), 461-145-0910(T), 461-160-0040(T), 461-160-0300(T), 461-170-0150(T), 461-170-0160(T), 461-175-0222(T), 461-175-0300(T)

Subject: The Department of Human Services, Office of Self-Sufficiency Programs, is amending rules governing the Employment Related Day Care (ERDC) program. Specifically:

OAR 461-001-0000 about definitions is being amended to include a definition of "homeless" in the ERDC program. Homeless families will be eligible for "priority processing" under a corresponding amendment to OAR 461-170-0150 described below.

OAR 461-135-0400 about specific requirements of the ERDC program is being amended to clarify that all caretakers in the filing group must be employed unless they meet an exception in the rule. An additional exception to the employment requirement is also being added to this rule for situations in which DHS Child Welfare confirms that the unemployed caretaker is not allowed to have supervised contact with the child. (This change was added to OAR 461-125-0830 by temporary rule on October 1, 2015. That temporary rule is being repealed and the change is being moved into this rule.)

OAR 461-135-0405 about children in Head Start contracted child care is being amended to remove the statement "other than self-employment"; remove the subsection about caretakers who have enrolled in school; and set the copayment for Head Start contracted child care.

OAR 461-135-0407 about children in Oregon Program of Quality (OPQ) contracted child care is amended to add reference for a caretaker who is no longer employed and in school full-time; remove language about not eligible due to self-employment; and set the copayment for OPQ contracted child care.

OAR 461-145-0910 about self-employment is being amended to include an exception in the ERDC program when anticipating income for a new self-employment business.

OAR 461-160-0040 about dependent care costs deductions and coverage is being amended to list circumstances during which child care payments can continue including during a job loss, medical leave, or military transition, and establish when a copay can be waived. This rule is also amended to remove reference to the Refugee (REF) assistance program because child care is not applicable in that program.

OAR 461-160-0300 about use of income to determine eligibility and benefits for ERDC is being amended to state the eligibility income standards at initial and recertification.

OAR 461-170-0150 about the certification period in the ERDC program is being amended to increase the ERDC certification period to not less than 12 months; allow "priority processing" for homeless families and families who have a current child care need for a foster child; and define "priority processing" as opening benefits for

up to three months pending verification of income and other eligibility requirements.

OAR 461-170-0160 about when a reapplication form is considered complete or not received in the ERDC program is being amended to include and make allowance for the reapplication to be turned in later than the 12 month certification date when authorized work search, medical leave, and military transition end dates are later than the 12 month end of certification period date and effective close date at reapplication when the case is coded with authorized work search, medical leave or military transition;

OAR 461-175-0222 about notice situations and the expiration of certification period in the ERDC.

SNAP, and TANF programs is being amended to include an exception for ERDC when households are certified for one or two months.

OAR 461-175-0300 about notice situations and prior notice is being amended to include when an ERDC case in "priority processing" can be closed without further notice.

In addition, non-substantive edits were made to update statutory and rule references and correct formatting and punctuation.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-001-0000
Definitions for Chapter 461

Defined terms are often italicized throughout this chapter of rules. If a defined term is accompanied by a cross-reference to a rule defining the term, subsequent usages of that term in the same rule refer to the same definition cross-referenced earlier in the rule. In this chapter of rules, unless the context indicates otherwise:

(1) A reference to Division, Adult and Family Services Division (or AFS), Senior and Disabled Services Division (or SDSD), or any other agency formerly part of the Department of Human Services means the Department of Human Services (DHS), except --

(a) The rule in which reference occurs only regulates programs covered by OAR chapter 461.

(b) OCCS medical program eligibility rules are in OAR chapter 410, division 200.

(2) "Address Confidentiality Program" (ACP) means a program of the Oregon Department of Justice, which provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence (see section (25) of this rule), sexual assault, or stalking.

(3) "Adjusted income" means the amount determined by subtracting income deductions from countable (see section (18) of this rule) income (see OAR 461-140-0010). Specific rules on the deductions are in OAR chapter 461, division 160.

(4) "Adoption assistance" means financial assistance provided to families adopting children with special needs. "Adoption assistance" may be state or federally funded. Federal adoption assistance is authorized by the Adoption Assistance and Child Welfare Act of 1980 (Pub. L. No. 96-272, 94 Stat. 500 (1980)). State adoption assistance is authorized by ORS 418.330 to 418.335.

(5) "Assets" mean income and resources.

(6) "Basic decision notice" means a decision notice (see section (21) of this rule) mailed no later than the date of action given in the notice.

(7) "Branch office" means any Department or AAA (Area Agency on Aging) office serving a program covered by this chapter of rules.

(8) "Budgeting" means the process of calculating the benefit level.

(9) "Budget month" means the calendar month from which nonfinancial and financial information is used to determine eligibility (see section (28) of this rule) and benefit level for the payment month (see section (50) of this rule).

(10) "Cafeteria plan" means a written benefit plan offered by an employer in which:

(a) All participants are employees; and

(b) Participants may choose, cafeteria-style, from a menu of two or more cash or qualified benefits. In this context, qualified benefits are benefits other than cash that the Internal Revenue Service does not consider part of an employee's gross income. Qualified benefits include, but are not limited to:

(A) Accident and health plans (including medical plans, vision plans, dental plans, accident and disability insurance);

(B) Group term life insurance plans (up to $50,000);

(C) Dependent care assistance plans; and

(D) Certain stock bonus plans under section 401(k)(2) of the Internal Revenue Code (but not 401(k)(1) plans).

(11) "Capital asset" means property that contributes toward earning self-employment income, including self-employment income from a microenterprise (see section (43) of this rule), either directly or indirectly. A "capital asset" generally has a useful life of over one year and a value, alone or in combination, of $100 or more.

(12) "Caretaker" means an individual who is responsible for the care, control, and supervision of a child (see section (15) of this rule). The status of "caretaker" ends once the individual no longer exercises care, control, and supervision of the child for 30 days.

(13) "Caretaker relative" means:

(a) In the Pre-TANF, SFPSS, and TANF programs, a dependent child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece who lives in a residence maintained by one or more of the relatives as the child's or the relative's own home.

(b) In all programs not covered under subsection (a) of this section, a caretaker (see section (12) of this rule) who meets the requirements of one of the following paragraphs:

(A) Is one of the following relatives of the dependent child (see section (23) of this rule):

(i) Any blood relative, including those of half-blood, and including first cousins, nephews, or nieces, and individuals of preceding generations as denoted by prefixes of grand, great, or great-great.

(ii) Stepfather, stepmother, stepbrother, and stepsister.

(iii) An individual who legally adopts the child and any individual related to the individual adopting the child, either naturally or through adoption.

(B) Is or was a spouse (see section (62) of this rule) of an individual listed in paragraph (A) of this subsection.

(C) Met the definition of "caretaker relative" under paragraph (A) or (B) of this subsection before the child was adopted (notwithstanding the subsequent adoption of the child).

(14) "Certification period" means the period for which an individual is certified eligible for a program.

(15) "Child" includes natural, step, and adoptive children. The term "child" does not include an unborn.

(a) In the ERDC program, a "child" need not have a biological or legal relationship to the caretaker but must be in the care and custody of the caretaker, must meet the citizenship or alien status requirements of OAR 461-120-0110, and must be:

(A) Under the age of 18; or

(B) Under the age of 19 and in secondary school or vocational training at least half time.

(b) In the GA, GAM, and OSIP programs, a "child" is an individual under the age of 18.

(c) In the OSIPM and QMB programs, "child" means an unmarried individual living with a parent (see section (49) of this rule) who is:

(A) Under the age of 18; or

(B) Under the age of 22 and attending full-time secondary, postsecondary or vocational-technical training designed to prepare the individual for employment.

(d) In the REF and REFM programs, a "child" is:

(A) An individual under the age of 18; or

(B) An individual who is 18 years of age and attending secondary school full-time or pursuing a GED full-time.

(16) "Community based care" is any of the following:

(a) Adult foster care — Room and board and 24 hour care and services for the elderly or for people with disabilities 18 years of age or older. The care is contracted to be provided in a home for five or fewer clients.

(b) Assisted living facility — A program approach, within a physical structure, which provides or coordinates a range of services, available on a 24-hour basis, for support of resident independence in a residential setting.

(c) In-home Services — Individuals living in their home receiving services determined necessary by the Department.

(d) Residential care facility — A facility that provides residential care in one or more buildings on contiguous property for six or more individuals who have physical disabilities or are socially dependent.

(e) Specialized living facility — Identifiable services designed to meet the needs of individuals in specific target groups which exist as the result of a problem, condition, or dysfunction resulting from a physical disability or a behavioral disorder and require more than basic services of other established programs.

(f) Independent choices — In-Home Services program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services provided pursuant to a written service plan (see OAR 411-030-0020).

(17) "Continuing benefit decision notice" means a decision notice that informs the client of the right to continued benefits and is mailed in time to be received by the date benefits are, or would be, received.

(18) "Countable" means that an available asset (either income or a resource) is not excluded and may be considered by some programs to determine eligibility.

(19) "Cover Oregon" means Oregon Health Insurance Exchange Corporation.

(20) "Custodial parents" mean parents who have physical custody of a child. "Custodial parents" may be receiving benefits as dependent children or as caretaker relatives for their own children.

(21) "Decision notice" means a written notice of a decision by the Department regarding an individual's eligibility for benefits in a program.

(22) "Department" means the Department of Human Services (DHS).

(23) "Dependent child" in the TANF program means the following:

(a) An individual who is not a caretaker relative (see section (13) of this rule) of a child in the household, is unmarried or married but separated, and is under the age of 18, or 18 years of age and a full time student in secondary school or the equivalent level of vocational or technical training; or

(b) A minor parent (see section (44) of this rule) whose parents have chosen to apply for benefits for the minor parent. This does not apply to a minor parent who is married and living with his or her spouse.

(24) "Disability" means:

(a) In the SNAP program, see OAR 461-001-0015.

(b) In the REF, SFPSS, TA-DVS, and TANF programs, for purposes other than determining eligibility:

(A) An individual with a physical or mental impairment that substantially limits the individual's ability to meet the requirements of the program; or

(B) An individual with a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or who is regarded as having such an impairment as defined by the Americans with Disabilities Act (42 USC 12102; 28 CFR 35.104).

(25) "Domestic violence" means the occurrence of one or more of the acts described in subsections (a) to (d) of this section between family members, intimate partners, or household members:

(a) Attempting to cause or intentionally, knowingly, or recklessly causing physical injury or emotional, mental, or verbal abuse.

(b) Intentionally, knowingly, or recklessly placing another in fear of imminent serious physical injury.

(c) Committing sexual abuse in any degree as defined in ORS 163.415, 163.425 and 163.427.

(d) Using coercive or controlling behavior.

(e) As used in this section, "family members" and "household members" mean any of the following:

(A) Spouse;

(B) Former spouse;

(C) Individuals related by blood, marriage (see section (42) of this rule), or adoption;

(D) Individuals who are cohabitating or have cohabited with each other;

(E) Individuals who have been involved in a sexually intimate or dating relationship; or

(F) Unmarried parents of a child.

(26) "Domestic violence shelters" are public or private nonprofit residential facilities providing services to victims of domestic violence. If the facility serves other people, a portion must be used solely for victims of domestic violence.

(27) "Electronic application" is an application electronically signed and submitted through the Internet.

(28) "Eligibility" means the decision as to whether an individual qualifies, under financial and nonfinancial requirements, to receive program benefits.

(29) "Equity value" means fair market value (see section (30) of this rule) minus encumbrances.

(30) "Fair market value" means the amount an item is worth on the open market.

(31) "Family stability" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means the characteristics of a family that support healthy child development, including parental mental health, drug and alcohol free environment, stable relationships, and a supportive, flexible, and nurturing home environment.

(32) "Family stability activity" in the JOBS, Pre-TANF, Post-TANF, SFPSS, TA-DVS, and TANF programs means an action or set of actions taken by an individual, as specified in a case plan, intended to promote the ability of one or both parents to achieve or maintain family stability (see section (31) of this rule).

(33) "Financial institution" means a bank, credit union, savings and loan association, investment trust, or other organization held out to the public as a place receiving funds for deposit, savings, checking, or investment.

(34) "Homeless" in the ERDC program means lacking a fixed regular and adequate nighttime residence and includes living in an emergency shelter, shared housing with others due to loss of housing or economic hardship, staying in motels, cars, parks, public places, tents, trailers, or other similar settings.

(35) "Income producing property" means:

(a) In all programs except OSIP, OSIPM, and QMB, real or personal property that generates income for the financial group (see OAR 461-110-0530). Examples of "income producing property" are:

(A) Livestock, poultry, and other animals.

(B) Farmland, rental homes (including a room or other space in the home or on the property of a member of the financial group), vacation homes, and condominiums.

(b) In the OSIP, OSIPM, and QMB programs, "income-producing property" means any real or personal property not used in self-employment (see OAR 461-145-0600 and 461-145-0915) that produces income for the financial group. "Income-producing property" includes:

(A) Livestock, poultry, or other animals that produce marketable products sold by the financial group.

(B) Farmland not excluded under OAR 461-145-0220 that is farmed or rented out by the financial group.

(C) Real property other than the home (including vacation homes and condominiums), that is rented out.

(c) In the OSIP, OSIPM, and QMB programs, "income-producing property" does not include:

(A) Rooms or other space for rent in the home (see OAR 461-145-0220).

(B) Livestock, poultry, or other animals kept for resale (see OAR 461-145-0010).

(36) "Initial month" of eligibility means any of the following:

(a) In all programs, the first month a benefit group (see OAR 461-110-0750) is eligible for a program benefit in Oregon after a period during which the group is not eligible.

(b) In all programs except the SNAP program, the first month a benefit group is eligible for a program benefit after there has been a break in the program benefit of at least one full calendar month. If benefits are suspended for one month, that is not considered a break.

(c) In the SNAP program:

(A) The first month for which the benefit group is certified following any period during which they were not certified to participate, except for migrant and seasonal farm workers (see OAR 461-001-0015).

(B) For migrant and seasonal farmworkers, the first month for which the benefit group is certified following any period of one month or more during which they were not certified to participate.

(d) For a new applicant to the GA, GAM, OSIP, or OSIPM program applying for care in a nonstandard living arrangement (see section (45) of this rule), for the purposes of calculating the correct divisor in OAR 461-140-0296, the month in which the individual would have been eligible had it not been for the disqualifying transfer of assets (see section (5) of this rule).

(e) For a current recipient of the GA, GAM, OSIP, or OSIPM program receiving or applying for care in a nonstandard living arrangement, for the purpose of calculating the correct divisor in OAR 461-140-0296, the later of the following:

(A) The month the disqualifying transfer occurred.

(B) The month of application for long-term care (see section (40) of this rule) services if the individual would have been eligible had it not been for the disqualifying transfer of assets.

(37) "In-kind income" means income in a form other than money (such as food, clothing, cars, furniture, and payments made to a third party).

(38) "Legally married" means a marriage uniting two individuals according to --

(a) The statutes of the state where the marriage occurred;

(b) Except in the SNAP program, the common law of the state in which the two individuals previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which the two individuals previously resided while meeting the requirements for legal or cultural marriage in that country.

(39) "Life estate" means the right to property limited to the lifetime of the individual holding it or the lifetime of some other individual. In general, a "life estate" enables the owner of the "life estate" to possess, use, and obtain profits from property during the lifetime of a designated individual while actual ownership of the property is held by another individual. A "life estate" is created when an individual owns property and then transfers ownership to another individual while retaining, for the rest of the individual's life, certain rights to that property. In addition, a "life estate" is established when a member of the financial group purchases a "life estate" interest in the home of another individual.

(40) "Lodger" means a member of the household group (see OAR 461-110-0210) who:

(a) Is not a member of the filing group (see OAR 461-110-0310); and

(b) Pays the filing group:

(A) In all programs except the GA, GAM, OSIP, OSIPM, and QMB programs, for room and board.

(B) In the GA, GAM, OSIP, OSIPM, and QMB programs, for room with or without board.

(41) "Long term care" means the system through which the Department provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and state hospitals (Eastern Oregon and Oregon State Hospitals).

(42) "Lump-sum income" means income received too infrequently or irregularly to be reasonably anticipated, or received as a one-time payment. "Lump-sum income" includes:

(a) Retroactive benefits covering more than one month, whether received in a single payment or several payments.

(b) Income from inheritance, gifts, winnings, and personal injury claims.

(43) "Marriage" means the union of two individuals who are legally married (see section (37) of this rule).

(44) "Microenterprise" means a sole proprietorship, partnership, or family business with fewer than five employees and capital needs no greater than $35,000.

(45) "Minor parent" in the ERDC and TANF programs means a parent under the age of 18.

(46) "Nonstandard living arrangement" is defined as follows:

(a) In the GA, GAM, OSIP, OSIPM, and QMB programs, an individual is considered to be in a "nonstandard living arrangement" when the individual is applying for or receiving services in any of the following locations:

(A) A nursing facility in which the individual receives long-term care services paid with Medicaid funding, except this subsection does not apply to a Medicare client in a skilled-stay nursing facility.

(B) An intermediate care facility for the mentally retarded (ICF/MR).

(C) A psychiatric institution, if the individual is not yet 21 years of age or has reached the age of 65.

(D) A community based care (see section (16) of this rule) setting, except a State Plan Personal Care (SPPC) setting is not considered a "nonstandard living arrangement".

(b) In all programs except GA, GAM, OSIP, OSIPM, and QMB, "nonstandard living arrangement" means each of the following locations:

(A) Foster care.

(B) Residential Care facility.

(C) Drug or alcohol residential treatment facility.

(D) Homeless or domestic violence shelter.

(E) Lodging house if paying for room and board.

(F) Correctional facility.

(G) Medical institution.

(47) "OCCS" is the Office of Client and Community Services, part of the Medical Assistance Programs under the Oregon Health Authority responsible for OCCS medical program eligibility policy, community outreach, OCCS Medical Program eligibility determinations, and the OHA Customer Service Call Center.

(48) "OCCS Medical Programs" refers to programs for which eligibility policy can be found in OAR chapter 410, division 200, and includes CEC, CEM, MAA, MAF, EXT, OHP, Substitute Care, BCCTP, and MAGI Medicaid/CHIP programs, including:

(a) MAGI Adult;

(b) MAGI Child;

(c) MAGI Parent or Other Caretaker Relative;

(d) MAGI Pregnant Woman; and

(e) MAGI CHIP.

(49) "Ongoing month" means one of the following:

(a) For all programs except the SNAP program, any month following the initial month (see section (35) of this rule) of eligibility, if there is no break in the program benefit of one or more calendar months.

(b) For the SNAP program, any month in the certification period (see section (14) of this rule) following the initial month of eligibility.

(50) "Parent" for all programs except the JPI and SNAP programs, means the biological or legal mother or father of an individual or unborn child. For the SNAP program, a "parent" means the biological or legal mother or father of an individual. For the JPI program, a "parent" means the biological or legal mother or father of a child under the age of 18.

(a) If the mother lives with a male and either she or the male claims that he is the father of the child or unborn, and no one else claims to be the father, he is treated as the father even if paternity has not been legally established.

(b) A stepparent relationship exists if:

(A) The individual is legally married to the child's biological or adoptive parent; and

(B) The marriage has not been terminated by legal separation, divorce, or death.

(c) A legal adoption erases all prior legal and blood relationships and establishes the adoptive parent as the legal parent. However, the biological parent is also considered a "parent" if both of the following are true:

(A) The child lives with the biological parent; and

(B) The legal parent has given up care, control, and supervision of the child.

(51) "Payment month" means, for all programs except EA, the calendar month for which benefits are issued.

(52) "Payment period" means, for EA, the 30-day period starting with the date the first payment is issued and ending on the 30th day after the date the payment is issued.

(53) "Periodic income" means income received on a regular basis less often than monthly.

(54) "Primary person" for all programs except the SNAP program, means the filing group member who is responsible for providing information necessary to determine eligibility and calculate benefits. The "primary person" for individual programs is as follows:

(a) For the TANF program, the parent or caretaker relative.

(b) For the ERDC program, the caretaker.

(c) For SNAP, see OAR 461-001-0015.

(d) For the GA, GAM, OSIP, OSIPM, QMB, REF, and REFM programs: the client or client's spouse.

(55) "Qualified Partnership Policy" means a long-term care insurance policy meeting the requirements of OAR 836-052-0531 that was either:

(a) Issued while the individual was a resident in Oregon on January 1, 2008 or later; or

(b) Issued in another state while the individual was a resident of that state on or after the effective date of that state's federally approved State Plan Amendment to issue qualified partnership policies.

(56) "Real property" means land, buildings, and whatever is erected on or affixed to the land and taxed as "real property".

(57) "Reimbursement" means money or in-kind compensation provided specifically for an identified expense.

(58) "Safe homes" mean private homes that provide a few nights lodging to victims of domestic violence. The homes must be recognized as such by the local domestic violence agency, such as crisis hot lines and shelters.

(59) "Shelter costs" mean, in all programs except the SNAP program, housing costs (rent or mortgage payments, property taxes) and utility costs, not including cable TV or non-basic telephone charges. In the SNAP program, see OAR 461-160-0420.

(60) "Shelter in kind" means an agency or individual outside the financial group provides the shelter of the financial group, or makes a payment to a third party for some or all of the shelter costs (see section (58) of this rule) of the financial group. "Shelter-in-kind" does not include temporary shelter provided by a domestic violence shelter, homeless shelter, or residential alcohol and drug treatment facilities or situations where no shelter is being provided, such as sleeping in a doorway, park, or bus station.

(61) "Sibling" means the brother or sister of an individual. "Blood related" means they share at least one biological or adoptive parent. "Step"

means they are not related by blood, but are related by the marriage of their parents.

(62) "Spousal support" means income paid (voluntarily, per court order, or per administrative order) by a separated or divorced spouse to a member of the financial group.

(63) "Spouse" means an individual who is legally married to another individual.

(64) "Stable income" means income that is the same amount each time it is received.

(65) "Standard living arrangement" means a location that does not qualify as a nonstandard living arrangement.

(66) "Teen parent" means, for TANF and JOBS, a parent under the age of 20 who has not completed a high school diploma or GED.

(67) "Timely continuing benefit decision notice" means a decision notice that informs the individual of the right to continued benefits and is mailed no later than the time requirements in OAR 461-175-0050.

(68) "Trust funds" mean money, securities, or similar property held by an individual or institution for the benefit of another individual.

(69) "USDA meal reimbursements" mean cash reimbursements made by the Oregon Department of Education for family day-care providers who serve snacks and meals to children in their care.

(70) "Variable income" means earned or unearned income that is not always received in the same amount each month.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 411.837, 412.001, 412.006, 412.014, 412.049, 413.085, 414.685

Hist.: AFS 28-1978, f. & ef. 7-13-78; AFS 54-1984, f. 12-28-84, ef. 1-1-85; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 15-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; Administrative correction 4-21-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 22-2013(Temp), f. & cert. ef. 8-23-13 thru 2-19-14; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 29-2013(Temp), f. & cert. ef. 10-1-13 thru 2-19-14; SSP 37-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; SSP 9-2014, f. & cert. ef. 4-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 18-2014(Temp), f. & cert. ef. 7-1-14 thru 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 11-2015, f. 3-13-15, cert. ef. 4-1-15; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-135-0400

Specific Requirements; ERDC

(1) The Department makes payments for child care, including care covered by the ERDC program, subject to the provisions of division 165 of this chapter of rules.

(2) To be eligible for ERDC, a filing group (see OAR 461-110-0310 and 461-110-0350) must meet the requirements of all of the following subsections:

(a) Except as provided in subsection (c) of this section, every caretaker (see OAR 461-001-0000) in the filing group must receive income from employment. This includes self-employment (see OAR 461-145-0910) and employment through a work study program.

(b) The filing group must include a child (see OAR 461-001-0000) who needs child care.

(c) The filing group must have an allowable child care need as described in OAR 461 160 0040. If there are two adults required to be in the filing group, and one of the adults is unemployed, the unemployed adult is considered available to provide child care, making the filing group ineligible, except in the following situations:

(A) The unemployed adult is physically or mentally unable to provide adequate child care. This must be verified (see OAR 461-125-0830).

(B) The unemployed adult is unavailable to provide child care while participating in the requirements of a case plan (see OAR 461-001-0025) other than requirements associated with post-secondary education.

(C) Confirmation is received from the Office of Child Welfare Programs that supervised contact is required between the child and an unemployed parent (see OAR 461-001-0000) or spouse (see OAR 461-001-0000) who is living in the home with the child.

(d) The filing group must use a child care provider who meets the requirements in OAR 461-165-0160 and 461-165-0180.

(e) The child needing child care must meet the citizenship or alien status requirements of OAR 461-120-0110.

(3) A filing group not willing to obtain a Certificate of Immunization Status for the child is not eligible for a child care payment for more than twelve calendar months, or longer if child care continues under OAR 461-160-0040(5).

(4) The child care must be necessary to enable the caretaker to remain employed, including self-employed.

(5) A filing group is not eligible for child care when the caretaker or parent in the filing group receives a grant for child care from the Oregon Student Assistance Commission for any month the grant is intended to cover, regardless of when the grant is received.

Stat. Auth.: ORS 409.050, 411.060, 411.070, OL 2015, ch. 698

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.070, 411.122, 411.141, 418.485, OL 2015 ch. 698

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 35-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 34-2010(Temp), f. & cert. ef. 10-1-10 thru 3-30-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 7-2011(Temp), f. & cert. ef. 2-16-11 thru 8-15-11; SSP 9-2011(Temp), f. & cert. ef. 3-22-11 thru 8-15-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-135-0405

Children in the Head Start Program; ERDC and TANF

(1) Initial eligibility (see OAR 461-001-0000) for the ERDC program (see OAR 461-135-0400) or the TANF program (see OAR 461-135-0070) must be met prior to receiving child care under a contract between a Head Start agency and the Department.

(2) The following subsections apply when a child (see OAR 461-001-0000) in the ERDC or TANF programs receives child care under a contract between a Head Start agency and the Department.

(a) The Head Start agency is considered the provider of child care.

(b) If the Head Start agency uses another provider for the child care, that provider must meet the requirements in OAR 461-165-0160 and following.

(c) The payment made by the Department on behalf of the child is made only to the Head Start agency. The child is ineligible for child care payments for care not provided under the contract between the Head Start agency and the Department.

(d) Once the Department makes a child care payment for the child under the contract, the child may not lose child care benefits until the next August 31, unless any of the following paragraphs apply:

(A) The child's caretaker (see OAR 461-001-0000) has been found ineligible for ERDC program benefits under OAR 461 135 0415 for failure to make a copayment.

(B) The caretaker was found ineligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined.

(C) The caretaker fails to meet the requirements of the locally-prepared agreement among the client and the Head Start program.

(D) The child is no longer attending a Head Start contracted program.

(E) The caretaker of the child voluntarily quits their job or causes their own dismissal and does not meet the "good cause" criteria set out in OAR 461-135-0070(2).

(F) The caretaker of the child is no longer employed and enrolls in school, unless the caretaker is:

(i) Continuing to actively seek employment during the hours the contracted Head Start program is operating; and

(ii) Available to work during the operating hours of the contracted Head Start program.

(G) In the TANF program:

(i) The case closes due to disqualification (see OAR 461-130-0330); or

(ii) The caretaker is not actively participating in an open case plan (see OAR 461-001-0025).

(H) The filing group (see OAR 461-110-0310 and 461-110-0350) no longer meets Oregon residency requirements under OAR 461-120-0010.

(e) Except as provided in subsection (f) of this section, for any month in which the child is eligible to be served under a contract covered by this rule is receiving ERDC, the copayment is $27.

(f) For any month in which a child in a contract covered by this rule is eligible for and receiving TANF, the copayment is zero.

(3) The Department will not make a child care payment for a child in a Head Start program if the child's caretaker has been found ineligible for ERDC program under OAR 461-135-0415 for failure to make a copayment.

Stat. Auth: ORS 409.050, 411.060, 411.116, 412.049
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.116, 411.122, 412.049
Hist.: AFS 33-2000(Temp), f. 12-22-00, cert. ef. 1-1-01 thru 3-31-01; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 11-2014(Temp), f. & cert. ef. 4-10-14 thru 10-7-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 16-2015, f. & cert. ef. 4-1-15; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-135-0407
Children in Oregon Program of Quality Contracted Child Care; ERDC and TANF

(1) Initial eligibility (see OAR 461-001-0000) for the ERDC program (see OAR 461-135-0400) or the TANF program (see OAR 461-135-0070) must be met prior to receiving child care under a contract between an Oregon Program of Quality (OPQ) provider and the Department.

(2) The following subsections apply when a child (see OAR 461-001-0000) in the ERDC or TANF programs receives child care under a contract between an OPQ provider and the Department.

(a) The payment made by the Department on behalf of the child is made only to the OPQ provider. The child is ineligible for child care payments for care not provided under the contract between the OPQ provider and the Department.

(b) Once the Department makes a child care payment for the child under the contract, the child may not lose child care benefits until the next August 31, unless any of the following paragraphs apply:

(A) The child is no longer attending an OPQ contracted provider.

(B) The filing group (see OAR 461-110-0310 and 461-110-0350) was found ineligible because of inaccurate information provided to the Department or because information was withheld from the Department when eligibility was determined.

(C) The filing group fails to meet the requirements of the agreement between the client and the OPQ provider.

(D) The caretaker (see OAR 461-001-0000) of the child voluntarily quits their job or causes their own dismissal, and does not meet the "good cause" criteria set out in OAR 461-135-0070(2).

(E) The caretaker of the child is no longer employed and enrolls in school full time, unless the caretaker is:

(i) Continuing to actively seek employment during the hours the OPQ contracted child care program is operating; and

(ii) Available to work during the operating hours of the OPQ provider.

(F) In the ERDC program, the caretaker of the child has been found ineligible under OAR 461-135-0415 for failure to make a copayment.

(G) In the TANF program:

(i) The case closes due to disqualification (see OAR 461-130-0330); or

(ii) The caretaker is not actively participating in an open case plan (see OAR 461-001-0025).

(H) The filing group no longer meets Oregon residency requirements under OAR 461-120-0010.

(3) Except as provided in section (4) of this rule, for any month in which a child is eligible to be served under a contract covered by this rule is receiving ERDC, the copayment is $27.

(4) For any month in which a child is eligible to be served under a contract covered by this rule is eligible for and receiving TANF, the copayment is zero.

Stat. Auth.: ORS 409.050, 411.060, 411.116, 412.049
Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.116, 411.121, 411.122, 411.135, 412.049
Hist.: SSP 29-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 11-2013(Temp), f. & cert. ef. 5-15-13 thru 11-11-13; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 12-2014(Temp), f. & cert. ef. 5-1-14 thru 10-28-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 16-2015, f. & cert. ef. 4-1-15; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-145-0910
Self-Employment; General; Not OSIP, OSIPM, or QMB

(1) Self-employment income is income resulting from an individual's business, trade, or profession, rather than from a salary or wage paid by an employer. An individual is considered self-employed if the individual meets the criteria in sections (2) or (3) of this rule. Except as noted in section (3) of this rule, for all programs except SNAP, when an individual has established a corporation, determine if the individual is self-employed according to section (2) of this rule. If the individual has more than one self-employment business, trade, or profession, the income from each is determined separately.

(2) Except as provided in OAR 461-145-0250(1), an individual is self-employed for the purposes of this division of rules if the individual:

(a) Is considered an independent contractor by the business that employs the individual; or

(b) Meets at least four of the following criteria:

(A) Is engaged in an enterprise for the purpose of producing income.

(B) Is responsible for obtaining or providing a service or product by retaining control over the means and manner of providing the work or services offered.

(C) Is principally responsible for the success or failure of the business operation by assuming the necessary business expenses and profit or loss risks connected with the operation of the business, and has the authority to hire and fire employees to perform the labor or services.

(D) Is not required to complete an IRS W-4 form for an employer and is not required to have federal income tax or FICA payments withheld from a pay check.

(E) Is not covered under an employer's liability or workers' compensation insurance policy.

(3) Notwithstanding section (2) of this rule:

(a) Homecare Workers (see OAR 411-031-0020) paid by the Department are not self-employed.

(b) Child care providers (see OAR 461-165-0180) paid by the Department, adult foster home providers (see OAR 411-050-0602) paid by the Department, realty agents, and individuals who sell plasma, redeem beverage containers, pick mushrooms for sale, or engage in similar enterprises are considered to be self-employed.

(4) In the ERDC, REF, SNAP, and TANF programs, self-employment income, including income from a microenterprise (see OAR 461-001-0000), is counted prospectively to determine eligibility (see OAR 461-001-0000) as follows:

(a) Self-employment income is annualized when it is:

(A) Received during less than a 12-month period but is intended as a full year's income.

(B) From a business that has operated for a full year and the previous year is representative of what the income and costs will be during the budget month.

(b) Except in the ERDC program, self-employment income is treated as anticipated income when a financial group (see OAR 461-110-0530) begins self-employment and is unable to determine what the income and costs will be during the budget month.

(5) In the GA program, self-employment income is considered available upon receipt by a member of the financial group, except it is prorated over the period of work if the duration of the work exceeds one month.

(6) In the REFM program:

(a) Self-employment income is counted only if received in the month of application.

(b) If self-employment income counted in the month of application puts the applicant over the income limits for REFM, the income is calculated according to section (4) of this rule.

(7) When determining the amount of countable (see OAR 461-001-0000) self-employment income, use gross receipts and sales, including mileage reimbursements, before costs.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 413.085, 414.685
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.404, 411.816, 412.006, 412.049, 413.085, 414.685
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 1-2005(Temp), f. & cert. ef. 2-1-05 thru 6-30-05; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 5-2005(Temp), f. & cert. ef. 4-1-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 11-2015, f. 3-13-15, cert. ef. 4-1-15; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0040
Dependent Care Costs; Deduction and Coverage

(1) In the SNAP program, dependent care is deductible (see OAR 461-160-0430) when all of the following are true:

(a) The dependent is a member of the filing group (see OAR 461-110-0310) and is in the care, control, and custody of an individual in the group.

(b) The dependent care provider:

(A) Is not in the filing group; and

(B) Is not the parent (see OAR 461-001-0000) of the dependent.

(c) The dependent care is necessary because the client is working, commuting, on a meal break, in training, participating in pre-employment education, or participating in an OFSET case plan (see OAR 461-001-0020).

(2) In the ERDC and TANF programs, the cost of dependent child care may be paid for by the Department (is covered) only if dependent child care is necessary for the working client to perform his or her job duties, except in the ERDC program the cost of dependent care is allowed for approved educational hours and child care authorized under section (5) of this rule. For a client working under a JOBS Plus agreement, child care is covered during the time the client is engaged in work or in job search if the employer pays the client during that time.

(3) In the ERDC, JOBS, and TANF programs, the cost of dependent child care is not covered by the Department when free care is available, such as during school hours for school-age children.

(4) Child care is not covered in the ERDC and TANF programs if the nature of the work of the caretaker (see OAR 461-001-0000) does not make it necessary for a person other than the caretaker to provide the care. Child care is not covered during a period of time when the caretaker:

(a) Works at home and the nature of the work allows the caretaker to provide the care without significantly affecting the work;

(b) Provides child care in a residence; or

(c) Works for a provider of child care in a residence, unless the provider is a certified family child care home under OAR 414-350-0000 to 414-350-0400.

(5) In the ERDC program the cost of dependent child care may continue to be paid for by the Department (is covered) during the certification period (see OAR 461-001-0000) with no change to the authorized child care hours subject to the following provisions:

(a) When a reduction in work hours occurs the copay may be adjusted.

(b) When a job loss occurs:

(A) When a caretaker has a permanent job loss from all employment the copay is waived for up to three months for a work search period, starting the month after the job loss occurred.

(B) The waiver ends at the end of the three month period if the caretaker becomes employed.

(C) The three month work search period does not apply when:

(i) The adult was discharged or fired without good cause (see OAR 461-135-0070(2)) for misconduct, felony, or theft. "Misconduct" means willful or wantonly negligent violation of the standards of behavior which an employer has the right to expect of an employee, including an act or series of actions that amount to a willful or wantonly negligent disregard of an employer's interest.

(ii) The adult voluntarily quit in anticipation of discharge or without good cause.

(c) For medical leave:

(A) When a caretaker is on medical leave the reason for the leave must be verified including diagnosis and prognosis under OAR 461-125-0830. Maternity leave may be authorized for three months (12 weeks) without medical documentation.

(B) For a decrease or increase in income during or at the end of medical leave see OAR 461-180-0005 and OAR 461-180-0030.

(C) Medical leave and maternity leave can be extended when new verification is received prior to the end of the month noted on the original documentation. Medical leave cannot extend beyond the certification period.

(d) For military transition:

(A) When a caretaker who is a discharged U.S. military member returns from active duty in a military war zone, the copay is waived for up to six months starting the month after the military member returns home.

(B) The copay waiver ends at the end of the six month period if the caretaker becomes employed. The copay waiver ends before the end of the six month period if the caretaker returns to active duty.

(e) Under this section child care may be used for work, work search, approved educational hours, military transition activities, or other activities to maintain a part-time or full-time slot at a child care facility.

(6) In the JOBS program, the cost of child care may be covered while the care is necessary to enable the client to participate in a case plan (see OAR 461-190-0211).

(7) In the ERDC, JOBS, JOBS Plus, and TANF programs, the cost of dependent child care may be paid for (is covered) by the Department, only if all the following are true:

(a) The dependent child (see OAR 461-001-0000):

(A) In the ERDC program, is a member of the benefit group (see OAR 461-110-0750) and is in the care, control, and custody of an individual in the group.

(B) In the JOBS, JOBS Plus, and TANF programs, lives with the filing group.

(b) The provider of child care is not in the filing group.

(c) The provider of child care is not the parent of a child in the filing group.

(8) Coverage of the cost of dependent care is subject to the requirements in OAR chapter 461, including OAR 461-120-0510(3), 461-135-0400, 461-155-0150, 461-160-0193, 461-165-0180, and 461-190-0211.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.700, 411.816, 412.049

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 1-1993, f. & cert. ef. 2-1-93; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 4-2009(Temp), f. 3-11-09, cert. ef. 4-1-09 thru 9-28-09; SSP 27-2009, f. & cert. ef. 9-29-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-160-0300

Use of Income to Determine Eligibility and Benefits for ERDC

The Department determines financial eligibility for ERDC and the benefit level as follows:

(1) The monthly gross income of the financial group (see OAR 461-110-0530) is determined in accordance with OAR 461-150-0060.

(2) The monthly gross income at initial certification and recertification is compared to the ERDC eligibility standards in OAR 461-155-0150(5). If monthly income equals or exceeds the eligibility standards, the need group is ineligible for ERDC. If monthly income does not exceed the eligibility standard, the client's eligibility is determined under section (3) of this rule.

(3) For a client found eligible under section (2) of this rule, the allowable child care cost and the client's copay are determined as follows:

(a) The child care costs for which the client has been billed are compared to the amount provided in the appropriate child care chart in OAR 461-155-0150. The allowable child care cost is the lesser of the two amounts.

(b) The need group's copay is determined in accordance with OAR 461-155-0150.

(4) The copay is subtracted from the allowable child care cost, and the remainder is the payment the Department makes to the provider. If the copay is equal to or greater than the allowable child care cost, the client is not eligible for ERDC. If the copay is less than the allowable child care cost, the client meets the income requirement for ERDC.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 411.060 & 411.122

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 17-1990(Temp), f. 6-29-90, cert. ef. 7-1-90; AFS 26-1990, f. & cert. ef. 11-29-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 9-1991, f. 3-29-91, cert. ef. 4-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-170-0150

Certification Period; ERDC

In the ERDC program:

(1) The length of the certification period (see OAR 461-001-0000) may not be less than12 months. In the following situations the certification period may be extended beyond the certification end date:

(a) Caretakers in authorized work search and medical leave are limited to no more than three months.

(b) Caretakers on military transition are limited to no more than six months.

(2) A filing group (see OAR 461-110-0310 and 461-110-0350) that is determined to be homeless (see OAR 461-001-0000) or requires child care for a current foster child may receive "priority processing." For purposes of this rule, "priority processing" means the benefits may be open for up to three months while pending for verification of income or work schedule during the application period.

Stat. Auth.: ORS 411.060

Stats. Implemented: ORS 409.610, 411.060

[Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 10-1993, f. & cert. ef. 6-1-93; AFS 13-1993(Temp), f. & cert. ef. 7-1-93; AFS 21-1993, f. & cert. ef. 10-12-93; AFS 2-1994, f. &

cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 27-1996, f. 6-27-96, cert. ef. 7-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-170-0160
When a Reapplication Form is Considered Complete or Not Received; ERDC

In the ERDC program:

(1) At the end of the certification, authorized work search, medical leave, or military transition period (see OAR 461-160-0040(5)), whichever is later, a client must complete and return to a Department branch office (see OAR 461-001-0000) a reapplication form before a new certification period may be established under OAR 461-170-0150.

(2) A reapplication form is considered complete when it is received by a Department branch office by the 10th day of the last month of the certification, authorized work search, medical leave, or military transition period, whichever is later, and:

(a) The client answers, completely and accurately, all questions necessary to determine a copay amount for the following certification period;

(b) The client provides all required verification; and

(c) The form contains the signature of the primary person (see OAR 461-001-0000) or the authorized representative (see OAR 461-115-0090).

(3) When a Department branch office receives a completed reapplication form by the deadline in section (2) of this rule, the form is used to:

(a) Determine eligibility (see OAR 461-001-0000) for ERDC benefits;

(b) Establish the ERDC benefit copay amount for the next certification period; and

(c) Establish the next certification period as beginning on the first day of the month following the last month of the previous certification, authorized work search, medical leave, or military transition period, whichever is later.

(4) When a Department branch office does not receive a completed reapplication form on or before the deadline in section (2) of this rule, the case is closed effective the last day of the last month of the certification, authorized work search, medical leave, or military transition period, whichever is later.

(5) If the reapplication form is received after the deadline in section (2) of this rule, it is treated as a new application in accordance with OAR 461-115-0050.

Stat. Auth.: ORS 411.060
Stats. Implemented: ORS 409.610, 411.060, 411.105, 411.111
Hist.: AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 25-1998, f. 12-28-98, cert. ef. 1-1-99; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-175-0222
Notice Situations — Expiration of Certification Period; ERDC, SNAP, TANF

In the ERDC, SNAP, and TANF programs:

(1) Except in the ERDC program, the Department must provide a household certified for one month or certified in the second month of a two-month certification period (see OAR 461-001-0000) a notice of expiration at the time of certification.

(2) In the ERDC program, each household must receive a notice of expiration prior to the last month of the certification period.

(3) In the ERDC program, the notice of expiration must contain:

(a) The date the certification period expires.

(b) A statement that to receive benefits, the client must reapply and be found eligible for a new benefit amount.

(c) The household's right to request a contested case hearing if the reapplication is denied or if the household objects to the benefit amount.

(4) In the SNAP program, each household other than those covered under section (1) of this rule must receive a notice of expiration before the first day of the last month of the certification period (established per OAR 461-115-0450), but not before the first day of the next-to-the-last month.

(5) In the SNAP program, notice of expiration under this rule is provided to the filing group (see OAR 461-110-0310 and 461-110-0370) and must contain all of the following:

(a) The date the certification period expires.

(b) The date by which a household must submit an application for recertification to receive uninterrupted benefits.

(c) The consequences of failure to apply for recertification in a timely manner.

(d) The right to receive an application form upon request and to have it accepted as long as it contains a signature and a legible name and address.

(e) Information on alternative submission methods available to households that are not able to come into the certification office or do not have an authorized representative and how to exercise these options.

(f) The address of the office where the application must be filed.

(g) The household's right to request a contested case hearing if the recertification is denied or if the household objects to the benefit amount.

(h) A statement that any household consisting only of Supplemental Security Income (SSI) applicants or recipients is entitled to apply for SNAP program benefits recertification at an office of the Social Security Administration.

(i) A statement that failure to attend an interview may result in delay or denial of benefits.

(j) A statement that the household is responsible for rescheduling a missed interview and for providing required verification information.

(k) A statement that the client has no rights to continuation of benefits after the SNAP program certification period expires; and that to receive benefits, the client must reapply and be found eligible for a new benefit amount after the end of the certification period, including a client who is receiving continuation of benefits when his or her SNAP program certification period ends.

(6) In the TANF program, each household other than those covered under section (1) of this rule must be sent:

(a) Before the first day of the last month of the certification period (see OAR 461-001-0000 and 461-115-0430), but not before the first day of the next-to-the-last month, a recertification packet that contains application forms, deadlines, and information about the consequences of not reapplying on time; and

(b) A basic decision notice (see OAR 461-001-0000) about the expiration of the certification period (see OAR 461-001-0000 and 461-115-0430).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.816, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 1-2000, f. 1-13-00, cert. ef. 2-1-00; Renumbered from 461-115-0510, SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 15-2010, f. & cert. ef. 5-27-10; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

461-175-0300
Notice Situation; Prior Notice

(1) Except as provided in section (5) of this rule, when benefits in any Department program except a medical program and the SNAP program will end or be reduced after a specific period of time, the Department may issue a decision notice (see OAR 461-001-0000) informing the benefit group (see OAR 461-110-0750) of the date benefits will end or be reduced, and no further decision notice is required.

(2) Except as provided in section (5) of this rule, in any Department program except a medical program and the SNAP program, if the benefit group was informed in writing when the benefits began that the benefit group would receive benefits only for a specific period of time a basic decision notice (see OAR 461-001-0000) may be used to:

(a) Deny an application to start or continue benefits after the completion of a certification period (see OAR 461-001-0000) or to approve benefits at a level lower than the prior certification period.

(b) Indicate that benefits have been ended or reduced when no timely application is submitted.

(3) A basic decision notice is used when a special need allowance granted for a specific period of time is removed at the end of the specified period and the benefit group was informed of this in writing when the allowance began. A timely continuing benefit decision notice (see OAR 461-001-0000) is required if stopping the special need allowance results in benefit closure.

(4) In the JOBS Plus program, a basic decision notice is used if:

(a) An employer submits a wage reimbursement billing and the Department calculates a supplement (see OAR 461-190-0416 about supplements);

(b) The benefit group received a timely continuing benefit decision notice that the method of payment would be changed from cash to employer-paid wages; and

(c) The notice specified the period of time that benefits would be diverted.

(5) No additional decision notice is required when:

(a) Notwithstanding OAR 461-115-0010(6), when a benefit group submits an application for a program from which they currently are receiving benefits.

(b) In the ERDC program when a filing group (see OAR 461-110-0310 and 461-110-0350) is receiving priority processing (see OAR 461-170-0150(2)) but does not return postponed verification to the Department by the last day of the month in which the application period ends (see OAR 461-115-0190).

(c) In the OSIPM program:

(A) A client's liability returns to the previous higher level after the Department sent the client a continuing benefit decision notice for a decrease in the client liability due to an allowable deduction and that notice also specified when the deduction no longer would apply causing the client liability to return to the previous higher level; or

(B) A client's benefits are being closed or reduced and the Department sent the client a basic decision notice of eligibility and a simultaneous continuing benefit decision notice because the client's circumstances changed between the date of the client's application and the date of the Department's eligibility decision and the change caused the client's benefits to be reduced or closed.

(6) In the SNAP program:

(a) A basic decision notice is used to close benefits if the benefit group was informed in writing, when their benefits began, that they would receive benefits only for a specific period of time.

(b) No decision notice is required if the client is provided a decision notice at the time of application or redetermination that:

(A) The allotment of the benefit group would vary from month to month and listed the anticipated changes;

(B) In the case the client applied at the same time for both cash assistance and SNAP benefits, the SNAP benefits would be reduced or closed upon approval of the cash assistance; or

(C) In the case of a benefit group receiving benefits under expedited services with postponed verification:

(i) The expedited services benefits would close if the Department did not receive the postponed verification within the timeframe established under OAR 461-115-0690.

(ii) The expedited services benefits may be adjusted beyond the timeframe established under OAR 461-115-0690 based on the verified information provided to the Department without further notice.

Stat. Auth.: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

Stats. Implemented: ORS 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.006, 412.014, 412.049, 414.231, 414.826

Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 25-1994, f. & cert. ef. 11-1-94; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 3-2005(Temp), f. & cert. ef. 3-2-05 thru 6-30-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 29-2015(Temp), f. & cert. ef. 10-1-15 thru 3-28-16; SSP 36-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Implementing SNAP time limits for ABAWD clients in Multnomah and Washington counties

Adm. Order No.: SSP 37-2015

Filed with Sec. of State: 12-23-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 11-1-2015, 12-1-2015

Rules Amended: 461-115-0651, 461-130-0310, 461-130-0330, 461-135-0520, 461-170-0011, 461-170-0101

Subject: Under the Food and Nutrition Act of 2008, able-bodied adults without dependents (ABAWD) are limited to three months of SNAP benefits unless they are exempt or meet certain work participation requirements. Oregon's statewide waiver of the federal requirement expires on December 31, 2015. The new waiver approved by the Food and Nutrition Services of the US Department of Agriculture exempts all Oregon reservations and counties, except Multnomah and Washington. The rules below are being amended to implement the time limit and the associated reporting requirements, exemption criteria, and work participation requirements for ABAWD SNAP clients residing in these counties:

OAR 461-115-0651 about verification requirements in the SNAP program is being amended to state that ABAWD who reside in Multnomah or Washington County must report work hours and the number of countable months used in another state when the individual initially applies for SNAP benefits.

OAR 461-130-0310 about participation classifications is being amended to comply with the federal exemption criteria for ABAWD which states that in the SNAP program an individual receiving benefits under Title IV of the Social Security Act is exempt from employment program participation.

OAR 461-130-0330 about disqualifications is being amended to add a reference to the ABAWD rule, OAR 461-135-0520, which has information about disqualification as it relates to the time limits for ABAWD clients.

OAR 461-135-0520 about eligibility requirements and time limits for ABAWD is being amended in its entirety to:

- Limit ABAWD in Multnomah and Washington Counties to three "countable months" of SNAP benefits;

- Define "countable months" as months during which the ABAWD:

Is not exempt;

Receives a full month of benefits;

Does not reside in a waivered county; and

Does not meet work participation requirements.

- State how an ABAWD may regain eligibility;

- Create a placeholder section which will be used to list criteria the Department will use to grant ABAWD exemptions if the Department receives special exemptions from the Food and Nutrition Service; and

- State that an ABAWD may be eligible to receive support services payments to help meet the work participation requirements.

OAR 461-170-0011 about changes that must be reported is being amended to require ABAWD who reside in Multnomah or Washington County to report a change in work hours when work hours are below 20 hours per week.

OAR 461-170-0101 about the Simplified Reporting System (SRS) is being amended to allow an ABAWD in Multnomah or Washington County who is certified for a four-month period to participate in SRS.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-115-0651

Required Verification and When to Verify; SNAP

(1) The Department must give households at least 10 days to provide required verification.

(2) All of the following information must be verified when an individual initially applies for SNAP benefits:

(a) The identity of the applicant and any authorized representative or alternate payee.

(b) Alien status.

(c) Social Security Number (SSN) or application for an SSN.

(d) Countable income.

(e) Medical expenses, if they are used as a deduction.

(f) An order to pay child support and the amount actually paid.

(g) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility (see OAR 461-001-0000) or the benefit amount.

(h) For an ABAWD (OAR 461-135-0520) who resides in Multnomah or Washington County:

(A) Work hours.

(B) The number of countable months (see OAR 461-135-0520) used in another state if the individual is applying for food benefits after receiving food benefits in another state.

(3) All of the following information must be verified when an individual reapplies for SNAP benefits:

(a) Countable income.

(b) Previously unreported medical expenses, and recurring medical expenses which have changed by more than $25.

(c) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the individual is paying for children that live in a different household group.

(d) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(4) For cases using the Change Reporting System (CRS), each of the following changes reported during the certification period (see OAR 461-001-0000) must be verified:

(a) A change in source of income, or the amount of stable income has changed by more than $50.

(b) The amount of variable income from any source.

(c) Changes in reported medical expenses by more than $25, and previously unreported medical expenses.

(d) Any changes in the legal obligation to pay child support, the obligated amount, and the amount the individual is paying for children that live in a different household group.

(e) Any information that is incomplete, inaccurate, inconsistent, or outdated, including unresolved issues that impact eligibility or the benefit amount.

(5) For cases using the Simplified Reporting System (SRS), each of the following changes reported during the certification period must be verified in accordance with OAR 461-170-0103:

(a) Alien status and SSN or application for an SSN when a new member joins the benefit group (see OAR 461-110-0750).

(b) Countable income.

(c) Medical expenses, if used as a deduction.

(d) An order to pay child support and the amount actually paid, if used as a deduction.

(6) A claimed expense or cost may be used to determine the SNAP benefit only when the individual provides the required or requested verification.

(7) In addition to the verification required by sections (2) to (5) of this rule, the income for an individual must be verified every six months for SRS cases certified for twelve months, except those in which every adult member of the filing group (see OAR 461-110-0370) is elderly (see OAR 461-001-0015) or an individual with a disability (see OAR 461-001-0015) and has no earned income (NED).

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816

Stats. Implemented: ORS 409.050, 411.060, 411.070, 411.081, 411.087, 411.816, 411.825, 411.837

Hist.: AFS 12-2001, f. 6-29-01, cert. ef. 7-1-01; AFS 22-2001, f. & cert. ef. 10-1-01; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 20-2004(Temp), f. & cert. ef. 9-7-04 thru 12-31-04; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 19-2005, f. 12-30-05, cert. ef. 1-1-06; SSP 12-2006(Temp), f. & cert. ef. 9-1-06 thru 12-31-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 5-2010, f. & cert. ef. 4-1-10: SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:

(a) The Department assigns an individual to one or more employment program participation classifications--exempt, mandatory, and volunteer (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program, an individual is classified as a volunteer.

(2) In the Pre-TANF, REF, and TANF programs:

(a) An individual is exempt from employment program participation and disqualification if the individual meets the requirements of at least one of the following paragraphs. The individual is --

(A) Pregnant and in the month before the month in which the due date of the pregnancy falls.

(B) A parent (see OAR 461-001-0000) during the first six months after the birth of the parent's dependent child (see OAR 461-001-0000) except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one mandatory participant in each filing group (see OAR 461-110-0310, 461-110-0330, and 461-110-0430).

(C) Under 20 years of age during the first 16 weeks after giving birth except that the individual may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activity.

(D) A parent providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent. Medical documentation to support the need for the care is required.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A noncitizen who is not authorized to work in the United States.

(H) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) An individual whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.

(K) A pregnant individual who participates more than 10 hours per week during the two months before the month in which the pregnancy due date falls.

(L) A VISTA volunteer.

(b) A caretaker relative of a dependent child or unborn who receives TANF program benefits is mandatory if the caretaker relative is in the same filing group with the dependent child or unborn (even if the caretaker relative is not in the TANF program benefit group under OAR 461-110-0750), unless the caretaker relative is otherwise exempt from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) An individual is exempt from employment program participation and disqualification if the individual meets the requirements of one of the following paragraphs. The individual is --

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) An individual with a physical or mental condition that prevents performance of any work.

(C) Responsible for the care of a child (see OAR 461-001-0000) in the household under 6 years of age or an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Providing care for at least 30 hours a week for an individual in another household with a disability that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. An individual remains exempt during normal periods of class attendance, vacation, and recess but no longer qualifies for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion, or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(F) Receiving program benefits under Title IV of the Social Security Act.

(G) In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department training programs:

(i) The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.

(ii) The Training Unemployment Insurance (TUI) program.

(iii) The Self-Employment Insurance (SEA) program.

(iv) The Apprenticeship Program (APT).

(H) Participating in a drug or alcohol treatment and rehabilitation program.

(I) Pregnant.

(J) Lacking adequate dependent care.

(K) Without adequate transportation available.

(L) Experiencing a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049

Stats. Implemented: ORS 409.010, 409.750, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049

Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 24-2015, f. 9-29-15, cert. ef. 10-1-15: SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

461-130-0330
Disqualifications; Pre-TANF, REF, SNAP, TANF

(1) In the Pre-TANF, REF, SNAP, and TANF programs, the Department may not disqualify from program benefits a client who is a volunteer (see OAR 461-130-0305) participant in an employment program.

(2) In the Pre-TANF, REF, and TANF programs, a mandatory (see OAR 461-130-0305) client who fails to comply with an employment program participation requirement and does not have good cause (see OAR 461-130-0327) for the failure to comply is subject to disqualification under this rule only after the requirements of all of the following subsections are met:

(a) The client has had the opportunity to participate in the re-engagement process under OAR 461-190-0231;

(b) The Department has determined the client is willfully non-compliant and does not have good cause for failing to comply with a requirement of the program;

(c) The Department has offered (and the client has refused) or conducted screenings (and assessed if appropriate) for physical or mental health needs, substance abuse, domestic violence, and learning needs;

(d) The Department has determined the client has no barriers (see OAR 461-001-0025) or refuses to take appropriate steps to address identified barriers;

(e) The Department has determined the client has not met federally required participation rates (see OAR 461-001-0025); and

(f) The Department has assessed for any risk of harm posed to the children by a reduction in cash assistance.

(3) In the REF and TANF programs, the effects of a JOBS disqualification are progressive. There are two levels of disqualification. Once a disqualification is imposed, it affects benefits according to the following schedule until the disqualification ends in accordance with OAR 461-130-0335:

(a) At the first level, the penalty is removal of the disqualified client from the need group (see OAR 461-110-0630) for up to three months or until the client has completed the two-consecutive week cooperation period.

(b) At the second level, the need group receives no cash benefit in the program for one month.

(c) At the first or second level of disqualification, the penalty may cause the need group to be over income for REF or TANF program benefits (see OAR 461-160-0100).

(d) At the end of the second level, program benefits are closed and the filing group (see OAR 461-110-0310, 461-110-0330, and 461-110-0430) may not receive program benefits for the following two consecutive months. This may be prevented if the disqualified client:

(A) Contacts a representative of the Department in order to re-engage in the JOBS program prior to the end of the second level; and

(B) Begins the two consecutive weeks of cooperation as outlined in OAR 461-130-0335(3)(b) prior to the end of the second level; or

(C) Is no longer a member of the household group (see OAR 461-110-0210 and 461-130-0335(2)); or

(D) Is unable to participate because there is no appropriate activity (see OAR 461-001-0025) or support services (see OAR 461-001-0025) necessary to support the activity.

(4) In the SNAP program:

(a) A mandatory client who fails to comply with the requirements of an employment program is subject to disqualification. A disqualified client is removed from the need group until he or she meets the employment program requirements and serves the applicable progressive disqualification under the following subsections:

(A) One calendar month for the first failure to comply.

(B) Three calendar months for the second failure to comply.

(C) Six calendar months for the third and subsequent failures to comply.

(b) A client who is exempt (see OAR 461-130-0305) from participation in the SNAP employment program because he or she is a mandatory participant in the JOBS program, receiving unemployment compensation benefits, or has applied for unemployment compensation benefits and is waiting on an initial decision must comply with the requirements of those programs. If the client fails to comply with the requirements of the applicable program the client is disqualified from receiving SNAP benefits, unless he or she can show good cause under OAR 461-130-0327.

(c) For ABAWD time limits, see OAR 461-135-0520.

Stat. Auth.: ORS 411.060, 411.816, 412.009, 412.049
Stats. Implemented: ORS 411.060, 411.816, 412.009, 412.049
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 2-1999, f. 3-26-99, cert. ef. 4-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13: SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

461-135-0520
Eligibility Requirements for ABAWD; SNAP

This rule establishes eligibility (see OAR 461-001-0000) requirements for receipt of SNAP benefits for certain adults.

(1) An able-bodied adult without dependents (ABAWD) means an individual 18 years of age or over, but under the age of 50, without dependents. For the purpose of this definition, "without dependents" means there is no child (see OAR 461-001-0000) under the age of 18 years in the filing group (see OAR 461-110-0310 and 461-110-0370).

(2) Except as provided otherwise in this rule, an ABAWD who resides in Multnomah or Washington County is ineligible to receive food benefits as a member of any household if the individual received food benefits for more than three countable months (see section (3) of this rule) during January 1, 2016 to December 31, 2018.

(3) "Countable months" means months within the 36-month period of January 1, 2016 to December 31, 2018 in which an individual receives SNAP benefits in Oregon or in any other state, unless at least one of the following applies:

(a) The individual resided for any part of the month in a county identified in a waiver approved by United States Department of Agriculture on the limitation on eligibility for SNAP benefits contained in section 6(o)(2) of the Food and Nutrition Act of 2008 (7 U.S.C. 2015(o)(2)). Under the waiver, the time limit in section (2) of this rule does not apply to residents of the following counties: Baker, Benton, Clackamas, Clatsop, Columbia, Coos, Crook, Curry, Deschutes, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Jefferson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Malheur, Marion, Marrow, Polk, Sherman, Tillamook, Umatilla, Union, Wallowa, Wasco, Wheeler, and Yamhill.

(b) Benefits were prorated for the month.

(c) The individual was exempt (see OAR 461-130-0305) for any part of the month under OAR 461-130-0310(3)(a)(A) to (J).

(d) The individual participated in one or more of the activities in paragraphs (A) to (D) of this subsection for 20 hours per week averaged monthly. For purposes of this rule, 20 hours per week averaged monthly means 80 hours per month. (Activities may be combined in one month to meet the 20 hours per week averaged monthly requirement.)

(A) Work for pay, in exchange for goods or services, or as a volunteer.

(i) Work in exchange for goods and services includes bartering and in-kind work.

(ii) Voluntary work hours must be verified by the employer.

(ii) For self-employed individuals, countable income after deducting the costs of producing income must average at least the federal minimum wage times 20 hours per week.

(B) Participate in a program under the Workforce Investment Act of 1998, Pub. L. No. 105 220, 112 Stat. 936 (1998).

(C) Participate in a program under section 236 of the Trade Act of 1974, Pub. L. 93 618, 88 Stat. 2023, (1975) (19 U.S.C. 2296).

(D) Comply with the employment and training requirements described in OAR 461-001-0020, 461-130-0305, and 461-130-0315. Work search activities must be combined with other work-related activities to equal 20 hours per week and may not exceed 9 hours per week.

(4) An ABAWD must submit evidence to the Department on the issue of whether a month is countable within 90 days following the last day of the month in question.

(5) An ABAWD who is ineligible under section (2) of this rule but otherwise eligible may regain eligibility if the requirements of subsections (a) or (b) of this section are met.

(a) The individual becomes exempt under OAR 461-130-0310(3)(a)(A) to (I).

(b) The individual, during a consecutive 30-day period during which the individual is ineligible, meets the requirements of subsection (3)(d) of this rule.

(A) Eligibility established under this subsection for an applicant begins on the date the individual files a new application for food benefits and continues as long as the individual meets the requirements of subsection (3)(d) of this rule and is otherwise eligible. If not eligible on the filing date (see OAR 461-115-0040), eligibility begins the date all other eligibility requirements are met.

(B) There is no limit to how many times an individual may regain eligibility under this subsection during January 1, 2016 to December 31, 2018. However, an individual may only receive benefits without meeting the

requirements of subsection (3)(d) of this rule for a total of 6 countable months during January 1, 2016 to December 31, 2018.

(c) See OAR 461-180-0010 to add an individual to an open SNAP case after the individual has regained eligibility under this section.

(6) An individual who regains eligibility under section (5) of this rule and later fails to comply with the participation requirements of subsection (3)(d) of this rule may receive a second set of food benefits for three consecutive countable months. The countable months are determined as follows:

(a) If the individual stopped participation in a work program, countable months start when the Department notifies the individual he or she is no longer meeting the work requirement.

(b) If the individual stopped participation in a work program, countable months start when the individual notifies the Department he or she is no longer meeting the work requirement.

(c) If a change occurred which results in an individual becoming subject to the time limit in section (2) of this rule and the change was required to be reported under rules in OAR chapter 461, division 170, the countable months start when the change occurred.

(d) If a change occurred which results in an individual becoming subject to the time limit and the change was not required to be reported under rules in OAR chapter 461, division 170, countable months start when the Department notifies the individual he or she must meet the work requirement.

(7) This section is a placeholder to establish criteria the Department will use to grant exemptions to ABAWD who are ineligible if the Department receives special exemptions from the Food and Nutrition Service.

(8) An ABAWD involved in the activities specified in subsection (3)(d) of this rule of this rule or an activity listed in the individual's case plan (see OAR 461-001-0020) is eligible for support service payments necessary for transportation or other costs related to completing the activity as allowed by OAR 461-190-0360.

[Publication.: Publications referenced are available from the agency.]

Stat. Auth.: ORS 411.816

Stats. Implemented: ORS 411.816

Hist.: AFS 39-1996(Temp), f. 11-27-96, cert. ef. 12-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 5-1997, f. 4-30-97, cert. ef. 5-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 6-1998(Temp), f. 3-30-98, cert. ef. 4-1-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; AFS 15-1998(Temp), f. 9-15-98, cert. ef.10-1-98 thru 10-31-98; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-999; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 8-2001, f. & cert. ef. 5-1-01; AFS 8-2002, f. & cert. ef. 5-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07: SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

461-170-0011

Changes That Must Be Reported

(1) A change in employment status is considered to occur as follows:

(a) For a new job, the change occurs the first day of the new job.

(b) For a job separation, the change occurs on the last day of employment.

(2) A change in source of income is considered to occur as follows:

(a) For earned income, the change occurs upon the receipt by the individual of the first paycheck from a new job or the first paycheck reflecting a new rate of pay.

(b) For unearned income, the change occurs the day the individual receives the new or changed payment.

(3) An individual must report, orally or in writing, the following changes:

(a) In the ERDC program, an individual must report the following changes within 10 days of occurrence:

(A) A change in child care provider.

(B) A change in employment status.

(C) A change in mailing address or residence.

(D) A change in membership of the filing group (see OAR 461-110-0350).

(E) A member of the filing group is discharged from the U.S. military and returning from active duty in a military war zone.

(F) A change in income above the ERDC income limit as defined in OAR 461-155-0150(5)(b) that is expected to continue.

(b) In the SNAP program:

(A) An individual assigned to CRS must report any of the following changes within 10 days of occurrence:

(i) A change in earned income of more than $100.

(ii) A change in unearned income of more than $50.

(iii) A change in source of income.

(iv) A change in membership of the filing group (see OAR 461-110-0370) and any resulting change in income.

(v) A change in residence and the shelter costs in the new residence.

(vi) A change in the legal obligation to pay child support.

(vii) When the sum of cash on hand, stocks, bond, and money in a bank or savings institution account reaches or exceeds program resource limits.

(viii) Acquisition or change in ownership of a non-excluded vehicle.

(B) An individual assigned to SRS must report when the monthly income of the filing group exceeds the SNAP countable (see OAR 461-001-0000) income limit by the tenth day of the month following the month of occurrence.

(C) An individual assigned to TBA is not required to report any changes.

(c) For JPI (see OAR 461-135-1260), an individual must follow the same reporting requirements as a SNAP client assigned to CRS, SRS, or TBA reporting systems (see OAR 461-170-0010).

(d) In the GA, GAM, OSIP, OSIPM, and QMB programs, an individual must report all changes that may affect eligibility (see OAR 461-001-0000) within 10 days of occurrence, including any of the following changes:

(A) A change in employment status.

(B) A change in health care coverage.

(C) A change in membership of the household group (see OAR 461-110-0210).

(D) A change in marital status.

(E) A change in residence.

(F) Except for QMB-BAS, QMB-SMB, and QMB-SMF, a change in resources.

(G) A change in source or amount of income.

(e) In the REF, SFPSS, and TANF programs, an individual assigned to CRS must report any of the following changes within 10 days of occurrence:

(A) Acquisition or change in ownership of a non-excluded vehicle.

(B) A change in earned income more than $100.

(C) A change in employment status.

(D) A change in membership of the household group (see OAR 461-110-0210).

(E) A change in marital status or other changes in membership of the filing group.

(F) A change in mailing address or residence.

(G) A change in pregnancy status of any member of the filing group.

(H) A change in source of income.

(I) A change in unearned income more than $50.

(J) A change in who pays the shelter costs if the costs will be paid by a non-custodial parent.

(K) Sale or receipt of a resource that causes total resources to exceed program resource limits.

(f) In the REFM program, an individual must report the following changes within 10 days of occurrence:

(A) A change in membership of the household group (see OAR 461-110-0210).

(B) A change in residence.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 413.085, 414.685

Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.404, 411.704, 411.706, 411.816, 411.825, 412.014, 412.049, 413.085, 414.685, 414.826

Hist.: AS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 17-1992, f. & cert. ef. 7-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 19-1994, f. & cert. ef. 9-1-94; AFS 22-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 15-1996, f. 4-29-96, cert. ef. 5-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 19-1997, f. & cert. ef. 10-1-97; AFS 17-1998, f. & cert. ef. 10-1-98; AFS 25-1998, f. 12-18-98, cert. ef. 1-1-99; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 11-1999, f. & cert. ef. 10-1-99; AFS 17-2000, f. 6-28-00, cert. ef. 7-1-00; AFS 24-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SPP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 4-2007, f. 3-30-07, cert. ef. 4-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; Renumbered from 461-170-0015, 461-170-0020, 461-170-0025, 461-170-0030, 461-170-0035 by SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 7-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 26-2011(Temp), f. 9-30-11, cert. ef. 10-1-11 thru 3-29-12; SSP 10-2012, f. 3-29-12, cert. ef. 3-30-12; SSP 17-2012(Temp), f. & cert. ef. 5-1-12 thru 10-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 24-2013, f. & cert. ef. 10-1-13; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 14-2014(Temp), f. & cert. ef. 6-26-14 thru 12-23-14; SSP 24-2014, f. & cert. ef. 10-1-14; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

461-170-0101
Simplified Reporting System (SRS); SNAP

In the SNAP program:

(1) OAR 461-170-0101 to 461-170-0104 establish and explain the Simplified Reporting System (SRS).

(2) Except for an ABAWD (see OAR 461-135-0520) who resides in Multnomah or Washington County and who is certified for a four-month period, a filing group (see OAR 461-110-0310 and 461-110-0370) certified to receive SNAP program benefits for less than six months may not participate in SRS.

(3) A filing group with a member working under a JOBS Plus agreement may not participate in SRS.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.049
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 412.049
Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 1-2015(Temp), f. & cert. ef. 1-1-15 thru 6-29-15; SSP 17-2015, f. & cert. ef. 6-30-15; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Amending rules relating to refugee assistance (REF and REFM programs)
Adm. Order No.: SSP 38-2015
Filed with Sec. of State: 12-25-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015, 12-1-2015
Rules Amended: 461-145-0080, 461-145-0280, 461-145-0300, 461-145-0365, 461-145-0430, 461-150-0090, 461-155-0030, 461-155-0035, 461-165-0030, 461-175-0305
Subject: The Department is making several updates to policy relating to the Refugee (REF) and Refugee Medical (REFM) programs. Specifically:

OAR 461-145-0080 relating to child support and cash medical support is being amended to remove reference to the REF and REFM programs.

OAR 461-145-0280 about in-kind income is being amended to remove reference to REF and REFM as it relates to noncustodial parents.

OAR 461-145-0300 relating to the treatment of payments made to clients under the Workforce Investment Act is being amended to remove reference to REF and REFM as it relates to caretaker relatives, which does not apply in those programs.

OAR 461-145-0365 about how payments from the National and Community Services Trust Act, including AmeriCorps, are treated is being amended to remove the reference to the REF program as it relates to child care, which is not applicable in the REF program.

OAR 461-145-0430 about real property excluded under an Interim Assistance Agreement is being amended to not apply to the REF and REFM programs because real property is excluded in those programs.

OAR 461-150-0090 about prospective budgeting and annualizing and prorating contracted or self-employment income is being amended to clarify how contract income is treated in the REFM program. That program was previously not covered by this rule.

OAR 461-155-0030 about income and payment standards in the JOBS, REF, and TANF programs is being amended to remove reference to the REF program as it relates to need groups that contain no adult because that is not applicable in the REF program.

OAR 461-155-0035 about cooperation incentive payment standards is being amended so that the rule no longer applies to the REF program, which does not issue cooperation incentive payments.

OAR 461-165-0030 about concurrent benefits is being amended to state that an REF or TANF filing group may not receive REF or TANF benefits while also receiving assistance from the Office of Refugee Resettlement Matching Grant Program.

OAR 461-175-0305 about the notice situation when an individual is removed from a benefit group or need group is being amended to remove reference to the REF and REFM programs as it relates to removing a child from the benefit group as a result of placement in child care by the caretaker relative. This is not applicable in the REF and REFM programs.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-145-0080
Child Support and Cash Medical Support

(1) Child support and cash medical support paid by a non-custodial parent for a dependent child (see OAR 461-001-0000) or minor parent (see OAR 461-001-0000) in the financial group (see OAR 461-110-0530) are considered income of the dependent child or minor parent, whether the support is paid voluntarily or in accordance with an order to pay child support.

(2) For the purposes of this rule:

(a) "Disregard" means child support, up to $50 per dependent child or minor parent per financial group per month and not to exceed $200 per financial group per month, that is not counted as income of the client. "Disregard" includes current child support only.

(b) "Pass-through" means child support, up to $50 per dependent child or minor parent per financial group per month and not to exceed $200 per financial group per month, that is sent to the client before any remaining amount of current child support is withheld by the State. "Pass-through" includes current child support only.

(3) In the ERDC program, child support is considered countable (see OAR 461-001-0000) unearned income if it is received by the financial group or is countable under OAR 461-145-0280. Otherwise it is excluded.

(4) In the SNAP program, child support and cash medical support are treated as follows:

(a) Child support payments the group receives that must be assigned to the Department to maintain TANF eligibility are excluded, even if the group fails to turn the payments over to the Department.

(b) Child support payments received by a filing group (see OAR 461-110-0370) with at least one member working under a TANF JOBS Plus agreement are excluded, except:

(A) It is considered countable unearned income in the calculation of the wage supplement; and

(B) Any pass-through pursuant to section (2) of this rule is considered countable unearned income.

(c) All other child support, including any pass-through pursuant to section (2) of this rule, is considered countable unearned income.

(d) Cash medical support is considered countable unearned income except to the extent it is used to reimburse (see OAR 461-145-0440) an actual medical cost.

(e) Payments made by a non-custodial parent to a third party for the benefit of the financial group are treated in accordance with OAR 461-145-0280.

(5) Except as provided otherwise in section (8) of this rule, in the TANF program:

(a) In determining initial eligibility (see OAR 461-001-0000), except for disregard pursuant to section (2) of this rule, child support received by the Oregon Department of Justice, Division of Child Support (DCS) is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(b) In determining on-going eligibility, except for clients working under a TANF JOBS Plus agreement and except for child support passed through to the client and disregarded pursuant to section (2) of this rule, child support received by the DCS is considered countable unearned income, if continued receipt of the child support is reasonably anticipated. These payments are excluded when determining the benefit amount.

(c) For clients working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

(d) All other child support payments:

(A) Paid directly to the financial group that are turned over to the Department or to the DCS are considered countable unearned income except for any amount of pass-through and disregard pursuant to section (2) of this rule.

(B) Paid directly to the financial group that are not turned over to the Department or to the DCS are considered countable unearned income.

(C) Paid to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(e) Cash medical support is excluded in determining countable income.

(6) In the OSIP, OSIPM, and QMB programs, all child support and cash medical support paid to the financial group are considered countable unearned income. Child support and cash medical support paid by the financial group are not deductible from income.

(7) In the SFPSS program, notwithstanding section (5) of this rule, for on-going eligibility and benefit determination:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third-party for rent, mortgage, utilities, or child care.

(8) For on-going eligibility and benefit determination for TANF clients in a two-parent household:

(a) Except for disregard pursuant to section (2) of this rule, child support is considered countable unearned income.

(b) Cash medical support is excluded in determining countable income.

(c) Payments made by a non-custodial parent to a third party for the benefit of the financial group are considered countable unearned income. This includes but is not limited to payments made by a non-custodial parent to a third party for rent, mortgage, utilities, or child care.

(d) For a filing group (see OAR 461-110-0330) with at least one member working under a TANF JOBS Plus agreement:

(A) Child support is excluded in determining countable income.

(B) Child support is excluded when calculating the TANF portion of the benefit equivalency standards.

(C) All child support paid directly to the client is considered countable unearned income in the calculation of the wage supplement.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.816, 412.009, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 2-1992, f. 1-30-92, cert. ef. 2-1-92; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 29-1994, f. 12-29-94, cert. ef. 1-1-95; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 7-2008(Temp), f. & cert. ef. 3-21-08 thru 9-17-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 12-2009(Temp), f. 6-23-09, cert. ef. 7-1-09 thru 12-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 29-2011(Temp), f. & cert. ef. 10-5-11 thru 4-2-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 24-2012(Temp), f. 6-29-12, cert. ef. 7-1-12 thru 12-28-12; SSP 30-2012, f. 9-28-12, cert. ef. 10-1-12; SSP 31-2012(Temp), f. 9-28-12, cert. ef. 10-1-12 thru 12-28-12; SSP 36-2012, f. 12-28-12, cert. ef. 12-29-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14.: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-145-0280
In-Kind Income

(1) This rule does not apply to shelter-in-kind income (see OAR 461-145-0470).

(2) In all programs except the REF, REFM, and TANF programs, in-kind income (see OAR 461-001-0000) that is earned is treated according to the administrative rules on earned income (such as OAR 461-145-0130).

(3) In all programs except the REF, REFM, and TANF programs, in-kind income that is unearned (except third-party payments) is treated as follows:

(a) Income from court-ordered community service work or bartering is excluded. Bartering is the exchange of goods of equal value.

(b) Items such as cars and furniture are treated according to the administrative rule for the specific type of asset.

(4) In the REF, REFM, and TANF programs, in-kind income (except unearned third-party payments) is excluded.

(5) In the SNAP program, except for child support (see OAR 461-145-0080) and an expenditure by a business entity that benefits a principal (see OAR 461-145-0088), in-kind income is excluded.

(6) Unearned third-party payments are treated as follows:

(a) Payments made to a third party that should legally be paid directly to a member of the financial group (see OAR 461-110-0530) are counted as unearned income.

(b) Payments made to a third party that the payee is not legally obligated to pay directly to a member of the financial group and that the financial group does not have the option of taking as cash, and payments made by the noncustodial parent to a third party that are court-ordered are treated as follows:

(A) In the SNAP program, these third-party payments are excluded unless they are transitional housing payments for the homeless.

(B) In the TANF program, except for payments designated as child support (see OAR 461-145-0080), these third-party payments are excluded.

(C) In all programs except the SNAP and TANF programs, these third-party payments are excluded.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-9; AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; SSP 9-2014, f. & cert. ef. 4-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-145-0300
Workforce Investment Act

Payments to clients made under Title I-B of the Workforce Investment Act (see OAR 589-020-0210) are treated as provided in this rule.

(1) Need-based (stipend) payments are treated as unearned income except as follows:

(a) In the SNAP program, these payments are excluded.

(b) The payments are excluded for TANF clients under the age of 19 years, or under the age of 20 years if the client is a caretaker relative (see OAR 461-001-0000).

(2) OJT (On-the-Job Training) and work experience payments are counted as earned income, except as follows:

(a) The payments are excluded for TANF clients under the age of 18 years, or under the age of 20 years if the client is a caretaker relative (see OAR 461-001-0000);

(b) The payments are excluded for an SNAP client who is:

(A) Under the age of 19 years and under the control of an adult member of the filing group (see OAR 461-110-0370); or

(B) Receiving OJT payments under the Summer Youth Employment and Training Program.

(3) A support service payment for an item already covered by the benefits of the benefit group (see OAR 461-110-0750) is treated as unearned income. All other support service payments (including lunch payments and clothing allowances) are excluded.

(4) A reimbursement (see OAR 461-001-0000) is treated as provided in OAR 461-145-0440.

[Publication.: Publications referenced are available from the agency.]
Stat. Auth: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 8-1992, f. & cert. ef. 4-1-92; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 9-2001, f. & cert. ef. 6-1-01; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-145-0365
National and Community Services Trust Act (NCSTA), including AmeriCorps (other than AmeriCorps VISTA)

(1) The National and Community Service Trust Act (NCSTA) of 1993 (P.L. 103-82) amended the National and Community Service Act (NCSA) of 1990 (P.L. 101-610) that established a Corporation for National and Community Service. The Corporation administers national service programs providing living allowance, educational award, child care, and in-kind benefits.

(2) NCSTA payments, including AmeriCorps (except AmeriCorps VISTA which is covered in OAR 461-145-0110) are treated as follows:

(a) The living allowance (stipend benefits) is excluded.

(b) Educational award and in-kind benefits are treated as follows:

(A) In the GA program, these benefits are treated according to the policy for the specific type of asset.

(B) In all programs except GA, these benefits are excluded.

(c) The child care allowance is treated as follows:

(A) For clients in the ERDC and TANF programs who are eligible for direct provider payment of child care, the allowance is counted as unearned income. The allowance is excluded only if the client already pays the provider. The provider may be paid for only the costs not covered by the allowance.

(B) For clients in the SNAP program who are receiving a child care deduction, the deduction is allowed only for the costs not covered by the allowance.

(C) In all other programs, the allowance is excluded.

Stat. Auth.: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Stats. Implemented: ORS 411.060, 411.070, 411.816, 414.042, 412.049
Hist.: AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-145-0430
Real Property Excluded under an Interim Assistance Agreement; TANF

(1) This rule applies in the TANF program when the equity value (see OAR 461-001-0000) of real property (see OAR 461-001-0000) puts the financial group (see OAR 461-110-0530) over the resource limit.

(2) When section (1) of this rule applies:

(a) The equity value of real property is excluded for a maximum of nine months if the financial group signs and complies with the terms of the program's Interim Assistance Agreement.

(b) After the ninth month, the equity value of the property is counted as a resource.

(3) To comply with the terms of the program's Interim Assistance Agreement, the financial group must agree to do all the following:

(a) Make a good-faith effort to sell the property; and

(b) Use the proceeds from the sale of the property to reimburse the Department for all benefits paid under the terms of the program's Interim Assistance Agreement. The reimbursement will not exceed the net proceeds of the sale of the property.

(4) The amount of benefits paid while the financial group has excess real property is an overpayment if the financial group fails to notify the Department that the group has the property.

(5) The amount of the benefits paid while the financial group has excess real property is an overpayment up to the net proceeds of the sale of the property if the property sells and the financial group does not repay the Department under the terms of the program's Interim Assistance Agreement.

Stat. Auth.: ORS 411.060, 411.700, 412.049
Stats. Implemented: ORS 411.060, 411.700, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-150-0090
Prospective Budgeting: Annualizing and Prorating Contracted or Self-employment Income; Not OSIP, OSIPM, or QMB

(1) Income from self-employment, including contract income while self-employed, is treated in accordance with OAR 461-145-0910 unless the income meets the provisions of section (2) of this rule.

(2) If past contract income is not representative of future income or when a substantial increase or decrease is expected in countable (see OAR 461-001-0000) self-employment income (see OAR 461-145-0910) in the next year, costs as allowed under OAR 461-145-0930 and anticipated income are used to determine the countable income.

(3) In the ERDC, REF, SNAP, and TANF programs, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) Income received during a less than 12-month period but intended as a full year's income is annualized.

(b) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as stable income (see OAR 461-001-0000) under OAR 461-150-0070 or variable income (see OAR 461-001-0000) under OAR 461-150-0080.

(4) In the REFM program, contract income that does not meet the criteria of self-employment income (see OAR 461-145-0910) is treated as follows:

(a) Income is counted only if received in the month of application. If income counted in the month of application puts the applicant over the income limits for REFM, the income is annualized.

(b) Income received on an hourly or piecework basis or monthly over the term of the contract period is not annualized. It is treated as stable income (see OAR 461-001-0000) under OAR 461-150-0070 or variable income (see OAR 461-001-0000) under OAR 461-150-0080.

(5) Contract income that is not the annual income of the financial group (see OAR 461-110-0530) and not paid on an hourly or piecework basis is prorated over the period the income is intended to cover.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.014, 412.049
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1992, f. & cert. ef. 5-1-92; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 37-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; ; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 25-2015, f. 9-29-15, cert. ef. 10-1-15: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-155-0030
Income and Payment Standards; JOBS, REF, TANF

In the JOBS, REF, and TANF programs, the income standards are as follows:

(1) The Countable Income Limit Standard is the amount set as the maximum countable income limit.

(a) For each need group (see OAR 461-110-0630) in the REF and TANF programs containing an adult, the following table is used:

(b) In the TANF program, a caretaker relative (see OAR 461-001-0000) other than a parent (see OAR 461-001-0000) who chooses not to be included in the need group is subject to the "no-adult countable income limit standard" for the need group under subsection (c) of this section. The "non-needy countable income limit standard" for the filing group (see OAR 461-110-0330) is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(c) In the TANF program, when the need group contains no adults, the "no adult countable income limit standard" is calculated as follows:

(A) Refer to the Countable Income Limit Standard for need groups with adults. Use the standard for the number of individuals in the household group (see OAR 461-110-0210).

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group. The result is the standard.

(d) In the JOBS program, for the filing group of a non-custodial parent who resides in Oregon and whose dependent child (see OAR 461-001-0000) is receiving TANF program benefits in Oregon to participate in an activity (see OAR 461-001-0025) of the JOBS program, the countable (see OAR 461-001-0000) income limit is set at 185 percent of the federal poverty level (see OAR 461-155-0180).

(2) The Adjusted Income/Payment Standard is used as the adjusted income limit and to calculate cash benefits for need groups with an adult.

(a) For need groups containing an adult in the REF and TANF programs, except as provided otherwise in subsection (b) of this section, the following table is used:

(b) To calculate cash benefits for a need group with an adult in the REF and TANF programs, the following table is used:

(c) In the TANF program, when the need group contains no adult, the No-Adult Adjusted Income/Payment Standard is calculated as follows:

(A) Refer to the Adjusted Income/Payment Standard for need groups with adults. Use the standard for the number of individuals in the household group.

(B) Divide the standard in paragraph (A) of this subsection by the number of individuals in the household group. Round this figure down to the next lower whole number if the figure is not a whole number.

(C) Multiply the figure from paragraph (B) of this subsection by the number of individuals in the need group.

(D) Add $12 to the figure calculated in paragraph (C) of this subsection.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049, 412.124
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.400, 412.006, 412.049, 412.124
Hist.: AFS 80-1989, f. & cert. ef. 2-1-90; AFS 16-1990, f. 6-29-90, cert. ef. 7-1-90; AFS 20-1990, f. 8-17-90, cert. ef. 9-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 7-2006(Temp), f. 3-31-06, cert. ef. 4-1-06 thru 9-28-06; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 6-2007(Temp), f. 6-29-07, cert. ef. 7-1-07 thru 9-30-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 8-2009(Temp), f. 4-20-09, cert. ef. 5-1-09 thru 10-28-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 42-2010(Temp), f. 12-30-10, cert. ef. 1-1-11 thru 6-30-11; SSP 10-2011, f. 3-31-11, cert. ef. 4-1-11; SSP 3-2012(Temp), f. & cert. ef. 1-26-12 thru 3-31-12; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-155-0035
Cooperation Incentive Payment Standard; TANF

(1) The cooperation incentive is a monthly payment added to the TANF cash grant. OAR 461 135 0210 explains who is eligible for this incentive payment.

(2) Except as provided in section (4) of this rule, when there is an adult in the need group (see OAR 461-110-0630), the incentive payment is based on the number of people in the need group as follows:

(a) One person — $26

(b) Two people — $32
(c) Three people — $43
(d) Four people — $52
(e) Five people — $52
(f) Six people — $75
(g) Seven people — $75
(h) Eight or more people — $109

(3) Except as provided in section (4) of this rule, when there is no adult in the need group, the incentive is calculated as follows:

(a) The payment authorized by section (1) of this rule is determined based on the number of people in the household group (see OAR 461-110-0210) rather than in the need group. For instance, if there are three people in the household group, the amount used for this calculation is $43.

(b) The figure obtained in subsection (a) of this section is divided by the number of people in the household group, and the result is rounded to the next lower whole number.

(c) The figure obtained in subsection (b) of this section is multiplied by the number of people in the need group. The result is the incentive payment.

(4) All cooperation incentive payments end on September 30, 2010. Beginning October 1, 2010, no client in the TANF program will receive a cooperation incentive payment.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 412.006, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.070, 412.006, 412.049
Hist.: AFS 23-2000(Temp), f. 9-29-00, cert. ef. 10-1-00 thru 12-31-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 23-2002(Temp), f. 12-31-02, cert. ef. 1-1-03 thru 6-30-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 24-2003(Temp), f. & cert. ef. 10-1-03 thru 12-31-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-165-0030
Concurrent and Duplicate Program Benefits

(1) Except as noted in this rule, an individual may not receive benefits from the Department of the same type (that is, cash, medical, or SNAP benefits) for the same period as a member of two or more different benefit groups (see OAR 461-110-0750) or from two or more separate programs. Except as allowed in subsection (g) of this section, this provision includes a prohibition against an individual receiving TANF concurrently with another cash assistance program funded under Title IV-E of the Social Security Act.

(a) An individual may receive EA, HSP, and TA-DVS benefits and cash payments from other programs for the same time period.

(b) If a GA recipient becomes eligible for the TANF program, benefits are supplemented during the first month of eligibility (see OAR 461-001-0000) for TANF to the TANF payment standards.

(c) A TANF recipient may receive ERDC for a child (see OAR 461-001-0000) in the household group (see OAR 461-110-0210), but who may not be included in the TANF filing group (see OAR 461-110-0310).

(d) A child who is a member of an ERDC benefit group may also be a member of one of the following benefit groups:

(A) An OSIP-AB benefit group.

(B) A TANF benefit group when living with a nonneedy caretaker relative (see OAR 461-001-0000), if the caretaker relative is not the parent (see OAR 461-001-0000) of the child.

(C) A TANF benefit group when living with a needy caretaker relative receiving SSI.

(e) An individual in the SNAP program who leaves a filing group (see OAR 461-110-0370) that includes an individual who abused them and enters a domestic violence shelter (see OAR 461-001-0000) or safe home (see OAR 461-001-0000) for victims of domestic violence (see OAR 461-001-0000) may receive SNAP benefits twice during the month the individual enters the domestic violence shelter or safe home.

(f) A QMB recipient may also receive medical benefits from OSIPM, REFM, or an OCCS medical program with the exception of OHP-OPC, OHP-OPU, OHP-OP6, OHP-CHIP, MAGI Adult, and MAGI CHIP.

(g) An individual may receive Chafee (see OAR 413-030-0400 to 413-030-0455) and TANF benefits during the same time period. As of January 1, 2013, receipt of both Chafee and TANF benefits will not result in an overpayment.

(2) An individual may not receive benefits of the same type (that is, cash, medical, or SNAP benefits) for the same period from both Oregon and another state or tribal food distribution program, except as follows:

(a) Medical benefits may be authorized for an eligible individual if the individual's provider refuses to submit a bill to the Medicaid agency of another state and the individual would not otherwise receive medical care.

(b) Cash benefits may be authorized for an individual in the Pre-TANF program if benefits from another state will end by the last day of the month in which the individual applied for TANF.

(3) In the SNAP program, each individual who has been included as a member of the filing group in Oregon or another state is subject to all of the restrictions in section (2) of this rule.

(4) An REF or TANF filing group may not receive REF or TANF benefits for the same period of time that an individual in the REF or TANF filing group receives assistance from the Office of Refugee Resettlement Matching Grant Program.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.816, 412.049, 412.124, 414.826
Stats. Implemented: ORS 411.060, 411.070, 411.117, 411.404, 411.704, 411.706, 411.816, 412.049, 412.124, 414.025, 414.826, 414.839
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 14-1999, f. & cert. ef. 11-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; SSP 1-2003, f. 1-31-03, cert. ef. 2-1-03; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 29-2014(Temp), f. & cert. ef. 11-3-14 thru 5-1-15; SSP 12-2015, f. 3-16-15, cert. ef. 4-1-15: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

461-175-0305
Notice Situation; Removing an Individual From a Benefit Group (REF, REFM, SNAP, TANF) or Need Group (ERDC)

(1) To remove an individual from a benefit group (see OAR 461-110-0750), the following notices are used:

(a) A continuing benefit decision notice (see OAR 461-001-0000) is used when the removal is based on information reported on the Interim Change Report form.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is used when the removal is not based on the Interim Change Report form.

(2) In the ERDC program, the Department sends a timely continuing benefit decision notice to remove an individual from the need group (see OAR 461-110-0630).

(3) In the TANF program, if a child (see OAR 461-001-0000) is removed from the benefit group as a result of a court order or a voluntary placement in foster care by the child's caretaker relative (see OAR 461-001-0000), a basic decision notice (see OAR 461-001-0000) is used.

Stat. Auth.: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Stats. Implemented: ORS 411.060, 411.095, 411.404, 411.816, 412.049
Hist.: AFS 30-1990, f. 12-31-90, cert. ef. 1-1-91; AFS 20-1992, f. 7-31-92, cert. ef. 8-1-92; AFS 12-1993, f. & cert. ef. 7-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 10-2002, f. & cert. ef. 7-1-02; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 32-2010, f. & cert. ef. 10-1-10; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14: SSP 38-2015, f. 12-25-15, cert. ef. 1-1-16

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Rule Caption: Adding exemption to ERDC reservation list
Adm. Order No.: SSP 39-2015(Temp)
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 461-115-0016
Subject: The Department of Human Services, Office of Self-Sufficiency Programs, is adopting temporary changes to OAR 461-115-0016 to exempt participants in the Early Head Start Child Care Partnership provider sites contracted with DHS from the ERDC reservation list. The ERDC reservation list is used to keep the ERDC caseload within the legislatively mandated cap.
Rules Coordinator: Kris Skaro—(503) 945-6067

461-115-0016
Application Process; Reservation List for ERDC

Notwithstanding any other rule in chapter 461 of the Oregon Administrative Rules, in the ERDC program:

(1) Eligibility (see OAR 461-001-0000) is subject to the availability of funds. The Department may implement a Child Care Reservation List whenever the Department determines that sufficient funding is not available to sustain benefits for all of the applicants requesting assistance.

(2) Except as provided in section (3) of this rule, the following applicants are subject to placement on the Child Care Reservation List when the Child Care Reservation List is in effect:

(a) New applicants for ERDC when no member of the ERDC filing group (see OAR 461-110-0310 and 461-110-0350) meets the requirements of one or more of the following paragraphs:

(A) Received a partial or full month of REF, SFPSS, or TANF program cash benefits from the State of Oregon in at least one of the preceding three months; and no member of the ERDC program filing group may be concurrently receiving TANF program benefits except as allowed under OAR 461-165-0030.

(B) Is eligible for and being placed in a current opening in a Head Start program contracted slot under OAR 461-135-0405, an Oregon Program of Quality contracted slot under OAR 461-135-0407, or an Early Head Start Child Care Partnership contracted slot.

(C) The caretaker (see OAR 461-001-0000) is currently working with Child Welfare as part of a CPS assessment or open case, an ongoing safety plan is in place, and Child Welfare has determined the use of child care as part of an ongoing safety plan will:

(i) Prevent removal of the child (see OAR 461-001-0000) from their home;

(ii) Allow a child to be returned home; or

(iii) Allow for placement of the child with a relative or with an adult whom the child or the family of the child has an established relationship.

(D) Determined eligible for TA-DVS program benefits (see OAR 461-135-1225) from the State of Oregon in the current month or at least one of the preceding three months.

(b) Individuals who are reapplying for ERDC after a break in ERDC benefits of two consecutive, calendar months or more.

(3) Except as allowed under OAR 461-165-0030, no member of an ERDC program filing group may be concurrently receiving TANF program benefits. When concurrent benefits are not allowed, the Department sends a decision notice (see OAR 461-001-0000) of ineligibility for the ERDC program and the filing group is not placed on the Child Care Reservation List.

(4) When the Child Care Reservation List is in effect, the Department must place all applicants who are subject to the Child Care Reservation List under section (2) of this rule on the Child Care Reservation List for future selection. The Department sends these applicants a decision notice of ineligibility for the ERDC program.

(5) Each month, on the basis of an estimate of available funds, an appropriate number of individuals from the Child Care Reservation List are randomly selected and invited to apply for ERDC.

(6) After an individual is selected from the Child Care Reservation List, the individual must contact the Department to establish a date of request (see OAR 461-115-0030) no later than 30 days after the date on the selection letter. The individual may request child care benefits from the Department:

(a) Without completing a new application, when the previous application is within 45 days of its date of request; or

(b) By submitting a new application for child care benefits to the Department.

(7) The processing time frame for the ERDC application is the same as that specified in OAR 461-115-0190, except that:

(a) An individual who requests benefits after the 30 day deadline to apply (see section (6) of this rule) will be returned to the Child Care Reservation List.

(b) If the Department does not receive a request for benefits within the deadline to apply, the individual is dropped from the Child Care Reservation List.

Stat. Auth.: ORS 409.050, 411.060 & 411.116

Stats. Implemented: ORS 409.010, 409.050, 409.610, 411.060, 411.116, 411.121, 411.122 & 411.135

Hist.: SSP 23-2011(Temp), f. & cert. ef. 8-1-11 thru 1-27-12; SSP 35-2011, f. 12-27-11, cert. ef. 1-1-12; SSP 29-2012(Temp), f. 8-31-12, cert. ef. 9-1-12 thru 2-28-13; SSP 37-2012, f. 12-28-12, cert. ef. 1-1-13; SSP 39-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; SSP 15-2014, f. & cert. ef. 7-1-14; SSP 25-2014(Temp), f. & cert. ef 10-1-14 thur 3-30-15; SSP 10-2015, f. 3-12-15, cert. ef. 3-31-15; SSP 39-2015(Temp), f. 12-30-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending rules relating to time limits for some SNAP clients

Adm. Order No.: SSP 1-2016(Temp)

Filed with Sec. of State: 1-1-2016

Certified to be Effective: 1-1-16 thru 6-28-16

Notice Publication Date:

Rules Amended: 461-130-0310, 461-135-0506

Subject: Effective January 1, 2016, the Department is implementing a three-month limit on SNAP benefits for ABAWD (able-bodied adults without dependents) clients residing in Multnomah and Washington counties who are not otherwise exempt. (Oregon's statewide waiver of this federal requirement expires December 31, 2015. The new waiver excludes all reservations and counties in Oregon, except Multnomah and Washington.) The Department is adopting the temporary amendments below as part of the implementation of the time limit.

OAR 461-130-0310 about participation classifications is being amended to exempt chronically homeless individuals from employment program participation in the SNAP program. An individual is considered chronically homeless if an individual is currently homeless and one of the following applies:

- The individual has been homeless for more than six months.
- The individual has been homeless more than one time in the last year.
- The individual states that the individual is unable to meet the basic necessities of everyday life.

OAR 413-135-0506 about Transitional Benefit Alternative (TBA) is being amended to state that a household may not participate in TBA if a member of the financial group is subject to a penalty in the SNAP program because the individual becomes ineligible for or disqualified from participation in the SNAP program because of the time limit for ABAWD clients living in Multnomah and Washington counties.

Rule text showing edits is available at http://www.dhs.state.or.us/policy/selfsufficiency/ar_temporary.htm.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-130-0310

Participation Classifications: Exempt, Mandatory, and Volunteer

(1) In the Post-TANF, Pre-TANF, REF, SNAP, and TANF programs:

(a) The Department assigns an individual to one or more employment program participation classifications: exempt, mandatory, and volunteer (see OAR 461-130-0305 for definitions of all three terms).

(b) In the Post-TANF program, an individual is classified as a volunteer.

(2) In the Pre-TANF, REF, and TANF programs:

(a) An individual is exempt from employment program participation and disqualification if the individual meets the requirements of at least one of the following paragraphs. The individual is:

(A) Pregnant and in the month before the month in which the due date of the pregnancy falls.

(B) A parent (see OAR 461-001-0000) during the first six months after the birth of the parent's dependent child (see OAR 461-001-0000) except that the Department may require the parent to participate in parenting classes or a family stability activity (see OAR 461-001-0000). An exemption allowed under this paragraph may apply only to one mandatory participant in each filing group (see OAR 461-110-0310, 461-110-0330, and 461-110-0430).

(C) Under 20 years of age during the first 16 weeks after giving birth except that the individual may be required to participate in suitable activities with a preference for educational activities, parenting classes, and family stability activity.

(D) A parent providing care for a family member who is an individual with a disability (see OAR 461-001-0000) and is in the household group (see OAR 461-110-0210) with the parent. Medical documentation to support the need for the care is required.

(E) An REF client 65 years of age or older.

(F) A TANF client 60 years of age or older.

(G) A noncitizen who is not authorized to work in the United States.

(H) An individual who is eligible for and receives supplemental security income (SSI) from the Social Security Administration.

(I) A caretaker relative (see OAR 461-001-0000) who is non-needy.

(J) An individual whose participation is likely to cause undue hardship or is contrary to the best interests of the dependent child or needy caretaker relative.

(K) A pregnant individual who participates more than 10 hours per week during the two months before the month in which the pregnancy due date falls.

(L) A VISTA volunteer.

(b) A caretaker relative of a dependent child or unborn who receives TANF program benefits is mandatory if the caretaker relative is in the same filing group with the dependent child or unborn (even if the caretaker rela-

tive is not in the TANF program benefit group under OAR 461-110-0750), unless the caretaker relative is otherwise exempt from participation under subsection (a) of this section.

(3) In the SNAP program:

(a) An individual is exempt from employment program participation and disqualification if the individual meets the requirements of one of the following paragraphs. The individual is:

(A) Working a minimum of 30 hours a week or earning money equal to at least the federal minimum wage multiplied by 30 hours per week multiplied by 4.3 weeks. An individual who is self-employed with allowable costs must meet the earnings threshold after allowing the 50 percent deduction. This includes migrant and seasonal farm workers (see OAR 461-001-0015) who are under contract or similar agreement with an employer or crew chief to begin employment within 30 days.

(B) An individual with a physical or mental condition that prevents performance of any work.

(C) Responsible for the care of a child (see OAR 461-001-0000) in the household under 6 years of age or an individual in the household with a disability (see OAR 461-001-0015) that substantially reduces or eliminates the individual's ability to care for himself or herself.

(D) Providing care for at least 30 hours a week for an individual in another household with a disability that substantially reduces or eliminates the individual's ability to care for himself or herself.

(E) Enrolled at least half-time, as defined by the school, in any high school or equivalent program recognized by a school district or enrolled at least half-time in any school, training program, or institution of higher education. An individual remains exempt during normal periods of class attendance, vacation, and recess but no longer qualifies for the student exemption when a break in enrollment occurs due to graduation, suspension or expulsion, or when the student drops out of school or does not enroll in classes for the next regular school term (excluding summer term).

(F) Receiving program benefits under Title IV of the Social Security Act.

(G) In receipt of unemployment insurance benefits, has completed an application for unemployment insurance benefits and is waiting for an initial decision on the claim, or is participating in at least one of the following Employment Department training programs:

(i) The Trade Readjustment Allowance (TRA) program serving displaced workers under the Trade Act.

(ii) The Training Unemployment Insurance (TUI) program.

(iii) The Self-Employment Insurance (SEA) program.

(iv) The Apprenticeship Program (APT).

(H) Participating in a drug or alcohol treatment and rehabilitation program.

(I) Pregnant.

(J) Considered chronically homeless. For purposes of this rule, an individual is considered chronically homeless if the individual is currently homeless (see OAR 461-001-0015) and one of the following applies:

(i) The individual has been homeless for more than six months.

(ii) The individual has been homeless more than one time in the last year.

(iii) The individual states that the individual is unable to meet the basic necessities of everyday life.

(K) Lacking adequate dependent care.

(L) Without adequate transportation available.

(M) Experiencing a barrier to employment, such as being homeless or having a short-term physical or mental limitation or a serious family problem.

(b) A mandatory client is an individual in the need group (see OAR 461-110-0630); who is 16 or 17 years of age and a primary person (see OAR 461-001-0015), or 18 years of age and older and 59 years of age and younger; and who is not exempt under subsection (a) of this section.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816, 412.006, 412.009, 412.014, 412.049
Stats. Implemented: ORS 409.010, 409.750, 411.060, 411.070, 411.816, 411.837, 412.006, 412.009, 412.014, 412.049
Hist.: AFS 17-1998, f. & cert. ef. 10-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 12-2000(Temp), f. 5-1-00, cert. ef. 5-1-00 thru 9-30-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 18-2011(Temp), f. & cert. ef. 7-1-11 thru 12-28-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 39-2012(Temp), f. 12-28-12, cert. ef. 1-1-13 thru 6-30-13; SSP 8-2013, f. & cert. ef. 4-1-13; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 24-2015, f. 9-29-15, cert. ef. 10-1-15: SSP 37-2015, f. 12-23-15, cert. ef. 1-1-16; SSP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

461-135-0506

Transitional Benefit Alternative (TBA) in the SNAP program

(1) This rule establishes the transitional benefit alternative (TBA). A client participating in TBA continues to receive SNAP benefits without reduction during the transition period. The transition period is five months. If the filing group (see OAR 461-110-0370) separates into two groups during the TBA period, only the group containing the head of household continues in the TBA.

(2) In the SNAP program, a client who receives a cash grant from the Department in the SFPSS or TANF programs may participate in TBA when the benefits are stopped, except as provided in section (4) of this rule.

(3) The benefit level for the transition period is based on countable income for SNAP during the last month before TBA begins, but the Title IV-A grant is not counted as income. Once it is established, the TBA benefit level is changed only when:

(a) The filing group submits a new application in the SNAP program and will receive more SNAP benefits if they are not using the TBA reporting system;

(b) A member of the filing group leaves and applies for SNAP benefits as a member of another household; or

(c) The Department initiates a change identified in OAR 461-170-0200.

(4) A household may not participate in TBA in each of the following situations:

(a) A member of the filing group is receiving benefits of the TANF program.

(b) The TANF benefits are stopped because the household does not reside in Oregon.

(c) The TANF benefits are stopped because of a change that results in ineligibility for TANF and the household failed to complete a timely report or to complete a required action on time.

(d) As of the date the TANF case closed, an individual in the household was serving a penalty imposed in the TANF program.

(e) The TANF benefits are stopped at the request of the household after the household is informed of an impending disqualification in the TANF program.

(f) The head of household becomes ineligible for the SNAP program because he or she lives in an institution or in a facility that provides at least 50 percent of the meals.

(g) A member of the financial group (see OAR 461-110-0530) is subject to a penalty in the SNAP program because of the individual's conduct, for instance, because the individual:

(A) Was excluded from the need group under OAR 461-110-0630(5);

(B) Was penalized for failure to meet a requirement of an employment program;

(C) Was ineligible for SNAP benefits under OAR 461-105-0410; or

(D) Was ineligible for or disqualified from participation in the SNAP program because of a failure to comply with a requirement of the program to provide complete and accurate information to the Department.

(E) Becomes ineligible for or disqualified from participation in the SNAP program because of the time limit imposed under OAR 461-135-0520.

(5) Once the TBA benefits have ended, a client's eligibility for the SNAP program is determined on the basis of a new application.

Stat. Auth.: ORS 411.816
Stats. Implemented: ORS 411.816
Hist.: SSP 13-2003, f. 6-12-03, cert. ef. 6-16-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 11-2007(Temp), f. & cert. ef. 10-1-07 thru 3-29-08; SSP 5-2008, f. 2-29-08, cert. ef. 3-1-08; SSP 23-2008, f. & cert. ef. 10-1-08; SSP 1-2016(Temp), f. & cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending rules relating to public and medical assistance programs
Adm. Order No.: SSP 2-2016
Filed with Sec. of State: 1-1-2016
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 461-120-0125, 461-170-0103, 461-175-0200, 461-175-0220, 461-175-0250, 461-175-0340, 461-195-0521, 461-195-0621
Rules Repealed: 461-170-0103(T), 461-175-0200(T)
Subject: OAR 461-120-0125 relating to alien status is being amended to: remove Afghan and Iraqi aliens granted Special Immigrant Status (SIV) as qualified non-citizens; add Afghan and Iraqi aliens granted Special Immigrant Status (SIV) as meeting the alien status

requirements in the ERDC, TA-DVS, and TANF programs; add victims of trafficking as qualified non-citizens; and increase eligibility for OSIPM and QMB by expanding individuals who meet the alien status requirements.

OAR 461-170-0103 about actions resulting from changes in household circumstances and OAR 461-175-0200 about notice situations are being amended to allow JPI (Job Participation Incentive) payments to be closed with a basic notice (instead of a 10-days advance notice with a right to continuing benefits) when a client reports a change in income that results in eligibility for increased SNAP benefits. The JPI program is a $10 food benefits. This amendment covers situations in which net benefits are not decreasing. This makes permanent temporary rules adopted on October 1, 2015.

OAR 461-175-0200 about notice situations generally; OAR 461-175-0220 about notice situations for disqualifications; OAR 461-175-0340 about notice situations for voluntary actions; and OAR 461-195-0621 about intentional program violations are being amended to clarify that a signed IPV waiver qualifies as a final order and therefore no further notice to the client who signed the IPV waiver is required. It is also clarified that other members of the benefit group do receive notice if the benefits of the remaining members are reduced as a result of the disqualification based on a signed IPV waiver.

OAR 461-175-0250 is notices required when there are mass changes (such as a cost-of-living adjustment or federal government shutdown) is being amended to: state that the Department is not required to send notice of intended action to each SNAP client when the federal government changes a benefit or standard that results in the mass suspension or closure of SNAP benefits; describe the kinds of notification the Department may undertake instead; and state that there is no right to a hearing or continuing benefits in this situation. This is in compliance with 7 CFR 271.7(f), 7 CFR 273.12(e)(1), and ORS 411.095 as amended by SB 225 (Oregon Laws 2015, chapter 269).

OAR 461-195-0521 about the calculation of overpayments is being amended to clarify that an underpayment of benefits can be credited against an overpayment only when they occur in the same program. This aligns with existing practice and with OAR 461-195-0551(4)(b).

In addition, non-substantive edits are being made to improve clarity and ease of reading such as updating terminology, alphabetizing programs, correcting and updating statutory and rule references, and correcting formatting and punctuation.

Rules Coordinator: Kris Skaro—(503) 945-6067

461-120-0125
Alien Status

(1) For purposes of this chapter of rules, an individual is a "qualified non-citizen" if the individual is any of the following:

(a) A non-citizen who is lawfully admitted for permanent residence under the Immigration and Nationality Act (INA) (8 U.S.C. 1101 et seq).

(b) A refugee who is admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157).

(c) A non-citizen who is granted asylum under section 208 of the INA (8 U.S.C. 1158).

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996)).

(e) A non-citizen who is paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year.

(f) A non-citizen who is granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980.

(g) A non-citizen who is a "Cuban and Haitian entrant" (as defined in section 501(3) of the Refugee Education Assistance Act of 1980).

(h) A battered spouse or dependent child who meets the requirements of 8 U.S.C. 1641(c), as determined by the U.S. Citizenship and Immigration Services.

(i) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(j) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(2) In all programs except the REF and REFM programs, an individual meets the alien status requirements if the individual is one of the following:

(a) An American Indian born in Canada to whom the provisions of section 289 of the INA (8 U.S.C. 1359) apply.

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e)).

(3) In the ERDC, TA-DVS, and TANF programs, an individual meets the alien status requirements if the individual is one of the following:

(a) An individual who is a qualified non-citizen (see section (1) of this rule).

(b) A non-citizen who is currently a victim of domestic violence or who is at risk of becoming a victim of domestic violence.

(c) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(4) In the OSIPM and QMB programs an individual meets the alien status requirement if:

(a) The individual is a non-citizen who entered the United States or was given qualified non-citizen status on or after August 22, 1996 and has been in the U.S. for five years beginning on the date the non-citizen received his or her qualified non-citizen status; or

(b) The individual meets the requirements of one of the following subsections:

(A) An individual granted any of the following alien statuses:

(i) Refugee — under section 207 of the INA.

(ii) Asylum — under section 208 of the INA.

(iii) Deportation being withheld under section 243(h) of the INA.

(iv) Cubans and Haitians who are either public interest or humanitarian parolees.

(v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(B) Effective October 1, 2009, an individual is a qualified non-citizen and is under 19 years of age.

(C) Was a qualified non-citizen before August 22, 1996.

(D) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.

(E) Is under the age of 19 and is one of the following:

(i) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S.

(ii) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(I) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(II) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(III) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603 (8 USC 1255a), as amended;

(IV) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 (8 USC 1255a), as amended;

(V) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(VI) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or

(VII) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status.

(iii) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including those individuals as specified in section 101(a)(15) of the INA (8 USC 1101).

(F) In the OSIPM program, is receiving SSI benefits.

(G) In the QMB program, is receiving SSI and Medicare Part A benefits.

(H) Meets the alien status requirements in section (2) or (6) of this rule.

(5) In the GA and GAM programs, an individual meets the alien status requirement if the individual is one of the following:

(a) An individual who is blind or has a disability was lawfully residing in the United States on August 22, 1996, and is now a qualified non-citizen.

(b) An individual granted one of the following statuses, but only for seven years following the date the status is granted:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(E) Cubans and Haitians who are either public interest or humanitarian parolees.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(c) An individual who meets one of the alien status requirements in section (2) or (6) of this rule.

(d) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(6) In all programs except the ERDC, REF, REFM, and TANF programs, a qualified non-citizen meets the alien status requirement if the individual is:

(a) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d).

(b) A member of the United States Armed Forces on active duty (other than active duty for training).

(c) The spouse or a dependent child of an individual described in subsection (a) or (b) of this section.

(d) In the SNAP program, a qualified non-citizen who meets the requirement in section (10) of this rule.

(7) In the REF and REFM programs, an individual meets the alien status requirements if the individual is admitted lawfully under any of the following provisions of law:

(a) An individual admitted as a refugee under section 207 of the INA (8 USC 1157).

(b) An individual granted asylum under section 208 of the INA (8 USC 1158).

(c) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401.

(d) An individual paroled as a refugee or asylee under section 212(d)(5) of the Immigration and Nationality Act (INA) (8 USC 1182(d)(5)). For purposes of this section, "Lautenberg" parolees, humanitarian interest parolees, and other public interest parolees do not qualify.

(e) An Amerasian from Vietnam who is admitted to the U.S. as an immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Pub. L. No. 100-461 as amended)).

(f) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1464 (2000), as amended.

(g) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003, Pub. L. 108-193, 117 Stat. 2875 (2003).

(h) Iraqi and Afghan aliens granted special immigrant status under section 101(a)(27) of the Immigration and Nationality Act.

(8) In the SNAP program, an individual meets the alien status requirement if the individual meets the requirements of one or more of the following subsections:

(a) An individual granted any of the following alien statuses:

(A) Refugee — under section 207 of the INA.

(B) Asylum — under section 208 of the INA.

(C) Deportation being withheld under section 243(h) of the INA.

(D) Cubans and Haitians who are either public interest or humanitarian parolees.

(E) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988.

(F) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112).

(G) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112).

(H) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA.

(b) A qualified non-citizen under 18 years of age.

(c) A non-citizen who has been residing in the United States for at least five years while a qualified non-citizen.

(d) A non-citizen who is lawfully residing in the United States and who was a member of a Hmong or Highland Laotian tribe at the time that the tribe rendered assistance to United States personnel by taking part in a military or rescue operation during the Vietnam era (as defined in 38 U.S.C. 101).

(e) The spouse, the un-remarried surviving spouse, or an unmarried dependent child, of an individual described in subsection (d) of this section.

(f) A qualified non-citizen who has a disability, as defined in OAR 461-001-0015.

(9) A client who is lawfully admitted to the United States for permanent residence under the INA and has worked 40 qualifying quarters of coverage as defined under title II of the Social Security Act, or can be credited with such qualifying quarters as provided under 8 U.S.C. 1645, meets the alien status requirements for the SNAP program, subject to the following provisions:

(a) No quarter beginning after December 31, 1996, is a qualifying quarter if the client received any federal, means-tested benefit during the quarter. Federal means tested benefits include SNAP, TANF, and Medicaid (except emergency medical).

(b) For the purpose of determining the number of qualifying quarters of coverage, a client is credited with all of the quarters of coverage worked by a parent of the client while the client was under the age of 18 and all of the qualifying quarters worked by a spouse of the client during their marriage, during the time the client remains married to such spouse or such spouse is deceased.

(c) A lawful permanent resident who would meet the alien status requirement, except for a determination by the Social Security Administration (SSA) that the individual has fewer than 40 quarters of coverage, may be provisionally certified for SNAP program benefits while SSA investigates the number of quarters creditable to the client. A client provisionally certified under this section who is found by SSA, in its final administrative decision after investigation, not to have 40 qualifying quarters is not eligible for SNAP program benefits received while provisionally certified. The provisional certification is effective according to the rule on effective dates for opening benefits, OAR 461-180-0080. The provisional certification cannot run more than six months from the date of original determination by SSA that the client does not have sufficient quarters.

Stat. Auth.: ORS 411.060, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.231

Stats. Implemented: ORS 411.060, 411.070, 411.404, 411.704, 411.706, 411.816, 412.014, 412.049, 414.025, 414.231, 414.826

Hist.: AFS 17-1992, f. & cert. ef. 7-1-92; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 10-1995, f. 3-30-95, cert. ef. 4-1-95; AFS 32-1996(Temp), f. & cert. ef. 9-23-96; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 13-1997, f. 8-28-97, cert. ef. 9-1-97; AFS 24-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 22-1998, f. 10-30-98, cert. ef. 11-1-98; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 15-1999, f. 11-30-99, cert. ef. 12-1-99; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 17-

2001(Temp), f. 8-31-01, cert. ef. 9-1-01 thru 9-30-01; AFS 22-2001, f. & cert. ef. 10-1-01; AFS 5-2002, f. & cert. ef. 4-1-02; AFS 10-2002, f. & cert. ef. 7-1-02; AFS 13-2002, f. & cert. ef. 10-1-02; SSP 7-2003, f. & cert. ef. 4-1-03; SSP 16-2003, f. & cert. ef. 7-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 29-2003(Temp), f. 10-31-03, cert. ef. 11-1-03 thru 3-31-04; SSP 36-2003(Temp), f. 12-31-03 cert. ef. 1-1-04 thru 3-31-04; SSP 6-2004, f. & cert. ef. 4-1-04; SSP 10-2004(Temp), f. & cert. ef. 4-9-04 thru 6-30-04; SSP 14-2004(Temp), f. & cert. ef. 5-11-04 thru 6-30-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2005, f. & cert. ef. 7-1-05; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 11-2006(Temp), f. 6-30-06, cert. ef. 7-1-06 thru 9-30-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 3-2008(Temp), f. & cert. ef. 1-30-08 thru 7-28-08; SSP 4-2008(Temp), f. & cert. ef. 2-22-08 thru 7-28-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 25-2008(Temp), f. 12-31-08, cert. ef. 1-1-09 thru 6-30-09; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 9-2009(Temp), f. & cert. ef. 5-1-09 thru 10-28-09; SSP 29-2009(Temp), f. & cert. ef. 10-1-09 thru 3-30-10; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 39-2009(Temp), f. 12-31-09, cert. ef. 1-1-10 thru 6-30-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 9-2012, f. 3-29-12, cert. ef. 4-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 16-2014, f. & cert. ef. 7-1-14; SSP 2-2016, f. & cert. ef. 1-1-16

461-170-0103
Actions Resulting From Changes in Household Circumstances; Simplified Reporting System (SRS); SNAP, JPI

In the SNAP program and JPI, benefits may be changed for an individual using SRS — based on information obtained other than through the Interim Change Report — only as follows:

(1) The benefit level is increased if the information demonstrates the individual is eligible for greater benefits.

(2) The benefits are closed or reduced if any of the following subsections apply:

(a) The household requests a closure of benefits.

(b) The action is based on information that is verified upon receipt. Information is considered verified upon receipt if:

(A) It is not questionable and the individual making the report has first-hand knowledge of the information reported; or

(B) Verification is provided with the reported change in accordance with OAR 461-115-0651.

(c) The individual reports information that results in loss of eligibility (see OAR 461-001-0000).

(d) The individual reports financial group (see OAR 461-110-0530) income exceeding the SNAP program countable (see OAR 461-001-0000) income limit.

(3) The Department acts on information reported through computer matches when the Interim Change Report is processed, when the individual is recertified, or when the monthly match with the Department of Corrections indicates a member is incarcerated.

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.816
Stats. Implemented: ORS 409.010, 409.050, 411.060, 411.070, 411.081, 411.816, 411.825, 411.837
Hist.: SSP 20-2003, f. & cert. ef. 8-15-03; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 16-2005, f. & cert. ef. 12-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 5-2009, f. & cert. ef. 4-1-09; SSP 23-2015, f. 9-28-15, cert. ef. 10-1-15; SSP 27-2015(Temp). f. 9-29-15, cert. ef. 10-1-15 thru 3-28-16; SSP 2-2016, f. & cert. ef. 1-1-16

461-175-0200
Notice Situations; General Information

(1) In the EA program, a basic decision notice (see OAR 461-001-0000) is sent for all situations.

(2) In the SNAP program, a basic decision notice is sent for all actions on applications for assistance.

(3) In the JOBS program:

(a) A basic decision notice is sent whenever a request for a support service payment is denied.

(b) No decision notice is required if request for a support service is approved.

(4) A basic decision notice is sent to close JPI benefits when the filing group (see OAR 461-110-0310) reports a change during the reporting period in which SNAP benefits do not decrease.

(5) In the TANF program, a notice approving benefits informs the client, within one month following eligibility determination, of the opportunity to volunteer for JOBS participation and of the procedure for JOBS program entry.

(6) In the Pre-TANF program, a basic decision notice is sent when payment for basic living expenses is denied or when payment for other support services in the JOBS program is denied. No other notices are required for this program.

(7) In the TA-DVS program, a basic decision notice (see OAR 461-001-0000) is sent to a safe mailing address or hand delivered for all situations. This includes when the program is approved, denied, or closed (prior to the end of the 90 day eligibility period) and when a payment under the program is denied.

(8) In all programs except the Pre-TANF program, unless stated differently in this rule or another rule, the Department mails or otherwise provides the client with (sends) a decision notice (see OAR 461-001-0000) as follows:

(a) A basic decision notice is sent whenever an application for assistance, including retroactive medical assistance, is approved or denied or a request for a support service payment in the JOBS program is denied.

(b) A timely continuing benefit decision notice (see OAR 461-001-0000) is sent whenever benefits or support service payments authorized by OAR 461-190-0211 are reduced or closed, or the method of payment changes to protective, vendor, or two-party.

(c) A decision notice is sent whenever the Department adjusts previously underissued cash assistance or SNAP benefits.

(9) In all programs:

(a) Notwithstanding any rule in Chapter 461, to the extent permitted by OAR 137-003-0530, the Department may take any of the following actions:

(A) Amend a decision notice with another decision notice or a contested case notice.

(B) Amend a contested case notice.

(C) Delay a reduction or closure of benefits as a result of a client's request for hearing.

(D) Extend the effective date on a decision notice or contested case notice.

(b) Except as provided in subsection (a) of this section or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not initiated on the date stated on the notice. If the notice is void, a new notice is sent to inform the financial group (see OAR 461-110-0530) of a new date on which their benefits will be reduced or closed.

(c) No decision notice is required in each of the following situations:

(A) Benefits are ended because there is no living person in the benefit group (see OAR 461-110-0750).

(B) A notice was sent, the client requested a hearing, and either the hearing request is dismissed or a final order is issued.

(C) The client has signed a voluntary agreement that qualifies as a final order, including a signed IPV waiver, under ORS 183.417(3)(b) (see OAR 461-175-0340(2)).

(D) A decision notice that included the eligibility begin and end dates was given for TA-DVS program benefits and the 90 day eligibility period ends.

(d) When the Department amends a decision notice with another decision notice under subsection (a) of this section, the date of the amended notice restarts the client's deadlines to request a hearing or continuing benefits, or both.

(e) When a contested case notice extends an effective date or delays a reduction or closure, the date of the amended notice restarts a client's timeline to request continuing benefits.

(f) When a client has a pending hearing request or is receiving continuing benefits, and the Department amends a notice under this section, the client need not re-file the hearing request or renew the request for continuing benefits.

Stat. Auth.: ORS 411.060, 411.070, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231
Stats. Implemented: ORS 183.415, 183.417, 411.060, 411.070, 411.117, 411.404, 411.706, 411.816, 412.014, 412.049, 414.231, 414.826
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 12-1990, f. 3-30-90, cert. ef. 4-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 28-1992, f. & cert. ef. 10-1-92; AFS 29-1993, f. 12-30-93, cert. ef. 1-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 13-1995, f. 6-29-95, cert. ef. 7-1-95; AFS 23-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 42-1996, f. 12-31-96, cert. ef. 1-1-97; AFS 9-1997, f. & cert. ef. 7-1-97; AFS 9-1999, f. & cert. ef. 7-1-99; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 34-2000, f. 12-22-00, cert. ef. 1-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 33-2003, f. 12-31-03, cert. ef. 1-4-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 21-2004, f. & cert. ef. 10-1-04; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 10-2007, f. & cert. ef. 10-1-07; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 11-2008(Temp), f. & cert. ef. 4-7-08 thru 9-30-08; SSP 17-2008, f. & cert. ef. 7-1-08; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 3-2010(Temp), f. & cert. ef. 2-23-10 thru 8-22-10; SSP 18-2010, f. & cert. ef. 7-1-10; SSP 25-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 25-2012, f. 6-29-12, cert. ef. 7-1-12; SSP 30-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; SSP 38-2013, f. 12-31-13, cert. ef. 1-1-14; SSP 27-2015(Temp). f. 9-29-15, cert. ef. 10-1-15 thru 3-28-16; SSP 2-2016, f. & cert. ef. 1-1-16

461-175-0220
Notice Situation; Disqualification

(1) If a benefit group (see OAR 461-110-0750) or individual is disqualified for a SNAP voluntary job quit or for failure to apply for or provide an SSN, pursue assets, cooperate in the JOBS, JOBS Plus, or OFSET

program, or assist the state's efforts to collect support, the Department sends the following type of notice:

(a) If benefits are reduced or closed because of the disqualification:

(A) A continuing benefit decision notice (see OAR 461-001-0000) is used when changes are reported on the Interim Change Report form.

(B) A timely continuing benefit decision notice (see OAR 461-001-0000) is used when changes are not reported on the Interim Change Report form.

(b) If benefits are opened without the disqualified individual in the benefit group or if the entire benefit group is denied assistance, a basic decision notice (see OAR 461-001-0000) is used.

(2) For a JOBS, JOBS Plus, or OFSET disqualification, and for a SNAP voluntary job quit by an individual receiving SNAP benefits, the notice includes the following information:

(a) The client action that resulted in disqualification.

(b) The length of the minimum disqualification period.

(c) The reduced benefit amount.

(d) How the client may end the disqualification after the minimum period.

(3) For a voluntary job quit by an individual applying for SNAP benefits, the notice includes the following information:

(a) The action that resulted in the disqualification; and

(b) The length of the disqualification period.

(4) For an IPV disqualification:

(a) The Department does not send a notice of termination to an individual disqualified for an IPV after a court order, a final order from an administrative hearing, or a signed waiver (see OAR 461-175-0200(c)(C) and OAR 461-195-0621(2)) that imposes the disqualification.

(b) The Department sends a continuing benefit decision notice when benefits for other individuals in the benefit group are closed or reduced because an individual in the benefit group is disqualified for an IPV.

(5) For a disqualification due to being a fleeing felon or in violation of parole, probation, or post-prison supervision (under OAR 461-135-0560):

(a) A basic decision notice is required if benefits are opened without the disqualified individual in the benefit group or if the entire filing group is denied benefits.

(b) A timely continuing benefit decision notice is required if an individual in the benefit group is disqualified.

(6) The notice situation for a disqualification due to a transfer of assets is covered in OAR 461-175-0310.

Stat. Auth.: 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Stats. Implemented: 411.060, 411.070, 411.404, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 23-1990, f. 9-28-90, cert. ef. 10-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; AFS 19-1993, f. & cert. ef. 10-1-93; AFS 2-1994, f. & cert. ef. 2-1-94; AFS 23-1994, f. 9-29-94, cert. ef. 10-1-94; AFS 21-1995, f. 9-20-95, cert. ef. 10-1-95; AFS 36-1996, f. 10-31-96, cert. ef. 11-1-96; AFS 3-1997, f. 3-31-97, cert. ef. 4-1-97; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 26-2008, f. 12-31-08, cert. ef. 1-1-09; SSP 5-2010, f. & cert. ef. 4-1-10; SSP 2-2016, f. & cert. ef. 1-1-16

461-175-0250
Notice Situation; Mass Changes

(1) If benefits are reduced or closed to reflect cost-of-living adjustments in benefits or other mass change under a program operated by a federal agency or to reflect a mass change to payments in a program operated by the Department:

(a) Except as provided in subsection (b) of this section, the type of decision notice (see OAR 461-001-0000) used is the same as otherwise applies to the reduction or closure of benefits under the rules of this division.

(b) In the SNAP program, a continuing benefits decision notice (see OAR 461-001-0000) may be used if the rules in this division of rules would otherwise require a timely continuing benefits decision notice (see OAR 461-001-0000).

(c) OAR 461-175-0010(2) and (3) modify the content requirements for the decision notice that apply to other decision notices under OAR 461-175-0010(1).

(2) In the SNAP program, no decision notice is required when the Department makes the following mass changes:

(a) An annual adjustment to income limits, the shelter deduction, or the standard deduction.

(b) An annual adjustment to a standard utility allowance.

(3) In the SNAP program, notwithstanding any other rule in chapter 461, when the federal government changes a benefit or standard that results in the suspension or closure of SNAP benefits for the entire caseload or a significant portion of the caseload of recipients in Oregon:

(a) No decision notice is required. The Department and the Authority are not required to mail a notice of intended action.

(b) The Department publicizes the change using one or more of the following methods:

(A) Informing the public through the news media.

(B) Placing posters in the offices that serve affected recipients, in the locations where SNAP is issued, and at other sites frequented by SNAP clients.

(C) Mailing a general notice to the households of affected recipients.

(c) There is no right to hearing to merely dispute this federally required suspension or closure of benefits and no right to continuing benefits.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.014, 412.049
Stats. Implemented: ORS 409.010, 411.060, 411.816, 412.014, 412.049
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1994, f. & cert. ef. 7-1-94; AFS 4-1998, f. 2-25-98, cert. ef. 3-1-98; AFS 5-1998(Temp), f. & cert. ef. 3-11-98 thru 5-31-98; AFS 8-1998, f. 4-28-98, cert. ef. 5-1-98; SSP 22-2004, f. & cert. ef. 10-1-04; SSP 15-2006, f. 12-29-06, cert. ef. 1-1-07; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 26-2010(Temp), f. & cert. ef. 8-16-10 thru 2-12-11; SSP 41-2010, f. 12-30-10, cert. ef. 1-1-11; SSP 2-2016, f. & cert. ef. 1-1-16

461-175-0340
Notice Situation; Voluntary Action

(1) Unless the Department chooses to proceed as described in section (2) of this rule:

(a) For all programs except the SNAP program, if the primary person (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative:

(A) Makes an oral request to end or reduce benefits, a timely continuing benefit decision notice (see OAR 461-001-0000) is sent.

(B) Makes a signed, written request to withdraw, end, or reduce benefits, a basic decision notice (see OAR 461-001-0000) is sent.

(C) Makes an oral request to withdraw an application for benefits, a basic decision notice is sent.

(b) In the SNAP program, when the filing group (see OAR 461-110-0370) states it wishes to withdraw its benefits request, or states it wishes to reduce or no longer receive benefits:

(A) If the request is made by phone to end or reduce benefits, a timely continuing benefit decision notice is sent.

(B) If the request is made in person to reduce benefits, a basic decision notice is sent.

(C) If the request to reduce benefits is signed by the primary person (see OAR 461-001-0000), another adult member of the filing group, or the authorized representative, a basic decision notice is sent.

(D) If the request to end benefits is signed by the primary person, another adult member of the filing group, or the authorized representative in the presence of a worker, no notice is required. If it is not signed in the presence of a worker, a basic decision notice is sent.

(E) If the client withdraws a signed request for benefits, a basic decision notice is sent.

(2) The Department may reduce or terminate benefits to an individual when the individual completes a voluntary agreement on a Department form used for this purpose. The Department provides the individual with a copy of the completed agreement and except to the extent provided by OAR 461-175-0220(4)(b) no other notice is required. The individual may request a hearing to set aside this agreement on the grounds of fraud, duress, or reliance on misinformation provided by the Department, subject to the time limits for hearing requests in OAR 461-025-0310.

(3) In the SNAP program, a timely continuing benefit decision notice is sent if the filing group returns a signed Change Report form with information that requires a reduction or closure of benefits.

Stat. Auth.: ORS 411.060, 411.816, 412.014, 412.049, 414.042
Stats. Implemented: ORS 183.417, 411.060, 411.816, 412.014, 412.049, 414.042
Hist.: AFS 80-1989, f. 12-21-89, cert. ef. 2-1-90; AFS 13-1991, f. & cert. ef. 7-1-91; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 24-2004, f. 12-30-04, cert. ef. 1-1-05; SSP 16-2007(Temp), f. 12-31-07, cert. ef. 1-1-08 thru 6-27-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 23-2008, f. & cert. ef. 10-1-081; SSP 2-2016, f. & cert. ef. 1-1-16

461-195-0521
Calculation of Overpayments

This rule specifies how the Department calculates an overpayment (see OAR 461-195-0501).

(1) The Department calculates an overpayment by determining the amount the client received or the payment made by the Department on behalf of the client that exceeds the amount for which the client was eligible.

(2) When a filing group, OCCS Medical programs household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and 410-200-0015) fails to report income, the

Department calculates and determines the overpayment by assigning unreported income to the applicable budget month without averaging the unreported income, except:

(a) A client's earned income reported quarterly from the Employment Department is considered received by the client in equal amounts during the months identified in the report.

(b) In the ERDC, MAA, MAF, REF, SNAP, and TANF programs, a client's actual self-employment income is annualized retrospectively to calculate the overpayment.

(c) In the OCCS Medical programs, if actual income is not available for the months in which an overpayment occurred, a client's actual self-employment income (see OAR 410-200-0015) received during the year when an overpayment occurred is annualized to calculate an overpayment.

(3) When using prospective budgeting (see OAR division 461-150) and the actual income differs from the amount determined under OAR 461-150-0020(2), there may be a client error overpayment (see OAR 461-195-0501) only when the filing group, ineligible student, or authorized representative withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.

(4) When using anticipated income for the OCCS Medical programs and the actual income differs from the amount determined under OAR 410-200-0310, there may be a client error overpayment only when the OCCS Medical programs household group (see OAR 410-200-0015) or authorized representative (see OAR 410-200-0015) withheld information, failed to report a change, or provided inaccurate information. In such a case, the Department uses the actual income to determine the amount of an overpayment.

(5) When a filing group, ineligible student, or authorized representative fails to report all earned income within the reporting time frame, the earned income deduction (see OAR 461-160-0160, 461-160-0190, 461-160-0430, 461-160-0550, and 461-160-0552) is applied as follows:

(a) In the OSIP, OSIPM, QMB, and REFM programs, the Department allows the earned income deduction.

(b) In the MAA, MAF, REF, and TANF programs, the Department allows the earned income deduction when good cause (see section (6) of this rule) exists.

(c) In the SNAP program, no deduction is applied to earned income if the amount or source of income was not timely reported.

(6) For the purposes of OAR 461-195-0501 to 461-195-0561, "good cause" means circumstances beyond the client's reasonable control that caused the client to be unable to report income timely and accurately.

(7) When support is retained:

(a) In the TANF program, the amount of support (other than cash medical support) the Department of Justice retains as a current reimbursement each month is added to other income to determine eligibility (see OAR 461-001-0000). When a client is not eligible for TANF program benefits, the overpayment is offset by the support the Department of Justice retains as a current reimbursement.

(b) In the medical programs, the amount of the cash medical support the Department retains each month is excluded income and not used to determine eligibility for medical program benefits. When a client has incurred a medical program overpayment, the overpayment is offset by the amount of the cash medical support the Department retains during each month of the overpayment.

(8) In the REF and TANF programs, when a client directly receives support used to determine eligibility or calculate benefits, the overpayment is:

(a) If still eligible for REF or TANF program benefits, the amount of support the client received directly; or

(b) If no longer eligible for REF or TANF program benefits, the amount of program benefits the client received.

(9) When an overpayment occurs due to the failure of an individual to reimburse the Department, when required by law to do so, for benefits or services (including cash medical support) provided for a need for which that individual is compensated by another source, the overpayment is limited to the lesser of the following:

(a) The amount of the payment from the Department;

(b) Cash medical support; or

(c) The amount by which the total of all payments exceeds the amount payable for such a need under the Department's rules.

(10) Benefits paid during a required notice period (see OAR 461-175-0050, OAR 410-200-0120) are included in the calculation of the overpayment when:

(a) The filing group, OCCS Medical programs household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) failed to report a change within the reporting time frame under OAR 461-170-0011 or OAR 410-200-0235; and

(b) Sufficient time existed for the Department to adjust the benefits to prevent the overpayment if the filing group, OCCS Medical program household group (see OAR 410-200-0015), ineligible student, or authorized representative (see OAR 461-115-0090 and OAR 410-200-0015) had reported the change at any time within the reporting time frame.

(11) In the SNAP program:

(a) If the benefit group (see OAR 461-110-0750) was categorically eligible, there is no overpayment based on resources.

(b) For a filing group (see OAR 461-110-0370) found eligible for SNAP program benefits under OAR 461-135-0505(1)(a) to (c), and the actual income made the group ineligible for the related program, the group remains categorically eligible for SNAP program benefits as long as the eligibility requirement under OAR 461-135-0505(1)(d) is met. A benefit group of one or two individuals would be entitled to at least the minimum SNAP program benefit allotment under OAR 461-165-0060.

(c) For a filing group found eligible for SNAP program benefits only under OAR 461-135-0505(1)(d), and the actual income equals or exceeds 185 percent of the Federal Poverty Level, the filing group is no longer categorically eligible. The overpayment is the amount of SNAP program benefits incorrectly received.

(12) In the OSIP and OSIPM programs, when a client does not pay his or her share of the cost of services (see OAR 461-160-0610) or the OSIP-EPD or OSIPM-EPD program participant fee (see OAR 461-160-0800) in the month in which it is due, an overpayment is calculated as follows:

(a) All payments made by the Department on behalf of the client during the month in question are totaled, including but not limited to any payment for:

(A) Capitation;

(B) Long term care services;

(C) Medical expenses for the month in question;

(D) Medicare buy-in (when not concurrently eligible for an MSP);

(E) Medicare Part D;

(F) Mileage reimbursement;

(G) Special needs under OAR 461-155-0500 to 461-155-0710; and

(H) Home and community-based care (see OAR 461-001-0030), including home delivered meals and non-medical transportation.

(b) Any partial or late liability payment made by a client receiving home and community-based care in-home services or participant fee paid by an OSIP-EPD or OSIPM-EPD program client is subtracted from the total calculated under subsection (a) of this section. The remainder, if any, is the amount of the overpayment.

(13) When a client's liability is unreduced pending the outcome of a contested case hearing about that liability the overpayment is the difference between the liability amount determined in the final order and the amount, if any, the client has repaid.

(14) In the OCCS Medical programs, OSIPM, QMB, and REFM programs if the client was not eligible for one program, but during the period in question was eligible for another program:

(a) With the same benefit level, there is no overpayment.

(b) With a lesser benefit level, the overpayment is the amount of medical program benefit payments made on behalf of the client exceeding the amount for which the client was eligible.

(15) When an overpayment is caused by administrative error (see OAR 461-195-0501), any overpayment of GA, OSIP, REF, SFPSS, or TANF program benefits is not counted as income when determining eligibility for the GAM, OCCS Medical programs, OSIPM, and REFM programs.

(16) Credit against an overpayment is allowed as follows:

(a) In the GA, REF, and TANF programs, a credit is allowed for a client's payment for medical services made during the period covered by the overpayment, in an amount not to exceed the Department fee schedule for the service, but credit is not allowed for an elective procedure unless the Department authorized the procedure prior to its completion.

(b) In the SNAP program, if the overpayment was caused by unreported earned income, verified child care costs are allowed as a credit to the extent the costs would have been deductible under OAR 461-160-0040 and 461-160-0430.

(c) In the SFPSS and TANF programs, if the overpayment is caused by reported earned income, a credit is allowed for the Post-TANF grant if

the client meets eligibility under OAR 461-135-1250 and the client has received less than 12 months of Post-TANF program benefits.

(d) In all programs, for an underpayment of benefits in the program in which the overpayment occurred.

(17) In the SNAP program, in compliance with the American Recovery and Reinvestment Act of 2009, effective April 1, 2009 through September 30, 2009, the amount between the normal Thrifty Food Plan (TFP) benefit amount under this section and the increased TFP benefit amount under OAR 461-155-0190 is not counted in the overpayment amount unless the filing group was ineligible for SNAP program benefits.

(18) In the REF program, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(8)(a), the amount of the overpayment is the amount of cash benefits the client used or accessed.

(19) In the SFPSS and TANF programs, when an individual used or accessed cash benefits in violation of OAR 461-165-0010(9)(a), the amount of the overpayment is the amount of cash benefits the client used or accessed.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 411.060, 411.070, 411.404, 411.660, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, HB 2089 (2013, Section 10)

Stats. Implemented: ORS 409.010, 411.060, 411.070, 411.404, 411.620, 411.630, 411.635, 411.640, 411.660, 411.690, 411.706, 411.816, 412.014, 412.049, 412.124, 414.231, 416.350

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 25-2000, f. 9-29-00, cert. ef. 10-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; AFS 27-2001, f. 12-21-01, cert. ef. 1-1-02; AFS 22-2002, f. 12-31-02, cert ef. 1-1-03; SSP 23-2003, f. & cert. ef. 10-1-03; SSP 4-2005, f. & cert. ef. 4-1-05; SSP 10-2006, f. 6-30-06, cert. ef. 7-1-06; SSP 20-2003, f. & cert. ef. 8-15-03; SSP 7-2007, f. 6-29-07, cert. ef. 7-1-07; SSP 14-2007, f. 12-31-07, cert. ef. 1-1-08; SSP 8-2008, f. & cert. ef. 4-1-08; SSP 6-2009(Temp), f. & cert. ef. 4-1-09 thru 9-28-09; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 28-2009, f. & cert. ef. 10-1-09; SSP 38-2009, f. 12-31-09, cert. ef. 1-1-10; SSP 17-2011, f. & cert. ef. 7-1-11; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 13-2013, f. & cert. ef. 7-1-13; SSP 17-2013(Temp), f. & cert. ef. 7-1-13 thru 12-28-13; SSP 26-2013, f. & cert. ef. 10-1-13; SSP 36-2013(Temp), f. & cert. ef. 11-1-13 thru 4-30-14; SSP 9-2014, f. & cert. ef. 4-1-14; SSP 19-2015, f. & cert. ef. 7-1-15; SSP 2-2016, f. & cert. ef. 1-1-16

461-195-0621

Intentional Program Violations; Penalties and Liability for Overpayments

(1) Disqualification penalties resulting from intentional program violations and other violations of law are listed in this rule. An individual may be subject to disqualification for an intentional program violation (IPV) (see OAR 461-195-0601) only if the individual was advised of the disqualification penalties prior to committing the IPV. A disqualification established in another state or established in the Food Distribution Program on Indian Reservations continues in effect in Oregon.

(2) In the ERDC program, if an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court, that individual is liable for repayment to the Department of the full amount of overpayment (see OAR 461-195-0501) the Department has established. The amount of restitution to the Department ordered by a court as part of a criminal proceeding does not lower the amount owed to the Department. Payments of restitution to the Department are credited against the amount owed. A client is not subject to an IPV disqualification but is still required to repay overpayment amounts.

(3) A child care provider found to have committed an IPV is ineligible for payment for child care as follows:

(a) A child care provider with an IPV established between April 1, 2001 and September 30, 2005 is permanently disqualified to receive payment.

(b) A child care provider who has incurred an overpayment established as an IPV claim after September 30, 2005 is ineligible for payment:

(A) For six months and until the full amount of the overpayment is paid; or

(B) Permanently, if the Child Care Program Manager finds that such ineligibility is in the public interest. The following is a non-exclusive list of reasons that support a determination of permanent ineligibility: safety concerns; or, the likelihood of future violations; or, the degree of egregiousness of any of the established IPVs; or, the degree of primary involvement in the violation by the provider.

(4) In the SNAP and TANF programs, when an IPV is established against an individual through a contested case hearing, a waiver of the right to hearing, or by a state or federal court:

(a) That individual is liable for repayment to the Department of the full amount of overpayment the Department has established, regardless of any restitution ordered by a court.

(b) Except as otherwise set forth in this section, the individual is disqualified from receiving benefits in the program in which the IPV was committed for a period of 12 calendar months for the first IPV, 24 calendar months for the second IPV, and permanently for the third IPV.

(c) An individual found by a federal, state, or local court to have traded a controlled substance for SNAP benefits is disqualified from participation in the SNAP program as follows:

(A) For a period of two years upon the first occasion.

(B) Permanently upon the second occasion.

(d) An individual found by a federal, state, or local court to have traded firearms, ammunition, or explosives for SNAP benefits is permanently disqualified from participation in the SNAP program.

(e) An individual convicted of trafficking (see OAR 461-195-0601) benefits for a value of $500 or more is permanently disqualified from participation in the SNAP program.

(f) An individual is disqualified for a 10-year period, except if permanently disqualified under subsection (b) of this section, from receiving benefits in the program in which the individual committed fraud if the individual:

(A) In TANF program:

(i) Is convicted in state or federal court of having made a fraudulent statement or representation with respect to the place of residence of the individual in order to receive assistance simultaneously from two or more states under programs that are funded under Title IV or XIX of the Social Security Act; or

(ii) Is found in an IPV hearing or admits, in a written waiver of the right to an IPV hearing, to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive benefits simultaneously from two or more states.

(B) In the SNAP program, is found to have or admits to having made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple SNAP benefits simultaneously.

(5) If the TANF grant is affected by the IPV penalty imposed under this rule, eligibility (see OAR 461-001-0000) for and the level of SNAP benefits are determined in accordance with OAR 461-145-0105.

(6) Once a disqualification period begins, it continues uninterrupted until completed, regardless of the eligibility of the filing group (see OAR 461-110-0310) of the disqualified individual.

Stat. Auth.: ORS 409.050, 411.060, 411.816, 412.049

Stats. Implemented: ORS 409.010, 411.060, 411.816, 412.049

Hist.: AFS 3-2000, f. 1-31-00, cert. ef. 2-1-00; AFS 6-2001, f. 3-30-01, cert. ef. 4-1-01; SSP 8-2004, f. & cert. ef. 4-1-04; SSP 17-2004, f. & cert. ef. 7-1-04; SSP 14-2005, f. 9-30-05, cert. ef. 10-1-05; SSP 6-2006, f. 3-31-06, cert. ef. 4-1-06; SSP 14-2006, f. 9-29-06, cert. ef. 10-1-06; SSP 13-2009, f. & cert. ef. 7-1-09; SSP 25-2011, f. 9-30-11, cert. ef. 10-1-11; SSP 7-2013(Temp), f. & cert. ef. 3-25-13 thru 9-21-13; SSP 23-2013, f. & cert. ef. 9-20-13; SSP 19-2015, f. & cert. ef. 7-1-15; SSP 2-2016, f. & cert. ef. 1-1-16

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Department of Justice
Chapter 137

Rule Caption: Annual self-support reserve update
Adm. Order No.: DOJ 14-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 137-050-0745
Subject: OAR 137-050-0745 is amended to update the self-support reserve using the federal poverty guidelines for 2015.
Rules Coordinator: Carol Riches—(503) 378-5987

137-050-0745

Self-Support Reserve

(1) The support calculation must leave an obligated parent enough income to meet his or her own basic needs.

(2) To determine the amount of the parent's income available for support ("available income"), subtract the self-support reserve of $1145 from the parent's adjusted income;

(3) The parent's total obligation, including the parent's shares of the basic support obligation, child care costs, health insurance, and cash medical support, may not exceed the parent's available income, except as provided in OAR 137-050-0750(7).

(4) The limitation on support described in this rule is reflected in the specific provisions of OAR 137-050-0710 (Calculating Support), 137-050-0725 (Basic Support Obligation), 137-050-0735 (Child Care Costs), and 137-050-0750 (Medical Support).

(5) The amount of the self-support reserve is based on the federal poverty guideline, multiplied by 1.167 to account for estimated taxes, and rounded to the nearest whole dollar. This rule will be reviewed and updated annually to reflect changes in the federal poverty guideline.

Stat. Auth.: ORS 25.275, 25.280 & 180.345

Stats. Implemented: ORS 25.275 & 25.280
Hist.: DOJ 16-2009, f. 12-1-09, cert. ef. 1-4-10; DOJ 1-2011(Temp), f. & cert. ef. 1-26-11 thru 7-24-11; DOJ 5-2011, f. & cert. ef. 7-1-11; DOJ 9-2012, f. & cert. ef. 7-2-12; DOJ 3-2013, f. 5-15-13, cert. ef. 7-1-13; DOJ 8-2014, f. & cert. ef. 5-22-14; DOJ 14-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: Rule changes to comply with 2015 legislation
Adm. Order No.: DOJ 15-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 137-055-3240, 137-055-3490, 137-055-3660, 137-055-5035, 137-055-5080, 137-055-6220, 137-055-6240, 137-055-7040, 137-055-7060, 137-055-7100, 137-055-7120, 137-055-7140, 137-055-7160, 137-055-7180, 137-055-7190
Rules Repealed: 137-055-7020, 137-055-7160
Subject: The following rules are amended to implement 2015 SB 604A (2008 amendments to the Uniform Interstate Family Support Act): 137-055-3240, 137-055-5035, 137-055-5080, 137-055-7040, 137-055-7060, 137-055-7100, 137-055-7120, 137-055-7140, 137-055-7180 and 137-055-7190.

OAR 137-055-7020 is repealed, and OAR 137-055-7160 is repealed and consolidated into 137-055-7140.

OAR 137-055-3490 is amended to implement 2015 HB 3156. The amendments clarify that enforcement of a support order may be suspended pending certain legal actions if a credit balance will result, or when continued enforcement will create a hardship for the parent paying support when he/she now has custody of all of the children.

OAR 137-055-3660 is amended to implement 2015 HB 3158. The amendments clarify the options when it is discovered that two or more child support judgments exist involving the same obligor and child for the same period.

OAR 137-055-6220 and 137-055-6240 are amended to implement 2015 HB 3159 to allow the Program to establish a state debt against a third party who issued a check that is dishonored after being disbursed.
Rules Coordinator: Carol Riches—(503) 378-5987

137-055-3240
Establishment of Arrears

(1) The administrator may establish arrears on support cases when the following conditions have been met:

(a) Services are being provided under ORS 25.080;

(b) Oregon is the appropriate state to determine the arrearage because:

(A) Oregon has continuing, exclusive jurisdiction because either Oregon issued the order and it has not been modified by another jurisdiction, or Oregon has modified and assumed continuing, exclusive jurisdiction over the order; or

(B) An order from another jurisdiction has been registered in Oregon, the jurisdiction with continuing, exclusive jurisdiction is unable or unwilling to provide a determination of the arrearages, and Oregon can obtain personal jurisdiction over the parties; and

(c) The administrator has determined that there is a need to establish the arrears balance on the case because:

(A) The administrator has no record or an incomplete accounting case record;

(B) An establishment of income withholding has been requested by an obligor or obligee pursuant to ORS 25.381; or

(C) There is a reason which necessitates that the arrears on the case record be reestablished; and

(D) There has been a request for arrears establishment by a party.

(2) A party requesting establishment or reestablishment of arrears must furnish an accounting that shows the payment history in as much detail as is necessary to demonstrate the periods and amounts of any arrears.

(3) Where arrears had earlier been established, through a process which afforded notice and an opportunity to contest to the parties, the arrears from that period will not be reestablished except that if interest had not been included in the establishment, interest may be added for that period.

(4) The administrator may establish or reestablish arrears by either:

(a) Use of the judicial process authorized under ORS 25.167; or

(b) Use of the administrative process authorized under ORS 416.429.

(5) Upon completion of the arrears establishment process in subsection (4)(a) or subsection (4)(b) of this rule, the case record will be adjusted to reflect the new arrears amount.

(6) Notwithstanding any other provision of this rule, when applicable, arrears will be established pursuant to ORS 25.015.

(7) Arrears for a child attending school as defined in OAR 137-055-5110, will be as set forth in OAR 137-055-5120.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.015, 25.167, 25.381, 416.429 & Sec. 49, Ch. 298, OL 2015
Hist.: AFS 5-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 23-1997, f. 12-29-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0047; AFS 2-2001, f. 1-31-01, cert. ef. 2-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3240; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 5-2007, f. & cert. ef. 7-2-07; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-3490
Suspension of Enforcement

(1) For purposes of this rule, "credit balance" means that payments received on a support account exceed all amounts owed by the obligor for ongoing and past-due support.

(2) When an action is pending to terminate, vacate, or set aside a support order, or when an action is pending to modify a support order because of a change in physical custody of the child the administrator may suspend enforcement of the support order if:

(a) Collection of support would result in the support account accruing a credit balance if the motion were granted; or

(b) Collection of support would create a hardship for the obligor to provide for all of the parties' children now in the obligor's household.

(3) When enforcement is to be suspended under this section, the administrator will send written notice of the proposed suspension to the obligee and any child attending school, and will send a copy of the notice to the obligor;

(4) The notice will advise the obligee and any child attending school that they have 14 days from the date the notice is sent to object in writing to the proposed suspension of enforcement and to give the reason(s) for the objection.

(a) If the reason for the suspension is prevent a credit balance, the obligee and any child attending school may object only if the basis for the suspension of enforcement is factually incorrect.

(b) If the reason for the suspension is to avoid impairing the obligor's ability to support the parties' children now in the obligor's household, the obligee or any child attending school may object only if:

(A) The child is not in the physical custody of the obligor;

(B) The child is in the custody of the obligor without the consent of the obligee or without a court order for legal custody; or

(C) The basis for the suspension of enforcement is factually incorrect.

(5) The obligee or any child attending school may appeal the administrator's decision to suspend enforcement of the support order under ORS 183.484.

Stat. Auth.: ORS 25.125 & 180.345
Stats. Implemented: ORS 25.125
Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0069; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-3490; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-3490; DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 8-2005(Temp), f. & cert. ef. 9-1-05 thru 2-17-06; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-3660
Multiple Child Support Judgments

(1) When the administrator finds that two or more child support judgments exist involving the same obligor and child for the same period and each judgment was issued in this state, the administrator may, as appropriate:

(a) Issue a notice that, pursuant to Chapter 73, Oregon Laws 2015, the terms of a later-issued court judgment terminated and replaced the terms of an earlier-issued administrative order, if the later-issued court judgment was entered within the last six months or the particular factual circumstances of the case indicate that it should control;

(b) Terminate an existing administrative child support judgment, pursuant to ORS 416.455;

(c) Move to set aside a judgment pursuant to ORCP 71;

(d) Issue a proposed governing child support order under ORS 416.448 applying the presumption provided in ORS 25.091(4) and section (2) of this rule that the later-issued child support judgment should control; or

(e) Petition the court in the county where a child who is subject to the judgment resides for a governing child support judgment pursuant to ORS 25.091.

(2) When determining which support judgment is the "last-issued" for purposes of applying or rebutting the presumption in ORS 25.091(4), the issue date for any support judgment is:

(a) The date the support judgment was entered into the circuit court register; or

(b) If the administrative child support judgment required judicial approval, the date the order approving the administrative child support judgment was entered into the circuit court register.

(3) A governing child support judgment entered pursuant to ORS 25.091 does not affect any liability accrued under a child support judgment before the governing child support judgment is issued.

(4) The administrator's proposed governing child support order or petition for governing child support judgment will include:

(a) A reconciliation of all of the child support judgments' payment records; or

(b) An order or motion to reconcile any child support arrears or credits for overpayments under all of the child support judgments in a separate proceeding under ORS 25.167 or ORS 416.429.

(5) When reconciling child support payment records for any period when two or more child support judgments were in effect:

(a) The obligor owes, for each month, the amount of current support due under the highest judgment; and

(b) Payment made toward any one of the judgments must be credited against the obligation under each of the others.

Stat. Auth.: ORS 180.345, 416.448

Stats. Implemented: ORS 25.089, 25.091, 25.167, 416.429 and 416.448

Hist.: DOJ 2-2004, f. 1-2-04 cert. ef. 1-5-04; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 1-2010, f. & cert. ef. 1-4-10; DOJ 7-2014, f. & cert. ef. 4-1-14; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-5035

Payment by Electronic Funds Transfer

(1) As used in this rule:

(a) "Electronic Funds Transfer" (EFT) means the movement of funds by nonpaper means, usually through a payment system including, but not limited to, an automated clearinghouse or the Federal Reserve's Fedwire system.

(b) "Employer" means any entity or individual who:

(A) Does business in Oregon or has a registered agent in Oregon; and

(B) Engages an individual to perform work or services for which compensation is given in periodic payments or otherwise.

(c) "Income withholding order" means an order to withhold income issued under ORS 25.372 to 25.424.

(2) An employer required to remit support payments to the Department of Justice (DOJ) must remit payments by EFT if:

(a) An employer with five or more employees has received at least one income withholding order for an employee;

(b) An employer with less than five employees has received an income withholding order for more than one employee; or

(c) An employer is required by Treasury regulations to make federal corporation estimated tax payments or federal payroll tax payments by means of EFT.

(3) DOJ may grant an exemption from the requirement in section (2) to pay by EFT if the employer demonstrates that its payroll or accounting system will not support EFT. The exemption will be granted on a case by case basis. DOJ's decision is final with regard to the exemption, but may be appealed as an other than contested case order under ORS 183.484.

(4) Notwithstanding sections (2) and (3), an employer must remit all support payments to DOJ by EFT in the following circumstances:

(a) The employer has received at least one income withholding order for an employee and has failed to withhold or failed to withhold within the time provided by ORS 25.411 at least twice;

(b) The employer has submitted at least one dishonored payment; or

(c) The employer continues to incorrectly identify withholdings or makes other errors that affect proper distribution of the support, despite contact and information from DOJ on how to correct the error.

(5) All EFT payments must identify the employee for whom the payment is made, the amount of the payment, and the child support case number to which the payment is to be applied.

Stat. Auth: ORS 180.345, 293.525

Stats. Implemented: ORS 25.372 - 25.424, 293.525

Hist.: DOJ 2-2007, f. & cert. ef. 4-2-07; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-5080

Adding or Establishing Interest

(1) The administrator will add interest using the arrears establishment process in OAR 137-055-3240 if:

(a) The party makes a written request that the interest be added to the case;

(b) The requesting party provides a month by month calculation showing support accrual, principal due and interest accrual for each month with total principal and interest due as separate totals at the end of the calculations;

(c) The interest is calculated per ORS 82.010; and

(d) Oregon issued the controlling order.

(2) The administrator may limit adding interest to the case under section (1) of this rule to one time every 24 months.

(3) For a case with a controlling support order from another jurisdiction:

(a) The law of the jurisdiction that issued the controlling order governs the computation and accrual of interest under the support order;

(b) Except as provided in subsection (c) of this section, the administrator will update the account record as directed by the jurisdiction with the controlling order and will send an informational notice to the.

(c) If an updated account record is not available from the jurisdiction that issued the controlling order, the administrator may establish interest as provided in section (1) of this rule or may ask the jurisdiction with personal jurisdiction over the obligor to determine the arrearage.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.167, 82.010, 416.429 & Sec. 49, Ch. 298, OL 2015

Hist.: AFS 6-1996, f. 2-21-96, cert. ef. 3-1-96; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0048; AFS 15-2001, f. 7-31-01, cert. ef. 8-1-01; AFS 15-2002, f. 10-30-02, ef. 11-1-02; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-5080; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-5080; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-6220

Recovery of Overpayments on Support Accounts

(1) A child support overpayment in favor of the State of Oregon is created when:

(a) The Department of Justice (DOJ) has transmitted money to an obligee, to a person or entity authorized to receive support payments or to an obligor, and that amount:

(A) Was transmitted in error or is attributable in whole or in part to a tax refund offset collection, all or part of which has been reclaimed by the Internal Revenue Service or the Oregon Department of Revenue; and

(B) Does not qualify as an advance payment under OAR 137-055-6210 or as payment for future support under OAR 137-055-6021(13); or

(b) DOJ receives a check from an obligor, withholder, or other issuer on behalf of the obligor, transmits the appropriate amount from that check to the payee, and that check is dishonored.

(2) For overpayments described in subsection (1)(a), sections (3) through (8) of this rule apply. For overpayments described in subsection (1)(b), sections (9) through (12) of this rule apply.

(3) DOJ will determine a threshold amount for which attempts to recover the overpayment will occur. In determining the threshold, DOJ will consider the cost of:

(a) Staff time in processing the overpayment collection request; and

(b) An administrative hearing and the average number of cases requesting a hearing.

(4) When a notice is issued under ORS 25.125 to a person or entity described in subsection (1)(a), DOJ will include a statement that the person or entity:

(a) Must respond within 30 days from the date of the notice to object and request an administrative review; and

(b) If appropriate, may voluntarily assign any future support to repay the overpayment.

(5) If the person or entity described in subsection (1)(a) requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the person or entity of the results of the review.

(6) Notice of the results of the administrative review will include a statement that the person or entity described in subsection (1)(a) must respond within 30 days from the date of the notice to object and request an administrative hearing.

(7) If the person or entity described in subsection (1)(a) files a written objection or request for hearing within 30 days, an administrative law judge shall then hear the objection.

(a) An order by an administrative law judge is final.

(b) The person or entity described in subsection (1)(a) may appeal the decision of an administrative law judge to the circuit court for a hearing de novo. The appeal shall be by a petition for review, filed within 60 days after the date that the final hearing order has been mailed.

(8) If a person or entity described in subsection (1)(a) fails to file a written request for administrative review, objection or request for hearing, fails to voluntarily assign future support, or if an order setting the overpayment amount is received from an administrative law judge, DOJ may refer the overpayment for collection as provided in ORS 293.231.

(9) When a notice is issued to an obligor, withholder, or other issuer under ORS 25.125(5), DOJ will include a statement that the obligor or withholder must respond within 30 days of the date of the notice and request an administrative review.

(10) If the obligor, withholder, or other issuer requests an administrative review, DOJ will conduct the administrative review within 30 days after receiving the request and notify the obligor or withholder of the results of the review.

(11) The obligor, withholder, or other issuer may appeal the result of the administrative review as provided in ORS 183.484.

(12) If the obligor, withholder, or other issuer fails to request an administrative review or if the result of an administrative review is that an overpayment occurred, DOJ may refer the overpayment for collection from the obligor or withholder as provided in ORS 293.231.

Stat. Auth.: ORS 25.125, 180.345 & ORS Ch. 293
Stats. Implemented: ORS 25.020 & 25.125
Hist.: AFS 23-1983(Temp), f. & ef. 5-18-83; AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0045; AFS 3-1992, f. 1-31-92, cert. ef. 2-1-92; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 13-1999, f. 10-29-99, cert. ef. 11-1-99; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0265; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6220; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6220; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 9-2005, f. & cert. ef. 10-3-05; DOJ 1-2006, f & cert. ef. 1-3-06; DOJ 6-2006, f. & cert. ef. 10-2-06; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-6240
Dishonored Payments on Support Accounts

When the Department of Justice (DOJ) receives a check from an obligor, withholder, or another issuer on behalf of the obligor and that check is then dishonored, DOJ will:

(1) Hold all future payments by check from that issuer for 18 working days, or until the check clears the issuer's financial institution, before forwarding payment to the obligee. DOJ may waive this requirement after a one-year period if no further payments from that issuer have been dishonored, or if the dishonored payment was dishonored for reasons that DOJ has determined were beyond the issuer's control, such as an error on the part of the financial institution or on the part of DOJ.

(2) DOJ may assess a fee not to exceed $35 against the issuer of the check.

Stat. Auth.: ORS 25.125 & 180.345
Stats. Implemented: ORS 25.020; 25.125 & 30.701
Hist.: AFS 53-1983, f. 10-28-83, ef. 11-1-83; AFS 66-1989, f. 11-28-89, cert. ef. 12-1-89, Renumbered from 461-035-0046; AFS 16-1997, f. 9-2-97, cert. ef. 10-1-97; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-0270; AFS 4-2001, f. 3-28-01, cert. ef. 4-1-01; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-6240; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-6240; DOJ 16-2004, f. 12-30-04, cert. ef. 1-3-05; DOJ 13-2011, f. 12-30-11, cert. ef. 1-3-12; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7040
Central Registry

(1) The central registry required by 45 CFR 303.7 is established within the Department of Justice, Division of Child Support. It is responsible for receiving, distributing and responding to inquiries on all incoming intergovernmental requests.

(2) Within ten working days of receipt of a request from an initiating agency or other petitioner, the central registry will:

(a) Review the documentation submitted with the request to determine completeness;

(b) Forward the request for necessary action either to the State Parent Locator Service for location services or to the administrator for processing;

(c) Acknowledge receipt of the request and ask the initiating agency or other petitioner to provide any missing documentation; and

(d) Inform the initiating agency or other petitioner where the request has been sent for action.

(3) If the documentation received with a request is inadequate, the central registry will forward the request to the appropriate branch or DA office to take appropriate action pending receipt of additional documentation.

(4) The central registry must respond to inquiries about case status within five working days from receipt of the request.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729 & Sec. 1 – 80, Ch. 298, OL 2015
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2310; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7040; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7040; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7060
Initiating Jurisdiction Responsibilities – General Provisions

(1) The administrator will use a one-state process, when appropriate, to establish, enforce, or modify a support order, or to determine parentage.

(2) The administrator will determine:

(a) Whether one order exists or multiple orders exist for the same child and obligor;

(b) If there are multiple orders, which jurisdiction should complete a controlling order determination; and

(c) Whether a one-state process is appropriate.

(3) Within 20 calendar days of completing the actions in section (1) and after receipt of any documentation necessary to process a case, the administrator will:

(a) Refer a request for a controlling order determination and reconciliation of arrears, if needed, to the appropriate jurisdiction;

(b) If a one-state process is not appropriate, use federally prescribed forms and procedures to refer the case to the appropriate central registry, tribal IV-D program or central authority of a country for appropriate action.

(4) The administrator will send any requested additional information within 30 calendar days of receipt of the request or notify the responding jurisdiction when the information will be provided.

(5) The administrator will notify the responding jurisdiction within ten working days of receipt of new case information.

(6) The administrator will notify the responding jurisdiction at least annually, and upon request, of interest charges, if any, owed on a support order issued by this state.

Stat. Auth.: ORS 25.729, 180.345
Stats. Implemented: ORS 25.729 & Sec. 1 – 80, Ch. 298, OL 2015
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2320; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7060; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7060; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7100
Interstate Income Withholding

The administrator may send direct income withholding to an employer located in another state, and must ensure that the obligor is given the notice required by ORS 25.399. If the obligor files a written contest to the income withholding order in the employer's state, the administrator may dismiss the direct income withholding order and initiate an intergovernmental request for registration and enforcement.

Stat. Auth.: ORS 180.345
Stats. Implemented: ORS 25.729 & Sec. 1 – 80, Ch. 298, OL 2015
Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2340; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7100; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7100; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7120
Responding Jurisdiction Responsibilities – General Provisions

(1) Within 75 calendar days of receipt of an Intergovernmental Child Support Enforcement Transmittal Form, a UIFSA Action Request Form or other form and documentation from the Oregon central registry, the administrator will:

(a) Provide location services in accordance with 45 CFR 303.3 if appropriate;

(b) If unable to proceed with the case because of inadequate documentation, request any necessary additions or corrections;

(c) If the documentation received with a case is inadequate, process the case to the extent possible pending response from the initiating agency.

(2) Within ten working days of locating the obligor in a different locale within the state, if appropriate, the administrator will forward the form and documentation to the appropriate office and notify the initiating agency.

(3) Within ten working days of locating the obligor outside of Oregon, the administrator will:

(a) Return the form and documentation, including the new location, to the initiating agency, or if directed by that agency, forward the form and documentation to the central registry where the obligor has been located; and

(b) Document the Oregon case record.

(4) Within 30 days of receiving a request, the administrator must provide any order and payment record information requested by another state's child support program for a controlling order determination, or advise the requesting state when the information will be provided.

(5) The administrator must provide to the initiating agency timely advance notice of any formal hearings which may result in establishment or modification of an order.

(6) The administrator must notify the initiating agency within ten working days of receipt of new information on a case.

(7) The administrator must cooperate with requests for the following limited services:

(a) Quick locate;

(b) Service of process;

(c) Assistance with discovery;

(d) Assistance with genetic testing;

(e) Teleconferenced hearings;

(f) Administrative reviews;

(g) High-volume automated administrative enforcement in interstate cases under 42 USC 666(a)(14); and

(h) Copies of court orders and pay records.

(8) The administrator may cooperate with any other request for limited services.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729 & Sec. 1 – 80, Ch. 298, OL 2015

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2350; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7120; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7120; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7140

Oregon as Responding Jurisdiction – Establishing Paternity; Establishing, Enforcing, and Modifying Support

(1) The registering tribunal under ORS chapter 110, the Uniform Interstate Family Support Act, is the circuit court of Oregon. This designation does not preclude action by other tribunals.

(2) The administrator will establish paternity and establish, enforce, and modify support in intergovernmental actions under the laws and rules applicable to Oregon actions generally, including but not limited to the applicable provisions of ORS chapters 18, 25, 107, 109, 110, 180, 183, 416, 418, 419B, 419C, and 432.

Stat. Auth.: ORS 180.345

Stats. Implemented: ORS 25.729 & Sec. 1 – 80, Ch. 298, OL 2015

Hist.: AFS 24-1994, f. 10-26-94, cert. ef. 12-1-94; AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2360; SSP 4-2003, f. 2-25-03, cert. ef. 3-1-03; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7140; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7140; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7180

Determining Controlling Order

(1) The administrator will determine a single controlling order when:

(a) Services are being provided under ORS 25.080 and two or more child support orders have been issued regarding the same obligor, child and obligee; or

(b) A party or other jurisdiction requests a determination.

(2) For purposes of this rule, any order modified or issued after October 20, 1994 (the effective date of the Full Faith and Credit for Child Support Orders Act, 28 USC 1738B), will be interpreted as a modification of all orders issued prior to October 20, 1994, unless:

(a) The tribunal entering the order did not have jurisdiction to do so; or

(b) A party alleges the tribunal lacked personal or subject matter jurisdiction.

(3) When a request for a controlling order determination is received from another jurisdiction, the request is considered "filed with the appropriate tribunal" as required by 45 CFR 303.7(d)(5) when the administrator receives all documents necessary to perform the determination.

(4) The administrator will determine the controlling order and issue an order setting out the determination. The order is an order in an other than contested case proceeding under ORS chapter 183. The order will be served upon the parties by certified mail, return receipt requested, or by any other mail service with delivery confirmation, at the last known address of the parties. The order must include:

(a) The basis for personal jurisdiction over the parties;

(b) The names of the parties and the child for whom support was ordered;

(c) A statement of each child support order which was considered, the jurisdiction which issued the order and the date of the order;

(d) A statement identifying the order the administrator determines is the controlling order and why;

(e) A statement that the controlling order determination is effective the date the order is issued by the administrator;

(f) The amount of prospective support, if any;

(g) The total amount of consolidated arrears and accrued interest, if any, under all of the orders after all payments made are credited as provided by Section 15, Chapter 298, Oregon Laws 2015.

h) A reference to Section 13, Chapter 298, Oregon Laws 2015;

(i) A notice that a party may submit further information and petition the administrator for reconsideration of the order within 60 days of the date of the order;

(j) A notice that OAR 137-004-0080 applies to any petition for reconsideration; and

(k) A notice that a party may appeal the order as provided by ORS 183.484.

(5) If the administrator determines that no tribunal has continuing, exclusive jurisdiction under ORS chapter 110, the administrator will notify the parties and establish a new child support order.

(6) For the purposes of determining the Oregon county in which the administrator may enter the order determining the controlling order, the following provisions apply:

(a) If one or more Oregon court files exist for the same obligor and child, the order will be entered in each existing court file;

(b) If an Oregon court file does not exist, the administrator will enter the documents required by ORS 416.440 in the circuit court in the county where the party who lives in Oregon resides.

(7) Within 30 days after the determination of controlling order is issued, the administrator will certify copies of the order determining the controlling order and file one with each tribunal that issued or registered an earlier order of child support.

(8) Upon written receipt of an order determining the controlling order that a tribunal of this or another jurisdiction properly issued, the administrator will:

(a) Adjust the Oregon case record to cease prospective accrual on any non-controlling order and initiate accrual on any controlling order which was issued or registered by an Oregon tribunal on the date specified in the order determining controlling order or, when not specified, in accordance with OAR 137-055-5040; and

(b) When one of the non-controlling orders was issued by an Oregon tribunal, ensure that the order determining the controlling order is entered in the Oregon circuit court for the county which issued or entered the prior order.

Stat. Auth.: ORS 25.729 & 180.345

Stats. Implemented: Sec. 1 – 80, Ch. 298, OL 2015

Hist.: AFS 26-1997, f. 12-31-97, cert. ef. 1-1-98; AFS 32-2000, f. 11-29-00, cert. ef. 12-1-00, Renumbered from 461-195-2385; DOJ 6-2003(Temp), f. 6-25-03, cert. ef. 7-1-03 thru 12-28-03, Renumbered from 461-200-7180; DOJ 10-2003, f. 9-29-03, cert. ef. 10-1-03, Renumbered from 461-200-7180; DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 7-2014, f. & cert. ef. 4-1-14; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

137-055-7190

Review and Modification In Intergovernmental Cases

(1) Within 15 days of a party's request for a periodic review or a request for a modification based upon a change of circumstances, the administrator will determine in which jurisdiction the review will be sought. The administrator will follow the Uniform Interstate Family Support Act (UIFSA) provisions in ORS Chapter 110 in making this decision, including:

(a) If the controlling order is an Oregon support order and at the time of the request one of the parties or the child resides in this state, Oregon retains continuing, exclusive jurisdiction and will review and, if appropriate, modify the order unless the parties have consented in a record to modification in another jurisdiction pursuant to Section 11, Chapter 298, Oregon Laws 2015.

(b) If the controlling order is an Oregon support order, one of the parties resides in another state, and the other party resides outside the United States, Oregon will review and, if appropriate, modify the order pursuant to Section 56, Chapter 298, Oregon Laws 2015.

(c) If Oregon does not have the controlling order but all the parties have filed consents in a record in the jurisdiction which has the controlling order for Oregon to modify the order, Oregon will review and, if appropriate, modify the order.

(d) If an order has been registered for enforcement in Oregon and none of the parties or the child resides in the jurisdiction which issued the order, the jurisdiction where the non-requesting party resides will do the review.

(e) If a foreign country lacks or refuses to exercise jurisdiction to modify its child support order and one of the parties or the child resides in Oregon, or the parties have consented in a record to Oregon's jurisdiction, Oregon may assume jurisdiction to modify the order pursuant to Section 60, Chapter 298, Oregon Laws Bill 2015.

(2) If the administrator determines that Oregon is not the appropriate reviewer, the administrator will:

(a) Determine and obtain the information needed;

(b) Complete any required forms; and

(c) Send all required documents to the reviewer within 20 calendar days of receipt;

(3)(a) If the reviewer is currently providing services for Oregon on the case, the administrator will transmit the documents to the appropriate office or agency working the case;

(b) If the request is the first contact with the reviewer for the case, the request must be sent to the reviewer's central registry.

Stat. Auth.: ORS 25.080, 25.287, 180.345
Stats. Implemented: ORS 25.080, 25.287, Sec. 1 – 80, Ch. 298, OL 2015
Hist.: DOJ 10-2004, f. & cert. ef. 7-1-04; DOJ 3-2011(Temp), f. & cert. ef. 3-31-11 thru 9-26-11; DOJ 4-2011, f. & cert. ef. 7-1-11; DOJ 15-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: Motor Vehicle Advertising
Adm. Order No.: DOJ 16-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 137-020-0050
Subject: OAR 137-020-0050, known as the "Motor Vehicle Advertising rule" was originally adopted in 1987. It was last substantively amended in 2008. The amendment addresses changes in the industry, deletes repetitive and outdated information, and 2015 HB 2282.

The amendment considers changes dealers and financial organizations have made to comply with national changes in the industry. The amendment deletes outdated information, makes non-substantive edits to the Official Commentary, and makes the rules consistent with changes to Oregon law. The amendment also addresses certain advertisements of consignment sales.
Rules Coordinator: Carol Riches—(503) 378-5987

137-020-0050
Motor Vehicle Advertising

(1) For purposes of this rule, the definitions specified in OAR 137-020-0020 shall apply.

(2) Violations: It is unfair or deceptive in trade or commerce for any person to advertise motor vehicles if:

(a) Trade-in Value — The advertisement for the sale or lease of a motor vehicle claims that a seller will value property being offered in exchange for payment toward the motor vehicle: at a specific amount; within a range of specified amounts; at a guaranteed minimum amount; or as a multiple of or an increase in trade-in allowance, unless the advertisement:

(A) References a value cited in a motor vehicle price guide trade publication that is: nationally recognized and distributed; not published by the seller; and is readily accessible by the public;

(B) Clearly and conspicuously discloses the name of the trade publication being referenced;

(C) Clearly and conspicuously includes the following disclaimer: "THE VALUE OF USED MOTOR VEHICLES VARIES WITH MILEAGE, USAGE, INCLUDED ACCESSORIES AND CONDITION. BOOK VALUES SHOULD BE CONSIDERED ESTIMATES ONLY." and

(D) References the value cited for the geographic region in which the motor vehicle is being offered for sale, if the publisher of the trade publication publishes and distributes separate issues for specific geographic regions.

(b) Dealer Rebates — The advertisement represents that purchasers of vehicles will receive a cash rebate, discount certificate, coupon, cash card for products or services or other similar promotion unless it is offered by a manufacturer or another party, independent of the dealer and without dealer participation.

OFFICIAL COMMENTARY: Rebates controlled by the dealer may be illusory because the dealer may simply increase the offering price or limit the dealer's negotiated price by the same amount as the ostensible value of the rebate. The rule eliminates this possibility by prohibiting such rebates. Therefore, no monetary or similar form of remuneration to a consumer is allowed in the offering of a motor vehicle, unless it is a promotion paid for by a party wholly independent of the dealer and that third party is not paid by the dealer for offering the promotion. This rule does not prohibit associations comprised of multiple competing dealers from offering a promotion that customers of any dealership in the association can receive if any amounts the dealers pay to the association are in no way correlated to the promotion being offered by the association.

(c) Clarification of sale or lease — The advertisement includes lease and sale offers in the same advertisement without making a clear and conspicuous distinction as to which terms apply to the sale and which apply to the lease;

(d) Invoice advertising — The advertisement represents that motor vehicles are offered for sale at a price that is compared in any manner to the dealer's "cost" or terms of essentially identical import unless the advertisement:

(A) Exclusively uses the term "invoice" or "invoice price"; and

(B) Complies with the following:

(i) The invoice price shall be the final price listed on the manufacturer's invoice after subtracting any amount identified on the invoice as being held back for the dealer's account, and after subtracting any advertising fees or manufacturer to dealer rebates or incentives;

(ii) Purchasers shall be able to purchase any vehicle described by the advertisement at the offering price;

(iii) The invoice shall be readily available for inspection by prospective customers;

(iv) The advertisement clearly and conspicuously states that the invoice price for the sale of the vehicle is the dealer's actual cost after subtracting all holdbacks, incentives, manufacturer to dealer rebates, advertising incentives, promotional fees or any other consideration which will be paid by the manufacturer to the dealer;

(v) A manufacturer to consumer rebate is not included in the formula to arrive at the "invoice price." Consumers are entitled to any such rebate in addition to any savings advertised with the "invoice price" offer; and

(vi) The vehicles being so advertised have not had aftermarket items, including, but not limited to, additional goods, accessories, services, products or insurance added to them at a price higher than the dealer's actual cost.

OFFICIAL COMMENTARY: This rule mandates the use of the word "invoice" or "invoice price" when any advertisement is compared to a dealer's cost. The rule makes it clear that all holdbacks and other funds the dealer will get from the manufacturer must be subtracted from the offering price. The rule does not require the vehicle be sold for the invoice price, but only that the invoice price be the reference price used as a starting point. For example, it is lawful to state a certain model of car is for sale at $500 over invoice price, as long as the referenced adjusted invoice price is after all of the appropriate subtractions. Also, manufacturer to consumer rebates belong to the consumer and the consumer is entitled to those rebates in addition to the advertised "invoice price." This rule does not require the dealer to subtract promotional and sales incentives that are not known to the dealer at the time of the advertisement or listed on the invoice, such as volume sales incentives or special promotional manufacturer to dealer incentives and incentives that are calculated based upon special criteria. A dealer or broker may not, however, offer a vehicle for sale referenced to the invoice price and simply pack the price of the vehicle by adding aftermarket items not sold at true invoice price. This practice would simply add back profit on the vehicle and the consumer's cost would not be the invoice price. A vehicle advertised at invoice must be sold at invoice.

(e) Buy-Down Rates — The advertisement represents that financing is available for the purchase of motor vehicles at a buy-down rate unless the advertisement includes a clear and conspicuous disclosure that the interest rate is not sponsored by the manufacturer, if such is the case, the amount of the buy-down is reflected in the Federal Truth in Lending Statement, and the advertisement clearly and conspicuously states that "the cost of the buy-down may increase the price of the vehicle." If the buy-down will increase the cost of the vehicle, the dealer shall offer the consumer the option of purchasing the vehicle without the buy-down rate at the offering price less the cost of the buy-down. If any specific terms must be met in order to qualify for the advertised buy-down rate, they shall be clearly and conspicuously disclosed. Examples are large down payments, only available to the highest credit ratings, hidden finance charges, unusual terms of the loan or higher selling prices;

(f) Clear and Conspicuous/Complete Offer — The advertisement:

(A) Fails to incorporate a material statement or fails to use any disclosure or disclaimer which is required by law or by these rules, or without which the advertisement would be false, incomplete, inaccurate, deceptive or misleading;

(B) Fails to incorporate a material statement or uses any disclosure or disclaimer which is not presented in a clear and conspicuous manner;

(C) Uses one or more footnotes or asterisks which, alone or in combination, confuse, contradict, materially modify or unreasonably limit the material terms or availability of any advertised statement; or

(D) Uses images, words, phrases, initials, abbreviations or any other items which are not clear and conspicuous.

OFFICIAL COMMENTARY: In order for material information to be "clear and conspicuous," it must be in direct proximity to the information it defines or clarifies and not in an obscure location of the advertisement. See the definition of "clear and conspicuous" in OAR 137-020-0020. Each advertisement will be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisers shall not advertise by placing important disclosures in small print, inconspicuously buried at the bottom of the advertisement, or speaking so fast or softly that an average person cannot understand what is being said. Use of multiple reference symbols which combine all information together in one paragraph at the bottom of an advertisement in small print is not clear and conspicuous. Asterisks or other reference symbols may not be used as a means of contradicting, disclaiming or substantially changing the meaning of any advertised statements.

(g) Bait and Switch Rules — An advertisement offers vehicles for sale or lease, vehicles at a specific or discounted price, or specific interest rates or credit or finance terms when such assertions are deceptive, false, misleading or not sincere good faith offers, including, but not limited to, the following:

(A) Statements or illustrations used in any advertisement which create a false impression of the grade, quality, year of model, size, usability, origin, price, interest rate, down payment, monthly payment, make, value or model of the product offered, or which misrepresent the product, interest rate or terms of sale or lease in such a manner that later, on disclosure of the true facts, the purchaser may be switched from the advertised vehicle to another vehicle or to a higher interest rate or different credit or finance offer (See 16 CFR § 238, FTC Guides Against Bait Advertising);

(B) Except as otherwise allowed by subsection (2)(j) of this rule, advertising a motor vehicle for sale or lease when it is not in the possession of the dealer, willingly shown to the consumer or sold at the advertised price and terms. If already sold or leased, the advertiser shall, upon request of a consumer, show proof of the sale or lease of the motor vehicle which was advertised;

(C) Using a headline or major theme in an advertisement to make an offer of a low or special interest rate, down payment or monthly payment which makes it appear that the special offer applies to all or a majority of vehicles offered in the advertisement when it only applies to a limited number of vehicles;

(D) Using discount or loss leader price advertising, unless the advertisement lists, in direct proximity in print type no less than half as large as the offering price, the number of vehicles available at the offering price. The listed number of vehicles must be available on the day the offer is advertised at the offered price;

(E) Using a deceptive, false or misleading offer to secure the first contact or interview, even if the true facts are subsequently made known to the consumer;

(F) Using any act or practice to discourage the purchase of the advertised vehicle as part of a scheme to sell another vehicle;

(G) Using any act or practice as part of a scheme to raise the interest rate, the down payment or the monthly payment to one higher than advertised;

(H) Advertising limited availability of vehicles, such as "only 1 at this price," in order to induce consumers into a dealership when the dealership has other similar vehicles available for sale at the same price or for the same terms;

(I) Offering credit or finance terms, including, but not limited to, low down payments, low monthly payments or low interest rates or credit or finance terms, which the advertiser cannot provide, does not intend to provide, does not want to provide, or which the advertiser knows or should know are not available or cannot be provided as advertised. The purpose of the offer is to switch borrowers from the advertised credit or finance offer to other credit or finance terms, usually at a higher interest rate or on a basis more advantageous to the person making the offer;

(J) Offering a low monthly lease payment based upon a capitalized cost reduction that is so large the advertiser knows or should have known:

(i) It is not a bona fide offer; or

(ii) It is so much more than an average capitalized cost reduction that most consumers would not be expected to make such a large payment for the advertised vehicle.

(h) Limited Offers of Vehicles, Discounts, Credit or Financing — The offering price or an offer to lease, a rebate, a discount offer or a special credit or finance offer applies to a specific vehicle, or to a specific or limited number of vehicles of a specific model or type, unless:

(A) For new vehicles, the exact number of vehicles available for which the offer is being made and the specific models to which the offer applies are clearly and conspicuously disclosed in type no less than half the size of the type used for the offer;

(B) Each vehicle is clearly and conspicuously identified in the advertisement by its vehicle identification number if there are less than six such vehicles advertised; and

(C) Any advertised vehicle is available for sale on the day it is advertised.

(i) Offer Limited to Only Eligible Consumers — An offer, including, but not limited to, one for special finance, credit or payment terms, rebates or any other special offer made in an advertisement, applies to a specific or limited number of consumers, unless the following information is clearly and conspicuously disclosed:

(A) The exact model vehicles for which the offer is being made; and

(B) All limitations and conditions of eligibility for the offer, including, but not limited to, the minimum credit score or tier upon which the offer is based.

OFFICIAL COMMENTARY: This rule is triggered when there are a "limited" number of consumers to whom an offer applies. If there are a limited number of consumers to whom the offer applies, the advertisement must clearly disclose any limitations. If the offer is only available to consumers with a particular credit score, then the advertisement must clearly and conspicuously disclose the required minimum credit score. If an offer to extend credit or financing is limited based on factors other than credit history, such as past employment, current wages, or a minimum down payment amount, those factors must be disclosed. It is important to remember that to be clear and conspicuous the disclosure must be in direct proximity to the offer.

(j) Vehicles Not Immediately Available — The advertisement uses terms which state or imply that motor vehicles are in stock or otherwise available for immediate delivery when they are not. If a motor vehicle is not available for immediate delivery, the advertisement must clearly and conspicuously state the vehicle's availability such as it is in transit, on order, or obtainable only by special order or dealer trade, and that it is not in stock;

(k) Used Vehicle Offers — The advertisement is for a used vehicle, which was manufactured less than four years prior to the date of the advertisement, without designating the vehicle as "used." Other descriptive terms may be substituted for the term used, but not so as to create ambiguity as to whether the vehicle is new or used. Used vehicles, such as "dealer demos" or late model vehicles, cannot be displayed in an advertisement with new vehicles in such a manner that it is difficult to determine if they are used or new;

OFFICIAL COMMENTARY: Examples of alternative terms include "lease return," "pre-owned," "dealer demonstrator" or "rental return."

(L) Program and Certified Vehicles — The advertisement uses the word "program," "certified" or terms of essentially similar import, unless the advertisement clearly and conspicuously discloses the nature and benefits of the "program" or "certification" that is offered with the motor vehicle and the origin and prior use of the vehicle. If there is an additional cost to the consumer to obtain the program or certification, that cost must be clearly and conspicuously disclosed in the advertisement and it must be listed on any purchase or lease agreement;

OFFICIAL COMMENTARY: This rule prohibits use of terms such as "program" or "certified" unless there is a verifiable benefit which attaches with the program or certification. The only time these words may be used are if the manufacturer, dealer or other third party actually has a special program that attaches to the sale of the used vehicle, such as a complete inspection for defects, repair of the defects that are discovered, and/or an additional warranty that is more extensive than the vehicle would otherwise have without the program. If any program or certification is used in an advertisement, the advertisement must clearly and conspicuously disclose the terms and cost, if any, of the program or certification, if that amount is not already included in the advertised offering price.

(m) Non-negotiable Offers — The advertisement offers or the dealer posts on any vehicle or uses any words which imply that the offering price of the vehicle is non-negotiable or that no negotiations are necessary unless in fact the dealer:

(A) Does not negotiate the offering price of the advertised vehicles;

(B) Maintains the same price for all consumers for equivalent vehicles;

(C) Maintains such price unless a general price adjustment is made which is applicable to all consumers;

(D) Posts the non-negotiable price on all such vehicles; and

(E) Does not falsely inflate the value of any trade-in vehicle by such an amount that the claim that it is a non-negotiable transaction is a sham.

OFFICIAL COMMENTARY: Dealers who engage in any advertisement that claims that the offering price is not negotiable, that the advertised price is so low that it is unnecessary to negotiate, or terms of similar import may not negotiate the offering price of the vehicle once the car has been offered at a price with such a claim. The non-negotiable price must be clearly posted on all such vehicles. The dealer may not alter the vehicle price offered in a particular transaction. Altering a vehicle price includes "reappraising" a trade-in vehicle, changing the terms of sale, or changing vehicle features or options where the effect is to alter the net offered price.

(n) Limited Offers — The advertisement offers any vehicle without disclosing material limitations of the terms listed in the offer, including, but not limited to, the length of time that the offering price is in effect. Advertisements which do not list any effective dates will be presumed to offer advertised vehicles at the "advertised price" until such time as the vehicles are subsequently advertised at different terms or for a period of 30 days, whichever comes sooner;

(o) Identification as a Dealer — The advertisement, including, but not limited to, those on the internet, offers any vehicle for sale and does not prominently identify the dealer or broker by the complete business name that the dealer or broker uses in the normal course of its business. When the advertisement is a classified line advertisement, the dealer or broker may use the word "dealer" or abbreviation "DLR." The dealer or broker must also display its business name prominently at any off-site sale location. In the case of an internet advertisement, the advertisement must state the full name of the dealer, the dealer's address, telephone number and Oregon dealer license number. If the internet advertisement is an online auction or small classified line advertisement with limited space, a hyperlink or web address which leads to all dealer information may be used. This rule does not apply to dealers providing vehicles for display purposes only under ORS 822.040(4), but only if the dealer complies with ORS 822.040(4) and all rules promulgated pursuant to that statute;

OFFICIAL COMMENTARY: This rule applies even in the case of special event or off-site sales, such as mall sales or sales conducted using the name of another prominent business at that business' location. The dealer or broker must always display its commonly used business name prominently in any advertisement or at any off-site sale. Creation and use of an assumed business name that is not used in the normal course of business is misleading as to what entity is actually offering the vehicles. Purchasers have an absolute right to know the dealership with which they are doing business and who is actually conducting the sale. If more than one dealership is involved, all dealerships participating in the event must be named. If an advertisement is by a new vehicle regional dealer group, only the name of the regional group need be identified, not the individual names of all the dealers in the group.

(p) Reference Pricing — The advertisement claims, implies or could cause a reasonable consumer to believe that:

(A) A vehicle is reduced in price from the dealer's former price, or that the price is a percentage or dollar amount of savings from the dealer's former price, or words to that effect, unless the dealer actually advertised or has records to substantiate that the vehicle has been offered for sale at the former price, for no less than 10 days in the prior 30 days; and

(i) For new vehicles, the advertisement lists the MSRP; or

(ii) For used vehicles, the advertisement lists a value cited in a motor vehicle price guide trade publication that is nationally recognized and distributed, not published by the seller, and is readily accessible by the public and the value is based upon the year, mileage, condition and accessories of the vehicle advertised. The advertisement must specify if it is referencing a retail or wholesale guide; or

(B) A dealer is conducting a sales promotion or marketing event at which prices have been reduced, when in fact prices have not been reduced.

(q) Used Car Reference to New MSRP — A used vehicle advertisement references the original MSRP of the vehicle when it was new in comparison to its present sales price;

(r) Comparison Price Advertising — The advertisement explicitly or implicitly claims that the dealer's offering price is lower than another dealer or dealers', unless the dealer can clearly show, through verifiable statistical analysis of other prices in the target market and records of the dealership, that such is the case;

(s) Adjustable Interest — The advertisement offers an interest rate that is adjustable without clearly and conspicuously disclosing that the interest rate is adjustable;

(t) Disclosure of MSRP — The advertisement states an offering price for a new vehicle and does not also state the MSRP of the vehicle. If the advertisement states the offering price of a new vehicle as discounted or in any way reduced by a specified amount below the MSRP or the dealer's sale price, the MSRP, the amount of any discount, rebate, or other price reduction and the final offering price shall be clearly and conspicuously displayed in figures. Each figure shall be labeled with a clear and conspicuous description;

OFFICIAL COMMENTARY: The clearest way to comply with this rule is to post this information in the form of a mathematical type equation.

(u) Range of Prices Advertising — The advertisement states that any vehicles are available for sale at a range of prices, a range of percentage or fractional discounts, a specific down payment or a specific monthly payment using the words "as low as" or "starting at" or words to that effect, unless:

(A) The advertisement clearly and conspicuously states the number of vehicles available at the lowest offered term in type no less than half the size of the type used for the offer;

(B) Each vehicle, to which the offer is applicable, is clearly and conspicuously identified in the advertisement by make, model, year of manufacture and its vehicle identification number, if less than 25% of the vehicles advertised are eligible for the lowest offer. This subsection is not applicable to advertisements published by a motor vehicle manufacturer;

(C) The highest price or lowest discount in the range is clearly and conspicuously disclosed in the advertisement in the same type size;

(D) The offer is not a major theme or headline in the advertisement, except for when a majority of the vehicles advertised are eligible for the offer; and

(E) The financing or credit criteria are clearly and conspicuously disclosed, if a consumer must meet certain minimum criteria to qualify for the offer.

(v) Limited Rebate Offers — An advertised offering price includes any rebates or reductions, unless such rebates and reductions are available to every purchaser or member of the general public without exception. Rebates or reductions which are not available to every purchaser or member of the general public, such as "commercial rebate," "college graduate rebate," "loyalty rebate," "financing company rebate," or "first time buyer's rebate," may be listed in the advertisement, but may not be subtracted from the price so as to reduce the offering price. The offering price, which is available to every purchaser or member of the general public, must be prominently displayed in type which is visibly greater than any other price listed in the advertisement that is not available to the general public. Any alternate price listed in the advertisement in addition to the offering price must be one that is reasonably possible for some members of the general public to obtain;

(w) Factory Sales — The advertisement uses the terms "factory or manufacturer authorized sale," "factory discount outlet," or similar terms indicating that the dealer has been granted special pricing or distribution privileges by a motor vehicle manufacturer, unless the dealer is specifically authorized to do so by the motor vehicle manufacturer. The dealer using such an offer must have written substantiation before publishing such an advertisement;

(x) Misleading Reasons for Sale — An advertised sale is one being conducted in a dealer or broker's normal course of business and a person uses terms or illustrations in the advertisement which are false or have the capacity or tendency to deceive or mislead consumers as to the nature of or reason for the sale, including, but not limited to, using:

(A) The terms "liquidator," "auction sale," "liquidation sale," "urgent," "disposal sale," "total inventory reduction sale," "close out," "final clearance," "bank asset sale," "repossession sale," "disposal sale," "reprocessed vehicle sale," "authorized distribution center," "factory authorized sale" or any similar terms;

(B) The term "public notice" or similar terms when used in such a manner that it appears to be a publication of any type of legal notice, court notice or government notice; or

(C) Any terms which imply the sale is an event of urgent status or the vehicles have unique qualities or benefits or were specially obtained inventory.

OFFICIAL COMMENTARY: Emergency or distress sales, including, but not limited to, bankruptcy, inventory reduction, liquidation and going out of business sales, or any other specific reason for a sale shall not be advertised unless the stated or implied reason is true. "Selling out," "closing out sale," and similar terms shall not be used unless the business publishing the advertisement is actually going out of business. The term "liquidation sale" means that the advertiser's business or inventory is in the process of being liquidated prior to actual closing. Using a business name or advertising agent that incorporates the term "liquidator," or term of similar import, in its business name in conjunction with the sale of motor vehicles has the tendency to mislead consumers as to the nature of the sale and is deceptive, unless the dealer is actually going out of business. When a dealer purchases a vehicle for its inventory, the source of its purchase does not superimpose any special benefit or pricing status upon the vehicle. The fact that the vehicle was previously a lease or rental return, sold at auction or repossessed by a lender does not allow the dealer to falsely imply that the consumer will get a better price on the vehicle because of its prior stature. This rule does not prohibit a dealer from disclosing that a vehicle is a rental return; however, the vehicle is simply being sold in the dealer's normal course of business and cannot be represented to be anything other than that. A new motor vehicle dealer may use the terms such as "close-out" or "final clearance" for the sale of inventory that is no longer being manufactured or for year-end vehicles that are not going to be restocked by the manufacturer. This rule does not prohibit offers of special sales events held in conjunction with a specific financial organization, such as a local credit union.

(y) Misrepresenting Down Payment — Any down payment required for the vehicle transaction is referred to in an advertisement as a "transfer fee," "reassignment fee," "assumption fee" or any other words of similar import that do not clearly specify that the amount referenced is in fact a down payment; or the monthly payment is referred to by any other term that is not commonly used to describe a monthly payment;

(z) Deceptive Format or Layout — The advertisement uses any format, layout, headline, assertion, illustration or type size which has a ten-

dency to mislead or deceive its intended audience regarding the prices, finance terms, availability or applicability of any offer made in the advertisement;

OFFICIAL COMMENTARY: Some advertisements incorporate large amounts of information that, if taken individually, might communicate valid information regarding the offering of a vehicle. When combined, however, the combination of inconsistent information makes it difficult to determine what information is applicable to any other information or vehicles. Disclaimers may not cure otherwise deceptive messages or practices. The composition and layout of advertisements should minimize the possibility of misunderstanding by the reader. Prices, illustrations, or descriptions should be displayed in an advertisement in such a manner that it is clear to which vehicles they apply.

(aa) False or Misleading Statements — The advertiser or advertising agent makes any representation or statement of fact in an advertisement if the advertiser or advertising agent knows or should know that the representation or statement is false, confusing or misleading or the advertiser or advertising agent does not have sufficient information upon which to base a reasonable belief in the truth of the representation;

OFFICIAL COMMENTARY: Statements made in an advertisement must be true and specifically applicable to the sale or offer being made in the advertisement. An example of a violation of this rule is an advertisement that stated, "National Rental Car Company Files Bankruptcy — Liquidation Companies Across the County Move to Eliminate Inventory." While some rental car company may once have filed bankruptcy, the dealerships and advertising agent which published this advertisement had no vehicles from the rental car company to sell. Further, no liquidation companies were liquidating vehicles from a rental car company and none were in any dealers' inventories. An advertisement may not be false, manipulate the truth or use language that does not correctly describe the nature of the sale, or the source of ownership of the vehicles for sale. Superlative advertising claims may be objective (factual) or subjective (puffery). General superiority claims like "the best" may only be used in clear puffery, and not on the basis of selective comparisons. The repeated insistence of superlatives within a script might in itself amount to a claim of supremacy which would need to be verified. Qualitative claims of superiority (e.g., "we simply sell for less") which are open to challenge and/or which are impossible to measure conclusively should be avoided, except for appropriate mentions in a way which allows that rival brands may also make the same claim (e.g., "we simply try to sell for less").

(bb) Zero Down Advertisements — The advertisement uses the phrase "zero down ($0 down)," "no money down," "a penny down" or words of similar meaning, when a down payment of any kind is, in fact, required, including, but not limited to:

(A) The consumer must use the vehicle's rebate as the down payment;

(B) The consumer must use the equity from the consumer's trade-in as a down payment; or

(C) The consumer must pay a security deposit, first month's payment, acquisition fee or any other amount, other than taxes, license and registration costs or a document processing fee which are clearly and conspicuously disclosed in the advertisement, at the inception of the transaction.

OFFICIAL COMMENTARY: If a down payment or fee of any amount is required at the time of the transaction it is not a "no money down" offer. This is especially a problem in lease advertising where it is common to require the first month's payment, a security deposit, and an acquisition fee at lease inception. If any government fees are required to be paid at the time of sale or lease, including, but not limited to, title or registration fees, this information must be clearly and conspicuously disclosed in the advertisement.

(cc) Rebate Offers — The advertisement offers the availability of a manufacturer's, lender's or other third party's rebate unless such advertisement clearly and conspicuously discloses:

(A) The amount of any applicable rebate;

(B) Any conditions, restrictions or limitations placed on the rebate; and

(C) To which model the rebate applies. If multiple rebates are applicable in the same advertisement, the models that each respective rebate applies to must be identified;

(dd) Withdrawal of Advertisement — An advertisement for the sale or lease of a specific motor vehicle is not withdrawn or the words "sold" superimposed over the advertisement as fast as technologically and reasonably possible, based upon the media used for the advertisement and the frequency of publication, after the motor vehicle is sold or is no longer available for sale or lease to the general public;

OFFICIAL COMMENTARY: Dealers, advertisers and advertising agents have the responsibility to monitor their advertisements and ensure that after a vehicle is sold or leased, or otherwise no longer available to the public, any advertisement for the vehicle is removed from the media in which it is published, including, but not limited to, television, radio, newspapers or the internet. If an internet vehicle advertising company, an advertising agent or any other publisher has received notice from a dealer that a vehicle is sold or no longer available, it must remove the advertisement or superimpose the words "sold" over the advertisement as fast as possible based upon the type of media in which the advertisement is placed and the frequency of its publication.

(ee) Sale Offer May Not be Reduced by Down Payment — The advertised offering price or monthly payment for the sale of a motor vehicle is calculated by reducing the offering price by the amount of a down payment, minimum trade-in amount, deposit or other payment to be made by the purchaser, unless a financial organization is making the offer, payment by the purchaser is required to meet the terms of this particular offer and the identity of the financial organization making the offer is clearly and conspicuously disclosed in the advertisement;

OFFICIAL COMMENTARY: This rule should be read in conjunction with OAR 137-020-0020(2)(v) and (3)(c) regarding what fees are allowed to be excluded from any offering price.

(ff) Price Matching Offers — The advertisement uses terms "we will meet your best offer" or "we won't be undersold," or terms of similar import which suggest that a dealer will beat or match a competitor's price unless:

(A) The advertisement clearly and conspicuously discloses the price matching policy and any limitations; and

(B) Such policy does not require the presentation of any evidence which places an unreasonable burden on the consumer.

OFFICIAL COMMENTARY: Dealers may not encourage consumers to make and break contracts in an attempt to offer them a price lower than the price which they already negotiated with another dealer. A dealer may always offer to beat another advertised price, but requiring a consumer to present a purchase order, lease agreement, retail installment contract or other written proof of an offer from another dealer is an unreasonable burden on the consumer.

(gg) False Credit Advertisements — The advertisement makes a false or misleading offer of credit or makes any false or misleading statement in connection with an offer of credit, including, but not limited to:

(A) Failing to clearly and conspicuously disclose all material limitations or conditions of the offer of credit;

(B) Stating that "no credit application is refused," "no credit application rejected," "all credit applications are accepted," "we finance anyone," or words of similar import, unless the offeror can substantiate that all credit applications received by the offeror have been approved for credit;

(C) Stating that a consumer is "approved" or "pre-approved" for an offer of credit, or words of similar import, if:

(i) The offer of credit is qualified by conditions other than the specific criteria used in making a firm offer of credit pursuant to the Fair Credit Reporting Act or otherwise allowed by FCRA;

(ii) The offer is not a "firm offer of credit" made pursuant to FCRA; or

(iii) The offer made is false; or

(D) Stating that the dealership will assist in improving or can improve the consumer's credit record, credit history or credit rating, unless it is in fact true.

OFFICIAL COMMENTARY: A dealer that sells a retail installment contract to a financial organization is not assisting a consumer in improving the consumer's credit record. If the financial organization reports payments to a consumer reporting agency (aka credit bureau), the consumer's credit record may be improved if the consumer makes all payments on time. However, the consumer's credit record may be detrimentally affected if the consumer does not make timely payments. Other examples of violations of this rule include: an advertisement for financing when financing is not actually offered or available by the stated financial organization listed in the advertisement or the dealership or advertising agent never intended to sell retail installment contracts to the stated financial organization; an offer that states consumers are qualified for a loan of $30,000 when the offeror knew the credit scores used to obtain the names of consumers would only qualify for loans of a lesser amount; and an advertisement claims that consumers are approved or pre-approved for credit when the offeror has no basis upon which to claim a consumer will be approved for credit.

(hh) Alternative Offer Limitations — An advertisement offers the sale or lease of a motor vehicle with either a special finance or credit rate or a manufacturer's rebate and fails to clearly and conspicuously disclose that the consumer is only entitled to receive one or the other and not both;

OFFICIAL COMMENTARY: It is common for a manufacturer to offer a special low finance or credit rate or a rebate on a vehicle at the same time; however, the consumer must make a choice of one or the other. Advertisements must clearly and conspicuously state, when such a situation exists, that the consumer may only receive one or the other.

(ii) Misleading Use of Illustrations — An advertisement uses inaccurate photographs, descriptions or illustrations when describing specific motor vehicles. However, an advertiser may use stock illustrations or photos which are substantially similar when an exact match is not available;

OFFICIAL COMMENTARY: Examples of improper advertisements include advertising a fully-loaded motor vehicle when the advertisement actually refers to a minimally-equipped motor vehicle in the text and a photograph of a four door pickup truck when the advertisement refers to an extended cab truck. Use of a deceptive illustration is not legitimized by stating in the advertisement "photo for illustration purposes only" or similar language.

(jj) False Advertising — The advertisement is a false advertisement;

(kk) Misleading Initial Term Offers — The advertisement offers adjustable terms of payment with no payments or low payments in the beginning of a loan or lease, which then increase after a term of months unless:

(A) The offer is by a manufacturer or financial organization as part of a specific loan or lease offer and no rebates, incentives or other funds that the consumer is entitled to receive are used to fund the reduction; or

(B) The offer is made by any person using rebates, incentives or other funds that the consumer is entitled to receive to fund the reduction and the

advertisement clearly and conspicuously discloses that the offer is available only by using rebates, incentives or other funds that the consumer is entitled to receive and the use of the rebates, incentives or other funds as a down payment may be more financially beneficial to the consumer over the term of the loan or lease.

(LL) Broker Fiduciary Obligation — Any person advertises as, holds itself out as, or engages in the conduct of a broker and fails to act in a fiduciary capacity for the consumer;

(mm) Use of Abbreviations — An advertisement uses any abbreviation which is deceptive, misleading or not commonly understood by the general public or approved by federal law or state law;

OFFICIAL COMMENTARY: Examples of abbreviations commonly understood: AC, AM/FM, AUTO, AIR, 2DR, CYL, MSRP, DOC, DOC. PROC. FEE, or DOC. PROCESS. FEE; abbreviations not commonly understood: WAC, OAC, PEG.

(nn) Misleading Business Names —Any words are used in a company name or advertisement which would mislead the public either directly or by implication regarding the nature or affiliation of a dealer or broker's business. Use of the term "wholesale" or "wholesaler" shall not be used in a company name affiliated with motor vehicle sales or leases after January 2, 2008 unless the person actually owns and operates a motor vehicle business that only sells vehicles wholesale. Any Oregon dealer or broker that used the term "wholesale" or "wholesaler" in its business name prior to January 2, 2008 may continue to use that word, except it must clearly and conspicuously state in any advertisement or display of its name at its business location words that convey to the public that it is a retail, not wholesale, motor vehicle business. Use of the term "liquidator" shall not be used in a company name to sell or advertise motor vehicles, unless the company is solely in the business of liquidating assets of persons going out of business and in fact the sale is a going out of business sale;

OFFICIAL COMMENTARY: This rule ensures that words are not incorporated into a business name that would tend to mislead a consumer as to the affiliation or nature of a business, the source of its goods or the type of business being conducted. Examples, other than wholesale, include: "factory" or "manufacturer," which should not be used in a company name, unless the advertiser actually owns and operates or directly and absolutely controls the manufacturing facility that produces the advertised products.

(oo) Negative Equity Trade-in Disclosure — The advertisement offers to "pay off" any motor vehicle taken in trade, or words of similar import, unless the advertiser will actually pay off the outstanding debt, without including the cost as negative equity as part of the new transaction. If the advertisement makes any statements regarding accepting any vehicle in trade for the purchase or lease of another vehicle, the following disclaimer must be used: "NOTICE: Trading in a vehicle will not eliminate your debt. Negative equity will be added to any purchase or lease."

OFFICIAL COMMENTARY: If a consumer owes $2,000 on his/her car, but its actual cash trade-in value is only $1,500, that person has $500 of negative equity that will be added to the purchase price or capitalized cost of a lease agreement. An advertisement that offers to "pay off" the balance on a trade-in can easily mislead a consumer to believe that the dealer is going to "pay off" the negative equity as well.

(pp) Consignment Sales — The advertisement falsely represents that the vehicle is being sold by an individual owner when a dealer is selling the vehicle on consignment;

OFFICIAL COMMENTARY: Since the dealer is selling the vehicle as an agent of the consignor, the dealer may not advertise the vehicle as "for sale by owner."

(3) Lease Advertisements: It is unfair or deceptive in trade or commerce for a person to advertise the lease of any motor vehicle unless the following information is clearly and conspicuously disclosed:

(a) Except for the name and model of the vehicle advertised, the following information shall be displayed most prominently and in the largest type in the advertisement for the lease:

(A) The monthly lease payment and the amount due at inception by the consumer (not including any rebate used to reduce the capitalized cost) in the same size font; and

(B) The term of the lease and that the offer is for a "lease," displayed, with the amounts listed in paragraph (3)(a)(A) above, in a font no less than half the size of those amounts or the minimum size described to be clear and conspicuous based on the media, as outlined in OAR 137-020-0020(j), whichever is larger.

(b) The MSRP and the capitalized cost if different than the MSRP;

(c) The capitalized cost reduction (either by cash down payment or trade equity), acquisition fee, initial payment, security deposit, document processing fee, taxes, any rebates which reduce the capitalized cost and any other additional costs due at the time of delivery, and the total of those amounts (also known as "amount due at inception");

(d) The total lease charge, which includes:

(A) The total of the monthly payments;

(B) Any lease acquisition fees;

(C) The total of the amounts listed in (3)(c); and

(D) Any required lease disposition or termination fee.

(e) The residual value of the vehicle at the end of the lease term; and

(f) Any lease return fee which a consumer must pay if the consumer chooses not to purchase the vehicle at the end of the lease.

OFFICIAL COMMENTARY: If the county in which the dealer is located requires residents to pay a tax, the dealer must include the estimated tax calculation. The dealer should disclose to which residents the offering price applies and that customers in other counties may pay a different amount.

(4) Used Vehicle Rule: It is unfair or deceptive in trade or commerce to advertise or otherwise represent, sell or lease a vehicle as new if:

(a) The vehicle has been previously spot delivered to a buyer or lessee;

(b) The vehicle has been previously titled or registered;

(c) The vehicle was previously used by any person for its discretionary use; or

(d) The vehicle is a used vehicle.

OFFICIAL COMMENTARY: This section makes it clear that a used vehicle may not be advertised as new. It does not prohibit a dealer or broker from titling a vehicle as a new vehicle that has been previously spot delivered, but not previously titled or registered; or providing new vehicle financing or warranty coverage for a used vehicle, such as a dealer demo, if the vehicle is otherwise still eligible for new vehicle financing or warranty coverage. The consumer must be informed, however, that (s)he is buying or leasing a used vehicle. Also, if a vehicle was erroneously titled or registered by an honest clerical error, the vehicle is still considered a new vehicle.

(5) The Advertised Price Must Be the Sales Price: It is unfair or deceptive in trade or commerce for a dealer to sell a vehicle to a consumer for more than an advertised price or fail to disclose the sale price of a vehicle as advertised in any media or advertisement.

OFFICIAL COMMENTARY: In addition to this rule, OAR 137-020-0020(3)(a) requires the use of an extension sticker on any vehicle offered for sale or lease in an advertisement stating the offering price of the motor vehicle listed in the advertisement. A dealer must post any advertised sale price on the window or use a "hang tag" stating the advertised price.

Stat. Auth.: ORS 646.608(1)(u)

Stats. Implemented: ORS 646.608(1)(u)

Hist.: JD 1-1987, f. 2-5-87, ef. 2-15-87; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 17-2007, f. 12-20-07, cert. ef. 1-2-08; DOJ 16-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Motor Vehicle Price and Sales Disclosure
Adm. Order No.: DOJ 17-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 137-020-0020
Subject: OAR 137-020-0020, known as the "Motor Vehicle Price and Sales Disclosure rule" was originally adopted in 1979. It was last substantively amended in 2008. The proposed amendment addresses changes in the industry, deletes repetitive and outdated information, and 2015 HB 2282.

The amendment considers changes dealers and financial organizations have made to comply with national changes in the industry. The amendment deletes outdated information, makes non-substantive edits to the Official Commentary, and makes the rules consistent with changes to Oregon law. The amendment also addresses consignment sales, representations about the Manufacturer Suggested Retail Price (MSRP) and providing copies of contracts.
Rules Coordinator: Carol Riches—(503) 378-5987

137-020-0020
Motor Vehicle Price and Sales Disclosure

(1) Purpose: The purpose of this rule is to declare as unfair or deceptive in trade or commerce certain motor vehicle pricing and sales practices. Nothing in this rule, or the administrative rules to which it applies, modifies or diminishes the applicability of exemptions or limitations on enforcement of the Oregon Unlawful Trade Practices Act, including, but not limited to, those specified in ORS 646.605 and 646.612.

(2) Definitions: For purposes of this rule, the following definitions shall apply:

(a) "Advertisement," including the terms "advertise" and "advertising," means any oral, written, pictorial or graphic notice given in a manner designed to attract public attention and includes, but is not limited to, public broadcasts, mailings, publications, internet sites, other internet applications, email, facsimiles and published notices. It includes, but is not limited to, any statement or representation made in a newspaper, magazine, or other publication; made on radio, television or internet; made by instant messaging or text messaging; appearing in any notice, handbill, sign, billboard, banner, poster, display, circular, pamphlet, flyer, catalog, letter, direct mail piece, or other printed material; or contained in any window sticker, price tag, or other point-of-sale display. Advertisement does not

include oral or written communications relating to the negotiation of a specific transaction initiated by a consumer;

(b) "Advertiser" means the person on whose behalf any advertising material is published and includes the advertising agent (if any) used by the advertiser;

(c) "Advertising agent" means any person who produces, promotes or assists in the sale, production, or placement of any advertisement or participates in a sales event directly or through its employees or agents, on behalf of any person;

(d) An "average" person, viewer or listener means a person other than one allied with or employed by the motor vehicle industry;

(e) "Broker" means a motor vehicle broker as defined by ORS 822.047;

(f) "Buy-down rate" means a financing rate which, due to a dealer's payment of finance charges to a third party, is below the prevailing market financing rate;

(g) "Buy-rate" means the lowest interest rate quoted to a dealer or broker by a financial organization for which a consumer qualifies, based upon the consumer's credit history;

(h) "Capitalized cost" means the amount the offeror places on a vehicle as the vehicle's value for the purpose of offering the vehicle for lease to the public, not including any capitalized cost reductions or taxes, title, license fees, lease acquisition, Department of Environmental Quality fees, document processing fee, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. The capitalized cost for the purpose of this definition is the equivalent of the "offering price" for the purchase of a motor vehicle in a sales transaction;

(i) "Capitalized cost reduction" means the total amount of any rebate, cash payment, net trade-in allowance or non-cash credit that reduces the capitalized cost;

(j) "Clear and conspicuous," including the terms "clearly" and "conspicuously," means that a message, statement, information, representation or term is conveyed in a manner that is readily noticeable, will be easily understood by the average person, and is in a meaningful sequence. In order for a message to be considered "clear and conspicuous," it shall, at a minimum:

(A) Not contradict or substantially alter any terms it purports to clarify, to explain or to which it otherwise relates;

(B) Be in direct proximity to the message, statement, information, representation or term it clarifies, modifies or explains, or to which it otherwise relates;

(C) Use abbreviations or terms only if they are commonly understood by the average person or approved by federal or state law;

(D) In the case of radio advertising:

(i) Include the information required to be disclosed by law and all disclaimers, conditions and limitations shall be spoken with sufficient deliberateness, clarity, speed and volume so as to be audible and understandable by the average radio listener;

(ii) Not be obscured by sounds which interfere with or distract from the disclosure; and

(iii) Provide all necessary information regarding leases. Any information required in radio advertising by the Federal Consumer Leasing Act and Oregon law and administrative rules shall be deemed to be clear and conspicuous if the advertisement complies with 15 USC sec. 1667c(c) and also discloses the capitalized cost of the lease.

(E) In the case of television advertising:

(i) Include the information required to be disclosed by law and shall be completely disclosed audibly, visually, or using a combination thereof;

(ii) If a visual message, be presented unobscured by other images and in a size and time sufficient to allow an average viewer to read with reasonable ease;

(iii) If an audible message, be presented with sufficient deliberateness, clarity, and volume so as to be understood by the average television listener unobscured by other sounds which interfere with or distract from the disclosure;

(iv) Have as a minimum height for required superimposed written copy ("super") in a television advertisement or advertisements in any other audio-visual medium:

(I) For Standard Definition Television — no less than 22 video scanlines for capital and lower case letters together, or no less than 18 video scanlines for use of capital letters only;

(II) For High Definition Television — no less than double the scanlines required for Standard Definition Television; and

(III) The supers must appear on the screen for a duration sufficient to allow a viewer to have a reasonable opportunity to read and understand the statement, representation or term.

(v) Be sufficient if the super on-screen display time is no less than three seconds for the first line of text and one second for each additional line. This is a rebuttable presumption.

(F) In the case of printed advertising:

(i) Include the information required to be disclosed by law and shall be in direct proximity to the terms it purports to clarify, to explain or to which it otherwise relates; and

(ii) Be of sufficient prominence in terms of print style, size and contrast as compared with the remainder of the advertisement so as to be readily noticeable to an average person in the audience to whom it is directed. Print size which is 8 point type or larger in display advertisements which are less than 200 square inches in size or print size which is 10 point type or larger in display advertisements which are larger than 200 square inches in size shall be rebuttably presumed to be of sufficient size to be readily noticeable.

(G) In the case of internet advertising:

(i) Include the information required to be disclosed by law near, and when technologically possible, on the same screen as the triggering claim;

(ii) Use text or visual cues to direct consumers to scroll down a Web page when it is necessary to view information;

(iii) When using hyperlinks to lead to information required to be disclosed by law:

(I) Ensure that hyperlinks are obvious;

(II) Ensure that hyperlinks appropriately convey the importance, nature and relevance of the information they lead to;

(III) Include consistent hyperlink styles and format;

(IV) Ensure that all hyperlinks are placed in direct proximity to relevant information; and

(V) Ensure that hyperlinks take consumers directly to the information on the click-through page.

(iv) Be displayed prominently prior to purchase;

(v) Be prominently displayed so the information is noticeable to consumers in relation to the size, color and graphic treatment of other parts of the Web page;

(vi) Repeat information on lengthy Web sites when there are multiple or repeated claims;

(vii) Include audio disclosures when audio claims are made on the Web site and the audio disclosures must be presented in a volume and speed so that consumers can hear and understand them;

(viii) Include visual disclosures that are displayed for a duration sufficient for consumers to notice, read and understand them; and

(ix) Use clear language and syntax in such a manner that an ordinary consumer can understand the information required to be disclosed by law.

OFFICIAL COMMENTARY: Each advertisement shall be evaluated for its overall impression. The public should not have to weigh each word, hunt for the hidden meaning of each statement, or search for inconspicuous disclaimers. Advertisements which place material disclosures in small print, or inconspicuously bury material at the bottom of the advertisement are not clear and conspicuous. If on the other hand, the information does not materially change, limit or alter the offer being made, it can be placed at the bottom of an advertisement.

15 USC sec. 1667c(c) allows certain required lease disclosures to be given to a consumer in a radio advertisement by referring the audience to either a toll free telephone number or a written advertisement that appears in a publication in general circulation in the community served by the radio station on which such advertisement is broadcast. All lease advertisements on the radio must include the following disclosures to comply with Oregon and Federal law: that the transaction advertised is a lease; the total amount of any initial payments required on or before consummation of the lease or delivery of the property, whichever is later; the number, amounts, due dates or periods of scheduled payments, and the total of such payments under the lease; and the capitalized cost.

(k) "Dealer" means a person who buys, sells, trades or exchanges, leases, displays or offers to buy, sell, trade or exchange motor vehicles either outright or by means of any conditional sale, bailment, lease, security interest, consignment or otherwise or who is a broker. "Dealer" does not include any person excluded by ORS 822.015;

(L) "Document processing fee" means any monies or other thing of value, which a dealer charges to prepare, submit or prepare and submit documents pursuant to ORS 822.043;

OFFICIAL COMMENTARY: Oregon law and administrative rules permit dealers to elect to prepare, submit, or prepare and submit documents necessary to issue or transfer a certificate of title for a vehicle; register a vehicle or transfer registration of a vehicle; issue a registration plate; verify and clear a title; perfect, release or satisfy a lien or other security interest; comply with federal security requirements; or render any other services for the purpose of complying with state and federal laws related to the sale of a vehicle. For providing this service, dealers may charge a purchaser of a vehicle a fee for the preparation of those documents, not to exceed the amount established by ORS 822.043. This fee is always negotiable; otherwise it could be classified as a tax. A dealer can process the documents without charging a fee. In addition to the document processing fee, dealers may offer consumers the option of electron-

ically filing their title and registration documents using an integrator. Dealers may charge consumers an additional fee for this service. Consumers must knowingly agree to pay the additional fee for this electronic filing service. If a consumer does not agree to pay the additional fee for the electronic filing service, a dealer may still electronically submit title and registration documents at no additional cost to the consumer.

(m) "Extension sticker" means a label (other than a Monroney sticker or other label bearing the manufacturer's suggested retail price), affixed to a new motor vehicle, displaying the offering price of the motor vehicle;

(n) "False advertisement" means any advertisement which is false, misleading or deceptive in a material respect. In determining whether any advertisement is false, misleading or deceptive, not only representations made or suggested by statement, word, design, device, sound or any combination thereof will be taken into account, but also the extent to which the advertisement fails to reveal facts material in light of representations made;

(o) "Financial Organization" means any person who finances a sale or lease of a motor vehicle for a third party or purchases a retail installment contract from a dealer;

(p) "Manufacturer" means any entity which:

(i) Manufactures or assembles new motor vehicles for sale or distribution;

(ii) Distributes new motor vehicles through franchised dealerships;

(iii) Is engaged in the business of importing new motor vehicles for sale or distribution to dealers, through distributors, or to factory branches; or

(iv) Is a subsidiary of a manufacturer including one that offers motor vehicle financing.

(q) "Manufacturer's Suggested Retail Price" or "MSRP" means the Monroney price, or if there is no Monroney sticker, then the total price of the vehicle after all factory installed options and factory costs have been added together, less any option package savings offered by the manufacturer;

(r) "Monroney sticker" means the label required by the Automobile Information Disclosure Act, 15 USC § 1232;

(s) "Motor Vehicle" means any self-propelled vehicle normally obtained for personal, family, or household purposes, including all terrain vehicles, snowmobiles, self-propelled motor homes, personal watercraft, boats and, for the purposes of this definition, any motor home, recreational vehicle or trailer pulled by a self-propelled vehicle. Motor vehicle does not include aircraft;

(t) "Negative equity" means the amount by which an existing lien on a trade-in vehicle exceeds the true market value of the trade-in vehicle;

OFFICIAL COMMENTARY: In layman's terms, if a consumer has negative equity on his/her vehicle, it means the consumer owes more on the vehicle than it is actually worth. While the "true market value" of a vehicle may vary, it can be determined by using a motor vehicle price guide trade publication and the average sale price of the vehicle at regional vehicle auctions. While these publications are relevant, they are not determinative. Depending upon the supply and demand for a given vehicle, it could be worth more or less than its "book" value.

(u) "Negative equity adjustment" means an amount which is added to both the purchase or lease price of a vehicle and the trade-in allowance for the trade-in vehicle in a transaction;

(v) "Offering price" means the full cash price for which a dealer will sell or lease a motor vehicle to every consumer or member of the general public without exception, excluding only taxes, license and registration costs, Department of Environmental Quality (DEQ) fees and a document processing fee;

OFFICIAL COMMENTARY: Examples of correctly calculated offering prices are as follows:

(A) A car's MSRP is $10,000, license and registration are $100, undercoat is $100, dealer-added options are $2,000 and the document processing fee is $115. A financial organization offers a $1,000 rebate to qualified consumers. The offering price of the vehicle is $12,100. The offering price cannot include the $115 document processing fee or the $1,000 rebate that is not available to all consumers without exception.

(B) A motorcycle's MSRP is $5,000, license and registration are $50, delivery, assembly and setup costs the dealer $250, custom accessories are $500 and the document processing fee is $115. The offering price of the vehicle is $5,750. The costs of delivery, assembly, setup and all accessories must be included in the offering price in any advertisement or quoted offering price given during the sales negotiation of the motorcycle and cannot be added in as fees or extras after the selling price of the motorcycle is agreed upon between the dealer and consumer. The advertised offering price does not need to include the license and registration or document processing fee. While the dealer may choose to prepare title and registration documents and may charge a fee for this service, nothing in this or any other rule requires a dealer to charge any document processing fee. Whether the consumer will pay any fee for this service and, if so, its amount, up to the maximum allowed by law, is always negotiable between the consumer and the dealer.

(w) "Person" means natural persons, corporations, trusts, partnerships, incorporated or unincorporated associations, and any other legal entity except bodies or officers acting under statutory authority of this state or the United States and includes, but is not limited to, dealers, brokers, manufacturers, publishers, advertisers or advertising agents;

(x) "Personal Watercraft" means a jet ski or other aquatic device of similar design;

(y) "Publish" means to disseminate, mail, or otherwise make available to the public at large, or any section of the public, in whatever form and by whatever means any information;

(z) "Publisher" means any person who publishes any advertisement;

(aa) "Rebate" means:

(i) The payment of money to a consumer or payment to a person on behalf of a consumer on the condition that the consumer purchase or lease a motor vehicle; or

(ii) The return of any part of a payment made by a consumer in conjunction with the sale or lease of real estate, goods or services and includes, but is not limited to, an offer of a future cash refund, a direct or indirect payment of money to a consumer or a voucher for future payments.

(bb) "Recreational vehicle" has the meaning given that term in ORS 650.300;

(cc) "Sale," "Sell" or "Buy" means any transaction for the sale, purchase, trade, exchange or lease of a motor vehicle;

(dd) "Spot Delivery" or "Spot Delivered" means that a consumer has taken possession of a motor vehicle from a dealer or broker and the consumer has committed to buy or lease the vehicle, whether or not there is a finalized transaction or final approval of financing;

OFFICIAL COMMENTARY: Spot delivery occurs when a consumer signs a purchase order, lease agreement or retail installment contract for a motor vehicle and the consumer takes possession of the vehicle "on the spot," prior to a financial organization purchasing the retail installment contract or lease agreement from the dealer or a consumer presenting a dealer with payment for the full purchase price of the vehicle.

(ee) "Taxes, license and registration costs" means those usual taxes, charges and fees payable to or collected on behalf of governmental agencies and necessary for the transfer of any interest in a motor vehicle or for the use of a motor vehicle;

(ff) "Used vehicle" means any vehicle which has been previously:

(i) Delivered to any person for his/her discretionary use for personal or business purposes and for more than a test drive before a contemplated purchase or preparation for sale;

(ii) Titled or registered to any person, whether or not it was used for the person's own discretionary personal or business purposes; or

(iii) Spot delivered.

OFFICIAL COMMENTARY: See Weigel v. Ron Tonkin Chevrolet Co., 298 Or 127, 690 P2d 488 (1984). Vehicles that would be considered "used" include, but are not limited to: new vehicles that are spot delivered to a consumer, then subsequently returned to the dealer for any reason, including, but not limited to, the inability of the dealer to sell the retail installment contract; demonstrators and company cars that have never been sold to a retail customer, but have been driven for purposes other than test drives or moving, including use by the dealer, the dealer's employees, the dealer's corporate officers or anyone else; and all vehicles that have been driven more than the limited use necessary in moving or test driving a new vehicle prior to purchase or delivery to a consumer.

(gg) "Vehicle identification number" or "VIN" means a number, a letter, a character, a datum, a derivative, or a combination thereof, used by the manufacturer or a Department of Motor Vehicles for the purpose of uniquely identifying a motor vehicle. For the purpose of this definition, any time a motor vehicle advertisement requires the publication of a "vehicle identification number," use of the last six numbers, letters or other characters will constitute compliance with the rule;

(hh) "Wholesale" means the sale of motor vehicles, goods or services for resale by a dealer, broker or other person, as opposed to the sale of motor vehicles, goods or services to the ultimate consumer;

(ii) "Yield Spread Premium" means the difference between a higher interest rate quoted to a consumer by a dealer or broker and the buy rate offered to the dealer or broker by a financial organization.

(3) Violations: Failure by a person, in the course of the person's business, vocation or occupation, to comply with this rule constitutes unfair or deceptive conduct in trade or commerce.

(a) Mandatory Posting of Offering Price — For any motor vehicle offered for sale or lease in an advertisement that states an offering price or capitalized cost for the motor vehicle, the dealer shall affix to the motor vehicle a clear and conspicuous label or extension sticker that states the advertised offering price of the motor vehicle listed in the advertisement. If a motor vehicle bears a label which states a MSRP and the MSRP is the offering price or capitalized cost for the vehicle, no additional label or extension sticker is required;

(b) Extension Sticker — A dealer shall affix an extension sticker to any motor vehicle offered for sale bearing a Monroney sticker or a label

stating a MSRP that states the offering price of the vehicle if the offering price is greater than the Monroney sticker price or the stated MSRP;

(c) Offering Price — Any price stated in an advertisement or in a written or oral price quotation given to a consumer shall be the offering price, excluding only taxes, license, registration costs, DEQ fees and a document processing fee;

OFFICIAL COMMENTARY: A vehicle has one offering price. This rule is to ensure that dealers do not add in hidden or undisclosed costs after the price for a vehicle has been advertised or negotiated with a consumer or charge different prices depending on where a consumer sees an advertised offering price. Examples of potential violations are as follows:

(A) A vehicle is advertised or offered for sale at the dealership for $10,000. After the consumer accepts the dealer's offer and agrees to purchase the vehicle, the dealer learns that the consumer has a poor credit history. The financial organization to which the dealer sells the retail installment contract charges the dealer a premium of $500 to accept the retail installment contract. The dealer then tries to add this $500 to the contract with the consumer as a "loan fee." This practice is unlawful;

(B) A person advertises a vehicle for $20,000 in the local newspaper. The vehicle has $1,500 worth of after-market accessories on the vehicle. When the consumer arrives at the dealership and wants to purchase the vehicle, the salesperson tells the consumer that the price is $21,500 with the added accessories. This practice is unlawful. If the dealer wants reimbursement for these options, the dealer should ensure that amount is included in any advertised price;

(C) A motorcycle dealer charges $350 to set up and assemble a motorcycle. This amount must be included in any offering price advertised and cannot be noted only by disclosure at the bottom of the advertisement with the use of an asterisk. Further, any price displayed on the motorcycle or price quoted to a consumer during negotiations must include this amount; and

(D) A vehicle is advertised or offered for sale at the dealership for $10,000. After the consumer accepts the dealer's offer and agrees to purchase the vehicle, the dealer tries to add a $200 "processing fee" if the consumer wants to pay for the vehicle by personal check, certified bank check, debit card or credit card. A dealer may not add a fee for payment by personal check or certified bank check. However, if "pass through" swipe fees for a debit card or credit card are permitted under a merchant account agreement, those swipe fees must be disclosed in advance and separately stated on the purchase order, lease agreement and retail installment contract; a dealer may not add swipe fees to the offering price or negotiated price.

(d) Limitations on Offering Price — An extension sticker shall accurately itemize and describe the charge(s) added to or subtracted from the MSRP to reach the offering price. No charge may be added for goods or services not actually provided. No charge may be added for services required by the manufacturer or distributor which are performed by a dealer prior to delivery of a motor vehicle to a retail consumer. No charge may be added for any overhead expense such as warehousing, flooring, advertising, and clerical costs. No charge may be added for transportation costs charged by the manufacturer or distributor to the dealer and included in the MSRP. In the case of inland freight, setup and dealer preparation, the charge listed must be the dealer's actual cost for freight from the port of entry to the dealership, and the actual cost of setup and dealer preparation and not included in the MSRP;

(e) Additional Dealer Mark-up — If the offering price of a new motor vehicle is greater than the MSRP, the portion of the difference shown on the extension sticker between the offering price and the MSRP not representing additional goods or services shall be described as "additional dealer profit," "additional mark-up" or by a term of similar import;

(f) Unconscionable Add-on Pricing — A person may not make false or misleading representations concerning the nature or amounts of charges for additional goods, accessories, services, products or insurance sold in conjunction with the sale or lease of a motor vehicle by selling them at a price which is unconscionably higher than the price used by the person for the sale of the same or substantially similar goods, accessories, services, products or insurance to other consumers;

OFFICIAL COMMENTARY: This rule does not limit a dealer's ability to mark up or down the selling price of a product or service in the normal course of business. This includes offering special discounts to repeat customers or volume discounts to purchasers of large quantities of products or services. However, sometimes dealers try to unlawfully take advantage of the most vulnerable consumers, such as those who are illiterate, have a physical infirmity, have a mental handicap, are unable to understand the English language or have other limitations.

(g) Disclosing Document Fee — A document processing fee may be separately stated in all advertisements and sales documents. If separately stated, the disclosure shall be clear and conspicuous;

(h) Document Fee Not Government Required — A person shall not represent a document processing fee as a governmental fee or one required by government;

(i) Vehicle Availability — A dealer or broker may not advise prospective customers that an advertised vehicle is available when the vehicle is not available for sale, or that an advertised vehicle is not available for sale when the vehicle is available for sale;

(j) Undisclosed Price Packing — A dealer or broker may not sell or lease a motor vehicle to a consumer with the cost of any additional goods, accessories, services, products or insurance added to the sale or lease, without the consumer's actual knowledge, written consent and individual itemization of all such additional costs listed on any purchase order, lease agreement and retail installment contract;

(k) Undisclosed Fee Payments — A dealer who sells or leases a motor vehicle to a consumer and makes any payment to any non-employee third-party in conjunction with the sale or lease, other than a referral fee of $100 or less (also known as a "bird-dog" payment), must specifically itemize such payment on the consumer's purchase order, lease agreement and retail installment contract;

OFFICIAL COMMENTARY: This rule is intended to apply to a payment of more than $100 made to a single individual or business entity. For example, if two unrelated individuals refer a purchaser to a specific dealership, each individual may receive a payment of $75 and the dealer does not need to specifically itemize the payments. However, the dealer may not make a payment of $75 to a dealership and $75 to the owner of the dealership and fail to itemize the $150 payment on the purchase order, lease agreement and retail installment contract.

(L) False Representations Regarding Financing or Goods — A person may not falsely represent to a consumer that, unless the consumer purchases additional goods, accessories, services, products or insurance, the person will not sell or lease a motor vehicle to the consumer or cannot provide credit or financing for the consumer. A person may not falsely represent to a consumer that additional goods, accessories, services, products or insurance are free or included in the price of a motor vehicle or the financing;

OFFICIAL COMMENTARY: Nothing in this rule prohibits a dealer from ensuring that a consumer has motor vehicle insurance required by law or according to the terms of financing in order to protect the collateral financed. No person, however, can make false statements regarding any requirement to purchase products or services. This rule does not prohibit dealers from adding tangible accessories, which enhance the value and marketability of a vehicle to some of their inventory, and including the tangible accessories in the offering price of the vehicle. If a dealer adds high profit aftermarket products, including, but not limited to, paint protector, door edge guards and glass etching, to its vehicles which do not correspondingly increase the actual cash value of the vehicles, such practice would be carefully scrutinized as a possible violation of this rule.

(m) Payment Price Packing — During negotiations for the sale or lease of a motor vehicle, a dealer or broker may not quote to a consumer a monthly payment or total price for the sale or lease of a motor vehicle that includes the cost of any additional goods, accessories, services, products or insurance, including, but not limited to, service contracts, security products, protectants, credit life or gap insurance, that are sold in conjunction with the sale or lease of a motor vehicle, unless the dealer or broker also clearly and conspicuously separately delivers in writing, during negotiations and prior to any purchase order, lease agreement or retail installment contract being executed by a customer:

(A) The individual price of each additional good, accessory, service, product or insurance; and

(B) The total cost of the lease or sale of the vehicle and the monthly payment, without such additional items included.

OFFICIAL COMMENTARY: This rule addresses the practice that is commonly referred to as "packing," or the "presumptive sale." "Packing" is the deceptive practice of misrepresenting monthly payments or total cost of a vehicle to consumers during motor vehicle sales and lease negotiations in order to surreptitiously facilitate the sale of additional motor vehicle related goods, accessories, services, products or insurance. Consumers are entitled to be treated in a fair and non-deceptive manner during negotiations to buy or lease a motor vehicle, including the right to receive timely, accurate and non-misleading information about the cost of the vehicle and all related goods, accessories, services, products or insurance they are buying or leasing. Some dealers have used "packed" payment schemes and poor disclosures to trick consumers into believing that services such as credit insurance, vehicle service contracts, chemical protection, and security devices are included at no additional cost or provided "free" in the purchase or lease agreement; or that they are discounted when they are not. Others have quoted monthly payments calculated upon interest rates far in excess of what they believe will be the final interest rate or simply add an extra $40 or more to the monthly payment than what is needed to cover the price of the vehicle. They use this inflated quote in order to build in some "legroom" to later add other optional products and services to the transaction with the extra cost hidden or appearing lower to the consumer. Because the monthly payment does not increase and because the consumer believes the products are "free" or discounted, most consumers do not object when the products are included in the final contract.

(n) Disclosure of Service Contract Coverage — A person may not misrepresent or fail to clearly and conspicuously disclose the following terms or conditions of a service contract sold in conjunction with the sale or lease of a motor vehicle: the length of the coverage, what parts or systems of the vehicle are covered by the contract, any exclusions in the cov-

erage, and that there may be an existing manufacturer's warranty which provides the same or similar coverage. If a person advertises that a vehicle has an existing manufacturer's warranty or the person knows a vehicle has an existing manufacturer's warranty, the person must disclose the terms of the remaining warranty coverage;

(o) Disclosure of Material Nonconformities and Defects — Prior to the sale or lease of a motor vehicle, a dealer or broker shall disclose existing material nonconformities and defects about which the dealer or broker knows or negligently disregarded when the dealer or broker should have known. This includes, but is not limited to if repairs have not been performed pursuant to a safety recall and the needed repairs can be identified through a VIN search;

OFFICIAL COMMENTARY: Unless explicitly disclosed prior to a sale or lease, a motor vehicle that is offered for sale or lease to the public is represented, either directly or by implication, to be roadworthy when it is sold, to have an unbranded title and to have no undisclosed material defects. A dealer is not required to guarantee, warrant or represent that a used vehicle will not have any mechanical problems or undetected material defects once the vehicle is sold. However, for used vehicles, even if the dealer states on the FTC Buyers Guide ("As Is") that the dealer is not providing a warranty, the dealer must still disclose material defects about which the dealer knew or should have known. See Parrott v. Carr Chevrolet, 156 Or App 257 (1998), aff. 331 Or 537 (2001) and Hinds v. Paul's Auto Werkstatt, 107 Or App 63, 810 P2d 874 (1991). For new vehicles, even if the dealer does not need to disclose damage and repairs under ORS 650.155(6), the dealer must still disclose material defects about which the dealer knew or should have known. See BMW of North America v. Gore, 517 US 559 (1995). The dealer is in a superior position to inspect and determine the condition of a vehicle prior to marketing the vehicle. It is an easy matter, through a number of industry and internet sources, for a dealer or broker to review a vehicle's title, damage and ownership history. Examples of negligent disregard of some things that should put a dealer on notice and trigger its duty to disclose might include, but is not limited to, a large pool of oil or antifreeze under the vehicle, dark colored smoke coming from an exhaust pipe, water stains on carpet or doors, a different color paint than the body under the hood or in the trunk or tires that are worn very unevenly. A dealer does not need to create an exhaustive list of every ding, paint scratch, fabric tear or discoloration clearly visible upon inspection by an average consumer. When a dealer sells a vehicle to an individual that is registering the vehicle in a metro area that requires that the vehicle pass DEQ emissions testing to be roadworthy, the dealer must ensure that the vehicle can pass the DEQ emissions test at the time of sale.

(p) False or Unsubstantiated Representations — A person may not make a misrepresentation or a false or incomplete statement of fact in conjunction with the sale or lease of a motor vehicle, or any other representation or statement which the person does not have sufficient information upon which a reasonable belief in the truth of the representation could be based;

(q) False Statement of Broker Fees — A broker may not misrepresent the source or nature of any profit, compensation or fee which the broker will receive for its services or cause a consumer to believe the services are free or at no cost to the consumer, when they are not;

OFFICIAL COMMENTARY: Brokers are a fiduciary of a consumer on whose behalf they have agreed to negotiate the purchase or lease of a vehicle. Unlike a dealer, a broker is not engaging in an "arm's length" transaction. Brokers market their services to act in the consumer's best interest. They are in an agency relationship. The consumer has a right to rely on that relationship. For example, a broker who tells a consumer that the broker may be receiving compensation from a dealer as part of the transaction, when the funds for that payment were part of the total amount paid by the consumer as part of the purchase or lease, is misrepresenting the nature of the transaction and making a false statement as to the source of the funds the broker will be receiving. The correct disclosure would be that the broker has added its fee to the price which it negotiated with the seller on behalf of the consumer. While ORS 822.047 does not require the broker to disclose the amount of its profit, once the broker undertakes to act on behalf of a consumer, or do anything that could cause a consumer to believe the broker is acting on the consumer's behalf, the dealer or broker may no longer engage in self-dealing, but must act in the consumer's best interest. Further, if a consumer asks what the fee is for the service, the broker may not misrepresent the amount of the fee being charged. In no case may the broker misrepresent the nature of the charge, the amount of the fee or in what way the fee for the broker's service is paid.

(r) Disclosure of Dealer/Broker Status — A dealer or broker may not misrepresent or fail to disclose whether it is acting as a dealer or broker when it has done anything to cause a consumer to believe it is acting as a broker for the consumer in the purchase or lease of a motor vehicle;

OFFICIAL COMMENTARY: It is well established in law that a broker is in a fiduciary relationship with its client. As such, a broker occupies a position of such power and confidence with regard to the property of another that the law requires brokers to act solely in the interest of the person whom they represent and in good faith. Fiduciary duties can be grouped into three categories: (A) Duty of Loyalty. A fiduciary must act in accordance with the interests of the beneficiary, and not his own interests; (B) Duty of Candor. A fiduciary must not withhold information from the beneficiary, particularly with respect to the fiduciary's dealings with the beneficiary; and (C) Duty of Care. A fiduciary must act with some degree of care with respect to the beneficiary. This is usually formulated as a duty to exercise the care that an ordinarily prudent person would in similar circumstances.

In Oregon, only one type of dealer license is required, whether the licensee acts as a dealer or broker. This can lead to confusion by a consumer. If the consumer believes the person the consumer contacted was a broker, the consumer expects that person to act in the consumer's best interest. Brokers have an obligation to ensure the consumer knows what the broker's business status is in relation to the transaction and whether the consumer is dealing with it as a broker or a dealer. If a consumer first contacts a dealer who does not have a vehicle in its own inventory that the consumer wishes to buy or lease, and the dealer agrees to find, negotiate or arrange the purchase or lease of a specific vehicle for the consumer from a third party, a broker relationship may be created. If the dealer, without placing any obligations on the consumer, finds the desired vehicle, purchases it and places it into the dealer's own inventory, the dealer may thereafter negotiate and sell or lease the vehicle to the consumer and still remain a dealer. However, a dealer may become a broker under several circumstances, including, but not limited to, the following: the dealer places a contractual or monetary obligation on the consumer in order to arrange or negotiate the purchase or lease of the vehicle; the dealer makes any statement which could cause an average consumer to believe the dealer was acting as an agent of the consumer (such as saying the dealer would negotiate the best price for the transaction); or the dealer arranges the transaction for the consumer through another dealer and receives any compensation from the consumer or other dealer.

(s) False Credit Applications — No person shall for any motor vehicle transaction:

(A) Knowingly prepare, participate or assist in the preparation or submission of a false, misleading or deceptive credit application;

(B) Direct any person to prepare or submit a false, misleading or deceptive credit application;

(C) Request or allow a consumer to sign a blank or incomplete credit application; or

(D) Knowingly accept or submit a false, misleading or deceptive credit application.

(t) Illusory or Deferred Down-Payments and Hold Check Agreements — In any transaction for a motor vehicle:

(A) No person shall request or accept from a consumer as payment for any part of a purchase or lease, or list the same as a down payment on any purchase order, lease agreement, retail installment contract, or credit application, any of the following:

(i) A promissory note for future payment, without clearly disclosing on the purchase order, lease agreement, retail installment contract, and credit application: the amount of the promissory note given by the consumer, the terms of repayment, any interest rate and that such amount is in the form of a promissory note;

(ii) A check that the person knows or should have known is drawn upon an account with insufficient funds, without clearly disclosing on the purchase order, lease agreement, retail installment contract, and credit application: the amount of such check, the terms of repayment, that there were insufficient funds in the checking account at the time the check was drawn and the date the check is expected to have sufficient funds available for its payment; or

(iii) A post-dated check that the consumer has given the person for payment at a future date, without clearly disclosing on the purchase order, lease agreement, retail installment contract, and credit application: the amount of such check, that the check is post-dated, and the date the check is due and payable.

(B) No person shall accept any check listed in (t)(A)(ii) or (iii) above without having a written hold check agreement, clearly disclosing on the purchase order, lease agreement and retail installment contract all terms and conditions of the hold check agreement, and disclosing the fact that there is a hold check agreement to any financial organization to which credit is requested;

(C) No person shall accept any payment listed in (t)(A)(i), (ii) or (iii) above without properly listing and identifying such payment in any retail installment contract or lease agreement; and

(D) No deferred portion of a down payment may be treated as part of the down payment if it is payable later than the due date of the second otherwise regularly scheduled payment and is not subject to a finance charge.

(u) Yield Spread Premium Disclosure — Any dealer or broker that charges a consumer a yield spread premium:

(A) Shall clearly and conspicuously disclose in writing, prior to the consumer applying for credit or executing a purchase order, lease agreement or retail installment contract:

(i) That the dealer or broker may receive additional compensation from the consumer for arranging the sale of the retail installment contract which may be in the form of a fee or additional loan points; and

(ii) That interest rates quoted by the dealer or broker may be negotiable; and

(B) Shall not, during the negotiation for the sale or lease of a motor vehicle, quote a monthly payment calculated using an interest rate that is more than three points higher than the buy rate, unless the dealer or broker discloses in writing the yield spread premium to the consumer, if the dealer or broker quoting the rate knows the consumer's credit score or has the ability to obtain the consumer's credit score at the time the monthly payment is quoted.

(v) Misleading or Deceptive Tying Requirements — If a person represents or implies that the person requires a consumer to purchase anything additional in conjunction with the sale or lease of a motor vehicle, including, but not limited to, any goods, accessories, services, products or insur-

ance, the person will not sell, lease or enter into a retail installment contract for any motor vehicle without the sale of such additional items to every other consumer.

(w) Deceptive Financing Representations — No dealer or broker shall falsely represent that a transaction is conditioned upon the consumer entering into a retail installment contract with the dealer that the dealer can sell to a financial organization when in fact the consumer is able to finance the transaction through other means or sources;

(x) Unlawful Spot Delivery — No dealer or broker shall spot deliver a vehicle to any consumer unless the dealer or broker has a reasonable basis to believe that the dealer will either keep the retail installment contract ("buy here pay here") or be able to sell the retail installment contract to a financial organization at the exact terms quoted to or agreed to by the consumer at the time of delivery;

(y) Misrepresentation Regarding Failure to Sell Retail Installment Contract — No dealer or broker, who has spot delivered a vehicle to a consumer and thereafter fails to complete the transaction in accordance with the terms offered in the purchase order, lease agreement or retail installment contract, shall misrepresent to a consumer why the transaction cannot be completed according to the terms offered or agreed upon;

(z) Anti-Bushing Rule — In any transaction in which the dealer or broker has spot delivered a vehicle to a consumer and the consumer does not qualify for the terms offered, the dealer or broker shall, prior to offering, negotiating or entering into new terms for the purchase or lease of a vehicle:

(A) Inform the consumer that the consumer is entitled to have all items of value received from the consumer as part of the transaction, including any trade-in and down payment, returned to the consumer;

(B) If the consumer is physically present when the dealer or broker informs the consumer that the consumer does not qualify for the terms offered, return all items of value received from the consumer as part of the transaction; and

(C) If the dealer or broker informs a consumer by telephone or other means, without the consumer present, that the consumer did not qualify for the terms offered, clearly disclose the consumer's right to receive the immediate return of all items of value given by the consumer as part of the transaction when the consumer returns the spot delivered vehicle. The consumer's down payment and trade-in must be actually available to the consumer should the consumer wish to rescind the transaction and not enter into a new transaction. If a consumer has paid a down payment with a check, the dealer is not required to refund the down payment until the consumer's check has cleared.

OFFICIAL COMMENTARY: ORS 646A.090 gives both dealers and consumers specific rights when it is necessary to unwind a spot delivery transaction. The consumer has an absolute right to walk away from the deal and get back his/her trade-in and down payment if the dealer is not going to honor the original agreed upon offer.

(aa) Unlawful Negative Equity Adjustment — No person shall make a negative equity adjustment in the sale or lease of a motor vehicle;

OFFICIAL COMMENTARY: Under Regulation Z, if the amount of an existing lien exceeds the value of a trade-in, a creditor must disclose the down payment as zero and not a negative amount on the down payment line of the retail installment contract. To illustrate, assume a consumer owes $10,000 on an existing motor vehicle retail installment contract or loan and that the trade-in value of the motor vehicle is only $8,000, leaving a $2,000 deficit. The creditor should disclose a down payment of $0, not -$2,000.

(bb) Negative Equity Disclosure — Any negative equity of a vehicle taken in trade as part of any motor vehicle transaction shall be clearly and conspicuously disclosed in any purchase order, lease agreement and retail installment contract.

(cc) Consignment Sales — If a person takes a vehicle on consignment, the person may not falsely represent or imply the amount that a potential purchaser has offered to pay for the vehicle or the amount that the consignor has agreed to accept for the sale of the vehicle.

OFFICIAL COMMENTARY: When a dealer takes a vehicle on consignment, the dealer is acting as an agent for the consignor. The dealer may not tell a prospective customer that the consignor will not accept a particular offering price for a vehicle when that offering price is above the price the consignor has agreed to sell the vehicle for. Additionally, the dealer may not misrepresent or fail to disclose an offering price to the consignor. It is unlawful for a dealer who takes a vehicle on consignment to ask the consignor to agree to a reduction in the amount listed in the consignment agreement when the dealer has received an offering price from a prospective customer that is higher than the amount the consignor has agreed to sell the vehicle for because the dealer wants to negotiate a higher profit for the dealer from the sale of the vehicle.

(dd) Dealer Cost — A dealer shall not misrepresent or fail to disclose the MSRP of a new vehicle. A dealer shall not state or imply that the MSRP is the dealer's cost.

OFFICIAL COMMENTARY: When negotiating the sale of a vehicle, a dealer may not misrepresent or fail to disclose the MSRP of the vehicle. For example, the Monroney sticker shows that the MSRP of a vehicle is $30,000. The dealer posts an extension sticker that shows the dealer added $5,000 of additional dealer profit and the dealer's offering price is $35,000. When negotiating the vehicle, the dealer fails to disclose to the potential purchaser that the MSRP of the vehicle is $30,000 and the dealer's offering price is $35,000. It is unlawful if the dealer represents to the consumer that the "market price" of the vehicle is $35,000 and the dealer is offering the consumer a $3,000 savings by starting negotiations at $32,000. Similarly, if the dealer obtains a vehicle through a dealer trade, the dealer must disclose that the MSRP of the vehicle is $30,000 and cannot represent to the consumer that the vehicle is $35,000 without also disclosing the MSRP and that the $35,000 offering price includes $5,000 of dealer mark-up.

(ee) Provide Copy of Contract — A dealer must provide the purchaser of a vehicle a copy of all documents signed or initialed by the purchaser or that are material to the terms of the sale.

OFFICIAL COMMENTARY: When a consumer signs a purchase order, lease agreement or retail installment contract, the dealer should promptly provide a consumer with a signed copy of the agreement for the consumer's records. The dealer should also provide the consumer with any other documents that are material to the terms of the sale, such as a "we owe" form that reflects that the dealer will perform post-delivery repairs.

(ff) Document Processing Fee — If a dealer collects money from or charges a purchaser a document processing fee, the dealer must prepare and submit all documents to complete the transaction as permitted by law.

Stat. Auth.: ORS 646.608(1)(u)
Stats. Implemented: ORS 646.608(1)(u)
Hist.: 1AG 6-1979, f. & ef. 12-19-79; JD 4-1993, f. 8-6-93, cert. ef. 8-16-93; JD 3-1996, f. 10-18-96, cert. ef. 10-23-96; DOJ 10-2001(Temp), f. & cert. ef. 10-17-01 thru 4-14-02; DOJ 3-2002, f. & cert. ef. 4-22-02; DOJ 15-2007, f. 12-20-07, cert. ef. 1-2-08; DOJ 17-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Amends Model Public Contract Rules; implements new laws on contractor responsibility, state contract templates.
Adm. Order No.: DOJ 18-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 137-046-0140
Rules Amended: 137-046-0110, 137-046-0200, 137-046-0210, 137-047-0260, 137-047-0640, 137-048-0220, 137-049-0120, 137-049-0370, 137-049-0390, 137-049-0440
Subject: Virtually all the rule amendments and the sole new rule (OAR 137-046-0140) addressed in this Certificate are required by legislative changes enacted by the 2015 Regular Session of the Oregon Legislative Assembly. The rule changes implement the following legislation: SB 491 (2015 Oregon Laws, chapter 454) (responsible bidders or proposers on contracts exceeding $500,000 with at least 50 employees must have certificate of training on the pay equity law, ORS 652.220); SB 675 (2015 Oregon Laws, chapter 539) (responsible bidders or proposers for goods or services contracts must attest that they complied with state and political subdivision tax laws); HB 2375 (2015 Oregon Laws, chapter 646) (Attorney General and Department of Administrative Services must develop solicitation templates, contract forms and contract templates for state agency public contracts); HB 2716 (2015 Oregon Laws, chapter 325) (contractors and subcontractors, in contracts awarded under disadvantaged, minority, women-owned and emerging small business program, must maintain certification under ORS 200.055); and HB 3303 (2015 Oregon Laws, chapter 565) (adds businesses owned by service-disabled veterans to the businesses for which participation in public contracts must be promoted under ORS chapter 200).

A change that is not required by 2015 legislation modifies OAR 137-047-0260(2)(c)(B), which prescribes requirements for competitive sealed proposals for contracts for goods and services. That amendment requires the application of equal measures of comparison to each of the proposers in a public contract solicitation, and calls for contracting agencies to use pricing criteria that permit the agencies to reasonably estimate the costs of a contract, based on the proposals the agencies receive.

Additional rule amendments update definitions and rule references to state officers and agencies whose titles have changed.
Rules Coordinator: Carol Riches—(503) 378-5987

137-046-0110
Definitions for the Model Rules

Unless the context of a specifically applicable definition in the Code requires otherwise, capitalized terms used in the Model Rules have the meaning set forth in the division of the Model Rules in which they appear, and if not defined there, the meaning set forth in these division 46 rules, and

if not defined here, the meaning set forth in the Code. The following terms, when capitalized in these Model Rules, have the meaning given below:

(1) "Addendum" or "Addenda" means an addition to, deletion from, a material change in, or general interest explanation of a Solicitation Document.

(2) "Administering Contracting Agency" has the meaning set forth in ORS 279A.200(1)(a) and for Interstate Cooperative Procurements includes the entities specified in ORS 279A.220(4).

(3) "Award" means, as the context requires, either identifying or the Contracting Agency's identification of the Person with whom the Contracting Agency intends to enter into a Contract following the resolution of any protest of the Contracting Agency's selection of that Person and the completion of all Contract negotiations.

(4) "Bid" means a Written response to an Invitation to Bid.

(5) "Closing" means the date and time specified in a Solicitation Document as the deadline for submitting Offers.

(6) "Code" means the Public Contracting Code.

(7) "Competitive Range" means the Proposers with whom the Contracting Agency will conduct discussions or negotiations if the Contracting Agency intends to conduct discussions or negotiations in accordance with OAR 137-047-0261 or 137-049-0650.

(8) "Contract" means a contract for sale or other disposal, or a purchase, lease, rental or other acquisition, by a Contracting Agency of personal property, services, including personal services, public improvements, public works, minor alterations, or ordinary repair or maintenance necessary to preserve a public improvement. "Contract" does not include grants.

(9) "Contract Price" means, as the context requires, the maximum monetary obligation that a Contracting Agency either will or may incur under a Contract, including bonuses, incentives and contingency amounts, if the Contractor fully performs under the Contract.

(10) "Contract Review Authority" means:

(a) For State Contracting Agencies, generally the Director of the Oregon Department of Administrative Services;

(b) For Local Contracting Agencies, the Local Contracting Agency's Local Contract Review Board determined as specified in ORS 279A.060; and

(c) Where specified by statute, the Director of the Oregon Department of Transportation.

(11) "Contractor" means the Person, including a Consultant as defined in OAR 137-048-0110(1), with whom a Contracting Agency enters into a Contract.

(12) "Descriptive Literature" means Written information submitted with the Offer that addresses the Goods and Services included in the Offer.

(13) "Disqualification" means a disqualification, suspension or debarment under ORS 200.065, 200.075 or 279A.110.

(14) "Electronic Advertisement" means a Contracting Agency's Solicitation Document, Request for Quotes, request for information or other document inviting participation in the Contracting Agency's Procurements made available over the Internet via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(15) "Electronic Offer" means a response to a Contracting Agency's Solicitation Document or Request for Quotes submitted to a Contracting Agency via:

(a) The World Wide Web or some other Internet protocol; or

(b) A Contracting Agency's Electronic Procurement System.

(16) "Electronic Procurement System" means an information system that Persons may access through the Internet using the World Wide Web or some other Internet protocol or that Persons may otherwise remotely access using a computer, that enables Persons to send Electronic Offers and a Contracting Agency to post Electronic Advertisements, receive Electronic Offers, and conduct other activities related to a Procurement.

(17) "Invitation to Bid" or "ITB" means the Solicitation Document issued to invite Offers from prospective Contractors under either ORS 279B.055 or 279C.335.

(18) "Model Rules" means the Attorney General's model rules of procedure for Public Contracting as required under ORS 279A.065.

(19) "Offer" means a Written offer to provide Goods or Services in response to a Solicitation Document.

(20) "Offeror" means a Person who submits an Offer.

(21) "Opening" means the date, time and place specified in the Solicitation Document for the public opening of Offers.

(22) "Person" means any of the following with legal capacity to enter into a Contract: individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

(23) "Personal Services" as used in division 47 and as used in division 46 when applicable to division 47 means the services performed under a Personal Services Contract. "Personal Services" as used in division 48 and division 49, and as used in this division 46 when applicable to division 48 or division 49, or both, has the meaning set forth in ORS 279C.100.

(24) "Personal Services Contract" means:

(a) For a Local Contracting Agency, a Contract or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), that the Local Contracting Agency's Local Contract Review Board has designated as a personal services contract pursuant to ORS 279A.055; or

(b) For a State Contracting Agency, a Contract, or member of a class of Contracts, other than a Contract for the services of an Architect, Engineer, Land Surveyor or Provider of Related Services (as defined in ORS 279C.100), whose primary purpose is to acquire specialized skills, knowledge and resources in the application of technical or scientific expertise, or the exercise of professional, artistic or management discretion or judgment, including, without limitation, a Contract for the services of an accountant, physician or dentist, educator, consultant, broadcaster or artist (including a photographer, filmmaker, painter, weaver or sculptor).

(25) "Product Sample" means the exact Goods or a representative portion of the Goods offered in an Offer, or the Goods requested in the Solicitation Document as a sample.

(26) "Proposal" means a Written response to a Request for Proposals.

(27) "Recycled Materials" means recycled paper (as defined in ORS 279A.010(1)(gg)), recycled PETE products (as defined in ORS 279A.010(1)(hh)), and other recycled plastic resin products and recycled products (as defined in ORS 279A.010(1)(ii)).

(28) "Request for Qualifications" or "RFQ" means a Written document issued by a Contracting Agency to which Contractors respond in Writing by describing their experience with and qualifications for the Services, Personal Services or Architectural, Engineering or Land Surveying Services, or Related Services, described in the document.

(29) "Request for Quotes" means a Written or oral request for prices, rates or other conditions under which a potential Contractor would provide Goods or perform Services, Personal Services or Public Improvements described in the request.

(30) "Responsible" means meeting the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and not debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(31) "Responsible Offeror" means, as the context requires, a Responsible Bidder, Responsible Proposer or a Person who has submitted an Offer and meets the standards set forth in OAR 137-047-0640 or 137-049-0390(2), and who has not been debarred or disqualified by the Contracting Agency under OAR 137-047-0575 or 137-049-0370.

(32) "Responsive" means having the characteristic of substantial compliance in all material respects with applicable solicitation requirements.

(33) "Responsive Offer" means, as the context requires, a Responsive Bid, Responsive Proposal or other Offer that substantially complies in all material respects with applicable solicitation requirements.

(34) "Signature" means any Written mark, word or symbol that is made or adopted by a Person with the intent to be bound and that is attached to or logically associated with a Written document to which the Person intends to be bound.

(35) "Signed" means, as the context requires, that a Written document contains a Signature or that the act of making a Signature has occurred.

(36) "Solicitation Document" means an Invitation to Bid, Request for Proposals, Request for Quotes, or other similar document issued to invite Offers from prospective Contractors under ORS Chapter 279B or 279C. The following are not Solicitation Documents unless they invite Offers from prospective Contractors: a Request for Qualifications, a prequalification of bidders, a request for information, a sole source notice, an approval of a Special Procurement, or a request for product prequalification. A project-specific selection document under a Price Agreement that has resulted from a previous Solicitation Document is not itself a Solicitation Document.

(37) "Writing" means letters, characters and symbols inscribed on paper by hand, print, type or other method of impression, intended to represent or convey particular ideas or meanings. "Writing," when required or permitted by law, or required or permitted in a Solicitation Document, also

means letters, characters and symbols made in electronic form and intended to represent or convey particular ideas or meanings.

(38) "Written" means existing in Writing.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-046-0140
Solicitation Document Templates; Contract Forms and Contract Templates; Accountability for Advice

(1) The Attorney General and the Director of the Oregon Department of Administrative Services will make available to state agencies Solicitation Document templates, Contract forms, and Contract templates as described in 2015 Oregon Laws, chapter 646, section 2. State agencies shall use approved Solicitation Document templates, Contract forms or Contract templates as required by 2015 Oregon Laws, chapter 646, section 2.

(2) The Attorney General, in cooperation with the Oregon Department of Administrative Services, will develop and make available to state agencies the process the Attorney General and the department will use to approve and designate Solicitation Document templates, Contract forms and Contract templates for required use, including the process for revising, updating or approving agency-specific variations of the approved Solicitation Document templates, Contract forms, and Contract templates.

(3) Contract forms and Contract templates include amendments to Contracts, including change orders, purchase orders, and other ordering instruments issued under Contracts, when the amendments, change orders, purchase orders, or other ordering instruments provide for payment in excess of $150,000.

(4) The Attorney General may exempt from required use a Solicitation Document template, Contract form, or Contract template that is approved by the Attorney General, subject to any conditions the Attorney General may impose on the continued use of the exempted and approved Solicitation Document template, Contract form or Contract template.

(5) The Attorney General, in cooperation with the Department of Administrative Services, shall specify how state agencies may access the approved Solicitation Document templates, Contract forms or Contract templates and shall also provide a list of the Solicitation Document templates, Contract forms or Contract templates that are exempt from the required use.

(6) Before a State Contracting Agency executes a Contract with a Contract Price that exceeds $150,000, the State Contracting Agency must designate in Writing the state employee who will oversee a specific Contract, or specifically identified Contracts, or a specifically identified category of Contracts. The Written designation must identify the employee as the "Contract Administrator" for the Contract or Contracts. The director or other head of the State Contracting Agency (or that officer's designee under 2015 Oregon Laws, chapter 646, section 4(2)) must verify that the Contract Administrator has read and understands all advice and recommendations given with respect to the Contract and Procurement. The director or other head of the State Contracting Agency (or that officer's designee) shall sign and preserve as an Agency record a statement acknowledging that the officer reviewed the advice and recommendations, and made the verification, in accordance with 2015 Oregon Laws, chapter 646, section 4.

(7) As used in 2015 Oregon Laws, chapter 646, section 4, "advice and recommendations" means material advice and recommendations from the Oregon Department of Justice or the Oregon Department of Administrative Services to a State Contracting Agency with respect to a specific Contract and amendments to the Contract, or a Procurement that resulted in the Contract. The term does not include advice or recommendations provided to a State Contracting Agency that were not directed to a specific Contract or Procurement. For example, programmatic advice or recommendations that address the general scope of authority or required procedures of a State Contracting Agency program do not constitute advice and recommendations. Material advice or recommendations are Written communications that address: (i) subject matter that modifies or influences the meaning, performance, administration, or means of enforcement of a Contract; or (ii) the allocation of significant liabilities or risk under a Contract.

Stat. Auth.: ORS 279A.065, OL 2015, ch 646 (HB 2375)
Stats. Implemented: OL 2015, ch 646 (HB 2375)
Hist.: DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-046-0200
Notice to Governor's Policy Advisor for Economic and Business Equity

In accordance with ORS 200.035, State Contracting Agencies shall provide timely notice of all Procurements and Contract Awards to the Governor's Policy Advisor for Economic and Business Equity if the estimated Contract Price exceeds $10,000.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 200.035, OL 2015, ch 325 (HB 2716)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-046-0210
Subcontracting to and Contracting with Emerging Small Businesses; Disqualification

(1) For purposes of ORS 279A.105, a subcontractor certified under 200.055 as an emerging small business is located in or draws its workforce from economically distressed areas if:

(a) Its principal place of business is located in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department; or

(b) The Contractor certifies in a Signed Writing to the Contracting Agency that a substantial number of the subcontractor's employees or subcontractors that will manufacture or provide the Goods or perform the Services or Personal Services under the Contract reside in an area designated as economically distressed under administrative rules adopted by the Oregon Business Development Department. For the purposes of making the foregoing determination, the Contracting Agency shall determine in each particular instance what proportion of a Contractor's subcontractor's employees or subcontractors constitutes a substantial number.

(2) Contracting Agencies shall include in each Solicitation Document a requirement that Offerors certify in their Offers, in a form prescribed by the Contracting Agency, that the Offeror has not discriminated, and will not discriminate, against a subcontractor in the awarding of a subcontract because the subcontractor is certified under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, an emerging small business, or a business that a service-disabled veteran owns.

(3) Disqualification.

(a) A Contracting Agency may disqualify a Person from consideration for Award of the Contracting Agency's Contracts under ORS 200.065(5), or suspend a Person's right to bid on or participate in any Contract under ORS 200.075(1), after providing the Person with notice and a reasonable opportunity to be heard in accordance with subsections (b) and (c) of this Section.

(b) The Contracting Agency shall provide Written notice to the Person of a proposed Disqualification. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. This notice shall:

(A) State that the Contracting Agency intends to disqualify or suspend the Person;

(B) Set forth the reasons for the Disqualification;

(C) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived the right to a hearing;

(D) Include a statement of the authority under which the hearing will be held;

(E) Include a reference to the particular sections of the statutes and rules involved;

(F) State the proposed Disqualification period; and

(G) State that the Person may be represented by legal counsel.

(c) Hearing. The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(d) Notice of Disqualification. The Contracting Agency shall provide Written notice of the Disqualification to the Person. The Contracting Agency shall deliver the Written notice by personal service or by registered or certified mail, return receipt requested. The notice shall contain:

(A) The effective date and period of Disqualification;

(B) The grounds for Disqualification; and

(C) A statement of the Person's appeal rights and applicable appeal deadlines.

(4) Contract and Subcontract Conditions. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (4) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (4)(a) of this rule.

(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, 200.075, 279A.065, 279A.105, 279A.110, OL 2015, ch 325 (HB 2716), OL 2015, ch 565 (HB 3303)

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-047-0260

Competitive Sealed Proposals

(1) Generally. A Contracting Agency may procure Goods or Services by competitive sealed Proposals as set forth in ORS 279B.060. A Contracting Agency shall use a Request for Proposal to initiate a competitive sealed Proposal solicitation. The Request for Proposal must contain the information required by 279B.060(2) and by section (2) of this rule. The Contracting Agency shall provide public notice of the Request for Proposal as set forth in OAR 137-047-0300.

(2) Request for Proposal. In addition to the provisions required by ORS 279B.060(2), the Request for Proposal must include the following:

(a) General Information.

(A) Notice of any pre-Offer conference as follows:

(i) The time, date and location of any pre-Offer conference;

(ii) Whether attendance at the conference will be mandatory or voluntary; and

(iii) A provision that provides that statements made by the Contracting Agency's representatives at the conference are not binding on the Contracting Agency unless confirmed by Written Addendum.

(B) The form and instructions for submission of Proposals and any other special information, e.g., whether Proposals may be submitted by electronic means. (See OAR 137-047-0330 for required provisions of electronic Proposals);

(C) The time, date and place of Opening;

(D) The office where the Solicitation Document may be reviewed;

(E) Proposer's certification of nondiscrimination in obtaining required subcontractors in accordance with ORS 279A.110(4). (See OAR 137-046-0210(2)); and

(F) How the Contracting Agency will notify Proposers of Addenda and how the Contracting Agency will make Addenda available. (See OAR 137-047-0430).

(b) Contracting Agency Need to Purchase. The character of the Goods or Services the Contracting Agency is purchasing including, if applicable, a description of the acquisition, Specifications, delivery or performance schedule, inspection and acceptance requirements. As required by ORS 279B.060(2)(c), the Contracting Agency's description of its need to purchase must:

(A) Identify the scope of the work to be performed under the resulting Contract, if the Contracting Agency awards one;

(B) Outline the anticipated duties of the Contractor under any resulting Contract;

(C) Establish the expectations for the Contractor's performance of any resulting Contract; and

(D) Unless the Contractor under any resulting Contract will provide architectural, engineering, photogrammetric mapping, transportation planning, or land surveying services, or related services that are subject to ORS 279C.100 to 279C.125, or the Contracting Agency for Good Cause specifies otherwise, the scope of work must require the Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services that the Contracting Agency is purchasing.

(c) Proposal and Evaluation Process.

(A) The anticipated solicitation schedule, deadlines, protest process, and evaluation process;

(B) The Contracting Agency shall set forth selection criteria in the Solicitation Document in accordance with the requirements of ORS 279B.060(3)(e). Evaluation criteria need not be precise predictors of actual future costs and performance, but to the extent possible, the criteria shall:

(i) Afford the Contracting Agency the ability to compare the Proposals and Proposers, applying the same standards of comparison to all Proposers;

(ii) Rationally reflect Proposers' abilities to perform the resulting Contract in compliance with the Contract's requirements; and

(iii) Permit the Contracting Agency to determine the relative pricing offered by the Proposers, and to reasonably estimate the costs to the Contracting Agency of entering into a Contract based on each Proposal, considering information available to the Contracting Agency and subject to the understanding that the actual Contract costs may vary as a result of the Statement of Work ultimately negotiated or the quantity of Goods or Services for which the Contracting Agency contracts.

(C) If the Contracting Agency's solicitation process calls for the Contracting Agency to establish a Competitive Range, the Contracting Agency shall generally describe, in the Solicitation Document, the criteria or parameters the Contracting Agency will apply to determine the Competitive Range. The Contracting Agency, however, subsequently may determine or adjust the number of Proposers in the Competitive Range in accordance with OAR 137-047-0261(6).

(d) Applicable Preferences, including those described in ORS 279A.120, 279A.125(2) and 282.210.

(e) For Contracting Agencies subject to ORS 305.385, the Proposers' certification of compliance with the Oregon tax laws in accordance with ORS 305.385.

(f) All contractual terms and conditions the Contracting Agency determines are applicable to the Procurement. The Contracting Agency's determination of contractual terms and conditions that are applicable to the Procurement may take into consideration, as authorized by ORS 279B.060(3), those contractual terms and conditions the Contracting Agency will not include in the Request for Proposal because the Contracting Agency either will reserve them for negotiation, or will request Proposers to offer or suggest those terms or conditions. (See OAR 137-047-0260(3)).

(g) As required by ORS 279B.060(2)(h), the Contract terms and conditions must specify the consequences of the Contractor's failure to perform the scope of work or to meet the performance standards established by the resulting Contract. Those consequences may include, but are not limited to:

(A) The Contracting Agency's reduction or withholding of payment under the Contract;

(B) The Contracting Agency's right to require the Contractor to perform, at the Contractor's expense, any additional work necessary to perform the scope of work or to meet the performance standards established by the resulting Contract; and

(C) The Contracting Agency's rights, which the Contracting Agency may assert individually or in combination, to declare a default of the resulting Contract, to terminate the resulting Contract, and to seek damages and other relief available under the resulting Contract or applicable law.

(3) The Contracting Agency may include the applicable contractual terms and conditions in the form of Contract provisions, or legal concepts to be included in the resulting Contract. Further, the Contracting Agency may specify that it will include or use Proposer's terms and conditions that have been pre-negotiated under OAR 137-047-0550(3), but the Contracting Agency may only include or use a Proposer's pre-negotiated terms and con-

ditions in the resulting Contract to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(4) For multiple Award Contracts, the Contracting Agency may enter into Contracts with different terms and conditions with each Contractor to the extent those terms and conditions do not materially conflict with the applicable contractual terms and conditions. The Contracting Agency shall not agree to any Proposer's terms and conditions that were expressly rejected in a solicitation protest under OAR 137-047-0420.

(5) Good Cause. For the purposes of this rule, "Good Cause" means a reasonable explanation for not requiring Contractor to meet the highest standards prevalent in the industry or business most closely involved in providing the Goods or Services under the Contract, and may include an explanation of circumstances that support a finding that the requirement would unreasonably limit competition or is not in the best interest of the Contracting Agency. The Contracting Agency shall document in the Procurement file the basis for the determination of Good Cause for specifying otherwise. A Contracting Agency will have Good Cause to specify otherwise when the Contracting Agency determines:

(a) The use or purpose to which the Goods or Services will be put does not justify a requirement that the Contractor meet the highest prevalent standards in performing the Contract;

(b) Imposing express technical, standard, dimensional or mathematical specifications will better ensure that the Goods or Services will be compatible with, or will operate efficiently or effectively with, associated information technology, hardware, software, components, equipment, parts, or on-going Services with which the Goods or Services will be used, integrated, or coordinated;

(c) The circumstances of the industry or business that provides the Goods or Services are sufficiently volatile in terms of innovation or evolution of products, performance techniques, or scientific developments, that a reliable highest prevalent standard does not exist or has not been developed;

(d) That other circumstances exist in which the Contracting Agency's interest in achieving economy, efficiency, compatibility or availability in the Procurement of the Goods or Services reasonably outweighs the Contracting Agency's practical need for the highest standard prevalent in the applicable or closest industry or business that supplies the Goods or Services to be delivered under the resulting Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.060, OL 2015, ch 325 (HB 2716)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-047-0640
Rejection of an Offer

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer as set forth in ORS 279B.100.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent on the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications) set forth in the Solicitation Document;

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of the Solicitation Document or in contravention of applicable law;

(D) Offers Goods or Services that fail to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Document; or

(G) Is not in substantial compliance with all prescribed public Procurement procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279B.120 and the Contracting Agency required mandatory prequalification;

(B) Has been Debarred as set forth in ORS 279B.130 or has been disqualified under OAR 137-046-0210(3) (Disqualification);

(C) Has not met the requirements of ORS 279A.105, if required by the Solicitation Document;

(D) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(E) Has failed to provide the certification of non-discrimination required under ORS 279A.110(4); or

(F) Is non-Responsible. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the applicable standards of Responsibility. To be a Responsible Offeror, the Contracting Agency must determine, under ORS 279B.110, that the Offeror:

(i) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(ii) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the Procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror non-Responsible under this subparagraph part of the Procurement file as required by ORS 279B.110(2)(b);

(iii) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror non-Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Debarment under ORS 279B.130 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is non-Responsible under this subparagraph part of the Procurement file as required by 279B.110(2)(c);

(iv) Is legally qualified to contract with the Contracting Agency;

(v) Has attested in Writing that the Offeror complied with the tax laws of this state and of political subdivisions of this state;

(vi) In State Contracting Agency procurements, possesses an unexpired certificate, issued by the Oregon Department of Administrative Services under 2015 Oregon Laws, chapter 454, section 2, if the Offeror employs 50 or more full-time workers at the time of the Closing and the estimated Contract Price exceeds $500,000; and

(vii) Has supplied all necessary information in connection with the inquiry concerning Responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning Responsibility, the Contracting Agency shall base the determination of Responsibility on any available information, or may find the Offeror non-Responsible.

(2) For the purposes of subparagraph (1)(c)(F)(v) of this rule:

(a) The period for which the Offeror must attest that it complied with the applicable tax laws must extend no fewer than six years into the past from the date of the Closing.

(b) Tax laws include, but are not limited to, ORS 305.620, ORS chapters 316, 317 and 318, any tax provisions imposed by a political subdivision that apply to the Offeror or to the performance of the Contract, and any rules and regulations that implement or enforce those tax laws.

(c) A Contracting Agency may exercise discretion in determining whether a particular form of attesting to compliance with the tax laws is "credible and convenient" under ORS 279B.110(2)(e), taking into consideration the circumstances in which the attestation is made and the consequences of making a false attestation. Therefore, a Contracting Agency may accept forms of attestation that range from a notarized statement to a less

formal document that records the Offeror's attestation. However, State Contracting Agencies may not accept the certificate of compliance with tax laws required by ORS 305.385 unless that certificate embraces, in addition to the tax laws described in ORS 305.380, the tax laws of political subdivisions.

(3) Form of Business Entity. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Debarment provisions of ORS 279B.130.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279B.100, 279B.110, OL 2015, ch 454 (SB 491), OL 2015, ch 539 (SB 675)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-048-0220
Formal Selection Procedure

(1) Subject to OAR 137-048-0130 (Applicable Selection Procedures; Pricing Information; Disclosure of Proposals), Contracting Agencies shall use the formal selection procedure described in this rule to select a Consultant if the Consultant cannot be selected under either 137-048-0200 (Direct Appointment Procedure) or under 137-048-0210 (Informal Selection Procedure). The formal selection procedure described in this rule may otherwise be used at Contracting Agencies' discretion.

(2) Contracting Agencies using the formal selection procedure shall obtain Contracts through public advertisement of RFPs, or Requests for Qualifications followed by RFPs.

(a) Except as provided in subsection (b) of this section, a Contracting Agency shall advertise each RFP and RFQ at least once in at least one newspaper of general circulation in the area where the Project is located and in as many other issues and publications as may be necessary or desirable to achieve adequate competition. Other issues and publications may include, but are not limited to, local newspapers, trade journals, and publications targeted to reach disadvantaged business enterprise ("DBE"), service-disabled veteran business ("SDVB"), minority business enterprise ("MBE"), women business enterprise ("WBE") and emerging small business enterprise ("ESB") audiences.

(A) A Contracting Agency shall publish the advertisement within a reasonable time before the deadline for the Proposal submission or response to the RFQ or RFP, but in any event no fewer than fourteen (14) calendar days before the closing date set forth in the RFQ or RFP.

(B) A Contracting Agency shall include a brief description of the following items in the advertisement:

(i) The Project;

(ii) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(iii) How and where Consultants may obtain a copy of the RFQ or RFP; and

(iv) The deadline for submitting a Proposal or response to the RFQ or RFP.

(b) In the alternative to advertising in a newspaper as described in subsection (2)(a) of this rule, the Contracting Agency shall publish each RFP and RFQ by one or more of the electronic methods identified in OAR 137-046-0110(14). The Contracting Agency shall comply with subsections (2)(a)(A) and (2)(a)(B) of this rule when publishing advertisements by electronic methods.

(c) A Contracting Agency may send notice of the RFP or RFQ directly to all Consultants on the Contracting Agency's list of Consultants that is created and maintained under OAR 137-048-0120 (List of Interested Consultants; Performance Record).

(3) Request for Qualifications Procedure. Contracting Agencies may use the RFQ procedure to evaluate potential Consultants and establish a short list of qualified Consultants to whom the Contracting Agency may issue an RFP for some or all of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ.

(a) A Contracting Agency shall include the following, at a minimum, in each RFQ:

(A) A brief description of the Project for which the Contracting Agency is seeking a Consultant;

(B) A description of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks for the Project;

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) The deadline for submitting a response to the RFQ;

(E) A description of required Consultant qualifications for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services the Contracting Agency seeks;

(F) The RFQ evaluation criteria, including weights, points or other classifications applicable to each criterion;

(G) A statement whether or not the Contracting Agency will hold a pre-qualification meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and if a pre-qualification meeting will be held, the location of the meeting and whether or not attendance is mandatory; and

(H) A Statement that Consultants responding to the RFQ do so solely at their expense, and that the Contracting Agency is not responsible for any Consultant expenses associated with the RFQ.

(b) A Contracting Agency may include a request for any or all of the following in each RFQ:

(A) A statement describing Consultants' general qualifications and related performance information;

(B) A description of Consultants' specific qualifications to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ including Consultants' committed resources and recent, current and projected workloads;

(C) A list of similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and references concerning past performance, including but not limited to price and cost data from previous projects, quality of work, ability to meet schedules, cost control and contract administration;

(D) A copy of all records, if any, of Consultants' performance under Contracts with any other Contracting Agency;

(E) The number of Consultants' experienced staff committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ, including such personnel's specific qualifications and experience and an estimate of the proportion of time that such personnel would spend on those services;

(F) Consultants' approaches to Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFQ and design philosophy, if applicable;

(G) Consultants' geographic proximity to and familiarity with the physical location of the Project;

(H) Consultants' Ownership status and employment practices regarding women, minorities and emerging small businesses or historically underutilized businesses;

(I) If the Contracting Agency is selecting a Consultant to provide Related Services, Consultants' pricing policies and pricing Proposals or other pricing information, including the number of hours estimated for the services required, expenses, hourly rates and overhead;

(J) Consultants' ability to assist a State Contracting Agency in complying with art acquisition requirements, pursuant to ORS 276.073 through 276.090;

(K) Consultants' ability to assist a State Contracting Agency in complying with State of Oregon energy efficient design requirements, pursuant to ORS 276.900 through 276.915;

(L) Consultants' ability to assist a Contracting Agency in complying with the energy technology requirements of ORS 279C.527 and 279C.528; and

(M) Any other information the Contracting Agency deems reasonably necessary to evaluate Consultants' qualifications.

(c) RFQ Evaluation Committee. The Contracting Agency shall establish an RFQ evaluation committee of at least two (2) individuals to review, score and rank the responding Consultants according to the evaluation criteria. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, Related Services, construction services or Public Contracting. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, photogramme-

try, transportation planning, land surveying or related professions. The Contracting Agency shall designate one member of the evaluation committee as the evaluation committee chairperson.

(d) A Contracting Agency may use any reasonable screening or evaluation method to establish a short list of qualified Consultants, including but not limited to, the following:

(A) Requiring Consultants responding to an RFQ to achieve a threshold score before qualifying for placement on the short list;

(B) Placing a pre-determined number of the highest scoring Consultants on a short list;

(C) Placing on a short list only those Consultants with certain essential qualifications or experience, whose practice is limited to a particular subject area, or who practice in a particular geographic locale or region, provided that such factors are material, would not unduly restrict competition, and were announced as dispositive in the RFQ.

(e) After the evaluation committee reviews, scores and ranks the responding Consultants, the Contracting Agency shall establish a short list of at least three qualified Consultants, if feasible; provided however, if four or fewer Consultants responded to the RFQ or if fewer than three Consultants fail to meet the Contracting Agency's minimum requirements, then:

(A) The Contracting Agency may establish a short list of fewer than three qualified Consultants; or

(B) The Contracting Agency may cancel the RFQ and issue an RFP.

(f) No Consultant will be eligible for placement on a Contracting Agency's short list established under subsection (3)(d) of this rule if Consultant or any of Consultant's principals, partners or associates are members of the Contracting Agency's RFQ evaluation committee.

(g) Except when the RFQ is cancelled, a Contracting Agency shall provide a copy of the subsequent RFP to each Consultant on the short list.

(4) Formal Selection of Consultants through Request for Proposals. Contracting Agencies shall use the procedure described in section (4) of this rule when issuing an RFP for a Contract described in section (1) of this rule.

(a) RFP Required Contents. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ:

(A) General background information, including a description of the Project and the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to be completed, and the estimated time period in which the specific Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services sought will be performed;

(B) The RFP evaluation process and the criteria which will be used to select the most qualified Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation criteria may include, but are not limited to, the following:

(i) Proposers' availability and capability to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(ii) Experience of Proposers' key staff persons in providing similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services, or Related Services on comparable projects;

(iii) The amount and type of resources, and number of experienced staff persons Proposers have committed to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(iv) The recent, current and projected workloads of the staff and resources referenced in section (4)(a)(B)(iii), above;

(v) The proportion of time Proposers estimate that the staff referenced in section (4)(a)(B)(iii), above, would spend on the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(vi) Proposers' demonstrated ability to complete successfully similar Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services on time and within budget, including whether or not there is a record of satisfactory performance under OAR 137-048-0120 (List of Interested Consultants; Performance Record);

(vii) References and recommendations from past clients;

(viii) Proposers' performance history in meeting deadlines, submitting accurate estimates, producing high quality work, meeting financial obligations, price and cost data from previous projects, cost controls and contract administration;

(ix) Status and quality of any required license or certification;

(x) Proposers' knowledge and understanding of the Project and Architectural, Engineering and Land Surveying Services or Related Services described in the RFP as shown in Proposers' approaches to staffing and scheduling needs for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services and proposed solutions to any perceived design and constructability issues;

(xi) Results from interviews, if conducted;

(xii) Design philosophy, if applicable, and approach to the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP;

(xiii) If the Contracting Agency is selecting a Consultant to provide Related Services, pricing policies and pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead; and

(xiv) Any other criteria that the Contracting Agency deems relevant to the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP, including, where the nature and budget of the Project so warrant, a design competition between competing Proposers. Provided, however, these additional criteria cannot include pricing policies, pricing Proposals or other pricing information, including the number of hours proposed for the services required, expenses, hourly rates and overhead, when the sole purpose or predominant purpose of the RFP is to obtain Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services.

(C) Conditions or limitations, if any, that may constrain or prohibit the selected Consultant's ability to provide additional services related to the Project, including but not limited to construction services;

(D) Whether interviews are possible and if so, the weight, points or other classifications applicable to the potential interview;

(E) The date and time Proposals are due, and the delivery location for Proposals;

(F) Reservation of the right to seek clarifications of each Proposal;

(G) Reservation of the right to negotiate a final Contract that is in the best interest of the Contracting Agency;

(H) Reservation of the right to reject any or all Proposals and reservation of the right to cancel the RFP at any time if doing either would be in the public interest as determined by the Contracting Agency;

(I) A Statement that Proposers responding to the RFP do so solely at their expense, and Contracting Agency is not responsible for any Proposer expenses associated with the RFP;

(J) A statement directing Proposers to the protest procedures set forth in these division 48 rules;

(K) Special Contract requirements, including but not limited to DBE, MBE, WBE, ESB and SDVB participation goals or good faith efforts with respect to DBE, MBE, WBE, ESB and SDVB participation, and federal requirements when federal funds are involved;

(L) A statement whether or not the Contracting Agency will hold a pre-Proposal meeting for all interested Consultants to discuss the Project and the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP and if a pre-Proposal meeting will be held, the location of the meeting and whether or not attendance is mandatory;

(M) A request for any information the Contracting Agency deems reasonably necessary to permit the Contracting Agency to evaluate, rank and select the most qualified Proposer to perform the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP; and

(N) A sample form of the Contract.

(b) RFP Contents for Related Services Selections Based on Price Only. Contracting Agencies using the formal selection procedure shall include at least the following in each RFP, whether or not the RFP is preceded by an RFQ, when the formal selection procedure is for Related Services selected on the basis of price Proposals and other pricing information only:

(A) General background information, including a description of the Project and the specific Related Services sought for the Project, the estimated Project cost, the estimated time period during which the Project is to

be completed, and the estimated time period in which the specific Related Services sought will be performed;

(B) The RFP evaluation process and the price criteria which will be used to select the highest ranked Proposer, including the weights, points or other classifications applicable to each criterion. If the Contracting Agency does not indicate the applicable number of points, weights or other classifications, then each criterion is of equal value. Evaluation price criteria may include, but are not limited to, the total price for the Related Services described in the RFP, Consultant pricing policies, and other pricing information such as the Consultant's estimated number of staff hours needed to perform the Related Services described in the RFP, expenses, hourly rates and overhead;

(C) Any minimum or pass-fail qualifications that the Proposers must meet, including but not limited to any such qualifications in the subject matter areas described in section (4)(a)(B)(i) through section (4)(a)(B)(xii) of this rule; and

(D) The information listed in section (4)(a)(C) through section (4)(a)(N) of this rule pertaining to the Related Services described in the RFP.

(c) RFP Evaluation Committee. The Contracting Agency shall establish a committee of at least three individuals to review, score and rank Proposals according to the evaluation criteria set forth in the RFP. If the RFP has followed an RFQ, the Contracting Agency may include the same members who served on the RFQ evaluation committee. The Contracting Agency may appoint to the evaluation committee Contracting Agency employees or employees of other public agencies with experience in Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying, Related Services, construction services or Public Contracting. At least one member of the evaluation committee must be a Contracting Agency employee. If the Contracting Agency procedure permits, the Contracting Agency may include on the evaluation committee private practitioners of architecture, engineering, land surveying or related professions. The Contracting Agency shall designate one of its employees who also is a member of the evaluation committee as the evaluation committee chairperson.

(A) No Proposer will be eligible for award of the Contract under the RFP if Proposer or any of Proposer's principals, partners or associates are members of the Contracting Agency's RFP evaluation committee for the Contract;

(B) If the RFP provides for the possibility of Proposer interviews, the evaluation committee may elect to interview Proposers if the evaluation committee considers it necessary or desirable. If the evaluation committee conducts interviews, it shall award weights, points or other classifications indicated in the RFP for the anticipated interview; and

(C) The evaluation committee shall provide to the Contracting Agency the results of the scoring and ranking for each Proposer.

(d) If the Contracting Agency does not cancel the RFP after it receives the results of the scoring and ranking for each Proposer, the Contracting Agency will begin negotiating a Contract with the highest ranked Proposer. The Contracting Agency shall direct negotiations toward obtaining written agreement on:

(A) The Consultant's performance obligations and performance schedule;

(B) Payment methodology and a maximum amount payable to the Consultant for the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services required under the Contract that is fair and reasonable to the Contracting Agency as determined solely by the Contracting Agency, taking into account the value, scope, complexity and nature of the Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services; and

(C) Any other provisions the Contracting Agency believes to be in the Contracting Agency's best interest to negotiate.

(e) The Contracting Agency shall, either orally or in writing, formally terminate negotiations with the highest ranked Proposer if the Contracting Agency and Proposer are unable for any reason to reach agreement on a Contract within a reasonable amount of time. The Contracting Agency may thereafter negotiate with the second ranked Proposer, and if necessary, with the third ranked Proposer, and so on, in accordance with section (4)(c) of this rule, until negotiations result in a Contract. If negotiations with any Proposer do not result in a Contract within a reasonable amount of time, the Contracting Agency may end the particular formal solicitation. Nothing in this rule precludes a Contracting Agency from proceeding with a new formal solicitation for the same Architectural, Engineering, Photogrammetric Mapping, Transportation Planning or Land Surveying Services or Related Services described in the RFP that failed to result in a Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.110, 279C.527, OL 2015, ch 565 (HB 3303)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 10-2011, f. 11-29-11, cert. ef. 1-1-12; DOJ 8-2012, f. 7-2-12, cert. ef. 8-1-12; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-049-0120
Definitions

(1) "Conduct Disqualification" means a Disqualification under ORS 279C.440.

(2) "Disqualification" means the preclusion of a Person from contracting with a Contracting Agency for a period of time in accordance with OAR 137-049-0370.

(3) "Foreign Contractor" means a Contractor that is not domiciled in or registered to do business in the State of Oregon. See OAR 137-049-0480.

(4) "Notice" means any of the alternative forms of public announcement of Procurements, as described in OAR 137-049-0210.

(5) "Work" means the furnishing of all services, materials, equipment, labor and incidentals necessary to successfully complete any individual item or the entire Contract and the carrying out and completion of all duties and obligations imposed by the Contract.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.065, OL 2015, ch 565 (HB 3303)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 10-2014(Temp), f. & cert. ef. 7-1-14 thru 12-26-14; Administrative correction, 1-27-15; DOJ 2-2015, f. & cert. ef. 2-3-15; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-049-0370
Disqualification of Persons

(1) **Authority.** A Contracting Agency may disqualify a Person from consideration of Award of the Contracting Agency's Contracts after providing the Person with notice and a reasonable opportunity to be heard in accordance with sections (2) and (4) of this rule.

(a) Standards for Conduct Disqualification. As provided in ORS 279C.440, a Contracting Agency may disqualify a Person for:

(A) Conviction for the commission of a criminal offense as an incident in obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract.

(B) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or any other offense indicating a lack of business integrity or business honesty that currently, seriously and directly affects the Person's responsibility as a contractor.

(C) Conviction under state or federal antitrust statutes.

(D) Violation of a contract provision that is regarded by the Contracting Agency to be so serious as to justify Conduct Disqualification. A violation under this subsection (1)(a)(D) may include but is not limited to material failure to perform the terms of a contract or an unsatisfactory performance in accordance with the terms of the contract. However, a Person's failure to perform or unsatisfactory performance caused by acts beyond the Person's control is not a basis for Disqualification.

(b) Standards for Disqualification. As provided in ORS 200.065, 200.075 or 279A.110, a Contracting Agency may disqualify a Person's right to submit an Offer or to participate in a Contract (e.g. subcontractors) as follows:

(A) For a Disqualification under ORS 200.065, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person fraudulently obtained or retained or attempted to obtain or retain or aided another Person to fraudulently obtain or retain or attempt to obtain or retain certification as a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns; or

(ii) The Person knowingly made a false claim that any Person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a Contract or subcontract or other benefit; or

(iii) The Person has been disqualified by another Contracting Agency under ORS 200.065.

(B) For a Disqualification under ORS 200.075, the Contracting Agency may disqualify a Person upon finding that:

(i) The Person has entered into an agreement representing that a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns, certified under ORS 200.055 ("Certified Enterprise"), will per-

form or supply materials under a Public Improvement Contract without the knowledge and consent of the Certified Enterprise; or

(ii) The Person exercises management and decision-making control over the internal operations, as defined by ORS 200.075(1)(b), of any Certified Enterprise; or

(iii) The Person uses a Certified Enterprise to perform Work under a Public Improvement Contract to meet an established Certified Enterprise goal, and such enterprise does not perform a commercially useful function, as defined by ORS 200.075(3), in performing its obligations under the contract.

(iv) If a Person is Disqualified for a Disqualification under ORS 200.075, the affected Contracting Agency shall not permit that Person to participate in that Contracting Agency's Contracts.

(C) For a Disqualification under ORS 279A.110, a Contracting Agency may disqualify a Person if the Contracting Agency finds that the Person discriminated against a disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or a business that a service-disabled veteran owns in awarding a subcontract under a Contract with that Contracting Agency.

(2) **Notice of Intent to Disqualify.** The Contracting Agency shall notify the Person in Writing of a proposed Disqualification personally or by registered or certified mail, return receipt requested. This notice shall:

(a) State that the Contracting Agency intends to disqualify the Person;

(b) Set forth the reasons for the Disqualification;

(c) Include a statement of the Person's right to a hearing if requested in Writing within the time stated in the notice and that if the Contracting Agency does not receive the Person's Written request for a hearing within the time stated, the Person shall have waived its right to a hearing;

(d) Include a statement of the authority under which the hearing will be held;

(e) Include a reference to the particular sections of the statutes and rules involved;

(f) State the proposed Disqualification period; and

(g) State that the Person may be represented by legal counsel.

(3) **Hearing.** The Contracting Agency shall schedule a hearing upon the Contracting Agency's receipt of the Person's timely hearing request. Within a reasonable time prior to the hearing, the Contracting Agency shall notify the Person of the time and place of the hearing and provide information on the procedures, right of representation and other rights related to the conduct of the hearing.

(4) **Notice of Disqualification.** The Contracting Agency will notify the Person in Writing of its Disqualification, personally or by registered or certified mail, return receipt requested. The notice shall contain:

(a) The effective date and period of Disqualification;

(b) The grounds for Disqualification; and

(c) A statement of the Person's appeal rights and applicable appeal deadlines. For a Conduct Disqualification or a Disqualification under ORS 279A.110, the disqualified person must notify the Contracting Agency in Writing within three business Days after receipt of the Contracting Agency's notice of Disqualification if the Person intends to appeal the Contracting Agency's decision.

Stat. Auth.: ORS 279A.065

Stats. Implemented: ORS 200.065, 200.075, 279A.110, 279C.440, 279C.445, 279C.450, OL 2015, ch 565 (HB 3303)

Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-049-0390

Offer Evaluation and Award; Determination of Responsibility

(1) General. If Awarded, the Contracting Agency shall Award the Contract to the Responsible Bidder submitting the lowest, Responsive Bid or the Responsible Proposer or Proposers submitting the best, Responsive Proposal or Proposals, provided that such Person is not listed by the Construction Contractors Board as disqualified to hold a Public Improvement Contract (ORS 279C.375(3)(a)) or is ineligible for Award as a nonresident education service district (ORS 279C.325). The Contracting Agency may Award by item, groups of items or the entire Offer provided such Award is consistent with the Solicitation Document and in the public interest. Where Award is based on competitive Bids, ORS 279C.375(5) permits multiple Contract awards when specified in the ITB.

(2) Determination of Responsibility. Offerors are required to demonstrate their ability to perform satisfactorily under a Contract. Before Awarding a Contract, the Contracting Agency must have information that indicates that the Offeror meets the standards of responsibility set forth in ORS 279C.375(3)(b). To be a Responsible Offeror, the Contracting Agency must determine that the Offeror:

(a) Has available the appropriate financial, material, equipment, facility and personnel resources and expertise, or ability to obtain the resources and expertise, necessary to meet all contractual responsibilities;

(b) Has completed previous contracts of a similar nature with a satisfactory record of performance. A satisfactory record of performance means that, to the extent the costs associated with and time available to perform a previous contract were within the Offeror's control, the Offeror stayed within the time and budget allotted for the procurement and otherwise performed the contract in a satisfactory manner. A Contracting Agency should carefully scrutinize an Offeror's record of contract performance if the Offeror is or recently has been materially deficient in contract performance. In reviewing the Offeror's performance, the Contracting Agency should determine whether the Offeror's deficient performance was expressly excused under the terms of the contract, or whether the Offeror took appropriate corrective action. The Contracting Agency may review the Offeror's performance on both private and public contracts in determining the Offeror's record of contract performance. The Contracting Agency shall make its basis for determining an Offeror not Responsible under this paragraph part of the Solicitation file;

(c) Has a satisfactory record of integrity. An Offeror may lack integrity if a Contracting Agency determines the Offeror demonstrates a lack of business ethics such as violation of state environmental laws or false certifications made to a Contracting Agency. A Contracting Agency may find an Offeror not Responsible based on the lack of integrity of any Person having influence or control over the Offeror (such as a key employee of the Offeror that has the authority to significantly influence the Offeror's performance of the Contract or a parent company, predecessor or successor Person). The standards for Conduct Disqualification under OAR 137-049-0370 may be used to determine an Offeror's integrity. A Contracting Agency may find an Offeror non-responsible based on previous convictions of offenses related to obtaining or attempting to obtain a contract or subcontract or in connection with the Offeror's performance of a contract or subcontract. The Contracting Agency shall make its basis for determining that an Offeror is not Responsible under this paragraph part of the Solicitation file;

(d) Is legally qualified to contract with the Contracting Agency;

(e) In State Contracting Agency procurements, possesses an unexpired certificate, issued by the Oregon Department of Administrative Services under 2015 Oregon Laws, chapter 454, section 2, if the Offeror employs 50 or more full-time workers at the time of the Bid or Proposal Closing and the estimated Contract Price exceeds $500,000; and

(f) Has supplied all necessary information in connection with the inquiry concerning responsibility. If the Offeror fails to promptly supply information requested by the Contracting Agency concerning responsibility, the Contracting Agency shall base the determination of responsibility on any available information, or may find the Offeror not Responsible.

(3) Documenting Agency Determinations. Contracting Agencies shall document their compliance with ORS 279C.375(3) and the above sections of this rule on a Responsibility Determination Form substantially as set forth in 279.375(3)(c), and file that form with the Construction Contractors Board within 30 days after Contract Award.

(4) Contracting Agency Evaluation. The Contracting Agency shall evaluate an Offer only as set forth in the Solicitation Document and in accordance with applicable law. The Contracting Agency shall not evaluate an Offer using any other requirement or criterion.

(5) Offeror Submissions.

(a) The Contracting Agency may require an Offeror to submit Product Samples, Descriptive Literature, technical data, or other material and may also require any of the following prior to Award:

(A) Demonstration, inspection or testing of a product prior to Award for characteristics such as compatibility, quality or workmanship;

(B) Examination of such elements as appearance or finish; or

(C) Other examinations to determine whether the product conforms to Specifications.

(b) The Contracting Agency shall evaluate product acceptability only in accordance with the criteria disclosed in the Solicitation Document to determine that a product is acceptable. The Contracting Agency shall reject an Offer providing any product that does not meet the Solicitation Document requirements. A Contracting Agency's rejection of an Offer because it offers nonconforming Work or materials is not Disqualification and is not appealable under ORS 279C.445.

(6) Evaluation of Bids. The Contracting Agency shall use only objective criteria to evaluate Bids as set forth in the ITB. The Contracting Agency shall evaluate Bids to determine which Responsible Offeror offers the lowest Responsive Bid.

(a) Nonresident Bidders. In determining the lowest Responsive Bid, the Contracting Agency shall, in accordance with OAR 137-046-0310, add a percentage increase to the Bid of a nonresident Bidder equal to the percentage, if any, of the preference given to that Bidder in the state in which the Bidder resides.

(b) Clarifications. In evaluating Bids, a Contracting Agency may seek information from a Bidder only to clarify the Bidder's Bid. Such clarification shall not vary, contradict or supplement the Bid. A Bidder must submit Written and Signed clarifications and such clarifications shall become part of the Bidder's Bid.

(c) Negotiation Prohibited. The Contracting Agency shall not negotiate scope of Work or other terms or conditions under an Invitation to Bid process prior to Award.

(7) Evaluation of Proposals. See OAR 137-049-0650 regarding rules applicable to Requests for Proposals.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279C.335, 279C.365, 279C.375, 279C.395, OL 2015, ch 454 (SB 491)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 19-2007, f. 12-28-07, cert. ef. 1-1-08; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

137-049-0440
Rejection of Offers

(1) Rejection of an Offer.

(a) A Contracting Agency may reject any Offer upon finding that to accept the Offer may impair the integrity of the Procurement process or that rejecting the Offer is in the public interest.

(b) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offer:

(A) Is contingent on the Contracting Agency's acceptance of terms and conditions (including Specifications) that differ from the Solicitation Document;

(B) Takes exception to terms and conditions (including Specifications);

(C) Attempts to prevent public disclosure of matters in contravention of the terms and conditions of Solicitation Document or in contravention of applicable law;

(D) Offers Work that fails to meet the Specifications of the Solicitation Document;

(E) Is late;

(F) Is not in substantial compliance with the Solicitation Documents;

(G) Is not in substantial compliance with all prescribed public solicitation procedures.

(c) The Contracting Agency shall reject an Offer upon the Contracting Agency's finding that the Offeror:

(A) Has not been prequalified under ORS 279C.430 and the Contracting Agency required mandatory prequalification;

(B) Has been Disqualified;

(C) Has been declared ineligible under ORS 279C.860 by the Commissioner of Bureau of Labor and Industries and the Contract is for a Public Work;

(D) Is listed as not qualified by the Construction Contractors Board, if the Contract is for a Public Improvement;

(E) Has not met the requirements of ORS 279A.105 if required by the Solicitation Document;

(F) Has not submitted properly executed Bid or Proposal security as required by the Solicitation Document;

(G) Has failed to provide the certification required under section 3 of this rule;

(H) Is not Responsible. See OAR 137-049-0390(2) regarding Contracting Agency determination that the Offeror has met statutory standards of responsibility.

(2) Form of Business. For purposes of this rule, the Contracting Agency may investigate any Person submitting an Offer. The investigation may include that Person's officers, Directors, owners, affiliates, or any other Person acquiring ownership of the Person to determine application of this rule or to apply the Disqualification provisions of ORS 279C.440 to 279C.450 and OAR 137-049-0370.

(3) Certification of Non-Discrimination. The Offeror shall certify and deliver to the Contracting Agency Written certification, as part of the Offer, that the Offeror has not discriminated and will not discriminate against any disadvantaged business enterprise, minority-owned business, women-owned business, emerging small business, or business that a service-disabled veteran owns, in obtaining any required subcontracts. Failure to do so shall be grounds for disqualification.

(4) Contract and Subcontract Conditions. If a Contracting Agency awards a Contract to an Offeror that has been determined to be responsible under ORS 200.005(8) and ORS 200.045(3), or awards a Contract under ORS 279A.100:

(a) The Contracting Agency must provide, as a material condition of the Contract:

(A) That the Contractor must maintain its certification under ORS 200.055 throughout the term of the Contract and any extensions (if the Contracting Agency used the certification as a factor in or as a basis for the award of the Contract);

(B) That the Contractor must promptly pay each subcontractor that is certified under ORS 200.055 in accordance with ORS 279B.220, or 279C.570 and ORS 279C.580, whichever apply to the Contract;

(C) That the Contractor must include, in any subcontract the Contractor establishes in connection with the Contract, a provision that requires the subcontractor to maintain the subcontractor's certification under ORS 200.055 throughout the term of the subcontract and any extensions (if the Contractor used the certification as a factor in or as a basis for the award of the subcontract);

(D) That the Contracting Agency may require the Contractor to terminate a subcontract with a subcontractor that fails to maintain its certification under ORS 200.055 throughout the term of the subcontract and any extensions.

(b) In the administration of Contracts that are subject to section (4) of this rule, the Contracting Agency must verify the Contractor's and any subcontractor's compliance with subsection (4)(a) of this rule.

(c) Subparagraph (4)(a)(A) of this section does not apply to an emerging small business that ceases to qualify as a tier one firm or a tier two firm (as ORS 200.005 defines those terms) due to the growth in the business's number of full-time equivalent employees or in average annual gross receipts during the term of the Contract. This section (4) does not apply to an emerging small business for which a certification under ORS 200.055 expires during the term of the Contract or any extensions.

(5) Rejection of all Offers. A Contracting Agency may reject all Offers for good cause upon the Contracting Agency's Written finding it is in the public interest to do so. The Contracting Agency shall notify all Offerors of the rejection of all Offers, along with the good cause justification and finding.

(6) Criteria for Rejection of All Offers. The Contracting Agency may reject all Offers upon a Written finding that:

(a) The content of or an error in the Solicitation Document, or the solicitation process unnecessarily restricted competition for the Contract;

(b) The price, quality or performance presented by the Offerors is too costly or of insufficient quality to justify acceptance of the Offer;

(c) Misconduct, error, or ambiguous or misleading provisions in the Solicitation Document threaten the fairness and integrity of the competitive process;

(d) Causes other than legitimate market forces threaten the integrity of the competitive Procurement process. These causes include, but are not limited to, those that tend to limit competition such as restrictions on competition, collusion, corruption, unlawful anti-competitive conduct and inadvertent or intentional errors in the Solicitation Document;

(e) The Contracting Agency cancels the solicitation in accordance with OAR 137-049-0270; or

(f) Any other circumstance indicating that Awarding the Contract would not be in the public interest.

Stat. Auth.: ORS 279A.065
Stats. Implemented: ORS 279A.105, 279A.110, 279C.375, 279C.380, 279C.395, OL 2015, ch 325 (HB 2716), OL 2015, ch 565 (HB 3303)
Hist.: DOJ 11-2004, f. 9-1-04, cert. ef. 3-1-05; DOJ 20-2005, f. 12-27-05, cert. ef. 1-1-06; DOJ 15-2009, f. 12-1-09, cert. ef. 1-1-10; DOJ 18-2015, f. 12-31-15, cert. ef. 1-1-16

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Department of Public Safety Standards and Training
Chapter 259

Rule Caption: Updates physical standards for law enforcement officers and other processes. Adds regulatory specialist to rule.
Adm. Order No.: DPSST 18-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Amended: 259-008-0005, 259-008-0010, 259-008-0025, 259-008-0040, 259-008-0060, 259-008-0100

Subject: This permanent rule change combines two proposed rule filings.

#1: OAR 259-008-0011: Medical Standards for Law Enforcement Officers:

To ensure that DPSST's physical standards for law enforcement officers were still appropriate and to determine the physical standards for Oregon Regulatory Specialists (formerly Liquor Enforcement Inspectors), DPSST contracted with Doctor Brad Lorber, Medical Director for Northwest Occupational Medicine in Beaverton, Oregon, to review DPSST's current physical standards.

After review, Doctor Lorber found that the physical standards for Regulatory Specialists are the same as for all law enforcement officers. Further, Doctor Lorber made numerous changes to the physical standards for law enforcement officers. This rule change also alters the process for submitting a DPSST Medical Examination Report (Form F-2) and eliminates the need for the policy committees and the Board to review and approve or deny physical standard waivers. This rule change was published in the September, 2015, Oregon Bulletin. No public comments were received. This rule is effective January 1, 2016.

#2: OAR 259-008-0005, OAR 259-008-0010, OAR 259-008-0025, OAR 259-008-0040, OAR 259-008-0060, and OAR 259-008-0100: Change "Liquor Enforcement Inspector" to "Regulatory Specialist" and remove wording regarding DUII implied consent:

This rule changes implements the provisions of House Bill 3400 by changing the word "Liquor Enforcement Inspector" to "Regulatory Specialist" throughout DPSST's rule set. Further, the rule language in OAR 259-008-0060 regarding DUII implied consent has been removed due to a statutory correction initiated by House Bill 2372. This rule change was published in the December, 2015, Oregon Bulletin. No public comments were received.

Rules Coordinator: Sharon Huck—(503) 378-2432

259-008-0005
Definitions

(1) "Academy Training Division" means the division of the Department which coordinates and facilitates criminal justice training courses to include the development, evaluation, and validation of curriculum and training.

(2) "Assistant Department Head" means a public safety officer employed in the first position subordinate to a Department Head who is primarily responsible for supervision of middle managers and supervisors.

(3) "Board" means the Board on Public Safety Standards and Training.

(4) "Casual employment" means employment that is occasional, irregular, or incidental for which the employee does not receive seniority rights or fringe benefits.

(5) "Certified Reserve Officer" means a reserve officer who has been designated by a local law enforcement unit, has received training necessary for certification and has met the minimum standards and training requirements established under ORS 181A.410.

(6) "Commissioned" means being authorized to perform various acts or duties of a police officer or reserve officer and acting under the supervision and responsibility of a county sheriff or as otherwise provided by law.

(7) "Community College" means a public institution operated by a community college district for the purpose of providing courses of study limited to not more than two years full-time attendance and designed to meet the needs of a geographical area by providing educational services, including, but not limited to, vocational or technical education programs or lower division collegiate programs.

(8) "Corrections Officer" means an officer or member employed full-time by a law enforcement unit who:

(a) Is charged with and primarily performs the duty of custody, control or supervision of individuals convicted of or arrested for a criminal offense and confined in a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles;

(b) Has been certified as a corrections officer described in paragraph (a) of this subsection and has supervisory or management authority for corrections officers as described in paragraph (a) of this subsections; or

(c) Is any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.520.

(9) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

(10) "Department Head" means the chief of police, sheriff, or chief executive of a law enforcement unit or a public or private safety agency directly responsible for the administration of that unit.

(11) "Director" means the Director of the Department of Public Safety Standards and Training.

(12) "Educational Credits" are credits earned for studies satisfactorily completed at an accredited post-secondary education institution recognized under OAR 259-008-0045.

(13) "Emergency Medical Dispatcher" means a person who has responsibility to process requests for medical assistance from the public or to dispatch medical care providers.

(14) "First-Level Supervisor" means a public safety officer employed in a position between the operational level and the middle manager, who is primarily responsible for the direct supervision of subordinates. A first level supervisor position does not include a position with limited or acting supervisory responsibilities.

(15) "Full-time employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for more than 80 hours per month for a period of more than 90 consecutive calendar days. For purposes of this rule, any employment that meets the definition of seasonal, casual, or temporary employment is not considered full-time employment as a public safety professional.

(16) "High School" is a school accredited as a high school by the Oregon Department of Education, a school accredited as a high school by the recognized regional accrediting body, or a school accredited as a high school by the state university of the state in which the high school is located.

(17) "Instructor" means an individual who has completed the requisite training and certification requirements prescribed by statute, rule, and policy and has been certified by the Department. The Department will only certify instructors who instruct mandated courses.

(18) "Law Enforcement Officers" means police, corrections, parole and probation officers and regulatory specialists as described in the Public Safety Standards and Training Act.

(19) "Law Enforcement Unit" means:

(a) A police force or organization of the state, a city, university that has established a police department under ORS 352.383, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal governments as defined in section 1, chapter 644, Oregon Laws 2011, that employs authorized tribal police officers as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Department of Corrections, the Oregon State Lottery Commission, the Security and Emergency Preparedness Office of the Judicial Department or common carrier railroad the primary duty of which, as prescribed by law, ordinance, or directive, is any one or more of the following:

(A) Detecting crime and enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(B) The custody, control, or supervision of individuals convicted of or arrested for a criminal offense and confined to a place of incarceration or detention other than a place used exclusively for incarceration or detention of juveniles; or

(C) The control, supervision, and reformation of adult offenders placed on parole or sentenced to probation and investigation of adult offenders on parole or probation or being considered for parole or probation.

(b) A police force or organization of a private entity with a population of more than 1,000 residents in an unincorporated area the employees of which are commissioned by a county sheriff;

(c) A district attorney's office;

(d) The Oregon Liquor Control Commission with regard to regulatory specialists; or

(e) A humane investigation agency as defined in section 1, chapter 67, Oregon Laws 2012.

(20) "Leave" means an authorized absence granted to a public safety professional by their employing public or private safety agency.

(21) "Limited Duration, Administrative Position" means a non-elected, certifiable public safety position where the primary duties relate to the administration, operation, and accountability of a public safety agency, including, but not limited to, the responsibility for command assignments and the supervision of subordinate managers.

(a) Primary duties are regular or recurring supervisory or managerial duties that are performed in a continuous manner and are the foundation of a limited duration, administrative position.

(b) Non-supervisory or non-managerial public safety duties, such as patrol, criminal investigations, or enforcement actions are not primary duties of a limited duration, administrative position.

(22) "Middle Manager" means a public safety officer working in a position that is between a first-level supervisor and a department head, who is primarily responsible for management and command duties. A middle manager position does not include a position with limited or acting middle management duties.

(23) "Part-time Employment" means the employment of a person who has the responsibility for, and is paid to perform the duties of a public safety professional for 80 hours or less per month for a period of more than 90 consecutive calendar days.

(24) "Parole and Probation Officer" means:

(a) An officer who is employed full-time by the Department of Corrections, a county or a court and who is charged with and performs the duty of:

(A) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(B) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(b) Any officer who:

(A) Is certified and has been employed as a full-time parole and probation officer for more than one year;

(B) Is employed part-time by the Department of Corrections, a county or a court; and

(C) Is charged with and performs the duty of:

(i) Community protection by controlling, investigating, supervising, and providing or making referrals to reformative services for adult parolees or probationers or offenders on post-prison supervision; or

(ii) Investigating adult offenders on parole or probation or being considered for parole or probation; or

(c) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.520.

(25) "Police Officer" means:

(a) An officer, member or employee of a law enforcement unit employed full-time as a peace officer who is:

(A) Commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, a university that has established a police department under ORS 352.383, the Governor or the Department of State Police; and

(B) Responsible for enforcing the criminal laws of this state or laws or ordinances relating to airport security;

(b) An investigator of a district attorney's office if the investigator is or has been certified as a peace officer in this or another state;

(c) An authorized tribal police officer as defined in section 1, chapter 644, Oregon Laws 2011;

(d) A special agent commissioned under section 1, chapter 67, Oregon Laws 2012;

(e) An individual member of the judicial security personnel identified pursuant to ORS 1.177 who is trained pursuant to section 3, chapter 88, Oregon Laws 2012; or

(f) Any full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.490.

(26) "Public or private safety agency" means:

(a) A law enforcement unit; or

(b) A unit of state or local government, a special purpose district or a private firm that provides, or has authority to provide, police, ambulance or emergency medical services.

(27) "Public Safety Personnel" and "Public Safety Officer" include corrections officers, emergency medical dispatchers, parole and probation officers, police officers, certified reserve officers, telecommunicators and regulatory specialists.

(28) "Public Safety Professional" includes public safety personnel, public safety officers, and instructors.

(29) "Regulations" mean written directives established by the Department or its designated staff describing training activities and student procedures at the Oregon Public Safety Academy.

(30) "Regulatory Specialist" means a full-time employee of the Oregon Liquor Control Commission (OLCC) who is authorized to act as an agent of the OLCC in conducting inspections or investigations, making arrests and seizures, aiding in prosecutions for offenses, issuing citations for violations and otherwise enforcing Chapter 471, ORS 474.005 to 474.095 and 474.115, OLCC rules and any other statutes the OLCC considers related to alcoholic liquor or marijuana.

(31) "Reimbursement" is the money allocated from the Police Standards and Training Account, established by ORS 181A.665, to a law enforcement unit meeting the requirements of these regulations to defray the costs of officer salaries, relief duty assignments, and other expenses incurred while officers attend approved training courses certified by the Department.

(32) "Reserve Officer" means an officer or member of a law enforcement unit who is:

(a) A volunteer or employed less than full time as a peace officer commissioned by a city, port, school district, mass transit district, county, county service district authorized to provide law enforcement services under ORS 451.010, tribal government as defined in section 1, chapter 644, Oregon Laws 2011, the Criminal Justice Division of the Department of Justice, the Oregon State Lottery Commission, the Governor, or the Department of State Police;

(b) Armed with a firearm; and

(c) Responsible for enforcing the criminal laws and traffic laws of this state or laws or ordinances relating to airport security.

(33) "Seasonal Employment" means employment that can be carried on only at certain seasons or fairly definite portions of the year, with defined starting and ending dates based on a seasonally determined need.

(34) "Staff" means those employees occupying full-time, part-time, or temporary positions with the Department.

(35) "Standards and Certification" means the division of the Department which implements and regulates compliance with Board-established, statewide standards for public safety professionals. Standards and Certification oversees the issuance, maintenance, denial, suspension or revocation of public safety certifications.

(36) "Suspension" means the administrative inactivation of a certificate issued by the Department until maintenance requirements or other administrative requirements for certification are met and certification is restored.

(37) "Telecommunicator" means:

(a) A person employed as an emergency telephone worker as defined in ORS 243.736 or a public safety dispatcher whose primary duties are receiving, processing and transmitting public safety information received through a 9-1-1 emergency reporting system as defined in ORS 403.105; or

(b) A full-time employee of the Department who possesses requisite qualifications and is so certified pursuant to ORS 181A.520.

(38) "Temporary employment" means employment that lasts no more than 90 consecutive calendar days and is not permanent.

(39) "The Act" refers to the Public Safety Standards and Training Act (ORS 181A.355 to 181A.265).

(40) "Waiver" means to refrain from pressing or enforcing a rule.

Stat. Auth.: ORS 181A.410

Stats. Implemented: ORS 181A.410

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0010, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 3-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 7-2000, f. & cert. ef. 9-29-00; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 6-2012, f. & cert. ef. 3-27-12; DPSST 24-2012, f. & cert. ef. 10-26-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 5-2014, f. & cert. ef. 1-29-14; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

259-008-0010

Minimum Standards for Employment as a Law Enforcement Officer

(1) Citizenship.

(a) A person may not be employed as a corrections officer for more than one year unless the person is a citizen of the United States.

(b) A person may not be employed as a police officer, parole and probation officer or a regulatory specialist for more than 18 months unless the person is a citizen of the United States.

(c) The citizenship requirement found in (b) does not apply to a person employed as a regulatory specialist on March 16, 2012, who continues full-time employment as a regulatory specialist without a lapse.

(2) Age. No law enforcement unit in this state may employ any person under the age of 21 years as a law enforcement officer.

(3) Fingerprints. Within 90 days of the date of employment in a certifiable position, each law enforcement officer must be fingerprinted on a standard applicant fingerprint card.

(a) The hiring agency is responsible for fingerprinting and must forward one card to the Oregon State Police Identification Services Section for processing and the assignment of an identification number.

(b) If any procedural change is made by either the Federal Bureau of Investigation or the Oregon State Police Identification Services Section, the Department must comply with the most current requirements.

(c) Applications for certification will not be processed until an applicant's fingerprints have cleared Oregon State Police Identification Services.

(4) Criminal Records. No law enforcement officer may have been convicted:

(a) In this state or any other jurisdiction, of a crime designated under the law where the conviction occurred as being punishable as a felony or as a crime for which a maximum term of imprisonment of more than one year may be imposed;

(b) Of violating any law involving the unlawful use, possession, delivery, or manufacture of a controlled substance, narcotic, or dangerous drug;

(c) In this state of violating any law subject to denial or revocation as identified in OAR 259-008-0070 or has been convicted of violating the statutory counterpart of any of those offenses in any other jurisdiction.

(5) Notification of Conviction:

(a) A law enforcement officer who is convicted of a crime, as identified in OAR 259-008-0070, while employed by a public or private safety agency must notify the agency head within 72 hours of the conviction.

(b) When an agency receives notification of a conviction from its employee, or another source, they must notify the Department within five business days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(6) Moral Fitness (Professional Fitness). All law enforcement officers must be of good moral fitness. For purposes of this standard, lack of good moral fitness includes, but is not limited to:

(a) Mandatory disqualifying misconduct as described in OAR 259-008-0070(3); or

(b) Discretionary disqualifying misconduct as described in OAR 259-008-0070(4).

(7) Education:

(a) Applicants for the position of a law enforcement officer will be required to furnish documentary evidence of one of the following:

(A) High School diploma;

(B) Successful completion of the General Educational Development (GED) Test; or

(C) A four-year, post-secondary degree issued by an accredited, degree-granting college or university recognized by the Oregon Office of Degree Authorization under the provisions of ORS 348.604.

(i) For the purpose of determining high school graduation level as required by these rules, the applicant must have achieved a score no less than that required by the Oregon Board of Education before issuing an Oregon GED certificate.

(ii) Applicants holding a GED from another state may be required to obtain an Oregon certificate at the discretion of the Department.

(b) Evidence of the above must consist of official transcripts, diplomas, or GED test report forms. Other documentation may be accepted, at the discretion of the Department.

(c) Academic Proficiency Standard. Before beginning basic training or beginning the career officer development course, each applicant must provide evidence to DPSST that the applicant possesses the academic tools necessary to successfully complete basic training.

(A) The hiring agency is responsible for ensuring a law enforcement proficiency test or validated written test designed to evaluate predictors of job-related skills and behaviors has been administered. The hiring agency must verify the completion of the test and report the date of completion to the Department on a Form F-5 (Application for Training) prior to the applicant being admitted to basic training.

(B) Individuals submitting transcripts verifying that they possess at least a four-year academic degree from an institution recognized by the Department under the provisions of OAR 259-008-0045 are exempt from this testing requirement.

(C) Individuals who have successfully completed training resulting in the award of certification in the discipline they are applying for training are exempt from this testing requirement. Individuals must submit proof of training and certification.

(8) Physical Standards.

(a) Prior to admittance into a basic training course, as described in OAR 259-008-0025, all law enforcement officers or applicants must demonstrate the physical abilities to perform the critical and essential tasks of a law enforcement officer.

(A) The critical and essential tasks for law enforcement officers have been determined by the following:

(i) The 2015 DPSST Job Task Analysis for Police Officers;

(ii) The 2011 DPSST Job Task Analysis for Parole & Probation Officers;

(iii) The 2012 DPSST Job Task Analysis for Corrections Officers; and

(iv) The 2013 Job Task Analysis for Liquor Enforcement Inspectors.

(b) The following minimum physical standards are required for all law enforcement officers:

(A) Visual Acuity.

(i) Monocular vision must be at least 20/30 (Snellen) corrected in each eye and not worse than 20/100 (Snellen) uncorrected in either eye.

(ii) Binocular vision must be at least 20/20 (Snellen) corrected.

(iii) Officers or applicants whose uncorrected vision is worse than 20/100 must wear soft contact lenses to meet the corrected vision requirement.

(B) Color Vision.

(i) Law enforcement officers or applicants must be able to distinguish red, green, blue, and yellow, as determined by the HRR Test, 4th Edition.

(ii) Red or green deficiencies may be acceptable, providing the officer or applicant can read at least nine of the first 13 plates of the Ishihara Test.

(iii) Officers or applicants who fail to meet the color vision standard may meet the standard by demonstrating that they can correctly discriminate colors via a field test conducted by the employer as approved by the examining licensed physician or surgeon.

(C) Depth Perception. Random Stereo Test equal to 60 seconds of arc or better.

(D) Peripheral Vision. Visual Field Performance must be 140 degrees in the horizontal meridian combined.

(E) Hearing.

(i) Law enforcement officers or applicants must have no average hearing loss greater than 25 decibels (db) at the 500, 1,000, 2,000 and 3,000-Hertz levels in either ear with no single loss in excess of 40 db.

(ii) Law enforcement officers or applicants who fail to meet the hearing standard must be examined by a licensed audiologist or otorhinolaryngologist to determine if an amplification device will allow them to meet the hearing standard.

(iii) An amplification device may be used to meet the hearing standard, if a licensed audiologist or otorhinolaryngologist determines an amplification device will allow the officer or applicant to meet the hearing standard.

(F) Cardiovascular.

(i) Resting blood pressure must be less than or equal to 160 mmHg systolic and 100 mmHg diastolic.

(ii) Law enforcement officers or applicants who fail to meet the cardiovascular standards must be examined by a general practitioner to address the issue.

(iii) Law enforcement officers or applicants who have a history of organic cardiovascular disease will necessitate further medical evaluation.

(G) Pulmonary Capacity. Officers and applicants with obstructive or restrictive spirograms (FVC or FEV1 less than 80% or FVC/FEV1 ratio of less than 70%) require further evaluation.

(H) Medications. The side effects of any prescribed medication must not interfere with the law enforcement officer's or applicant's ability to perform the critical and essential tasks of the job.

(I) Medical Recommendations.

(i) It is recommended that officers or applicants with a history of seizures or diabetes be evaluated following American College of Occupational and Environmental Medicine's Guidance for the Medical Evaluation of Law Enforcement Officers, to include post-employment monitoring.

(ii) It is recommended that officers or applicants with a history of hypertension (resting blood pressure exceeding 160 mmHg systolic and 100 mmHg diastolic (160/100) have post-employment medical monitoring.

(9) Medical Examinations.

(a) To ensure that law enforcement officers and applicants meet the minimum physical standards listed in section (8) of this rule, all officers and applicants must be examined by a licensed physician or surgeon.

(A) The licensed physician or surgeon performing the medical examination must be provided with a current DPSST Medical Examination Report (Form F-2) for completion at the time of the examination.

(B) The medical examination must conform to applicable standards of the Americans with Disabilities Act (ADA) Title 42 USC 1210.

(C) The medical examination must be completed within 180 days prior to the start of employment as a law enforcement officer.

(D) Upon completion of the medical examination, the examining licensed physician or surgeon must sign the final page of the Form F-2 (Form F-2A) attesting that the officer or applicant has met or has not met the minimum physical standards listed in section (8) of this rule.

(E) The Form F-2A must be submitted to the Department no later than 90 days after the start of employment.

(F) Law enforcement officers and applicants will not be admitted into a basic course until the Department receives a Form F-2A attesting that the minimum physical standards have been met or a physical standard waiver has been granted, as described in section (10) of this rule.

(G) DPSST may require that a law enforcement officer or applicant take a subsequent examination by a licensed physician or surgeon of the Department's choice at the expense of the officer, the applicant or the hiring agency.

(H) Certified individuals who are hired into a discipline they are not certified for are required to successfully complete a new physical examination.

(I) A law enforcement officer whose certification has lapsed will be required to complete a new medical examination prior to re-applying for certification.

(J) Individuals employed in a limited duration, administrative position, as described in OAR 259-008-0078, are exempt from the medical examination requirement.

(K) Regulatory Specialists employed by OLCC prior to July 1, 2015 who have previously completed OLCC basic training are exempt from completion of the physical examination.

(10) Physical Standard Waivers.

(a) An individual or department head may request a waiver of any physical standard in section (8) of this rule by:

(A) Submitting a request to the Department in writing; and

(B) Providing documentation or pertinent testimony that supports the physical standard waiver request.

(C) If further clarification is needed, the Department may require additional documentation or testimony from the individual or department head requesting the physical standard waiver.

(D) The requesting individual may be required to demonstrate the ability to perform the critical and essential job tasks.

(E) If the Department finds that the physical standard waiver request would not prohibit the requesting individual's ability to successfully complete training and the performance of the critical and essential tasks, the waiver will be granted.

(F) Any expense associated with providing physical standard wavier documentation or testimony will be the responsibility of the requesting individual or the requesting agency.

(G) If an individual requests and is granted a medical waiver, but does not obtain employment within one year from the date the waiver is granted, the waiver will be void.

(H) If the Department denies a request for a waiver of any physical standard in section (8) of this rule, the Department will issue Notice and proceed as provided in section (10)(b) of this rule.

(b) Contested Case Hearing Process for Denial of Physical Standard Waivers.

(A) Initiation of Proceedings: A contested case notice will be prepared when the Department denies a physical standard waiver after determining that factual data meeting the statutory and administrative rule requirements justifies the denial.

(B) Contested Case Notice: The contested case notice will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(C) Response Time: A party who has been served with a "Contested Case Notice of Intent to Deny a Waiver" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(D) Default Order: If a timely request for a hearing is not received, the Contested Case Notice will become a final order denying the requested waiver pursuant to OAR 137-003-0672.

(E) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(F) Proposed and Final Orders: In cases where a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 181A.410, 183.341

Stats. Implemented: 181A.410, 183.341

Hist.: PS 12, f. & ef. 12-19-77; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; PS 1-1987, f. & ef. 10-26-87; Renumbered from 259-010-0015, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 2-1996, f. 5-15-96, cert. ef. 5-20-96; PS 4-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 9-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 3-2001, f. & cert. ef. 8-22-01; BPSST 12-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; BPSST 5-2002(Temp), f. 4-3-02, cert. ef. 4-6-02 thru 8-1-02; BPSST 16-2002, f. & cert. ef. 7-5-2002; BPSST 20-2002, f. & cert. ef. 11-21-02; DPSST 3-2003, f. & cert. ef. 1-22-03; DPSST 6-2003, f. & cert. ef. 4-11-03; DPSST 8-2003, f. & cert. ef. 4-18-03; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 3-2006, f. & cert. ef. 2-28-06; DPSST 12-2006, f. & cert. ef. 10-13-06; DPSST 10-2007, f. & cert. ef. 10-15-07; DPSST 13-2007(Temp), f. & cert. ef. 11-1-07 thru 4-18-08; DPSST 1-2008(Temp), f. & cert. ef. 1-15-08 thru 4-18-08; DPSST 4-2008, f. & cert. ef. 4-15-08; DPSST 21-2008, f. 12-15-08, cert. ef. 1-1-09; DPSST 10-2009, f. & cert. ef. 9-21-09; DPSST 9-2011, f. & cert. ef. 6-28-11; DPSST 14-2011, f. 9-26-11, cert. ef. 10-1-11; DPSST 18-2012, f. & cert. ef. 8-27-12; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 18-2013, f. & cert. ef. 7-23-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 13-2014, f. & cert. ef. 6-24-14; DPSST 32-2014, f. 12-29-14, cert. ef. 1-1-15; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

259-008-0025
Minimum Standards for Training

(1) Basic Course:

(a) Except as provided in OAR 259-008-0035, all law enforcement officers, telecommunicators, and emergency medical dispatchers must satisfactorily complete the prescribed Basic Course, including the field training portion. The Basic Course and field training portion must be completed within twelve months from the date of employment by corrections officers and within 18 months by police officers, parole and probation officers, telecommunicators, emergency medical dispatchers and regulatory specialists.

(b) The field training program shall be conducted under the supervision of the employing department. When the field training manual is properly completed, the sign-off pages of the field training manual must be forwarded to the Department. Upon the approval of the Department, the employee shall receive credit toward basic certification.

(c) Regulatory specialists employed by OLCC prior to July 1, 2015 who have previously completed OLCC basic training may be exempted from completion of the Basic Regulatory Specialist course.

(d) Effective July 1, 2007, all police officers must satisfactorily complete the Department's physical fitness standard. The Department's physical standard is:

(A) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested upon entry at the Basic Police Course; or

(B) Successful completion of the OR-PAT at 5:30 (five minutes and thirty seconds) when tested prior to graduation from the Basic Police Course.

(e) Law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as defined in ORS 181A.355 and OAR 259-008-0005 during the last five years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon a finding that the applicant has current knowledge and skills to perform as an officer.

(f) Telecommunicators and emergency medical dispatchers who have previously completed the Basic Course, but have not been employed as a telecommunicator or EMD, as described in ORS 181A.355 and OAR 259-008-0005 for 2–1/2 years or more, must satisfactorily complete the full required Basic Course to qualify for certification. This requirement may be waived by the Department upon finding that a Telecommunicator has current knowledge and skills to perform as a Telecommunicator. There is no waiver available for an emergency medical dispatcher.

(g) Previously employed telecommunicators may challenge the Basic Telecommunications Course based on the following criteria:

(A) The department head of the applicant's employing agency shall submit the "challenge request" within the time limits set forth in the Oregon Revised Statutes and Oregon Administrative Rules.

(B) The applicant must provide proof of successful completion of prior equivalent training.

(C) The applicant must provide documentation of the course content with hour and subject breakdown.

(D) The applicant must obtain a minimum passing score on all written examinations for the course.

(E) The applicant must demonstrate performance at the minimum acceptable level for the course.

(F) Failure of written examination or demonstrated performance shall require attendance of the course challenged.

(G) The applicant will only be given one opportunity to challenge a course.

(h) Previously employed police officers, corrections officers, parole and probation officers, and regulatory specialists who are required to attend the Basic Course may not challenge the Basic Course.

(i) Except as provided in section (2)(b) of this rule, all law enforcement officers who have previously completed the Basic Course, but have not been employed as a law enforcement officer as described in ORS 181A.355 and OAR 259-008-0005 over 2–1/2 years but less than five years must complete a Career Officer Development (COD) Course if returning to the same discipline. This requirement may be waived after a staff determination that the applicant has demonstrated the knowledge and skills required for satisfactory completion of a Career Officer Development Course.

(j) Corrections and police officers who have not completed the Basic Course must begin training within 90 days of their initial date of employment.

(A) A police officer must begin training at an academy operated by the Department.

(B) A corrections officer who is employed by Oregon Department of Corrections (DOC) must begin DOC Basic Corrections Course (DOC BCC) training provided by DOC as described in section (6) of this rule.

(C) A corrections officer who is not employed by DOC must begin training at an academy operated by the Department.

(D) A 30-day extension of this time period shall be granted by the Board or its designee upon receipt of a written statement of the reasons for the delay from the officer's employer. Any delays caused by the inability of the Department to provide basic training for any reason, shall not be counted as part of the periods set forth above (refer to ORS 181A.490 and 181A.520).

(k) Law enforcement officers who have previously completed a basic training course out of state while employed by a law enforcement unit, or public or private safety agency, may, upon proper documentation of such training and with approval of the Department, satisfy the requirements of this section by successfully completing a prescribed Career Officer Development Course or other appropriate course of instruction.

(l) The basic course for police officers must include:

(A) Training on the law, theory, policies and practices related to vehicle pursuit driving;

(B) Vehicle pursuit training exercises, subject to the availability of funding; and

(C) A minimum of 24 hours of training in the recognition of mental illnesses utilizing a crisis intervention training model. A minimum of one hour of this training must be on the appropriate use of the medical health database maintained by the Department of State Police within the Law Enforcement Data System.

(2) Career Officer Development Course:

(a) Except as provided in (b), all law enforcement officers who have not been employed as such for between 2–1/2 years and five years, must satisfactorily complete a Career Officer Development (COD) Course approved by the Department.

(A) A law enforcement officer assigned to a COD Course must also complete the Board's field training program under the supervision of the employing department and submit to the Department a properly completed Field Training Manual. The Department may waive the Field Training Manual requirement upon demonstration by the employing agency that it is not necessary (refer to OAR 259-008-0025(1)(b)).

(B) A law enforcement officer who fails to achieve a minimum passing test score after completing a COD Course will be given one opportunity to remediate through self-study and re-test within 60 days of the initial date of failure.

(C) A law enforcement officer who fails to achieve a minimum passing test score after re-testing will have been determined to have failed academically and will be required to attend the next available Basic Course.

(D) A law enforcement officer who is scheduled to complete a distance learning COD Course must achieve a minimum passing test score within the timeframe set by the Department. Failure to successfully complete a distance COD Course within the timeframe set by the Department will require an officer to attend the next available COD Course.

(b) Law enforcement officers employed in a limited duration, administrative position, as described in OAR 259-008-0078, are exempted from completion of the COD course.

(c) The Department may also require successful completion of additional specified courses or remedial training.

(3) Supervision Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a first-level supervisory position must satisfactorily complete Supervision training that complies with the requirements outlined in DPSST Form F-21. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a supervisory position within a department, or is appointed from an outside department, without having completed the required Supervision training within the preceding five (5) years.

(4) Middle Management Course. All law enforcement officers, telecommunicators, and emergency medical dispatchers promoted, appointed, or transferred to a middle management position must satisfactorily complete Middle Management training that complies with the requirements outlined in DPSST Form F-22. The required training must be completed within 12 months after initial promotion, appointment, or transfer to such position. This section applies whether the individual is promoted or transferred to a middle management position within a department, or is appointed to the position from an outside department without having completed the required Middle Management training within the preceding five (5) years.

(5) Specialized Courses.

(a) Specialized courses are optional and may be presented at the Academy or regionally. The curriculum is generally selected because of relevancy to current trends and needs in public safety fields, at the local or statewide level.

(b) Specialized courses may be developed and presented by individual departments of the criminal justice system, local training districts, a college, the Department, or other interested persons. Department staff may be available to provide assistance when resources are not available in the local region.

(c) Police officers, including certified reserve officers, must be trained on how to investigate and report cases of missing children and adults.

(A) The above mandated training is subject to the availability of funds.

(B) Federal training programs must be offered to police officers, including certified reserve officers, when they are made available at no cost to the state.

(6) The DOC Basic Corrections Course.

Course Requirements:

(a) Except as provided in OAR 259-008-0035, all corrections officers hired by the Oregon Department of Corrections (DOC) must satisfactorily complete the DOC Basic Corrections Course (DOC BCC), including the field training portion. All corrections officers must complete the DOC BCC and field training portion within twelve months from the date of employment.

(b) Prior to attending a DOC BCC, a corrections officer hired by DOC must:

(A) Meet the minimum standards for employment as a law enforcement officer contained in OAR 259-008-0010;

(B) Meet the background investigation requirements for a law enforcement officer contained in OAR 259-008-0015; and

(C) Meet the minimum standards for training contained in this section.

(c) The DOC BCC must conform to the content and standard approved by the Board. The DOC BCC must include, but is not limited to:

(A) Minimum training standards for the basic certification of corrections officers employed by DOC. The minimum training developed by DOC must be adopted by the Board and must meet or exceed the minimum training standards for the basic certification of corrections officers employed by a law enforcement unit other than DOC.

(B) Minimum Course Hours. The minimum course hours are 240. DOC BCC Course hours refer to hours of training related to DPSST Instructional Goals and may include classroom, scenarios, skills sheets or other related training methodology.

(i) The DOC BCC must include hours addressing all Instructional Goals within each of the following sections:

(I) Section A — 20 hours in Legal Considerations;
(II) Section B — 37 hours in Security Procedures;
(III) Section C — 43 hours in Inmate Supervision;
(IV) Section D — 16 hours in Inmate Health Care;
(V) Section E — 16 hours in Professional Skills;
(VI) Section F — 27 hours in Personal Fitness;
(VII) Section G — 41 hours in Defensive Tactics; and
(VIII) Section H — 26 hours in Skills — Firearms.

(ii) Administrative time is not included within the hours identified in subsection (i). Administrative time may be up to 6% of the overall course hours, or a maximum of 14 hours.

(iii) A minimum of 80% of the classes in the DOC BCC must include:

(I) Participatory learning activities which include, but are not limited to, scenario training, hands-on training and problem-based learning; and

(II) Sufficient hours to address the Instructional Goals in subsection (i).

(C) Attendance Standards. Attendance rosters must be kept and copies of these rosters must be submitted to the Department at the conclusion of a student's training, or when requested by the Department. To successfully complete the DOC BCC, a student may not miss more than 10% of the DOC BCC.

(D) Notwithstanding (C) above, successful completion of the DOC BCC requires 100% attendance during classes in which the following Instructional Goals are covered:

(i) B1.2 Instruction and practice applying safe and efficient tactics for inmate monitoring, inmate counts and facility perimeter checks;

(ii) B2.2 Instruction and practice conducting appropriate, safe and systematic searches of inmates and correctional facilities;

(iii) B5.2 Instruction and practice restraining individuals in an appropriate, safe and systematic manner;

(iv) B8 Reality based scenarios that enhance a new corrections professional's understanding and application of security procedures in a correctional facility;

(v) C3.2 Instruction and practice using interpersonal skills to effectively communicate with inmates and other persons in a correctional setting;

(vi) C10 Reality-based scenarios that enhance a new corrections professional's understanding and application of inmate supervision strategies within a correctional facility;

(vii) D3.2 Instruction and practice applying appropriate intervention strategies for dealing with inmates with major mental illnesses;

(viii) G1 Decision-making skills related to the use of reasonable force to effectively overcome and control resistive and/or hostile behavior;

(ix) G2 Instruction and practice using reasonable force tactics to effectively overcome and control resistive and/or hostile behavior;

(x) G3 Reality-based scenarios that enhance a new corrections professional's understanding and application of reasonable force decision-making and tactics within a correctional facility;

(xi) H1 Basic gun-handling skills; and

(xii) H2 Basic understanding of the use, limitations and techniques of a service handgun, and proficiency in safety, proper gun-handling, marksmanship and firearms tactics.

(E) Conduct. An individual attending a DOC BCC is expected to uphold the minimum moral fitness standards for Oregon public safety officers during their training. DOC will document the date, type, and disposition of any student misconduct relating to the minimum standards for correctional officers. These include, but are not limited to, the following Zero Tolerance Offenses:

(i) Any unlawful act;
(ii) Dishonesty, lying or attempting to conceal violations;
(iii) Cheating;
(iv) Harassment; or
(v) Alcohol possession or use at the training venue.

(F) Course Curriculum.

(i) The DOC BCC will be based on the critical and essential job tasks identified in the most current Job Task Analysis for corrections officers provided to DOC by the Department.

(ii) The DOC BCC will incorporate the most current Instructional Goals provided to DOC by the Department.

(iii) The DOC BCC will incorporate curriculum updates provided to DOC by the Department, when those updates address the critical and essential job tasks or Instructional Goals referenced above. Testing Requirements:

(G) Academic Testing. Academic testing will consist of written test questions that are valid, create reasonable academic rigor, and require students to demonstrate knowledge and application of the essential tasks identified within the DOC BCC curriculum. DOC must administer examinations and maintain a file of examinations conducted.

(i) Academic Testing Passing Score. Except as provided below, to successfully complete the DOC BCC, students must achieve a minimum score of 75% on each academic test. If a student does not attain a 75% score, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. After remediation, a student will be allowed one opportunity to re-test and achieve a minimum score of 75%.

(ii) Students must attain a score of 100% on all academic test questions on Use of Force topics. If a student fails to attain a 100% score on Use of Force topics, and DOC retains the student as an employee in a certifiable position, DOC must remediate the student. Remediation must include the student completing the DPSST Use of Force Remediation form to demonstrate understanding of each topic missed.

(H) Skills Testing. Skills testing will consist of evaluations documented by use of Skills Sheets during which students must demonstrate competence and achieve a "pass" score in each skill tested.

(I) Test Security and Integrity.

(i) DOC must develop and strictly enforce measures to ensure the security of test questions and integrity of all testing processes.

(ii) DOC must randomize the order of test questions and must develop a sufficient bank of test questions to ensure that students who fail to achieve a passing score and are remediated are given a randomized test that includes some questions that are different than those in the test the student originally failed.

(J) Instructor Requirements: Instructor Qualifications.

(i) All instructors for the DOC BCC must meet or exceed the Instructor Certification standards for instructors at DPSST Basic courses and must be currently certified by the Department in the categories instructed.

(ii) DOC must verify that an instructor providing instruction within a category has the requisite subject matter knowledge, skills and abilities.

(K) The equivalency of the DOC BCC is subject to approval by the Board and verified by ongoing audits.

(L) DOC BCC documentation must include, but is not limited to:

(i) Training schedules, to include all training related to DOC BCC hours, such as classroom, skills sheets, online training and scenarios;
(ii) Classes with associated Instructional Goals and related hours;
(iii) Participatory learning activities within each class;
(iv) Testing Measures for each class; and
(v) Attendance rosters.

(M) DOC BCC Class Training Schedule documentation for each DOC BCC must include, but is not limited to:

(i) Notification of all anticipated DOC BCC training dates to include DOC BCC remediation training;
(ii) Times of DOC BCC training;
(iii) Locations of DOC BCC training; and
(iv) Instructors scheduled to provide training.

(N) Ongoing DOC BCC student documentation during each DOC BCC must include, but is not limited to:

(i) A list of students scheduled to attend training;

(ii) Student names, DPSST numbers, dates of employment and employing institutions;

(iii) Identification of any class or skill failure requiring remediation to including, but not limited to, the date and location of failure, date and location of remediation, the instructor who had oversight over remediation, and the result of remediation.

Certification Requirements

(O) Officer Certification. The applicant must meet the minimum standards for certification as a corrections officer contained in OAR 259-008-0060. DOC must submit the following documents at the time Basic certification is requested:

(i) F-7 (Application for Certification);

(ii) F-6 (Course Roster) for DOC BCC including the number of hours and the final cumulative score;

(iii) F-6 (Course Roster) for DOC Advanced Corrections Course with attached itemized list of classes attended;

(iv) Proof of current First Aid/CPR;

(v) F-11 (Criminal Justice Code of Ethics); and

(vi) FTO Manual Completion Report.

(P) Course Certification. Each DOC BCC class must be certified before officers who complete that BCC may be certified. The following Class Notebook requirements are needed prior to course certification:

(i) F-6 DPSST Class Roster, listing all students who began the course, passed or failed the course, and those who did not complete the course.

(ii) Curriculum for all components of the BCC, to include classroom, skills, online, and scenario training. The curriculum components must include lesson outlines, PowerPoint, handouts and other related documents to support each class.

(iii) Schedule of classes within the course, to include roster for each class, weekly schedule outlining the dates of training, the location of training, the phases of training, the number of hours for each class, the name of the class, the instructors who provided instruction.

(iv) Documentation of all training failures and remediation, to include class, date and location of training failure, the type of failure, the date, location and instructor who had oversight over the remediation of the failure and the result of the remediation.

(v) Testing measures, to include test questions and answers, individual student tests, student scores by student name, DPSST number and date of examination, and the overall class percentage.

(vi) Individual student records, to include evaluation forms, PQC qualification card, training records, and absence reports.

(vii) All skill sheets for every student completing some or all of the required skill sheets.

(7) Waiver. A person requesting a waiver of any course requirements is required to submit to the Department any supporting documents or pertinent expert testimony and evaluation requested. Any expense associated with providing such documentation, testimony or evaluation shall be borne by the person requesting the waiver or the requesting agency.

(8) Notwithstanding this rule, the Department may prescribe additional training for Basic certification, up to and including completion of the full Basic course, in situations in which previous periods of employment have been limited.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 181A.410
Stats. Implemented: 181A.410
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1982, f. & ef. 7-2-82; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0030, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 5-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 2-2002, f. & cert. ef. 2-6-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 15-2002, f. & cert. ef. 7-5-02; DPSST 14-2003, f. & cert. ef. 12-22-03; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 3-2007, f. & cert. ef. 1-12-06; DPSST 3-2007, f. & cert. ef. 1-12-07; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 14-2008, f. & cert. ef. 10-15-08; DPSST 3-2009, f. & cert. ef. 4-8-09; DPSST 8-2009(Temp), f. & cert. ef. 9-15-09 thru 3-1-10; DPSST 15-2009, f. & cert. ef. 12-15-09; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 2-2011, f. 3-23-11, cert. ef. 5-1-11; DPSST 13-2012(Temp), f. & cert. ef. 5-8-12 thru 10-1-12; DPSST 17-2012, f. & cert. ef. 8-24-12; DPSST 6-2013, f. & cert. ef. 3-8-13; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 2-2014, f. & cert. ef. 1-2-14; DPSST 10-2014, f. & cert. ef. 4-10-14; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

259-008-0040
Period of Service

(1) A law enforcement officer, telecommunicator, or emergency medical dispatcher who is not certified must complete no less than nine months of service in the field in which they are employed, to be eligible for certification. This requirement does not apply to a department head.

(2) No person may be employed as a police officer, parole and probation officer, telecommunicator, emergency medical dispatcher, or regulatory specialist for more than 18 months unless that officer, telecommunicator, emergency medical dispatcher or regulatory specialist has been certified under the provisions of ORS 181A.355 to 181A.420 and the certification has neither lapsed nor been revoked.

(3) No person may be employed as a corrections officer for more than one year unless that officer has been certified under the provisions of ORS 181A.355 to 181A.420 and the certification has neither lapsed nor been revoked.

(4) For purposes of this rule, the Department will count all periods of full-time employment identified in subsection (2) and (3) in the aggregate if:

(a) An individual was reclassified from a certifiable position to a non-certifiable position for a period of less than six months; and

(b) The individual is then returned to a certifiable position in the same discipline, while employed with the same employer.

(5) The Board or its designee, upon the facts contained in an affidavit accompanying the request for an extension, may find good cause for failure to obtain certification within the time period described in section (2) or (3) of this rule. If the Board finds that there is good cause for such failure, the Board may extend for up to one year the period that a person may serve as a law enforcement officer, telecommunicator, or emergency medical dispatcher without certification. The grant or denial of such an extension is within the sole discretion of the Board.

(6) The Board, or its designee, may further extend the time period for a law enforcement officer, telecommunicator, or emergency medical dispatcher who has been deployed to full-time active military duty during the time period described in section (2) or (3) of this rule. Conditions for certification upon an individual's return to his or her employer, may include, but are not limited to:

(a) Remediation of Basic course;

(b) Successful completion of Career Officer Development Course;

(c) Demonstrated proficiency of skills and ability;

(d) F-2 or F-2T (Medical Form).

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: 181A.410
Stats. Implemented: 181A.410
Hist.: PS 12, f. & ef. 12-19-77; Renumbered from 259-010-0020, PS 1-1983, f. & ef. 12-15-83; Renumbered from 259-010-0047, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; DPSST 7-2005, f. & cert. ef. 8-5-05; DPSST 3-2010, f. 4-12-10, cert. ef. 5-1-10; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

259-008-0060
Public Safety Officer Certification

(1) Basic, Intermediate, and Advanced Certificates are awarded by the Department to law enforcement officers and telecommunicators meeting prescribed standards of training, education, and experience. Emergency medical dispatchers may be awarded basic certification only.

(2) Supervisory, Management, and Executive Certificates are awarded to law enforcement officers and telecommunicators meeting the prescribed standards in section (1) of this rule and the ranks established by the employing law enforcement units, or public or private safety agencies.

(3) Basic certification is mandatory and must be acquired by all police officers, parole and probation officers, telecommunicators, emergency medical dispatchers, and regulatory specialists within 18 months of employment, and by all corrections officers within 12 months of employment, unless an extension is granted by the Department.

(4) To be eligible for the award of a certificate, law enforcement officers must:

(a) Be full-time employees as defined in OAR 259-008-0005 or part-time parole and probation officers, as defined in OAR 259-008-0066.

(b) Meet the prescribed minimum employment standards in OAR 259-008-0010;

(c) Law enforcement officers must subscribe to and swear or affirm to abide by the Criminal Justice Code of Ethics (Form F-11); and

(d) Have valid first aid and cardiopulmonary resuscitation (CPR) certification.

(5) To be eligible for the award of a certificate, telecommunicators and emergency medical dispatchers must:

(a) Meet the prescribed minimum employment standards as established by OAR 259-008-0011;

(b) Subscribe to and swear or affirm to abide by the Telecommunicator Code of Ethics (Form F-11T); and

(c) Have valid first aid and cardiopulmonary resuscitation (CPR) certification.

(6) Applications for certification must:

(a) Be submitted on Form F-7 (Application for Certification), with all applicable sections completed and signed by the applicant.

(b) Be signed by the employing agency's department head or authorized representative recommending that requested certification be issued. The department head's signature affirms that the applicant meets the minimum standards for employment, training, education, and experience and is competent to hold the level of certification being applied for.

(7) When a department head is the applicant, the above recommendation must be made by the department head's appointing authority, such as the city manager or mayor, or in the case of a specialized agency, the applicant's superior. Elected department heads are authorized to sign as both applicant and department head.

(8) In addition to the requirements in sections (1) through (7) of this rule, each applicant must have completed the designated education and training, combined with the prescribed corrections, parole and probation, police, regulatory specialist or telecommunications experience for the award of an Intermediate, Advanced, Supervisory, Management, or Executive Certificate.

(a) Each quarter credit unit granted by an accredited college or university which operates on a quarterly schedule will equal one education credit.

(b) Each semester credit unit granted by an accredited college or university operating on a semester schedule will equal 1-1/2 education credits.

(c) The Department must receive sealed official transcripts from a college prior to entering college credit on an individual's official record.

(9) Training:

(a) Basic courses certified by the Department will be approved by the Board.

(b) The Department may record training hours for departmental or other in-service training which is recorded and documented in the personnel files of the trainee's department. These records must include the subject, instructor, classroom hours, date, sponsor, and location.

(c) Training completed in other states, military training, and other specialized training, if properly documented, may be accepted, subject to staff evaluation and approval. These records must include the subject, date, and classroom hours, and must be certified true copies of the original.

(d) College credits earned may be counted for either training hours or education credits, whichever is to the advantage of the applicant.

(e) College credit awarded based on training completed may be applied toward either training hours or education credits, whichever is to the advantage of the applicant.

(A) Prior to applying an applicant's college credit toward any upper level of certification, the Department must receive documentation of the number of college credits awarded based on training attended.

(B) The training hours identified under section (9) (e) (A) and submitted as college credit toward an upper level of certification will not be included in any calculation of whether the applicant has earned sufficient training hours to qualify for the requested certification level.

(i) Any college credit received for practical or skills-based training attended will be calculated at a ratio of 1:20 hours for each quarter credit, for purposes of training hour deductions.

(ii) Any college credit received for academic training attended will be calculated at a ratio of 1:10 hours for each quarter credit, for purposes of training hour deductions.

(f) No credit can be applied toward both education credits and training hours when originating from the same training event.

(10) Experience/Employment:

(a) Experience gained as a corrections officer, parole and probation officer, police officer, or regulatory specialist employed full time with municipal, county, state, or federal agencies, may be accepted if the experience is in the discipline the certification is requested and is approved by the Department.

(b) Experience acquired as a telecommunicator or emergency medical dispatcher employed with a public or private safety agency may be accepted if the experience is in the discipline the certification is requested and is approved by the Department.

(c) Experience acquired as a certified part-time telecommunicator or emergency medical dispatcher as defined in OAR 259-008-0005, or part time parole and probation officer as defined under 259-008-0005 and 259-008-0066, will count on a pro-rated basis.

(d) Partial credit may be given to law enforcement experience that is not in the discipline the certification is requested, when supported by job descriptions or other documentary evidence. In all cases, experience claimed is subject to evaluation and approval by the Department.

(e) For the purpose of this rule, creditable service time for experience will not accrue under the following circumstances:

(A) When an individual is employed in a casual, seasonal, or temporary capacity;

(B) When an individual is on leave, other than full-time military leave;

(C) From the date a public safety officer's certification is suspended until it is reinstated by the Department;

(D) When a public safety officer fails to obtain Basic certification within a mandated timeframe and is prohibited from being employed as a public safety officer; or

(E) When a public safety officer is employed in a limited duration, administrative position, as described in OAR 259-008-0078.

(11) The Basic Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Basic Certificate:

(a) Applicants must have completed a period of service in a certifiable position of not less than nine months with one or more law enforcement units or public or private safety agencies in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed the required Basic Course as prescribed in OAR 259-008-0025, in the discipline the certification is requested or have completed equivalent training, as determined by the Department.

(12) The Intermediate Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Intermediate Certificate:

(a) Applicants must possess a Basic Certificate in the discipline the certification is requested; and

(b) Applicants must have acquired a combination of work experience in the discipline the certification is requested, along with training hours and college education credits or college degree, as identified in the Intermediate/Advanced Certification Charts. [Table not included. See ED. NOTE.]

(A) Applicants may determine eligibility for intermediate certification by referencing either:

(i) The "All Disciplines" chart (referred to as the old chart). This is the original certification chart and may be referenced by all police, corrections, parole and probation, regulatory specialist and telecommunicator applicants until October 31, 2015; or

(ii) The "Police/Corrections/Parole & Probation/Regulatory Specialist" chart. This certification chart became effective November 1, 2012, and may be referenced by police, corrections, regulatory specialists and parole and probation applicants; or

(iii) The "Telecommunicators" chart. This certification chart became effective November 1, 2012, and may be referenced by telecommunicator applicants.

(B) Applicants may apply for certification using the chart that best fits their experience, education and training.

(C) If applying using either the "Police/Corrections/Parole & Probation/Regulatory Specialist" chart or the "Telecommunicators" chart in section (12)(b)(A)(ii) and (iii) of this rule, training hours originating from a single training event used to meet the training hour requirement for intermediate certification cannot be applied towards future levels of certification.

(c) The required years of experience are for the purpose of developing and demonstrating competency at the intermediate level. The signature of the agency head or authorized representative on an F-7 at the intermediate level represents the agency's attestation that the applicant is performing competently at the intermediate level.

(13) The Advanced Certificate. In addition to the requirements in sections (1) through (7) of this rule, the following are required for the award of the Advanced Certificate:

(a) Applicants must possess or be eligible to possess the Intermediate Certificate in the discipline the certification is requested; and

(b) Applicants must have acquired a combination of work experience in the discipline the certification is requested, along with training hours and college education credits or college degree, as identified in the Intermediate/Advanced Certification Charts. [Table not included. See ED. NOTE.]

(A) Applicants may determine eligibility for advanced certification by referencing either:

(i) The "All Disciplines" chart (referred to as the old chart). This is the original certification chart and may be referenced by all police, corrections, parole and probation, regulatory specialist and telecommunicator applicants until October 31, 2015; or

(ii) The "Police/Corrections/Parole & Probation/Regulatory Specialist" chart. This certification chart became effective November 1, 2012, and may be referenced by police, corrections, regulatory specialist and parole and probation applicants; or

(iii) The "Telecommunicators" chart. This certification chart became effective November 1, 2012, and may be referenced by Telecommunicator applicants.

(B) Applicants may apply for certification using the chart that best fits their experience, education and training.

(C) If applying using either the "Police/Corrections/Parole & Probation/Regulatory Specialist" chart or the "Telecommunicators" chart in section (13) (b) (A) (ii) and (iii) of this rule, training hours originating from a single training event used to meet the training hour requirement for advanced certification cannot be applied towards future levels of certification.

(c) The required years of experience are for the purpose of developing and demonstrating competency at the advanced level. The signature of the agency head or authorized representative on an F-7 at the advanced level represents the agency's attestation that the applicant is performing competently at the advanced level.

(14) The Supervisory Certificate. In addition to requirements in sections (1) through (7) of this rule, the following are required for the award of the Supervisory Certificate:

(a) Applicants must possess or be eligible to possess the Advanced Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 45 education credits as defined in sections (8) and (9) of this rule;

(c) Applicants must have satisfactorily completed the prescribed supervision training within five years of the application for the Supervisory Certificate; and

(d) Applicants must be presently employed in and have satisfactorily performed the duties of a first-level supervisor as defined in OAR 259-008-0005.

(A) The applicant's department head must attest that the first-level supervisor duties were performed for a period of one year.

(B) The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (14) (c) or (d), provided the employing agency demonstrates that the applicant performs supervisory duties on a regular basis.

(15) The Management Certificate. In addition to requirements in sections (1) through (7) of this rule, the following are required for the award of the Management Certificate:

(a) Applicants must possess or be eligible to possess the Supervisory Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in sections (8) and (9) of this rule;

(c) Applicants must have satisfactorily completed the prescribed middle management training within five years of the application for the Management Certificate; and

(d) Applicants must be presently employed in and must have satisfactorily served in a middle management position as a department head or assistant department head as defined in OAR 259-008-0005 for a period of two years. The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (15)(c) or (d), provided the employing agency demonstrates that the applicant performs management duties on a regular basis.

(16) The Executive Certificate. In addition to requirements in section (1) through (7) of this rule, the following are required for the award of the Executive Certificate:

(a) Applicants must possess or be eligible to possess the Management Certificate in the discipline the certification is requested;

(b) Applicants must have satisfactorily completed no less than 90 education credits as defined in sections (8) and (9) of this rule;

(c) Applicants must have satisfactorily completed 100 hours of Department-approved executive level training within five years of the application for the Executive Certificate; and

(d) Applicants must be presently employed in and must have satisfactorily served in a middle management position as department head or assistant department head, as defined in OAR 259-008-0005 for a period of two years. The required experience must have been acquired within five years of the date of the application.

(e) Upon request of the employing agency, the Department may waive the requirements of section (16) (c) or (d), provided the employing agency demonstrates that the applicant performs the duties of a department head or assistant department head on a regular basis.

(17) Multi-discipline Certification. Upon receiving written request from the department head stating a justified and demonstrated need exists for the efficient operation of the employing agency, the Department may approve multi-discipline certification for law enforcement officers who meet all minimum employment, training and education standards established in OAR 259-008-0010, 259-008-0011, 259-008-0025, and this rule, in the disciplines which they are requesting certification. The officer must meet the following requirements for the award of multi-discipline certification:

(a) Basic certification. A law enforcement officer who is certified in one discipline may apply for multi-discipline certification if employed in or transferred to another discipline within the same law enforcement unit. The applicant must demonstrate completion of all training requirements in the discipline in which certification is being requested.

(b) Higher levels of certification. Law enforcement officers who possess higher levels of certification in one discipline may, upon employment in or transfer to another discipline within the same law enforcement unit, apply for the same level of certification after completion of nine months experience in the discipline in which they are requesting certification and meeting the requirements for those higher levels of certification as outlined in this rule. This section does not apply to the emergency medical dispatcher discipline since it only exists at the basic certification level.

(c) Retention of multi-discipline certification. In order to maintain multi-discipline certification, each discipline in which certification is held requires successful completion and documentation of training hours by the holders of the certificates every 12 months. The training must be reported to the Department, as follows:

(A) For a law enforcement officer who also holds emergency medical dispatcher certification, a minimum of four hours of training specific to the emergency medical dispatcher discipline must be reported annually as required under OAR 259-008-0064.

(B) For a law enforcement officer who also holds telecommunicator certification, a minimum of 12 hours of training specific to the telecommunicator discipline must be reported annually as required under OAR 259-008-0064.

(C) A minimum of 20 hours of training specific to each law enforcement discipline in which certification is held must be reported annually as required under subsections (h) through (l) of this section.

(d) The same training may be used for more than one discipline if the content is specific to each discipline. It is the responsibility of the agency head to determine if the training is appropriate for more than one discipline.

(e) The maintenance training cycle for law enforcement officers who are certified in more than one discipline begins on July 1st of each year and ends on June 30th the following year.

(f) The employing agency must maintain documentation of all required maintenance training completed.

(g) If reported on a Form F-6 (Course Attendance Roster), required maintenance training must be submitted to the Department by June 30th of each year. Training reported on a Form F-6 will result in credit for training hours. No training hours will be added to a law enforcement officer's record, unless accompanied by a Form F-6 Course Attendance Roster.

(h) On or after July 1st of each year, the Department will identify all law enforcement officers who are deficient in maintenance training according to Department records. A Contested Case Notice of Intent to Suspend will be prepared and served on the law enforcement officer pursuant to ORS 181A.640(c) and these rules. A copy of the Notice will be sent to the officer's employing agency.

(A) All Contested Case Notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) A law enforcement officer who has been served with a Contested Case Notice of Intent to Suspend has 30 days from the date of mailing or personal service of the notice to notify the Department of the training status identified as deficient by submitting a Form F-16 (Maintenance Training Log) to the Department identifying the maintenance training completed during the previous one year reporting period or to file a written request for hearing with the Department.

(C) Maintenance training hours reported to the Department on a Form F-16 will be used solely to verify completion of maintenance training requirements and will not be added to an officer's training record.

(i) Default Order: If the required training is not reported to the Department or a request for a hearing received within 30 days from the date of the mailing or personal service of the notice, the Contested Case Notice will become a final order suspending certification pursuant to OAR 137-003-0672.

(j) A law enforcement officer with a suspended certification is prohibited from being employed in any position for which the certification has been suspended.

(k) Recertification following a suspension may be obtained, subject to Department approval, by submitting the following:

(A) A written request from the employing agency head requesting recertification, along with a justification of why the maintenance training was not completed; and

(B) Verification that the missing training was completed.

(l) Failure to complete the required maintenance training may not result in a suspension of certification if the law enforcement officer is on leave from a public or private safety agency.

(23) Certificates and awards are the property of the Department. The Department has the power to revoke or suspend any certificate or award as provided in the Act.

[ED. NOTE: Forms & Tables referenced are available from the agency.]

Stat. Auth.: ORS 181A.410, 181A.490, 181A.520, 181A.530, 181A.560 & 181A.570

Stats. Implemented: 181A.410, 181A.490, 181A.520, 181A.530, 181A.560 & 181A.570
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1979, f. 10-1-79, ef. 10-3-79; PS 1-1980(Temp), f. & ef. 6-26-80; PS 2-1980, f. & ef. 12-8-80; PS 1-1981, f. 9-26-81, ef. 11-2-81; PS 1-1983, f. & ef. 12-15-83; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0055, PS 1-1990, f. & cert. ef. 2-7-90; PS 1-1995, f. & cert. ef. 3-30-95, PS 2-1995, f. & cert. ef. 9-27-95; PS 7-1997, f. 3-20-97, cert. ef. 3-25-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 1-1999, f. & cert. ef. 3-9-99; BPSST 6-1999, f. & cert. ef. 7-29-99; BPSST 11-2000, f. 11-13-00, cert. ef. 11-15-00; BPSST 13-2001(Temp), f. & cert. ef. 10-26-01 thru 4-10-02; BPSST 8-2002, f. & cert. ef. 4-3-02; BPSST 21-2002, f. & cert. ef. 11-21-02; DPSST 1-2004, f. 1-16-04, cert. ef. 1-20-04; DPSST 5-2004, f. & cert. ef. 4-23-04; DPSST 2-2008, f. & cert. ef. 1-15-08; DPSST 9-2008, f. & cert. ef. 7-15-08; DPSST 22-2008, f. & cert. ef. 12-29-08; DPSST 4-2009, f. & cert. ef. 4-8-09; DPSST 1-2010, f. & cert. ef. 1-11-10; DPSST 2-2010, f. & cert. ef. 3-15-10; DPSST 4-2010, f. & cert. ef. 6-2-10; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 8-2010, f. & cert. ef 8-13-10; DPSST 8-2011, f. & cert. ef. 6-24-11; DPSST 17-2011, f. & cert. ef. 12-23-11; DPSST 23-2012, f. 10-25-12, cert. ef. 11-1-12; DPSST 31-2012, f. & cert. ef. 12-27-12; DPSST 15-2013, f. & cert. ef. 6-25-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 12-2014, f. & cert. ef. 6-24-14; DPSST 28-2014(Temp), f. & cert. ef. 10-8-14 thru 4-6-15; DPSST 1-2015, f. & cert. ef. 1-5-15; DPSST 7-2015, f. & cert. ef. 3-24-15; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

259-008-0100
Miscellaneous Activities of the Board or Department

(1) The Board or Department may make or encourage studies of any aspect of corrections, parole and probation, telecommunications, regulatory specialist, emergency medical dispatch, fire, or police administration, including the stimulation of research by public and private agencies which shall be designed to improve the Criminal Justice System.

(2) The Board or Department may cooperate and consult with counties, municipalities, agencies of this State, other governmental agencies, and with universities, colleges, community colleges, and other institutions concerning the development of criminal justice training schools and programs or courses of instruction.

(3) The Board or Department may cooperate and consult with official bodies or individuals charged by law with the responsibility for corrections, parole and probation, regulatory specialist, telecommunications, emergency medical dispatch, fire or police selection and training standards in other states.

(4) The Board or Department may periodically publish or recommend that other governmental agencies publish curricula, manuals, lesson plans, brochures, newsletters, and other materials to aid departments in achieving the objectives of the Act.

(5) The Department may direct, operate, or sponsor training schools and set reasonable rules and regulations for the operation and use by trainees.

(6) The Department may, on request, issue retirement cards to Department-certified public safety officers who have honorably served the citizens of Oregon and who have honorably retired from their agency.

(a) For the purposes of this rule, "honorably retired" means reaching the State of Oregon's recognized retirement age and retiring in good standing from a certified position as a public safety officer with a minimum of five years of full-time public safety experience in Oregon.

(b) A public safety officer who has sustained a permanent disability that prevents them from returning to their certifiable position may qualify for a retirement card if the public safety officer has served a minimum of five years as a full-time public safety officer in Oregon.

(c) The request for a retirement card must be made by the agency where the public safety officer was last employed prior to retirement. The request must be made using a Form F-30 Retirement Card Request Form.

(d) The Department will issue only one retirement card per qualifying public safety officer.

(e) If a retirement card is lost or damaged, the Department may issue a replacement card if requested by the applicable public safety officer. Additional verification of original eligibility may be required.

(7) In accordance with the Oregon Revised Statutes, the Board, in consultation with the Department, designates the following classifications of public safety personnel killed in the line of duty who may be honored at the Law Enforcement Memorial Wall.

(a) Eligibility: For the purpose of placing names, law enforcement officer includes, as defined in ORS 181A.355, police officer, reserve officer, corrections officer, parole and probation officer, and regulatory specialist. Also included are federal law enforcement officers assigned to or performing law enforcement duties in Oregon.

(b) Criteria for placement on the Law Enforcement Memorial Wall: Officers who suffered an "in-the-line-of-duty" death.

(A) "In the line of duty death" means a fatal injury which is the direct or proximate result of any enforcement action or emergency response resulting in death or death directly resulting from law enforcement training for enforcement action or emergency response that the law enforcement officer is authorized or obligated to perform by law, rule, regulation, or condition of employment or service while on or off duty.

(B) A fatal injury may include a medical condition which arises out of law enforcement actions or training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing her/his death during a continuous period of hospitalization resulting from a law enforcement action.

(C) Not included under this definition are deaths attributed to natural causes (except when a medical condition arises out of law enforcement action or law enforcement training for enforcement action or emergency response causing an officer's death immediately or within 24 hours or causing his/her death during a continuous period of hospitalization immediately following the taking of law enforcement action). Deaths attributed to voluntary alcohol or controlled substance abuse, deaths caused by the intentional misconduct of the officer, deaths caused by the officer's intention to bring about his or her own death, and deaths attributed to an officer performing his or her duty in a grossly negligent manner at time of death are not included under this definition.

(D) When there is doubt arising from circumstances of the officer's death or with respect to individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Board on Public Safety Standards and Training Executive Committee.

(c) Exclusions from the Law Enforcement Memorial Wall:

(A) Officers whose deaths are attributed to natural causes are not eligible for inclusion in the wall; or

(B) A death that is attributed to the officer's voluntary alcohol or substance abuse use; or

(C) Death caused by intentional misconduct of the officer; or

(D) Death caused by the officer's intention to bring about his or her own death; and

(E) Death attributed to an officer performing his or her duty in a grossly negligent manner at the time of death.

(d) When there is doubt arising from the circumstances of the officer's death or with respect to the individual status as a law enforcement officer, the matter shall be resolved by a majority vote of the Executive Committee.

(e) The costs of maintenance and relocation of the Law Enforcement Memorial Wall and the costs of an annual memorial service honoring persons killed in the line of duty shall be paid out of the Police Memorial Trust Fund.

(8) It is the responsibility of the Governor's Commission on the Law Enforcement Medal of Honor to establish qualification criteria for nomination for the Law Enforcement Medal of Honor and the Law Enforcement Medal of Ultimate Sacrifice.

(a) Eligibility. For the purposes of nomination, law enforcement officer includes, but is not limited to, a police officer, reserve officer, corrections officer, or parole and probation officer. Also included are any state, county, municipal, federal or tribal individual who is:

(A) Commissioned; and

(B) Responsible for enforcing criminal laws in the state of Oregon.

(b) Officers nominated for the Law Enforcement Medal of Honor must have distinguished themselves by exceptionally honorable and meritorious conduct while in the performance of duty.

(A) "Exceptionally honorable and meritorious conduct" means an officer has distinguished themselves conspicuously by gallantry and fortitude at the risk of their life "above and beyond" the call of duty while performing or fulfilling their responsibilities as a law enforcement officer. It involves risk of life and is an act of bravery, self-sacrifice so conspicuous as to clearly distinguish the individual above their comrades.

(B) "While in the performance of duty" requires acting in an official capacity and performing a law enforcement function.

(C) The exceptionally honorable and meritorious conduct must have occurred on or after January 1, 2006.

(c) Officers nominated for the Law Enforcement Medal of Ultimate Sacrifice must have died while performing duties as a law enforcement officer or have been killed because of employment as a law enforcement officer. The death must have occurred on or after January 1, 2011.

(d) Process for Nominations.

(A) All nominations must be submitted on an official nomination form to the Department of Public Safety Standards and Training.

(B) All nominations must be postmarked no later than one year after the date an officer has performed exceptionally honorable and meritorious conduct or the death of an officer.

(C) All nominations must be approved by the Department head or designee of the nominee.

(D) Commission members are prohibited from voting on any nomination submitted from their employing agency.

(E) Notwithstanding subsection (D), Commission members must unanimously approve nominations for the Law Enforcement Medal of Honor.

(F) Any supporting documentation including, but not limited to, police reports, media reports, pictures, testimonials or affidavits, must accompany the nomination form. If necessary, the Commission may request additional information. The request will be in writing and addressed to the individual identified as the contributor on an official nomination form.

(e) Award of the Law Enforcement Medal of Honor and Law Enforcement Medal of Ultimate Sacrifice.

(A) All awards will be presented by the Governor or the Governor's designee at an appropriate time determined by the Commission and approved by the Governor.

(B) An individual or family member receiving the Law Enforcement Medal of Honor or Law Enforcement Medal of Ultimate Sacrifice will retain the option for a public or private ceremony.

(C) The Commission will determine the protocol for all award ceremonies.

Stat. Auth.: ORS 176.260 & 181A.410
Stats. Implemented: ORS 176.260 & 181A.410
Hist.: PS 12, f. & ef. 12-19-77; PS 1-1985, f. & ef. 4-24-85; Renumbered from 259-010-0080, PS 1-1990, f. & cert. ef. 2-7-90; PS 2-1995, f. & cert. ef. 9-27-95; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 16-2001(Temp), f. & cert. ef. 10-26-01 thru 4-5-02; Administrative correction 5-7-02; BPSST 17-2002, f. & cert. ef. 7-5-02; DPSST 12-2007, f. & cert. ef. 10-15-07; DPSST 10-2012, f.& cert. ef. 4-9-12; DPSST 13-2013, f. & cert. ef. 6-24-13; DPSST 1-2014, f. & cert. ef. 1-2-14; DPSST 11-2015, f. 6-23-15, cert. ef. 7-1-15; DPSST 18-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: To show DPSST's processes for granting an interim investigator's license and provide consistency with statute.
Adm. Order No.: DPSST 19-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15
Notice Publication Date: 12-1-2015
Rules Amended: 259-061-0120
Subject: ORS 703.430 outlines the requirements the Department must following when issuing an interim investigator's license. As part of the review of the Private Security and Investigator Oregon Administrative Rules, OAR 259-061-0120 was evaluated regarding issuing an interim investigator's license. The rule language has been revised to clearly show the Department's process for granting an interim investigator's license and to provide consistency with statute.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-061-0120
Interim Investigators License

(1) A person may request an interim investigator's license to perform investigative work while the person's application for licensure as a private or provisional investigator is being processed by the Department if the person:

(a) Only provides investigatory services for a licensed private investigator, an attorney, or another employer who has requested that the person be issued an interim investigator's license;

(b) Has never been convicted of, pled guilty or no contest to, or forfeited security for a crime;

(c) Has submitted to the Department all required application materials as prescribed in OAR 259-061-0020, including all fees and proof of a passing score on the Private Investigatory Proficiency Exam; and

(d) Has submitted to the Department a signed Interim Investigator License (PI-20), postmarked on or before the first day the applicant performs investigatory services.

(2) The interim license is valid for 120 days from the date the PI-20 is submitted, until the private investigator or provisional license is issued by the Department or upon written notice that the Department has administratively terminated the license for any reason.

Stat. Auth.: ORS 703.430 & 703.480
Stats. Implemented: ORS 703.430 & 703.480
Hist.: DPSST 7-2006, f. & cert. ef. 5-15-06; DPSST 19-2015, f. & cert. ef. 12-22-15

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Rule Caption: Clarifies the crowd management exemption; adds definitions.
Adm. Order No.: DPSST 20-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15
Notice Publication Date: 12-1-2015
Rules Amended: 259-060-0010, 259-060-0015, 259-060-0145
Subject: During a Private Security crowd management meeting in 2014, it became apparent that vagueness in the statutory language regarding the crowd management exemption (ORS 181.871 (k)(2)) was causing confusion in the industry about who is required to be certified and who is exempt. The Event Security/Hospitality Subcommittee met in 2014 and 2015 to discuss the statutes and Oregon Administrative Rules (OAR) regarding crowd management. They decided on several recommendations to present to the Private Security and Investigator Policy Committee (PSIPC), including filing a temporary rule.

On May 19, 2015, the PSIPC met and discussed the Event Security/Hospitality Subcommittee recommendations. The PSIPC recommended approving the amended language to the Board on Public Safety Standards and Training (Board) with an additional amendment to the definition of Crowd Management, subsection (c), to include that screening individuals for entry into an organized event does not include physical pat-down searches. Further, the PSIPC authorized Director Gabliks to approve filing a temporary rule while the permanent rulemaking process was underway. The temporary rule was filed on May 19, 2015. On July 1, 2015, Legislative Council requested that the temporary rule language filed on May 19, 2015, be amended to correct an incorrect statutory reference in OAR 259-060-0015 (2) (a) (b). Legislative Council also asked that the temporary rule language in 259-060-0145 (1) be re-worded to more clearly state when individuals performing crowd management or guest services are exempt from private security professional certification. To facilitate Legislative Council's request, the proposed rule changes to OAR 259-060-0010, OAR 259-060-0015 and OAR 259-060-0145 were removed from the Board's consent agenda for correction and review by the PSIPC. On August 18, 2015, the PSIPC met and discussed the proposed amendments to OAR 259-060-0010, OAR 259-060-0015 and OAR 259-060-0145. The PSIPC recommended approving the amended language and the Board affirmed their recommendation.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-060-0010
Definitions

(1) "Accreditation Program Manager" means a person who is designated as the administrator of an employer accredited training program and is primary liaison with the Department.

(2) "Alarm Monitor" means an individual whose primary duties are the processing of alarms in an alarm monitoring facility.

(3) "Alarm Monitoring Facility" mean any organization, contract or proprietary, with the primary responsibility of reviewing incoming traffic transmitted to alarm receiving equipment and follows up with actions that may include notification of public agencies to address imminent threats related to public safety. This does not include:

(a) Facilities that monitor only production or environmental signals not directly impacting public safety;

(b) Proprietary alarm systems being monitored by Department-certified private security professionals that generate an internal response by another Department-certified private security professional;

(c) Facilities that monitor Personal Emergency Response Systems (PERS) only; or

(d) Facilities utilizing alarms that never generate a response from a public safety agency.

(4) "Applicant" means an individual who is applying for or renewing certification or licensure as a private security provider.

(5) "Armed Private Security Professional" means a private security professional who is certified to possess or has access to a firearm at any time while performing private security services.

(6) "Assessments" means a Department-approved curriculum given to private security providers that includes, but is not limited to, the demonstration of task-related skills learned in the classroom instruction as applied to hypothetical situations.

(7) "Board" means the Board on Public Safety Standards and Training.

(8) "Certification" means recognition by the Department that a private security professional meets all the qualifications listed in ORS 181A.855 and these rules.

(9) "Confrontational Activity" means the exertion of physical control by detaining individuals.

(10) "Consideration" means something of value promised, given or done that has the effect of making an agreement to provide private security services.

(11) "Crowd Management or Guest Services" means duties performed during an organized event, including pre-event assembly and post-event departure activities relating to the organized event that involve:

(a) Directing people attending an organized event;

(b) Allowing entry into or exit out of an organized event or any area within the established confines of an organized event that requires authorized access; or

(c) Screening individuals for entry into an organized event. Screening does not include physical pat-down searches.

(12) "De Minimis" means non-monetary compensation received by a volunteer performing private security services for a non-profit organization as defined in ORS 181A.845. The compensation may not exceed a fair market value of $125 per day.

(13) "Denial" or "Deny" means the Department's refusal to grant private security certification or issue a license to an applicant who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.

(14) "Department" and "DPSST" means the Department of Public Safety Standards and Training.

(15) "Director" means the Director of the Department of Public Safety Standards and Training.

(16) "Employer" means:

(a) An individual who employs persons to provide private security services;

(b) An owner or owners of a business or entity that provides private security services; or

(c) An owner or owners of a business or entity who employs persons to provide private security services.

(17) "Executive Manager" means a person:

(a) Who is authorized to act on behalf of a company or business in matters of licensure and certification;

(b) Who is authorized to hire and terminate personnel;

(c) Whose primary responsibility is the management of certified private security professionals; and

(d) Who has final responsibility for a company's or business's compliance with the ORS 181A.840 to 181A.995.

(18) "Flagrant Violation" means an act by a provider, contractor, owner or manager who, after being notified of a violation, intentionally continues or repeats the violation within a 36 month period after the initial violation.

(19) "Fundamental" means a duty that is a basic task or function and may be low frequency, but is an essential component of a job.

(20) "Incidental or Temporary Action" means reaction to an unexpected occurrence that requires immediate response and occurs without regularity or expectation. These actions are not primary responsibilities and are for brief periods of time.

(21) "Instructor" means any person who has been certified by the Department as meeting the requirements to provide instruction to private security providers or applicants.

(22) "License" means recognition by the Department that executive manager or supervisory manager meets the requirements listed in ORS 181A.855 and these rules.

(23) "Organized Event" means a scheduled, noteworthy occurrence coordinated by a formal or official organization.

(24) "Policy Committee" means the Private Security and Investigator Policy Committee.

(25) "Primary Responsibility" means an activity that is fundamental to, and required or expected in, the regular course of employment and is not merely incidental to employment.

(26) "Private" as used in the Act means those activities intended for or restricted to the use of a particular person, group or interest, or belonging to or concerning an individual person, company or interest.

(27) "Private Security Professional" means an individual who performs, as the individual's primary responsibility, private security services for consideration, regardless of whether the individual, while performing private security services, is armed or unarmed or wears a uniform or plain clothes, and regardless of whether the individual is employed part-time or full-time to perform private security services. A private security professional is not authorized to independently contract with businesses or entities to provide services as a private security professional.

(28) "Private Security Provider" means any individual who performs the functions of a private security professional, executive manager, supervisory manager or instructor.

(29) "Private Security Services" means the performance of at least one of the following activities:

(a) Observing and reporting unlawful activity;

(b) Preventing or detecting theft or misappropriation of any goods, money or other items of value;

(c) Protecting individuals or property, including, but not limited to proprietary information, from harm or misappropriation;

(d) Controlling access to premises being protected or, with respect to a licensee of the Oregon Liquor Control Commission, controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited;

(e) Securely moving prisoners;

(f) Taking enforcement action by detaining persons or placing persons under arrest under ORS 133.225; or

(g) Providing canine services for guarding premises or for the detection of unlawful devices or substances.

(30) "Private Security Services Providers Act" or "The Act" means the Private Security Providers Act (ORS Chapter 181A.840 through 181A.995).

(31) "Revocation" or "Revoke" means action taken by the Department to rescind the certification or licensure of a private security provider who fails to meet the minimum standards for certification or licensure as identified in OAR 259-060-0020, including the mandatory and discretionary disqualifying misconduct identified in OAR 259-060-0300.

(32) "Supervisory Manager" means an employee of or a person supervised by an executive manager who has as a primary responsibility the supervision of certified private security professionals. A supervisory manager is not authorized to independently contract with businesses or entities to provide services as a supervisory manager.

(33) "Surrender" means the voluntary relinquishment of private security certification or licensure to the Department.

(34) "Suspension" or "Suspend" means action taken by the Department in temporarily depriving the holder of a license or certificate that authorizes the individual to provide private security services.

(35) "Temporary Work Permit" means a temporary certification or licensure issued by an employing, licensed manager to allow a company to employ and deploy a private security professional, executive or supervisory manager while the application for certification or licensure is being processed. A temporary work permit will not be issued for armed security professionals.

(36) "Unarmed Private Security Professional" means a private security professional who is not in possession of, or has access to, a firearm at any time while performing private security services.

(37) "Violation" means an act or omission that is prohibited under the Act or these rules.

(38) "Withdraw" means action taken by the applicant or private security provider to remove an application from consideration.

Stat. Auth.: ORS 181A.840 & 181A.870

Stats. Implemented: ORS 181A.840 & 181A.870

Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 4-2007, f. & cert. ef. 2-15-07; DPSST 11-2007, f. & cert. ef. 10-15-07; DPSST 6-2008, f. & cert. ef. 4-15-08; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 28-2012, f. & cert. ef. 12-24-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 3-2015, f & cert. ef. 1-5-15; DPSST 8-2015, f. & cert. ef. 3-24-15; DPSST 9-2015(Temp), f. & cert. ef. 5-19-15 thru 11-14-15; Administrative correction, 11-20-15; DPSST 20-2015, f. & cert. ef. 12-22-15

259-060-0015

Private Security Provider Responsibilities

(1) A person may not act as a private security provider unless that person is certified or licensed under the Private Security Services Providers Act and these rules.

(2) Persons described in ORS 181A.845 are exempt from regulation as private security providers.

(a) The exemption found in ORS 181A.845(1) (L) does not apply to an individual who has the primary responsibility of controlling access to premises at an entry to the premises or any portion of the premises where minors are prohibited.

(b) The exemption found in ORS 181A.845(1) (k) applies to individuals performing crowd management or guest services inside the established confines of an organized event and who are not armed, permitted to initiate confrontational activities, or hired with the primary responsibility of taking enforcement action as described in ORS 181A.840(8) (f).

(3) Private security providers are prohibited from:

(a) Providing private security services as a private security professional without having a certificate or license issued under the Act and these rules in the person's possession;

(b) Carrying a concealed weapon while providing security services unless currently certified as an armed private security professional and licensed under ORS 166.291; and

(c) Providing training to private security professionals or applicants unless currently certified as an instructor.

(4) For purposes of these administrative rules, these prohibitions apply to any business, employer, or entity that provides private security services within this state regardless of whether the business, employer, or entity is located in this state.

(5) Change of Information.

(a) An applicant or private security provider must notify the Department within 14 calendar days of any change of address by using Form PS-23 (Private Security Services Provider Change of Information).

(b) Executive managers must advise the Department of the hiring or terminations of private security providers using the Form PS-23.

(6) Notification of Arrest. Pursuant to ORS 181A.885, any private security provider or applicant who is charged with a crime must notify his or her employer or, if not employed, the Department no later than 48 hours after the charge is filed.

(a) The initial notification may be made by telephone or with a Recent Arrest Form.

(b) The Department may request immediate written notification documenting specific charges, the county and state where any charges are pending, the investigating agency, and the date of arrest.

(7) Should any certified armed private security provider become ineligible to purchase, own or possess a firearm, the provider and the manager, employer or supervisor of the provider must notify the Department in writing within 48 hours of the circumstances causing the ineligibility. The notification must list all facts known and must identify a person whom the Department may contact for additional information.

Stat. Auth.: ORS 181A.850, 181A.845 & 181A.870
Stats. Implemented: ORS 181A.850, 181A.845 & 181A.870
Hist.: PS 9-1997, f. & cert. ef. 8-20-97; PS 10-1997(Temp), f. & cert. ef. 11-5-97; BPSST 1-1998, f. & cert. ef. 5-6-98; BPSST 2-1998(Temp), f. & cert. ef. 5-6-98 thru 6-30-98; BPSST 3-1998, f. & cert. ef. 6-30-98; BPSST 3-1999(Temp), f. & cert. ef. 3-9-99 thru 9-5-99; BPSST 4-1999, f. 4-29-99, cert. ef. 9-5-99; BPSST 3-2000, f. & cert. ef. 8-10-00; BPSST 8-2001(Temp), f. & cert. ef. 8-22-01 thru 2-18-02; BPSST 18-2001(Temp), f. & cert. ef. 11-28-01 thru 2-18-02; BPSST 4-2002(Temp), f. & cert. ef. 2-25-02 thru 7-1-02; BPSST 13-2002, f. & cert. ef. 4-30-02; DPSST 4-2003, f. & cert. ef. 1-22-03; DPSST 11-2005, f. & cert. ef. 10-14-05; DPSST 6-2006, f. & cert. ef. 5-15-06; DPSST 9-2012, f. & cert. ef. 4-2-12; DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 28-2012, f. & cert. ef. 12-24-12; DPSST 12-2013, f. & cert. ef. 6-24-13; DPSST 9-2015(Temp), f. & cert. ef. 5-19-15 thru 11-14-15; Administrative correction, 11-20-15; DPSST 20-2015, f. & cert. ef. 12-22-15

259-060-0145
Crowd Management, Event or Guest Services

(1) Individuals who are performing crowd management or guest services, as defined in OAR 259-060-0010 and meet all the requirements of the exemption found in OAR 259-060-0015, are not required to be certified as a private security provider.

(2) Managers, contractors, or employers who employ individuals to provide crowd management or guest services must:

(a) Provide one certified private security professional on-site for every 10 or fewer crowd management or guest services staff;

(b) Ensure all crowd management or guest services staff have the ability to communicate with a certified private security professional at all times; and

(c) Provide documentation confirming the appropriate staffing ratio and communication ability to the Department upon request or to any other person upon reasonable request.

(3) Civil penalties may be assessed for violation of these rules in accordance with OAR 259-060-0450.

Stat. Auth.: ORS 181A.870
Stats. Implemented: ORS 181A.870
Hist.: DPSST 25-2012, f. 10-26-12, cert. ef. 11-1-12; DPSST 8-2015, f. & cert. ef. 3-24-15; DPSST 9-2015(Temp), f. & cert. ef. 5-19-15 thru 11-14-15; Administrative correction, 11-20-15; DPSST 20-2015, f. & cert. ef. 12-22-15

Rule Caption: Updates denial and revocation standards for fire service certification.
Adm. Order No.: DPSST 21-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 259-009-0059, 259-009-0070
Subject: On June 29, 2015, after approval by the Fire Policy Committee (FPC) and the Board on Public Safety Standards and Training (Board), DPSST filed a proposed rule regarding fire service denial and revocation standards as they relate to fire certification. The proposed rule change updated the core values, discharge for cause definitions, and DPSST's processes for discretionary convictions. Interested parties were notified on July 23, 2015, that the rule would be open for public comment from August 1 to August 23, 2015. On July 23, 2015, a public comment was received. The public comment requested that the FPC consider "Pre-Screening" individuals with discretionary convictions, prior to the person attending a fire academy and applying for certification. Staff analysis of this request determined that DPSST has no jurisdiction over a fire service professional until they apply for certification. Current FPC members cannot dictate the actions of future FPC members, so any "Pre-Screening" decision made by current FPC members may be subject to change if FPC membership changed prior to the applicant applying for certification.

Further, in response to a clarifying question raised by a constituent, staff noticed an oversight with regard to the scope of revocation. In the rule language filed proposed on June 29, 2015, the language indicated that when the Department revoked the certification of any fire service professional or instructor under 259-009-0070, the revocation would encompass all fire service certificates the Department had issued to that person on or after January 15, 2003. This language conflicts with the statute that prohibits individuals who have been convicted of a Measure 11 crime from holding certification. Additionally, the intention of the FPC workgroup was to eliminate this "look back" date, so the scope of revocation would include all certificates issued by the Department, regardless of the date the certification was issued. Due to these issues, staff recommended removing the January 15, 2003, date from the proposed language.

On August 26, 2015, DPSST presented the public comment and the oversight regarding scope of revocation to the FPC for their consideration. After reviewing the public comment and the staff analysis and recommendations, the FPC unanimously recommended accepting the staff recommendations, including the amendment to the scope of revocation. On October 22, 2015, the Board on Public Safety Standards and Training affirmed the FPC's recommendation.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-009-0059
Minimum Standards for Certification as a Fire Service Professional

(1) No person may be certified as a Fire Service Professional who is not 18 years of age.

(2) Only training received after attaining the age of 16 will be applied for certification purposes.

(3) DPSST Fire Service Agency affiliation must be attained after the age of 16 via submission of a Personnel Agency Form (PAF).

(4) Fingerprints. Any individual employed or utilized by a fire service agency that has never been fingerprinted for certification purposes or is identified in the Oregon LEDS system as a multi-source offender is required to be fingerprinted. Fingerprints must be submitted to the Department on a standard applicant fingerprint card or through a Department-approved vendor of electronic fingerprint capture services, with the appropriate processing fee.

(5) For the purposes of this standard, the Department, in consultation with the Fire Policy Committee and the Board, has defined core values that are integral to certification as a fire service professional. These values are:

(a) Integrity. Integrity is defined as honesty, trustworthiness, truthfulness, accountability and ethical behavior; and

(b) Professionalism. Professionalism is defined as accountability, exercising judgment and behavior expected of a fire service professional and conduct becoming a fire service professional.

(6) Notification of Conviction:

(a) A certified fire service professional or instructor who is convicted of a crime while employed or utilized by a fire service agency, must notify the agency head within five business days of the conviction.

(b) When an agency receives notification of a conviction from a certified fire service professional, instructor, or another source, the agency must notify the Department within 30 calendar days. The notification to the Department must be in writing and include the specific charges of the conviction, the county and state where the conviction occurred, the investigating agency and the date of the conviction.

(c) If not employed or utilized by a fire service agency, a certified fire service professional who is convicted of a crime must notify the Department within five days.

Stat. Auth.: ORS 181A.355 & ORS 181A.410
Stats. Implemented: ORS 181A.355 & ORS 181A.410
Hist.: DPSST 1-2006(Temp), f. & cert. ef. 1-23-06 thru 6-1-06; DPSST 5-2006, f. & cert. ef. 5-3-06; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 37-2014, f. & cert. ef. 12-31-14; DPSST 13-2015, f. & cert. ef. 6-23-15; DPSST 21-2015, f. 12-22-15, cert. ef. 1-1-16

259-009-0070
Denial/Revocation

(1) It is the responsibility of the Board to set the standards and for the Department to uphold them, to ensure the highest levels of professionalism and discipline. These standards will be upheld at all times, unless the Board determines that the safety of the public or respect of the profession is compromised.

(2) Definitions. For purposes of this rule, the following definitions will apply:

(a) "Denial" or "Deny" means the refusal to grant a fire service certification for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in (4) of this rule.

(b) "Discretionary Conviction" means a conviction identified in OAR 259-009-0070(4).

(c) "Discretionary Disqualifying Misconduct" means misconduct identified in OAR 259-009-0070(4).

(d) "Revocation" or "Revoke" means to withdraw the certification of a fire service professional or instructor for mandatory grounds or discretionary disqualifying misconduct as identified in this rule, pursuant to the procedures identified in section (4) of this rule.

(3) The Department must deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing if requested, based upon a finding that:

(a) The fire service professional or instructor has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in 137.700. Those crimes are:

163.095 Attempted or Conspiracy to Commit Aggravated Murder;
163.115 Murder, Attempted Murder, or Conspiracy to Commit Murder;
163.118 Manslaughter in the First Degree;
163.125 Manslaughter in the Second Degree;
163.149 Aggravated Vehicular Homicide;
163.175 Assault in the Second Degree;
163.185 Assault in the First Degree;
163.225 Kidnapping in the Second Degree;
163.235 Kidnapping in the First Degree;
163.365 Rape in the Second Degree;
163.375 Rape in the First Degree;
163.395 Sodomy in the Second Degree;
163.405 Sodomy in the First Degree;
163.408 Sexual Penetration in the Second Degree;
163.411 Sexual Penetration in the First Degree;
163.427 Sexual Abuse in the First Degree;
163.670 Using a Child in a Display of Sexually Explicit Conduct;
164.325 Arson in the First Degree (when offense represents a threat of serious physical injury);
164.405 Robbery in the Second Degree;
164.415 Robbery in the First Degree;
167.017 Compelling Prostitution.

(b) The fire service professional or instructor has been discharged for cause from employment as a fire service professional or instructor.

(c) For purposes of this rule, "discharged for cause" means an employer initiated termination of employment for the following reasons:

(A) Lack of Integrity: Lack of integrity is defined as dishonesty, untrustworthiness, untruthfulness, lack of accountability and unethical behavior; or

(B) Unprofessionalism. Unprofessionalism is defined as lack of accountability, exercising poor judgment and behavior not expected of or conduct unbecoming a fire service professional.

(d) The Department may stay any action against the certification of a fire service professional or instructor who has been reported as being discharged for cause until a final employment determination has been made.

(e) The Department will administratively close any case in which an arbitrator issues an opinion indicating that the discharge of a fire service professional or instructor is not supported by the underlying facts.

(4) The Department may deny or revoke the certification of any fire service professional or instructor, after written notice, and a hearing, if requested, based upon a finding that:

(a) The fire service professional or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board or Department;

(b) Notwithstanding section (3), the fire service professional or instructor has been convicted of an offense punishable as a crime in this state or any other jurisdiction, the elements of which violate the core values as defined in OAR 259-009-0059; and

(A) The conviction is for a crime classified as a felony;

(B) The elements of the crime for which the fire service professional or instructor is convicted are sexual in nature or require active registration as a sex offender;

(C) The crime for which the fire service professional or instructor is convicted is against a public agency;

(D) The conviction constitutes the fifth or more criminal conviction by the fire service professional or instructor within the last five years; or

(E) The conviction is for a crime classified as a Class A or Class B misdemeanor; and

(i) The conviction resulted in a period of incarceration for any period of time within the last five years;

(ii) The fire service professional or instructor is currently on a form of court-ordered supervision; or

(iii) The fire service professional or instructor has unpaid restitution, court fines or fees resulting from the conviction.

(5) Guidelines for Denial or Revocation Based on Discretionary Disqualifying Misconduct.

(a) The Department may take action on any discretionary conviction identified in section (4) of this rule that occurred after January 15, 2008;

(b) Convictions that occurred seven years or more prior to the date of review may be appropriate for summary staff disposition or administrative closure.

(c) Upon determination that a fire service professional or instructor may have been discharged for cause as defined in section (3) or has engaged in discretionary misconduct listed in section (4), the case may be presented to the Board, through the Fire Policy Committee.

(A) Prior to presentation to the Board or Fire Policy Committee, the Department will seek input from the affected fire service professional or instructor, allowing him or her to provide, in writing, information for the Fire Policy Committee and Board's consideration.

(B) In making a decision to authorize initiation of proceedings under subsection (g) of this rule the Fire Policy Committee and Board may consider mitigating and aggravating circumstances including, but not limited to, the following:

(i) When the misconduct occurred in relation to the fire service professional's or instructor's service as a fire service professional or instructor;

(ii) Whether the fire service professional or instructor served time in prison or jail and the length of incarceration;

(iii) Whether restitution was ordered and if the fire service professional or instructor met all obligations;

(iv) Whether the fire service professional or instructor has ever been on parole or probation. If so, the date the parole or probation period expired or will expire;

(v) Whether the fire service professional or instructor has more than one conviction and over what period of time;

(vi) Whether the misconduct involved domestic violence;

(vii) Whether the fire service professional or instructor self-reported the misconduct;

(viii) Whether the conduct adversely reflects on the fitness of the fire service professional or instructor to perform as a fire service professional or instructor;

(ix) Whether the conduct makes the fire service professional or instructor otherwise unfit to render effective service because of the agency's or public's loss of confidence that the fire service professional or instructor possesses the core values integral to the fire service profession; and

(x) The fire service professional's or instructor's physical or emotional condition at the time of the conduct.

(d) Upon determination to proceed with the denial or revocation of a fire service professional's or instructor's certification based on discretionary misconduct identified in section (4), the Fire Policy Committee and Board will:

(A) Determine how long the affected fire service professional or instructor will be ineligible to reapply for fire service certification. The period of ineligibility may range from 30 days to seven years; and

(B) Determine additional conditions, if any, which must be satisfied prior the eligibility to reapply for fire service certifications is restored.

(e) A person is not eligible to reapply for training or certification if the person had certification denied or revoked for mandatory grounds identified in section (3) of this rule.

(f) The period of ineligibility and any additional conditions will be included in any Final Order of the Department.

(g) Scope of Revocation. When the Department denies or revokes the certification of any fire service professional or instructor under OAR 259-009-0070, the revocation will encompass all fire service certificates the Department has issued to that person.

(h) Initiation of Proceedings: Upon determination by the policy committee that the certifications of a fire service professional or instructor should be denied or revoked after considering the totality of the case, a contested case notice will be prepared and served on the fire service professional or instructor.

(i) Contested Case Notice:

(A) All contested case notices will be prepared in accordance with the applicable provisions of the Attorney General's Model Rules of Procedures adopted under OAR 259-005-0015.

(B) In discretionary cases heard by a policy committee, the contested case notice will be served on the fire service professional or instructor prior to Board review. If the Board disapproves the policy committee's recommendation, the Department will withdraw the Contested Case Notice.

(j) Response Time:

(A) A party who has been served with a "Contested Case Notice of Intent to Deny Certification" has 60 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(B) A party who has been served with a "Contested Case Notice of Intent to Revoke Certification" has 20 days from the date of mailing or personal service of the notice in which to file a written request for a hearing with the Department.

(k) Default Orders:

(A) If a timely request for a hearing is not received, the Contested Case Notice will become a final order revoking or denying certification pursuant to OAR 137-003-0672.

(B) If a timely request for a hearing is not received in cases heard by a policy committee, the Contested Case Notice will become a final order denying or revoking certification pursuant to OAR 137-003-0672, pending Board affirmation.

(l) Hearing Request: If a timely request for a hearing is received, the Department will refer the matter to the Office of Administrative Hearings in accordance with OAR 137-003-0515.

(m) Proposed and Final Orders:

(A) In cases where a hearing is requested, proposed orders, exceptions, and final orders will be issued pursuant to the applicable provision of the Attorney General's Model Rules of Procedure adopted under OAR 259-005-0015.

(B) Department-proposed amendments to a proposed order issued by an Administrative Law Judge in a case that was originally heard by a policy committee must be considered and approved by the policy committee that originally reviewed the case before a final order can be issued.

(n) Stipulated Order Revoking Certification: The Department may enter a stipulated order revoking the certification of a fire service professional or instructor upon the person's voluntary agreement to terminate an administrative proceeding to revoke a certification, or to relinquish a certification under the terms and conditions outlined in the stipulated order.

(o) Appeal Procedure. A fire service professional or instructor, aggrieved by the findings and Order of the Department may, as provided in ORS 183.480, file an appeal with the Court of Appeals from the final Order of the Department.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 181A.410, 183.341

Stats. Implemented: ORS 181A.410

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 3-2008, f. & cert. ef. 1-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 7-2010, f. 7-15-10, cert. ef. 8-1-10; DPSST 1-2011, f. 2-24-11, cert. ef. 4-1-11; DPSST 11-2011, f. & cert. ef. 7-1-11; DPSST 19-2012, f. & cert. ef. 8-31-12; DPSST 7-2013, f. & cert. ef. 3-26-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 4-2014, f. & cert. ef. 1-28-14; DPSST 20-2014, f. & cert. ef. 7-30-14; DPSST 21-2014(Temp), f. & cert. ef. 7-31-14 thru 1-27-15; DPSST 30-2014, f. & cert. ef. 10-22-14; DPSST 37-2014, f. & cert. ef. 12-31-14; DPSST 21-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: To adopt the NFPA Standard 1021, 2014 Edition, Standards for Fire Officer Professional Qualifications.
Adm. Order No.: DPSST 22-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15
Notice Publication Date: 12-1-2015
Rules Amended: 259-009-0062
Subject: The Fire Policy Committee and Board on Public Safety Standards and Training previously reviewed and approved filing a proposed rule to adopt the National Fire Protection Association (NFPA) 1021 Fire Officer Standards. The proposed rule change was filed with the Secretary of State's Office and open for public comment from June 1 to June 22, 2015. Two public comments were received regarding the exclusion of a job performance requirement in the Fire Officer III standard, JPR 6.8, Emergency Management. Upon review, it was discovered that the that Fire Officer III standard, JPR 6.8, Emergency Management, was inadvertently omitted from the initially proposed rule language. The permanent rule language has been updated to include section 6.8 of the standard.
Rules Coordinator: Sharon Huck—(503) 378-2432

259-009-0062
Fire Service Personnel Certification

(1) A fire service professional affiliated with an Oregon fire service agency may be certified by:

(a) Satisfactorily completing the requirements specified in section (2) of this rule;

(b) Through participation in a fire service agency training program accredited by the Department;

(c) Through a course certified by the Department; or

(d) By evaluation of experience as specified in OAR 259-009-0063.

(e) The Department may certify a fire service professional who has satisfactorily completed the requirements for certification as prescribed in section (2) of this rule, including the Task Performance Evaluations (TPE) if applicable.

(2) The following standards for fire service personnel are adopted by reference:

(a) The provisions of the NFPA Standard 1001, 2013 Edition, entitled "Fire Fighter Professional Qualifications";

(A) Delete section 1.3.1.
NOTE: This references NFPA 1500.

(B) Delete section 2.2.
NOTE: This references NFPA 1500 and 1582.

(C) For certification as Fire Fighter II, the applicant must be certified at NFPA 1001 Fire Fighter I as defined by the Department and meet the job performance requirements defined in Sections 6.1 through 6.5.5 of this Standard.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Fighter I and NFPA Fire Fighter II. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(b) The provisions of the NFPA Standard 1002, 2009 Edition, entitled "Standard for Fire Apparatus Driver/Operator Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 5.1 General. The job performance requirements defined in Sections 5.1 and 5.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Pumper.

(B) 6.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 6.1 and 6.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aerial.

(C) 7.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 7.1 and 7.2 must be met prior to certification as a Fire Service Agency Driver/Operator-Tiller.

(D) 8.1 General. The requirements of NFPA 1001 Fire Fighter I and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 8.1 and 8.2, must

be met prior to certification as a Fire Service Agency Driver/Operator-Wildland Fire Apparatus.

(E) 9.1 General. The requirements of NFPA 1001 Fire Fighter II and NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 9.1 and 9.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Aircraft Rescue and Fire Fighting Apparatus (ARFF).

(F) 10.1 General. The requirements of NFPA 1002 Fire Apparatus Driver/Operator, as specified by the Department and the job performance requirements defined in Sections 10.1 and 10.2, must be met prior to certification as a Fire Service Agency Driver/Operator-Mobile Water Supply Apparatus.

(G) Delete "the requirements of NFPA 1500, Standard on Fire Department Occupational Safety and Health Program".

(H) All applicants for certification must complete a task performance evaluation or a Department-approved task book for: NFPA Fire Apparatus Driver/Operator, NFPA Apparatus Equipped with Fire Pump, NFPA Apparatus Equipped with an Aerial Device, NFPA Apparatus Equipped with a Tiller, NFPA Wildland Fire Apparatus, NFPA Aircraft Rescue and Firefighting Apparatus or NFPA Mobile Water Supply Apparatus. The task books must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(c) The provisions of the NFPA Standards 1003, 2010 Edition, entitled "Standard for Airport Fire Fighter Professional Qualifications".

(A) 6.1 General. Prior to certification as a Fire Service Agency NFPA 1003 Airport Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department and the job performance requirements defined in sections 5.1 through 5.4, must be met.

(B) All applicants for certification must complete a Department-approved task book for Airport Fire Fighter. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(d) The provisions of NFPA Standard 1005, 2007 Edition, entitled "Marine Fire Fighting for Land Based Fire Fighters Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) Delete section 2.2.

NOTE: This references NFPA 1500.

(B) Delete sections of 2.4.

NOTE: This references NFPA 1000, NFPA 1081, NFPA 1405, NFPA 1670 and NFPA 1710.

(C) 5.1 General. Prior to certification as a Fire Service Agency NFPA 1005 Marine Land-Based Fire Fighter, the requirements of NFPA 1001 Fire Fighter II, as specified by the Department.

(D) All applicants for certification must complete a Department approved task book for Marine Fire Fighting for Land Based Fire Fighters. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(E) Transition Phase:

(i) An application for certification in Marine Fire Fighting for Land Based Fire Fighters must be submitted to the Department no later than June 30, 2009 to receive consideration for certification without having to complete a task book.

(ii) All applications received on or after July 1, 2009 will need to show completion of the approved task book.

(e) The provisions of the NFPA Standard No. 1031, Edition of (2009), entitled "Professional Qualifications for Fire Inspector and Plan Examiner" are adopted.

(A) All applicants for certification as an NFPA Fire Inspector I must:

(i) Successfully complete a Department-approved task book; and

(ii) Furnish proof that they have passed an exam demonstrating proficiency in the model fire code adopted by the State of Oregon or an equivalent.

(B) All applicants for certification as an NFPA Fire Inspector II must:

(i) Hold a certification as a NFPA Fire Inspector I; and

(ii) Successfully complete a Department-approved task book.

(C) All applicants for certification as an NFPA Fire Inspector III must:

(i) Hold a certification as a NFPA Fire Inspector II; and

(ii) Successfully complete a Department-approved task book.

(D) Task books must be monitored by a Field Training Officer approved by the Department. The Field Training Officer must be certified at or above the level being monitored and have at least five years inspection experience. The Department may approve other Field Training Officers with equivalent training, education and experience as determined by designated Department staff.

(f) The provisions of the NFPA Standard No. 1033, Edition of (2009), entitled "Professional Qualifications for Fire Investigator" are adopted subject to the following definitions and requirements:

(A) An individual must successfully complete a Department-approved task book before the Department will administer a written examination for the Fire Investigator certification level. Exception: Anyone holding a valid IAAI Fire Investigator Certification, National Association of Fire Investigators (NAFI) certification, or Certified Fire Explosion Investigators (CFEI) certification is exempt from taking the Department's Fire Investigator written exam.

(B) A Department approved Field Training Officer must monitor the completion of a task book. The Field Training Officer must be certified at or above the level being monitored and have at least five (5) years fire investigation experience. Exception: The Department may approve Field Training Officers with equivalent training, education and experience.

(g) The provisions of the NFPA Standard No. 1035, Edition of 2010, entitled "Professional Qualifications for Public Fire and Life Safety Educator" are adopted subject to the following definitions and modifications:

(A) A task book will be completed prior to certification as a NFPA Public Fire and Life Safety Educator I, II or III. The Task Book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) A task book will be completed prior to certification as a NFPA Public Information Officer. The task took must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(C) A task book will be completed prior to certification as a NFPA Juvenile Firesetter Intervention Specialist I and II. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(h) The provisions of the NFPA Standard No. 1041, Edition of 2012, entitled "Standard for Fire Service Instructor Professional Qualifications," are adopted subject to the successful completion of an approved task book for NFPA Fire Instructor I, II and III.

(i) The provisions of the NFPA Standard 1021, 2014 Edition, entitled "Standards for Fire Officer Professional Qualifications," are adopted subject to the following definitions and modifications:

(A) 4.1 General. For certification as NFPA Fire Officer I, the candidate must be certified at NFPA 1001 Fire Fighter II, and NFPA 1041 Fire Instructor I, as defined by the Department, and meet the job performance requirements defined in Sections 4.1 through 4.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer I.

(ii)The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) 5.1 General. For certification as NFPA Fire Officer II, the candidate must be certified as NFPA Fire Officer I, as defined by the Department, and meet the job performance requirements defined in Section 5.1 through 5.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer II.

(ii) The evaluation or task book must be approved off by the Agency Head or Training Officer, before an applicant can qualify for certification.

(C) 6.1 General. For certification as NFPA Fire Officer III, the candidate must be certified as a NFPA Fire Officer II and meet the job performance requirements defined in Sections 6.1 through 6.8 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer III.

(ii) The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(D) 7.1 General. For certification as NFPA Fire Officer IV the candidate must be certified as NFPA Fire Officer III, as defined by the Department, and meet the job performance requirements in Sections 7.1 through 7.7 of the Standard.

(i) All applicants for certification must complete a task performance evaluation or a Department-approved task book for NFPA Fire Officer IV.

(ii) The evaluation or task book must be approved by the Agency Head or Training Officer, before an applicant can qualify for certification.

(j) Hazardous Materials Responder (DPSST-P-12 1/96).

(k) Fire Ground Leader.

(A) This is a standard that is Oregon-specific.

(B) An applicant applying for Fire Ground Leader must first be certified as an NFPA Fire Fighter II.

(C) An applicant applying for Fire Ground Leader must document training in all of the following areas:

(i) Building Construction: Non-Combustible and Combustible;
(ii) Emergency Service Delivery;
(iii) Fire Behavior;
(iv) Fire Ground Safety; and
(v) Water Supply Operations.

(D) All applicants for certification must complete a task performance evaluation or a Department-approved task book for Fire Ground Leader. The evaluation or task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(l) NWCG Firefighter Type 2 (FFT2).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter (FFT2) must document training in all of the following areas at the time of application:

(i) S-130 Firefighter Training;
(ii) S-190 Wildland Fire Behavior;
(iii) L-180 Human Factors on the Fireline;
(iv) I-100 Introduction to ICS.
(v) NIMS, Introduction IS700; and
(vi) I-100 Introduction to ICS or IS100.

(m) NWCG Firefighter Type 1 (FFT1).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Firefighter Type 1 (FFT1) must be certified as a NWCG Firefighter Type 2 (FFT2) prior to applying for NWCG Firefighter Type 1 (FFT1) and must document training in all of the following areas at the time of application:

(i) S-131 Firefighter Type I;
(ii) S-133 Look Up, Look Down, Look Around;
(iii) Annual Fireline Safety Refresher (RT-130); and
(iv) Completion of the NWCG Firefighter Type 1 (FFT1)/Incident Commander Type 5 (ICT5) Task Book.

(n) NWCG Single Resource, Engine Boss (ENGB).

(A) This is an NWCG standard.

(B) An individual applying for NWCG Single Resource, Engine Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Engine Boss and must document training in all of the following areas at the time of application:

(i) I-200 Basic Incident Command;
(ii) S-230 or Crew Boss (Single Resource);
(iii) S-290 Intermediate Wildland Fire Behavior;
(iv) NIMS I-200 or IS200;
(v) Annual Fireline Safety Refresher (RT-130); and
(vi) Completion of the task book for NWCG Single Resource Engine Boss

(o) NWCG Single Resource, Crew Boss (CRWB.)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource Crew Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource Crew Boss and must document training in all of the following areas at the time of application:

(i) S-230 Crew Boss (Single Resource);
(ii) S-290 Intermediate Wildland Fire Behavior;
(iii) NIMS I-200 or IS200;
(iv)Annual Fireline Safety Refresher (RT-130); and
(v) Completion of the task book for NWCG Single Resource Crew Boss.

(p) NWCG Single Resource, Heavy Equipment Boss (HEBQ).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Heavy Equipment Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Heavy Equipment Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;
(ii) S-230 Crew Boss (Single Resource);
(iii) S-290 Intermediate Wildland Fire Behavior;
(iv) Annual Fireline Safety Refresher (RT-130); and
(v) Completion of the task book for NWCG Single Resource, Heavy Equipment Boss.

(q) NWCG Single Resource, Felling Boss (FELB).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Felling Boss must be certified as a NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Felling Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;
(ii) S-230 Crew Boss (Single Resource);
(iii) S-290 Intermediate Wildland Fire Behavior;
(iv) Annual Fireline Safety Refresher (RT-130); and
(v) Completion of the task book for NWCG Single Resource, Felling Boss.

(r) NWCG Single Resource, Firing Boss (FIRB)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Single Resource, Firing Boss must be certified as NWCG Firefighter Type 1 (FFT1) prior to applying for NWCG Single Resource, Firing Boss and must document training in all of the following areas at the time of application:

(i) I -200 Basic Incident Command or IS200;
(ii) S-230 Crew Boss (Single Resource);
(iii) S-290 Intermediate Wildland Fire Behavior;
(iv) Annual Fireline Safety Refresher (RT-130); and
(v) Completion of the task book for NWCG Single Resource, Firing Boss

(s) NWCG Strike Team Leader Engine (STEN.)

(A) This is a NWCG standard.

(B) An individual applying for NWCG Strike Team Leader Engine (STEN) must be certified as NWCG Single Resource, Engine Boss prior to applying for NWCG Strike Team Leader Engine and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operations in the Wildland Urban Interface WUI;
(ii) S-330 Task Force Strike Team Leader;
(iii) I-300 Incident Command Systems for Expanding Incidents;
(iv) NRF: Introduction IS800B;
(v) Annual Fireline Safety Refresher (RT-130); and
(vi) Completion of the task book for NWCG Strike Team Leader Engine.

(t) NWCG Task Force Leader (TFLD).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Task Force Leader (TFLD) must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:

(i) S-215 Fire Operation in the Wildland Urban Interface (WUI);
(ii) S-330 Task Force/Strike Team Leader;
(iii) I-300 Incident Command Systems for Expanding Incidents;
(iv) NRF: Introduction IS800B;
(v) Annual Fireline Safety Refresher (RT-130); and
(vi) Completion of the task book for NWCG Task Force Leader.

(u) NWCG Division/Group Supervisor (DIVS).

(A) This is a NWCG standard.

(B) An individual applying for NWCG Division/Group Supervisor must complete "Required Experience" as defined in PMS 310-1 and must document training in all of the following areas at the time of application:

(i) S-390 Introduction to Wildland Fire Behavior Calculations;
(ii) S-339 Division/Group Supervisor;
(iii) Annual Fireline Safety Refresher (RT-130); and
(iv) Completion of the task book for NWCG Division/Group Supervisor.

(v) Maritime Fire Service Operator Standards Professional Qualifications (October, 1999) and completion of an approved task book. Historical Recognition:

(A) The application must be submitted with the fire chief or designee's signature attesting to the skill level and training of the applicant.

(B) The application must be submitted to the Department no later than October 1, 2004, to receive certification for Maritime Fire Service Operator without having to complete the task book.

(C) All applications received after October 1, 2004, will need to show completion of the approved task book.

(w) Certification guide for Wildland Fire Investigator (August, 2005).

(x) The provisions of the 2013 Edition of NFPA 1006 entitled, "Standards for Technical Rescuer Professional Qualifications" are adopted subject to the following modifications:

(A) Historical Recognition:

(i) Applicants who currently hold active Department NFPA Rope Rescue I and II certifications will be recognized as a NFPA Rope Rescue Technician.

(ii) An individual who holds an active NFPA Rope Rescue I certification and has been working toward an NFPA Rope Rescue II certification may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Rope Rescue II certifications will issued after January 1, 2016.

(iii) Applicants who currently hold active Department NFPA Surface Water I and II certifications will be recognized as a NFPA Surface Water Rescue Technician.

(iv) An individual who holds an active NFPA Surface Water I certification and has been working toward an NFPA Surface Water II certification may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Surface Water II certifications will be issued after January 1, 2016.

(v) Applicants who currently hold an active Department NFPA Vehicle and Machinery Rescue certification will be recognized as NFPA Vehicle Rescue and NFPA Machinery Rescue.

(vi) An individual who has fulfilled training competencies in NFPA Vehicle and Machinery Rescue may complete certification based on NFPA 1006 until January 1, 2016. No new NFPA Vehicle and Machinery Rescue certifications will be issued after January 1, 2016.

(B) Instructors:

(i) Curriculum must be certified by the Department to meet NFPA 1006 standards.

(ii) An instructor delivering training under a fire service agency's accreditation agreement must be a certified technician in that specialty rescue area.

(C) Task Books:

(i) A task book must be completed for each of the eleven specialty rescue areas applied for.

(ii) Only a certified technician in that specialty rescue area can approve the task book.

(iii) The requirements in Chapters 4 and 5 only need to be met once for all eleven specialty rescue areas.

(y) Urban Search and Rescue.

(A) This is a standard that is Oregon-specific.

(B) The following eleven (11) specialty Urban Search and Rescue (USAR) certifications are adopted:

(i) Task Force Leader;

(ii) Safety Officer;

(iii) Logistics Manager;

(iv) Rescue Team Manager;

(v) Rescue Squad Officer;

(vi) Rescue Technician;

(vii) Medical Technician;

(viii) Rigging Technician;

(ix) Search Team Manager;

(x) Search Squad Officer; and

(xi) Search Technician.

(C) An applicant applying for any USAR certification(s) must complete the appropriate application attesting to completion of the required training.

(z) The provisions of the NFPA Standard 472, 2008 Edition, entitled "Standard for Hazardous Materials and Weapons of Mass Destruction" are adopted subject to the following definitions and modifications:

(A) NFPA Hazardous Materials Technician: All applicants for certification must first certify as an NFPA Operations Level Responder and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification.

(B) NFPA Hazardous Materials Safety Officer: All applicants for certification must first certify as a NFPA Hazardous Materials Technician and complete a Department-approved task book. The task book must be approved by the Agency Head or Training Officer before an applicant can qualify for certification. This certification level includes, but is not limited to, the following course work:

(i) Analyzing the Incident;

(ii) Planning the Response;

(iii) Implementing the Planned Response;

(iv) Evaluating the Progress.

(C) Incident Commander: The level of certification formerly known as "On-Scene Incident Commander" is now known as "NFPA Hazardous Materials Incident Commander." The Incident Commander correlates directly with NFPA 472. All applicants for certification must first certify as an NFPA Operations Level Responder.

(D) Operations Level Responder: The level of certification formerly known as "First Responder" is now known as "NFPA Operations Level Responder." The NFPA Operations Level Responder correlates directly with NFPA 472. Successful completion of skills sheets or task performance evaluations (TPE) must be met prior to certification as an NFPA Operations Level Responder.

(aa) Specialty Levels of Certification. All applicants for specialty levels of certification must first certify as a NFPA Hazardous Materials Technician.

(A) The following four (4) specialty certifications are adopted:

(i) NFPA Cargo Tank Specialty;

(ii) NFPA Intermodal Tank Specialty;

(iii) NFPA Marine Tank Vessel Specialty;

(iv) NFPA Tank Car Specialty;

(B) Successful completion of task performance evaluations (TPE) must be met prior to obtaining a specialty level of certification.

(3) Task performance evaluations, where prescribed, will be required prior to certification. Such examinations will be conducted in the following manner:

(a) Task performance competency will be evaluated by three people nominated by the employing fire service agency's Chief Officer for approval by the Department or its designated representative.

(b) The employing fire service agency's equipment and operational procedures must be used in accomplishing the task performance to be tested.

(c) Specific minimum testing procedures, as provided by the Department, will be used for administration of the evaluation.

(d) The training officer for an accredited fire service agency training program must notify the Department or its designated representative prior to performing a task performance evaluation.

(e) At the request of the fire chief, a representative of the Department will be designated to monitor the task performance evaluation for personnel from a fire service agency whose training program is not accredited.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 181A.410

Stats. Implemented: ORS 181A.410

Hist.: BPSST 22-2002, f. & cert. ef. 11-18-02; DPSST 11-2003 f. & cert. ef. 7-24-03; DPSST 13-2003(Temp), f. & cert. ef. 10-27-03 thru 3-31-04; DPSST 3-2004(Temp), f. & cert. ef. 4-9-04 thru 10-1-04; DPSST 8-2004, f. & cert. ef. 4-23-04; DPSST 2-2006, f. & cert. ef. 1-24-06; DPSST 9-2006 f. & cert. ef. 7-7-06; DPSST 14-2006, f. & cert. ef. 10-13-06; DPSST 16-2006, f. & cert. ef. 11-20-06; DPSST 2-2007, f. & cert. ef. 1-12-07; DPSST 10-2008, f. & cert. ef. 7-15-08; DPSST 7-2009, f. & cert. ef. 7-13-09; DPSST 12-2009, f. & cert. ef. 10-15-09; DPSST 16-2009(Temp), f. & cert. ef. 12-15-09 thru 6-11-10; DPSST 5-2010, f. 6-11-10, cert. ef. 6-14-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 11-2010, f. & cert. ef. 11-12-10; DPSST 3-2011, f. 3-28-11, cert. ef. 5-1-11; DPSST 7-2012, f. & cert. ef. 3-28-12; DPSST 21-2012, f. & cert. ef. 10-1-12; DPSST 8-2013, f. & cert. ef. 3-26-13; DPSST 16-2013, f. & cert. ef. 6-25-13; DPSST 22-2013, f. & cert. ef. 10-3-13; DPSST 6-2014, f. & cert. ef. 2-6-14; DPSST 9-2014, f. & cert. ef. 4-3-14; DPSST 36-2014, f. & cert. ef. 12-31-14; DPSST 17-2015, f. & cert. ef. 10-22-15; DPSST 22-2015, f. & cert. ef. 12-22-15

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Department of Revenue
Chapter 150

Rule Caption: Public Records requests, Requesting information from Department of Revenue
Adm. Order No.: REV 3-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 150-192.440
Rules Ren. & Amend: 150-183.330(1) to 150-183.330
Subject: 150-192.440 — Reflecting changes in Department of Revenue processes for public records requests, including taxpayer information requests.

150-183.330(1) to 150-183.330 — Moving language related to taxpayer information requests and public records requests to 150-192.440.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-183.330
Obtaining Information from the Department

(1) Information on the organization of the department can be found on our website at www.oregon.gov/dor.

(2) Sources of Information. The department provides information to the public through several sources.

(a) Taxpayers may call for general tax information. The department answers questions about tax-related matters such as figuring income taxes, filing tax returns, and obtaining copies of forms and tax returns. Department listings are in the telephone directory.

(b) The department provides Oregon tax publications and forms by mail. Write to: Oregon Department of Revenue, 955 Center Street NE, Salem, Oregon 97301 to request copies of these publications or forms.

(c) Website. Many forms, publications, administrative rules and other information may be accessed at the department website: www.oregon.gov/dor.

(2) Requesting Records.

(a) Instructions for requesting public records, including copies of tax returns, are provided in OAR 150-192.440.

(3) Additional Information. Other administrative rules provide additional information on obtaining department information or obtaining review of agency actions.

(a) For information on petitions for review of agency actions, see OAR 150-306.115.

(b) For information on agency conference procedures, see OAR 150-305.265(6)-(A).

Stat. Auth.: ORS 305.100; 183.330
Stats. Implemented: ORS 183.330
Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; REV 5-2000, f. & cert. ef. 8-3-00; Renumbered from 150-183.330(1), REV 3-2015, f. 12-23-15, cert. ef. 1-1-16

150-192.440
Public Records Requests

(1) The department shall provide, upon request, a copy of any public record that the requestor has a right to inspect.

(2) Requests for taxpayer records. Under ORS 314.840(1)(a), the department provides taxpayers and their authorized representatives access to the taxpayer's tax return and related records containing information that would otherwise be exempt from public records disclosure. A person requesting taxpayer records must pay a document charge of no more than the actual costs of making records available.

(a) Requests should be made in writing and must contain the taxpayer's full name, address, Social Security number, daytime phone number, the tax year(s) requested, and signature.

(b) Send requests to: Department of Revenue, Tax Services Unit, 955 Center St. NE, Salem, OR 97301.

(c) Document charge. There may be a charge for locating, preparing, and providing documents.

(A) Payment must be included with the request.

(B) Transcripts of tax returns are available through the same process for free.

(3) Requests for all other public records. Any person may make a public records request of the department. Following are the procedures and costs for making such a request.

(a) Requests must be made in writing and must include:

(A) Requester's name.

(B) Requester's contact information.

(C) A detailed description of the records being requested.

(b) Send requests to: Department of Revenue, Public Records Coordinator, 955 Center St. NE, Salem, OR 97301.

(c) Fees. There may be fees associated with fulfilling a public records request.

(A) Requesters may be charged for staff time spent preparing records.

(B) Requesters may be charged for attorney time spent on certain types of legal reviews.

(C) Physical copies are $0.25 per page.

(D) The department will provide an estimate of any fees to the requester for approval. Payment is required before any records will be provided.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 192.440, 314.840(1)(a)
Hist.: TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; REV 3-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Property tax: Appraisal, Forestland, Education, Exemptions, Elderly, Appeals, Values, Enterprise Zones, Training
Adm. Order No.: REV 4-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 150-285C.420-(A)
Rules Amended: 150-308.010, 150-308.205-(A), 150-308.205-(D), 150-308.290-(B), 150-309.110-(A), 150-311.234, 150-358.505
Rules Repealed: 150-306.125, 150-307.405(3), 150-308.290-(A), 150-310.110(1)
Rules Ren. & Amend: 150-294.175(1)(c) to 150-294.175-(B), 150-294.175(2) to 150-294.175-(C), 150-306.126(1) to 150-306.126-(A), 150-306.126(2) to 150-306.126-(B), 150-306.126(3)-(A) to 150-306.126-(C), 150-307.242(2) to 150-307.242, 150-308.205(2) to 150-308.205-(H), 150-309.026(2)-(A) to 150-309.026-(A), 150-321.207(1) to 150-321.207-(A)
Subject: 150-285C.420-(A) — The department will establish criteria for disqualifying a business if it does not begin operations under ORS 285C.420.

150-294.175(1)(c) renumbered to 150-294.175-(B) — References to ORS 308.027, which was repealed, need to be removed.

150-294.175(2) renumbered to 150-294.175-(C) — References to ORS 308.027, which was repealed, need to be removed.

150-306.125 — References to "standard magnetic exchange formats" are no longer in use so the rule is to be repealed.

150-306.126(1) renumbered to 150-306.126-(A) — Update language for County Appraised and State Appraised Accounts (HB 2482).

150-306.126(2) renumbered to 150-306.126-(B) — Update language for County Appraised and State Appraised Accounts (HB 2482).

150-306.126(3)-(A) renumbered to 150-306.126-(C) — Update language for County Appraised and State Appraised Accounts (HB 2482).

150-307.242(2) renumbered to 150-307.242 — To clarify the Department's role in the property tax exemption claim approval process for Nonprofit Homes for the Elderly.

150-307.405(3) — The 20-year period has expired and no longer applies; the rule is obsolete and is to repealed.

150-308.010 — Gives DOR flexibility to create appraisal training for different audiences.

150-308.205-(A) — Removes reference to "The Appraisal of Real Estate, 12th addition (2001)(section (1)(e)) for determining "highest and best use."

150-308.205-(D) — Removes reference to "The Appraisal of Real Estate, 12th addition (2001)(section (1)(e)) for determining "highest and best use." And, adds language for items that contribute to the value of machinery and equipment.

150-308.205(2) renumbered to 150-308.205-(H) — House Bill 2482 amends the language in several statutes that refer to responsibility over industrial property appraisals, thus the language in the rule also needs to change.

150-308.290-(A) — The passage of 2015 House Bill 2484 makes this rule obsolete and is to be repealed.

150-308.290-(B) — The passage of 2015 House Bill 2484 amends the language in several statutes that refer to responsibility over industrial property appraisals, thus the language in the rule also needs to change.

150-309.026(2)-(A) renumbered to 150-309.026-(A) — To conform with ORS 305.287 and the outcome of Supreme Court case Village at Main Street Phase II v. Department of Revenue, 356 Or. 164, 339 P.3d 428 (2014).

150-309.110-(A) — Combines sections 1 and 2 of the old rule.

150-310.110(1) — The repeal of ORS 334.350 and 334.410 make this rule obsolete and is to be repealed.

150-311.234 — Clarifies the procedure to correct MAV when there is an error in square footage for the property, consistent with changes in statute.

150-321.207(1) renumbered to 150-321.207-(A) — Change the data collection year to an assessment year and use sales from a rolling 5–10 year sales base to eliminate using data from 1993.

150-358.505 — To provide consistency between the rule and the statute regarding the initial calculation of the specially assessed value.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-285C.420-(A)
Criteria for disqualification

(1) The county assessor will disqualify the facility of a certified business firm from exemption if the certified business firm does not begin operations and is not reasonably expected to begin operations. A decision of the assessor to disqualify the property from exemption must be based on one or

more of the criteria listed in subsection (2). For purposes of this rule, the date that a facility "begins operations" is the date that the facility is placed in service, which, in turn, means the date a certified business has received a permit to occupy or use the facility for its intended purpose.

(2) In determining whether a facility should be disqualified because it has not begun operations and is not reasonably expected to begin operations, the county assessor must consider the following:

(a) Operations by the certified business firm have not started at the facility within 5 years from the date of starting construction or reconstruction of the facility unless otherwise specified in an agreement between the zone sponsor and the certified business firm;

(b) Two years have elapsed from the last date construction or reconstruction activity on the facility ceased;

(c) The certified business firm has notified the zone sponsor of the firm's intent to cease construction or installation of facility property or improvements;

(d) The expected date the facility would first be placed in service, as specified on the Certification Application or a revised date specified in a written notice to the assessor and zone manager has elapsed;

(e) The certified business firm has declared bankruptcy or has ceased to exist;

(f) The certified business firm has notified the assessor and zone manager that the facility is inoperable.

Stat. Auth.: ORS 305.100, ORS 285C.420
Stats. Implemented: ORS 285C.420
Hist,: REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-294.175-(B)
Expenditures for Assessment and Taxation

(1) Expenditures include all direct costs, including personnel and supplies, associated with the assessment and appeal of property values and the collection and distribution of property taxes, as set out in ORS Chapters 305 through 312 and 321 or other statutes relating to the assessment, appeal, collection, and distribution of property taxes. Costs resulting from the performance of these functions performed in the offices of the county must be allowed.

(2) All expenditures for assessment and taxation funding will be for no more than one fiscal year.

(3) Costs incurred by the assessor's, tax collector's, and treasurer's office, or any other office in the county that are not attributable to assessment and taxation as set out in ORS Chapters 305 through 312 and 321 or any other statute or meet the requirements of section (1) of this rule must not be allowed.

(4) Direct costs as determined for the county budget include:

(a) Personnel Services.

(b) Materials and Services.

(c) Transportation. For purposes of this rule, the cost of transportation included as a direct cost must be determined using one of the following two methods:

(A) The estimate of the actual cost of operating vehicle for a twelve-month period plus a depreciation allowance for the useful life of the vehicle.

(B) The mileage rate used in the other county programs, with the estimate of number of miles to be driven based on historical information.

(d) For the purpose of section (4) of this rule, only the costs of cadastral maps or mapping necessary for the assessor's office may be included in the expenditures for assessment and taxation funding. All other costs for maps or mapping are not allowed.

(e) For the purpose of section (4) of this rule, costs for data processing support based on the actual cost of items directly relating to assessment and taxation may be included in the expenditures for assessment and taxation funding. For example:

(A) System operating costs will be allocated on a pro rata share based on the ratio of usage for assessment and taxation functions.

(B) Development of new computer applications to support the assessment and taxation functions.

(C) Technical education of assessment and taxation staff.

(D) Software changes required because of changes to laws or rules which govern the assessment, appeal, levy, collection or distribution of property taxes.

(E) Software changes requested by the user to improve or extend the functionality of the system.

(F) Elimination of reproducible errors (BUGS) in the application software.

(G) Installation of periodic software upgrades.

(H) Training of user staff in the use of new or enhanced software.

(I) Technical assistance for personal computer support.

(5) Indirect costs associated with the assessment, appeal, collection, and distribution of property taxes will be determined using one of the following methods.

(a) A percentage amount approved by a Federal Granting Agency for the county in accordance with the Cost Principles and Procedures for Establishing Cost Allocation Plans and Indirect Cost Rates for Grants and Contracts with the Federal Government. The percentage must be applied in the same manner as has been approved by the Federal Agency; or

(b) Five percent of the total direct expenditures less capital outlay.

(6) Capital outlay as determined for the county budget includes:

(a) For the purpose of this rule, automobiles purchased by the county and used for assessment and taxation functions are an exception to section (6) of this rule and should be included as an expense item under section (4)(c) of this rule. They must not be included as part of the capital outlay expenditures eligible to be certified for funding under ORS Chapter 294.

(b) The county must be limited in the amount of capital outlay expenditure to be funded by these statutes to the higher of:

(A) $50,000; or

(B) Six percent of the total dollars certified as expenditures under the statutes for funding pursuant to ORS Chapter 294.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.175
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; REV 8-2000, f. & cert. ef. 8-3-00; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(A)(1); Renumbered from 150-294.175-(1)(c), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-294.175-(C)
Definition: Certification of Compliance. Plan to Achieve Adequacy

(1) On or before May 1 of each year, each county will file with the Department of Revenue an estimate of expenditures as required by ORS 294.175. The Department of Revenue will determine the adequacy of each county's estimates of expenditures to comply with the requirements of ORS 308.232, 308.234, ORS Ch. 309, and other laws requiring equality and uniformity in the system of property taxation. For any county whose proposed expenditures are neither at a level nor of a type to achieve adequacy as determined by the department, the county will state how it intends to comply with a plan to achieve adequacy previously approved by the department.

(2) Any county which is not in compliance as of January 1, of any year, and does not have a plan to achieve adequacy which has been approved by the department must, in lieu of the statement of compliance required under section 1 of this rule, submit a plan to achieve adequacy. After its review of the plan, the department will, if it deems necessary before approval, set a date for a meeting to be held with the county. The meeting may be for review of the plan only, or may be held in conjunction with the conference with the county governing body on their expenditure level.

(3) At the meeting the department and county governing body, assessing officials, and others as appropriate, will conduct a thorough review of the plan to identify and resolve any areas of disagreement. Before the conclusion of the meeting the department will inform the county governing body of its agreement with the plan, or modifications that may be necessary to the plan before approval. If the department and county governing body reach agreement on the county's plan, or modified plan, the department will include in its approval, based upon the plan, the number of years for the county to reach full compliance.

(4) Within ten days after the date of the meeting, the county governing body must furnish to the department a signed resolution of intent by the county governing body and assessing official to meet the provisions of the plan.

(5) If the department and county governing body cannot reach agreement on the plan, or if the signed statement of intent is not furnished to the department by June 1 of the year, the department must issue a denial of certification under ORS 294.175 (6).

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 294.005, 294.175
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 2-1995, f. 12-29-95, cert. ef. 12-31-95; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01, Renumbered from 150-294.005(Note)-(B)(2)); Renumbered from 150-294.175(2), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-306.126-(A)
Determination of Responsibility for the Appraisal of Industrial Property

(1) Definitions for purposes of this rule:

(a) "Industrial property" means a facility or property engaged in manufacturing or processing which includes, but is not limited to sawmills, ply-

wood and veneer plants, paper and pulp mills, food processing facilities, bakeries, flour mills, chemical processing operations refineries, breweries, wineries bottling operations, machine shops, metal rolling mills, metal fabrication facilities, smelters, printing and publishing operations, seed processing operations, permanent sand and gravel operations, and electronic and high technology manufacturing operations.

(b) "State-appraised industrial property" means industrial property that had real market value for improvements of more than $1 million for the preceding year and whose appraisal responsibility has not been delegated by the department to the county.

(c) "Improvements" or "real property improvements", for determining responsibility for property of more than $1 million, means improvements erected upon, above or affixed to the land but not the land itself. Improvements include, but are not limited to: yard improvements, buildings, structures, and real property machinery and equipment. Improvements do not include site development and personal property.

(A) "Yard improvements" include but are not limited to on-site: paving, exterior lighting, log ponds, underground fire systems, fences, access roads and roadways and railroad sidings.

(B) "Site developments" are defined in OAR 150-307.010(1).

(d) "Integrated" and "integral" means directly involved in the production of a new product.

(e) "Processing" means the treatment of materials to produce a new product.

(f) "Unit of industrial property" means, for appraisal purposes, a single facility or an integrated complex currently engaged in manufacturing or processing operations and may include one or more accounts.

(2) The purpose of this rule is to determine the responsibility for the appraisal of industrial property between the Oregon Department of Revenue and the thirty-six Oregon county assessors' offices. Property classification for all purposes other than assigning appraisal responsibility is determined by OAR 150-308.215(1)-(A).

(3) The department is responsible for the appraisal of industrial property that meets the definition of "state-appraised industrial property". The county is responsible for the appraisal of all land, including that for state responsibility industrial accounts.

(4) Property other than industrial property that is at the same location as the manufacturing or processing operation may be appraised as part of the unit of industrial property.

(5) The procedure for determining the appraisal responsibility for industrial property is as follows:

(a) On or before August 1 of each year, the department will provide each county a list of all industrial property accounts within their jurisdiction for which the state was responsible for appraising in the preceding year. The list will include the owner's name, the account number, and the real market value.

(b) The county will review the list, and all other industrial property accounts, to determine if there are any units of industrial property that have moved above or below the $1 million threshold.

(A) Units of industrial property that have gone below the threshold will be placed on a list to be transferred to the county.

(B) Units of industrial property that have gone above the threshold will be placed on a list to be transferred to the department.

(C) Construction of a new industrial facility that will result in a real market value of more than $1 million for the real property improvements will be placed on a list of properties recommended for transfer to the department. If construction has begun or is expected to begin by January 1 of the current tax year it will also be placed on the list to be transferred.

(c) By October 1, the county will submit a list of accounts recommended to become state responsibility.

(d) By November 15, the department will make a final determination of appraisal responsibility for all industrial property and provide this information to the county.

(6) For state-appraised industrial property in which the real property improvements are not all at the same location, the department and the county will evaluate each account to determine if the account should be appraised by the department. The criteria that will be used are:

(a) The combined value of the real property improvements from all locations is more than $1 million, and

(b) The real property improvements are integral to the same manufacturing or processing operation.

(7) The party that valued the property will be responsible for defending any appeals. In all cases, the county is responsible for the defense of the land valuation.

(8) The department may return to the county the appraisal responsibility for any property that no longer qualifies as state responsibility industrial property. The department will forward to the county a copy of all appraisal material on file at the department and a copy of all industrial property returns filed by the taxpayer.

(9) This rule is effective January 1, 2016.

Stat. Auth.: ORS 305.100, 306.126
Stats. Implemented: ORS 306.126
Hist.: 12-55; 3-58; 11-59; 8-65; 1-66; 3-70; TC 10-1978, f. 12-5-78, cert. ef. 12-31-78; RD 9-1984, f. 12-5-84, cert. ef. 12-31-84; RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 1-1995, f. 12-29-95, cert. ef. 12-31-95; RD 9-1997, f. & cert. ef. 12-31-97, Renumbered from 150-306.126(1)-(A); REV 8-1998, f. 11-13-98, & cert. ef. 12-31-98; REV 3-2001, f. 7-31-01, cert. ef. 8-1-01; REV 7-2008, f. 8-29-08, cert. ef. 8-31-08; Renumbered from 150-306.126(1), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-306.126-(B)
Transmission of the Values for State-Appraised Industrial Properties

(1) The department will transmit the real market values of state-appraised industrial accounts to the assessor prior to July 1 of each year.

(2) For each real property account, the real market value transmitted to the assessor by the department will include:

(a) The total real market value of all improvements as of January 1; and

(b) The real market value of all additions minus retirements as of January 1 for purposes of calculating maximum assessed value for the current assessment year.

(3) For each personal property account, the real market value transmitted to the assessor by the department will include the total real market value of all personal property assets as of January 1 for the current assessment year.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.126
Hist.: Repealed by RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91, Renumbered from 306.126(2)-(A); RD 9-1997, f. & cert. ef. 12-31-97; REV 11-2009, f. 12-21-09, cert. ef. 1-1-10; Renumbered from 150-306.126(2), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-306.126-(C)
Delegation of Responsibility for Industrial Property

(1) If the assessor requests the delegation of responsibility for a state-appraised industrial property, the request shall be in writing to the department prior to October 1. The request shall include:

(a) Name of the property owner,

(b) Account number,

(c) District code,

(d) Reason for the request.

(2) On or before November 15, the department shall either approve or deny the assessor's request for delegation of responsibility. The county must meet the following criteria:

(a) The county industrial appraisal staff must be qualified to perform the appraisals of these industrial properties and adhere to the department's industrial appraisal standards.

(b) The county must maintain and achieve compliance with all the locally appraised property for which they currently have responsibility.

(c) The county must commit to provide all necessary resources for the appraisal, maintenance, and legal defense of the value of the delegated properties for a regular appraisal cycle with no shift of resources from the county's other assessment and taxation programs.

(3) When the department delegates the responsibility for a state-appraised industrial property to the county assessor, the assessor shall be responsible for this property for five consecutive assessment years, including the original appraisal, annual updates to value, and appeals. After five consecutive assessment years, the county assessor may request the department to resume responsibility for appraising the property. At the following assessment year, the responsibility shall revert to the department if the property still qualifies as a state-appraised industrial property as defined by OAR 150-306.126(1), (2), and (3).

(4) Appraisals of industrial property by the county under this section are subject to audit and review under the procedures established by OAR 150-294.005(Note)-(D). If the department finds an appraisal of industrial property made by the county assessor under this section does not follow the established procedures, the department shall take corrective action.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 306.126
Hist.: RD 3-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-306.126(3)-(A), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-307.242
Exemption Claim Procedures

(1) The assessor shall review all claims filed under ORS 307.241 to 307.245 and approve or deny the claims, except as provided in section 3 of this rule.

(2) A copy of each claim approved by the assessor must be sent to the Department of Revenue with a checklist indicating the assessor has, at a minimum, received and reviewed the following information:

(a) The application form completed in full by the corporation;

(b) A description of the federal financial assistance the corporation making the application is receiving or has received;

(c) A statement showing in detail the sources and amounts of all corporate income received by the corporation;

(d) A statement showing in detail the basis for rental amounts charged for occupancy of the facility;

(e) Verification that the corporation meets the requirements of ORS 307.375 and ORS 307.243(1), including that the corporation.

(A) Is organized and operated only for the purpose of providing permanent residential, recreational and social facilities primarily for elderly persons;

(B) Is a nonprofit corporation organized under ORS chapter 65;

(C) Receives at least 95% of its operating gross income, excluding investment income, from payments by or on behalf of elderly persons solely for living, medical, recreational and social services and facilities;

(D) Permits none of its net earnings to inure to the benefit of a stockholder or individual;

(E) Provides that upon dissolution of the corporation the net assets must be distributed to one or more charitable, scientific, literary or educational corporations exempt under ORS chapter 307, or to the State of Oregon;

(F) Is applying for exemption of land and improvements on which construction of the improvements started after January 1, 1977, or where the property was acquired after January 1, 1977; or in the case of corporations that received state financial assistance as described in ORS 307.242(1)(e), where the property was actually occupied and used for permanent residential recreational and social facilities primarily for elderly persons prior to January 1, 1990;

(f) Verification that a payment in excess of one month's rent is not required as a condition for occupancy;

(g) That the actual use being made of the property is consistent with the claim;

(h) A statement from the claimant that either

(A) The rent charged does not include an amount for property tax, as certified by the U.S. Department of Housing and Urban Development, or

(B) If the exemption was granted the previous year, showing how the rent that otherwise would have been paid for occupancy at the facility has been reduced as a result of the exemption; and

(C) That no delinquencies exist on the tax roll for the property.

(3)(a) The assessor may request from the Department of Revenue a statement certifying a corporation's qualification or non-qualification under ORS 307.375 and ORS 307.242.

(b) The assessor's request to the department must be accompanied by the following:

(A) The application form completed by the corporation;

(B) The source documents evidencing the requirements on the checklist referenced in subsection 2 above.

(c) The department shall notify the assessor in writing of its certification of qualification or non-qualification under ORS 307.242 and ORS 307.375, and the assessor shall thereafter notify the claimant of the decision.

(4) This rule is effective January 1, 2016.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 307.242
Hist.: TC 7-1980, f. 11-28-80, cert. ef. 12-31-80; Renumbered from 150-307.242(2), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-308.010
Continuing Education Requirements for Registered Appraisers, Waiver of those Requirements, and Revocation of Registrations

(1) Registered appraisers in Oregon must participate in a continuing education program related to technical competency. To maintain their registration, appraisers must meet the continuing education requirements outlined in this rule, or OAR 150-308.057 for assessors and directors of assessment and taxation, or OAR 150-308.059-(A) for appraisal managers. The requirements of this rule apply to any person who wishes to maintain registration, without regard to the person's place of employment, except for assessors, directors of assessment and taxation, and appraisal managers.

(2) Definitions:

(a) For the purposes of this rule, a "registered appraiser" is a person who has satisfied the requirements of ORS 308.010 relating to employment and successful completion of an appraiser skills examination.

(b) "Technical credits" are units of training that are approved by the department in assessment and taxation subjects.

(A) Topics eligible for technical credit include, but are not limited to: mass appraisal, tax rate calculation, ratio studies, personal property, farm or forest uses, board of property tax appeals, property tax exemptions and special assessments and computer applications.

(B) Technical credits are equal to the number of hours in a course or presentation the department approves for continuing education.

(C) Technical credits are awarded for course attendance, development, and presentation. A course instructor will receive technical credits for presentation for the first training session equal to the number of hours the department approved for continuing education for that training session, and one-half that number for each subsequent presentation of the same training.

(3) Required Credit Hours

(a) Registered appraisers who achieve their registration by passing the examination either for the first time, or after a lapse in their registered appraiser status, must accumulate 60 technical credit hours within the first two full calendar years after their registration is issued.

(b) All other registered appraisers must accumulate 30 technical credit hours every two full calendar years.

(c) The Department of Revenue will maintain a database of training it provides to registered appraisers. That database may be supplemented by records provided by the registered appraiser as to qualifying appraisal training received from sources other than the Department of Revenue.

(d) The department will provide sufficient training programs to allow registered appraisers to meet technical credit requirements. Technical credit hours are approved for appraisal related courses offered by the following organizations:

(A) Department of Revenue;

(B) International Association of Assessing Officials (IAAO);

(C) American Society of Appraisers (ASA);

(D) The Appraisal Institute.

(e) The department may restrict the number or types of enrollees in certain classes, so long as the department meets the requirements of subsection (d) of this section for all registered appraisers.

(f) The department will approve technical credit hours provided through training given by other entities, individuals or by the county if it determines that the content of the training meets the definition for technical credits provided in this rule.

(4) Waiver of Requirement for Continuing Education Credits

(a) Prior to March 31 of the first year of any registered appraiser's current certification period, either the registered appraiser or the appraiser's employer on behalf of the appraiser may submit a request to the Department of Revenue for waiver of the technical credit requirements to be certified for the current two-year certification period. A request for waiver must be in writing and signed by the requestor. If it is a waiver for a registered appraiser employed by the county, the assessor must approve it. For registered appraisers employed by the Department of Revenue, the appraiser's immediate supervisor must approve the request for waiver.

(b) The following are conditions for which the department may grant a waiver:

(A) Military service that prevents the completion of technical credit requirements.

(B) Disability or illness that prevents the completion of technical credit requirements.

(C) Accident or other uncontrollable events that prevent the completion of technical credit requirements.

(D) Limited duration assignments within the Department of Revenue but outside the Property Tax Division for Department of Revenue appraisers.

(E) Formal retirement from regular employment, whether or not the appraiser is working on a temporary or part-time basis in an appraisal capacity.

(F) Absence from the state that prevents completion of technical credit requirements.

(c) Waivers under this section for the conditions in paragraphs (A) through (C) of subsection (b) above may be allowed indefinitely as long as the condition continues. However waivers under paragraphs (A) through (C) above will not be granted for more than a single two-year certification

period if the appraiser is also practicing in an appraisal capacity, either independently or under the employ of an individual, entity, or public employer.

(d) Waivers under this section may be granted for no more than a single two-year certification period for the conditions in paragraphs (D) through (F) above.

(5) Validation of Accumulated Technical Credits

(a) Prior to January 1:

(A) In the case of registered appraisers employed by the county, the assessor annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the technical credit requirements for their two year continuing education cycle.

(B) In the case of registered appraisers employed by the State of Oregon, the direct supervisor of those employees annually will certify on forms provided by the Department of Revenue a list of those registered appraisers who have met the technical credit requirements for their two year continuing education cycle.

(C) In the case of registered appraisers not employed by a county assessor or the State of Oregon, at the end of each two year continuing education cycle, individuals will self-certify on a form provided by the Department of Revenue as to the satisfactory completion of technical credit requirements.

(b) The Department of Revenue will revoke appraiser registration under ORS 308.010(4)(d) for failing to submit satisfactory evidence to the department that the registered appraiser has met the technical credit requirement.

Stat. Auth.: ORS 305.100 & 308.010
Stats. Implemented: ORS 308.010
Hist.: RD 3-1989, f. 12-18-89, cert.ef. 12-31-89, Renumbered from 150-308.010; 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 6-1993, f. 12-30-93, cert. ef. 12-31-93; RD 6-1994, f. 12-15-94, cert. ef. 12-30-94; Renumbered from 150-308.010-(A), REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 9-2013, f. 12-26-13, cert. ef. 1-1-14; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-308.205-(A)
Real Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment which comprise an integral part of the property or manufacturing operation) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Rural lands" means those lands with property classification 400, 401, 500, 501, 600, 601, 800, and 801 as defined by OAR 150-308.215. They are distinguished from platted land as acreages in varying sizes and are either improved or unimproved.

(d) "Utility" means the quality or property of being useful which may either add to or subtract from market value.

(e) "Highest and best use" means the reasonably probable use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and maximally productive, which results in the highest real market value.

(2) Methods and Procedures for Determining Real Market Value:

(a) For the valuation of real property all three approaches-sales comparison approach, cost approach, and income approach-must be considered. For a particular property, it may be that all three approaches cannot be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The real market value of a unit of property shall not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, etc., each priced separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length market transactions. When nontypical market conditions of sale are involved in a transaction (duress, death, foreclosures, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the nontypical market condition.

(d) If there are no market transactions of property comparable to the subject, then it is still appropriate to use market value indications derived by the cost, income or stock and debt approaches.

(e) Sales on the basis of disposal at salvage or scrap levels are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(f) The cost approach must use the reproduction, replacement, or used equipment technique; however, original historical cost may be used when appraising property under ORS 308.505 to 308.730. The value estimate must include all costs required to assemble and construct the unit of property.

(g) The income to be used in the income approach must be the economic rent that the property would most probably command in the open market as indicated by current rents being paid, and asked, for comparable space. Income from the operation of the property may be utilized for property types, such as industrial plants that are not typically leased or rented.

(h) The real market value for rural lands is based on an average price per acre for each size of parcel. Adjustments to the value must be made to those acres with more or less utility. For improved parcels the value of the site developments as defined by OAR 150-307.010(1)(2)(a)(A) must be added.

(i) Determining highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(3) Valuation of Especial Property: Especial property is property specially designed, equipped, and used for a specific operation or use that is beneficial to only one particular user. This may occur because the especial property is part of a larger total operation or because of the specific nature of the operation or use. In either case, the improvement's usefulness is designed without concern for marketability. Because a general market for the property does not exist, the property has no apparent immediate market value. Real market value must be determined by estimating just compensation for loss to the owner of the unit of property through either the cost or income approaches, whichever is applicable, or a combination of both.

(4) Real market value for all personal property must be as of the date of assessment in accord with the statutory definition and must take into account the location and place in the level of trade of items of property in the hands of manufacturers, producers, wholesalers, distributors, retailers, users, and others.

(5) Valuation of Land Under Improvements Having Only Partial Exemption. This does not apply to those cases where land is not eligible for inclusion in the exemption.

(a) The value of land under a single story improvement when part of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the value of each portion.

Example 1: There is a one-story building of which a part representing 80 percent of total value is under exemption and the remaining part is taxable and consists of new construction representing 20 percent of the total value. The value of the land under the building would be apportioned 80 percent to the exemption and 20 percent to the taxable or market value each year.

(b) The value of land under a multiple story improvement when all or part of one or more stories of the improvement is receiving an exemption must be apportioned between the exempted and taxable portions of the improvement based on the contribution of the current market value of each portion.

Example 2: There is a two story building which occupies a 100' x 100' lot in its entirety. The first story is under exemption, and the value carried on the roll represents 60 percent of the total improvement value. The second story, valued at market, represents 40 percent of the total improvement value. The value of the land under the building must be apportioned 60 percent to the exemption and 40 percent to the property valued at market.

(c) Where an improvement does not fully occupy the land and where only a portion of the improvement and land are used for an exempt purpose, then the value of the improvement and land must be allocated between the exempt and taxable portions of the parcel. Any portion of the land or improvement that is not used, developed, or that is being held for future expansion is fully taxable.

Example 3: Assume a parcel that measures 200' by 200', a building measuring 100' x 100', paved parking measuring 100' x 100' and unimproved land measuring 200' x 100'. One-half or 50% of the building and parking are used by an exempt entity. One-half (50%) or 5000 square feet of the building is exempt, one-half (50%) of the parking is exempt. The remainder of the building, the parking lot and unimproved land are fully taxable.

Example 4: There is a building measuring 100' x 100' located on one-fourth of a 200' x 200' lot. The remaining portion of the lot is a parking area. The taxable portion of the building rents or leases a 100' x 100' parking area and has exclusive use. The value of the remaining 100' x 200' area of the lot is exempted only to the extent it is used as a parking area for the exempt entity. If 100' x 100' of this 100' x 200' parking area is used for parking and the remainder is held by the exempt entity for future expansion, the area held for expansion is fully taxable.

(d) When an improvement is partially exempted and that improvement contains common areas (i.e., hallways, restrooms, conference rooms, etc.), the percentage of the total area of these common areas that receives exemption shall be the same as the percentage of the total net rentable area occupied by the exempt entity.

(6) Valuation of Land Under Improvements Having Only Partial Special Assessment: The procedures described in Section (5) of this rule also apply to properties receiving a partial special assessment, such as a partial historical designation.

(7) This rule is effective January 1, 2016.

Stat. Auth.: ORS 305.100, 308.205
Stats. Implemented: ORS 308.205
Hist.: 1-54; 12-55; 11-59; 8-62; 1-64; 12-65; 1-66; 3-70; 11-71; 12-31-79; 12-31-81; RD 16-1987, f. 12-10-87, cert. ef. 12-31-87; RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 11-1990, f. 12-20-90, cert. ef. 12-31-90; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-308.205-(D)
Industrial Property Valuation for Tax Purposes

(1) For the purposes of this rule, the following words and phrases have the following meaning:

(a) A "unit of property" is the item, structure, plant, or integrated complex as it physically exists on the assessment date.

(b) "Real property" means the real estate (physical land and appurtenances including structures, and machinery and equipment erected upon the land or attached to the land or structures) and all interests, benefits, and rights inherent in the ownership of the physical real estate.

(c) "Highest and best use" means the reasonably probable use of vacant land or an improved property that is legally permissible, physically possible, financially feasible, and maximally productive, which results in the highest real market value.

(2) If the highest and best use of the unit of property is an operating plant or an operating integrated complex, the real market value will be considered to be a "going concern." The going concern concept recognizes that the value of an assembled and operational group of assets usually exceeds the value of an identical group of assets that are separate or not operational.

(3) Methods and Procedures for Determining the Real Market Value of Industrial Property:

(a) For the valuation of industrial property all three approaches to value (sales comparison, cost, and income), must be considered. For a particular property, it may be that all three approaches cannot be applied, however, each must be investigated for its merit in each specific appraisal.

(b) The market value of a unit of property must not be determined from the market price of its component parts, such as wood, glass, concrete, furnaces, elevators, machines, conveyors, etc., each priced separately as an item of property, without regard to its being integrated into the total unit.

(c) In utilizing the sales comparison approach only actual market transactions of property comparable to the subject, or adjusted to be comparable, will be used. All transactions utilized in the sales comparison approach must be verified to ensure they reflect arms-length transactions. When non-typical market conditions of sale are involved in a transaction (duress, death, foreclosure, bankruptcy, liquidation, interrelated corporations or persons, etc.) the transaction will not be used in the sales comparison approach unless market-based adjustments can be made for the non-typical market condition.

(A) Properties utilized in the sales comparison approach, although not necessarily identical, at the very least must be similar in many respects. Adjustments must be made for differences in location, product, production capacity, and all other factors that may affect value. Excessively large adjustments or an excessive number of adjustments is an indication that the properties are not comparable.

(B) When utilizing the sales comparison approach, the appraiser must take into consideration difference between the subject and the comparable properties for physical condition, functional obsolescence and economic obsolescence. Adjustments must be made for differences between the subject and comparable properties for factors such as physical condition, functional deficiencies, operating efficiency, and economic obsolescence. If the properties are functionally or economically equivalent, verification of the equivalency must be included in the appraisal.

(f) Sales for the disposal of properties through auction, liquidation or scrap sales are indicators of market value only when on the assessment date such disposal of the subject property is imminent, or has actually taken place.

(g) The cost approach may utilize either the reproduction, replacement, or the used equipment technique. It is acceptable to use trended historical cost to estimate the reproduction cost new. The value estimate must include all costs required to assemble and construct the unit of property.

(h) When using the income approach, the income from the operation of the property may be utilized for industrial properties and other properties that are not typically leased or rented. When the income from the property's operation is used, the unit of property must be valued as a going concern. In utilizing the income approach for the valuation of industrial properties, the discounted cash flow technique is one of the appropriate methods to derive a value estimate. Consideration in the discounted cash flow technique is given to items such as the anticipated future free cash flow available to both, the debt and equity holders; inventory valuation methods, intangible assets, income taxes, net working capital, capital reinvestment, etc. When utilizing the discounted cash flow technique, the capitalization or discount rate must be derived in accordance with OAR 150-308.205-(C).

(i) Determining the highest and best use for the unit of property is necessary for establishing real market value. This determination of highest and best use may include, among others, all possible uses that might result from retaining, altering or ceasing the integrated nature of the unit of property.

(4) For machinery and equipment, in all the approaches to value, if the highest and best use is continued operation, adjustments must be made to account for the cost of integrating the machinery and equipment into the total unit of the property. These costs include, but are not limited to, freight, installation, wiring, piping and foundation costs.

(5) Basic information for an appraisal. Basic data and procedures in making appraisals normally include the following when applicable:

(a) Location of property by tax codes and tax lot numbers;

(b) Map or sketch of land owned and layout of plant;

(c) Inventory of physical plant;

(d) Reproduction or replacement cost computations, as applicable;

(e) Analysis of depreciation;

(f) Analysis of economics as they affect valuation;

(g) Analysis of sales data, when applicable;

(h) Field inspection;

(i) Research and familiarization with typical properties of the industry;

(j) Annual reports to stockholders;

(k) Fixed assets schedules;

(L) Income statements;

(m) Such other data that may affect value.

(6) Basic information for an appraisal utilizing the industrial property return. Basic data for an appraisal utilizing the industrial property return normally includes the following:

(a) Report of additions;

(b) Report of retirements;

(c) Knowledge of miscellaneous technical and economic conditions that affect value;

(d) Trending factors:

(A) Separate factors for yard improvements, buildings, and equipment classified as real property must be developed.

(B) The development of the factors must use data published by the United States Department of Labor, the Oregon Building Construction Trades Council, and other sources the Department of Revenue deems to be reliable indicators of property value over time.

(C) Data developed by physical inspection together with appraising a segment of the total property or making a general review of the total value under certain circumstances may supplement the data utilized in (A) above.

(e) Depreciation allowances;

(f) Real market value for prior year.

(7) This rule is effective January 1, 2016.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 308.205
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1991, f. 12-30-91, cert. ef. 12-31-91; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-308.205-(H)
Valuation Review of State-appraised Industrial Property.

(1) The department may conduct valuation reviews of state-appraised industrial properties to verify the accuracy of the property's real market value and maximum assessed value.

(2) Valuation reviews will follow procedures adopted by the Department of Revenue.

(3) The real market value and maximum assessed value of a property may change for the current year and previous years following the requirements in ORS 311.205 and 311.216, as a result of the valuation review.

(4) The real market value and maximum assessed value of a property may change for subsequent tax years if the result of the valuation review is a change in valuation judgment.

(5) This rule is effective January 1, 2016.
Stat. Auth.: ORS 305.100, 308.205
Stats. Implemented: ORS 308.205
Hist.: REV 9-1998, f. 12-11-98, cert. ef. 12-31-98; REV 12-1998, f. 12-29-98, cert. ef. 12-31-98; Renumbered from 150-308.205(2), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-308.290-(B)
Industrial Property Returns — Incomplete Returns and Late Filing Penalties

(1) Industrial Property Returns are combined returns of real and personal property for state-appraised industrial property. The Industrial Property Return forms and instructions specify the information to be included in the return and submitted to the department.

(2) A taxpayer must submit a substantially complete return by the due date of the return. A return is substantially complete if it contains sufficient information to allow the return to be processed by the department. A return is not substantially complete if:

(a) It is submitted with blank or missing schedules unless the schedules are appropriately left blank and are labeled with an identifying notation such as "no", "none", or "not applicable"; or

(b) It is submitted with attachments that do not include required information as specified on the schedule.

(3) For the purposes of the late filing penalty imposed by ORS 308.295, a return that is not substantially complete will not be considered "filed".

(4) If a taxpayer submits a return that is not substantially complete, the department will send the return back to the taxpayer with a request that the return be filed with the required information. The taxpayer will be subject to a late filing penalty under ORS 308.295 if a substantially complete Industrial Property Return is not filed by the due date.
Stat. Auth.: ORS 305.100, 308.290
Stats. Implemented: ORS 308.290
Hist.: REV 4-1998, f. & cert. ef. 6-30-98; REV 2-2002, f. 6-26-02, cert. ef 6-30-02; REV 10-2002, f. & cert. ef. 12-31-02; Renumbered from 150-308.290(4)(b) by REV 4-2011, f. 12-30-11, cert. ef. 1-1-12; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-309.026-(A)
Limitations on Increase in Value by Board of Property Tax Appeals

(1) For purposes of this rule;

(a) "Property tax account" means the administrative division of property used by the assessor for listing the property on the assessment roll.

(b) "Unit of property" is as defined within ORS 310.160(1).

(2) The board of property tax appeals (BOPTA) lacks jurisdiction under ORS 309.026 to increase the total real market value (RMV), the total specially assessed value (SAV), the maximum assessed value (MAV), or assessed value (AV) of property because the statute specifies that BOPTA may only hear petitions to reduce the value of property.

(3) When BOPTA receives a petition requesting an increase in the value of property, the board must act on the petition in the following manner:

(a) When BOPTA receives a petition requesting an increase or resulting in an increase in the total RMV, SAV, MAV or AV of property in a property tax account or accounts constituting a unit of property, the board must dismiss the petition for lack of jurisdiction.

(b) When BOPTA receives a petition requesting an increase in the RMV of one or more components of a property tax account or accounts constituting a unit of property, the board may increase that component provided the change does not result in an increase to the total RMV, SAV, MAV, or AV of the property in the tax account, or unit of property.

(4) When BOPTA receives a petition requesting a reduction in the value of property, the board must act on the petition in the following manner:

(a) When BOPTA receives a petition requesting a reduction in total RMV that does not specify a reduction in value of one or more components of a property tax account or accounts that constitute a unit of property, the board may increase or decrease any or all components, provided the net result sustains or reduces the total RMV, SAV, MAV or AV of the property in the property tax account or unit of property.

(b) When BOPTA receives a petition requesting a reduction in the RMV of one or more components of a property tax account or accounts that constitute a unit of property and no change to other component(s), or the petition is silent as to the requested value of the other components, at the request of the Assessor's Office, the board may act on any or all components of the tax account or unit of property, or both.

(5) This rule is effective January 1, 2016.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.026
Hist.: RD 9-1989, f. 12-18-89, cert. ef. 12-31-89; RD 8-1992, f. 12-29-92, cert. ef. 12-31-92, Renumbered from 150-309.026(2)(e); RD 8-1992, f. 12-29-92, cert. ef. 12-31-92; RD 9-1997, f. & cert. ef. 12-31-97; Renumbered from 150-309.026(2), REV 5-2004, f. 7-30-04, cert. ef. 7-31-04; REV 9-2006, f. 12-27-06, cert. ef. 1-1-07; REV 6-2009, f. & cert. ef. 7-31-09; Renumbered from 150-309.026(2)-(A), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-309.110-(A)
Board of Property Tax Appeals (BOPTA) Procedures When Roll Changed after Petition is Filed

(1) If the assessor reduces the value of property under ORS 308.242(2) after a petition has been filed with BOPTA, but prior to January 1 of the tax year, or under ORS 311.205, prior to the time the board convenes, and in neither case is a stipulation filed with the board prior to the time the board convenes, the board will act on the petition in the following manner:

(a) The board will schedule a hearing and notify the petitioner of the time and place the board will meet to resolve the petition.

(b) If the value requested in the petition is higher than or equal to the adjusted value, the board must issue an order dismissing the petition.

(c) If the value requested in the petition is lower than the adjusted value, the board must review the adjusted value and issue an order sustaining or correcting the adjusted value.

(2) Not withstanding (1)(b) of this rule, the board will issue an order to sustain or reduce the adjusted value if the petitioner amends the value requested pursuant to section 5 of OAR 150-309.100(3)-(B) prior to or during the board hearing.

(3) This rule is effective January 1, 2016.
Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 309.110
Hist.: REV 6-2003, f. & cert. ef. 12-31-03; Renumbered from 150-309.110(1)-(E), REV 17-2008, f. 12-26-08, cert. ef. 1-1-09; REV 4-2014, f. & cert. ef. 8-11-14; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-311.234
Procedure to Correct MAV When Square Footage Error Exists

(1) For purposes of this rule, "Current RMV", as used in subsection (4)(b), is defined as the RMV for the tax year of the petition. For example, a petition submitted in August 2016 will use the roll values for the 2016-2017 tax year to calculate the adjustment.

(2) To correct the maximum assessed value (MAV) of a property for an error in square footage, the assessor must receive a petition from either the current owner of the property or other person obligated to pay taxes imposed on the property. The petition must be filed with the county assessor on or before December 31 of the current tax year on a form prescribed by the department.

(3) The correction to MAV by the assessor must be in proportion to the correction to RMV due to the error in square footage.

(4) The proportion of error and resulting MAV are calculated as follows by the assessor:

(a) For properties described by a single component (for example, land only), use the following procedure to adjust MAV.

NOTE: An example is incorporated into the steps with the following assumptions:
The assessor's records show that a parcel has 435,600 sq. ft. (10 acres), when, in fact, it only has 392,040
sq. ft. (9 acres).
The existing RMV is $80,000.
The corrected RMV is $75,000.
The existing MAV is $50,000.
Step 1: Divide the correct RMV by the RMV as currently shown in the assessment records to determine the proportional RMV correction.
Example: $75,000 / $80,000 = 0.9375.
Step 2: Multiply the proportional RMV correction (Step 1) by the existing MAV for the property to determine the corrected MAV for the property.
Example: 0.9375 X $50,000 = $46,875, which is the corrected MAV for the property.

(b) For properties described by multiple components (for example, land and buildings, or more than one building or structure, or buildings and machinery), use the following procedure to adjust MAV.

NOTE: An example is incorporated into the steps with the following assumptions:
A property consists of a 3-acre land parcel and two buildings.
Building 1 was incorrectly valued as having 2,000 square feet, when in fact it has only 1,500 square feet.
Current Real Market Value (RMV) of the building with the error is $80,000.
Corrected RMV of the building with the error is $60,000.
The square footage on the land and other building is correct.
The property's total RMV is $400,000.
The property's total MAV is $300,000.
Step 1: Determine which component has the square footage error.
Example: Building 1 is the component with the error in square footage.
Step 2: Determine the portion of the property's total RMV that is contributed by the component with the square footage error.
Example: Building 1 RMV is given as $80,000.
Step 3: Calculate the ratio of the RMV of the component with the error to the RMV of the entire property.
Example: Building 1 RMV ($80,000) divided by Total RMV ($400,000) = 0.20.
Step 4: Multiply the property's total MAV by the ratio obtained from Step 3 to determine the MAV attributable to the component with the error in square footage.

Example: $300,000 x .20 = $60,000.
Step 5: Subtract the MAV attributable to the component with the error in square footage (Step 4) from the property's total MAV to determine the base MAV.
Example: $300,000 - $60,000 = $240,000.
Step 6: Divide the correct RMV of the component by the RMV of the component as currently shown in the assessment records to determine the proportional RMV correction ratio.
Example: $60,000 / $80,000 = 0.75.
Step 7: Multiply the proportional square footage error ratio (Step 6) by the MAV attributable to the component with the square footage error (Step 4) to determine the corrected MAV attributable to the component.
Example: 0.75 x $60,000 = $45,000, which is the corrected MAV attributable to the component.
Step 8: Add the corrected MAV attributable to the component (Step 7) to the base MAV (Step 5) to determine the corrected MAV for the entire property.
Example: $45,000 + $240,000 = $285,000, which is the corrected MAV for the property.

(5) For a building that is valued by summing the individual value contributions from distinct portions of that building, the particular building portion affected by the square footage error may be considered as a separate component such as in (4)(b) above when making the correction to MAV. Examples of this type of building include but are not limited to a warehouse with attached offices or a house with an attached garage.

(6) Notwithstanding that a property's MAV has been corrected due to a square footage error, the corrected MAV remains subject to adjustments required by ORS 308.146 to 308.166.

(7) Roll corrections pursuant to ORS 311.234 are to be made using the procedures in 311.205.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 311.234
Hist.: REV 2-2002, f. 6-26-02, cert. ef. 6-30-02; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-321.207-(A)
Forestland Valuation Rule

(1) Purpose: The purpose of this rule is to describe the process used to develop the annual preliminary forestland values and to clarify the establishment of the final certified forestland values (ORS 321.216).

(2) General Principles and Definitions:

(a) For the purpose of this rule, "forestland" has the meaning provided in ORS 321.257(2) for Western Oregon, and ORS 321.805(4) for Eastern Oregon.

(b) Values developed by this rule are the values of bare forestland.

(c) The mix of sales of highest and best use forestland in Western Oregon will approximate, over the long term, the percentage distribution of acres in each land productivity class in Western Oregon.

(d) The department will rely on market sale evidence as the primary appraisal method for determining forestland values in both Eastern Oregon and Western Oregon.

(e) Sales of forestland in Eastern Oregon often include the influence of non-forestland values. Non-forestland values include, but are not limited to, values associated with grazing, hunting or other recreational uses.

(3) Forestland Sales Data:

(a) The department will collect and verify forestland sales data. Only sales with the following characteristics will be considered:

(A) The current or immediate future use of the land is the growing and harvesting of timber,

(B) The improvement values and other non-forestland values can be accurately extracted from the sale price to give a land residual value,

(C) The transaction is at arm's-length,

(D) The purchase consideration is cash or a financing method standard to the real estate market,

(E) The bare land value is greater than $0, and

(F) The sale is 20 acres or larger of productive forestland.

(b) The department will compile the sales data in a forestland sales database.

(c) The department will analyze calendar year (January 1 to December 31) sales data to determine a single per acre Western Oregon Average Value (WAV) and a single per acre Eastern Oregon Average Value (EAV). The acres to be included in the denominator for each sale are productive forestland acres only, that is, land in classes FA through FG in Western Oregon and land not classed as wasteland in Eastern Oregon.

(d) The WAV and EAV will be determined only from data where sales identified as a statistical outlier have been rejected.

An outlier is defined as a sale with a price that is outside of the range of plus or minus two standard deviations from the seven year average of all sales in Western Oregon or plus or minus two standard deviations from the seven year average for all sales in Eastern Oregon. For the purpose of determining whether a sale is an outlier, the department will consider all sales from the prior seven years, including any outliers identified from prior years' analysis. If a sale is an outlier for three consecutive years, the sale will be treated as an outlier in all subsequent years.

(e) In the absence of sales for the current year, the department will average the two prior years to get an average for the year. For a previous year with no sales the department will average the year prior and the next year going forward.

(f) The resulting average per acre values calculated for Western and Eastern Oregon in subsection (c) above will be further processed as follows:

(4) Western Oregon Process.

(a) For each of the seven calendar years of sales data immediately prior to the January 1 assessment date, calculate the WAV for each year. WAV is the arithmetic mean of the individual sales' average value per acre of forestland for the calendar year.

(b) Sum the current plus six immediately prior years WAV from subsection (3)(c) of this rule and divide by seven to obtain the seven-year average for Western Oregon (7YAVWO).

(c) Multiply the resulting 7YAVWO by the Western Forestland Class Spread (WFCS), see below, [ED. NOTE: Tables referenced are available from the agency.] For each productivity class (FA through FX) to obtain the value for each productivity class.

(d) The value obtained in subsection (4)(c) of this rule, rounded to the nearest whole dollar, is the preliminary value by productivity class for the January 1 assessment date.

(5) Eastern Oregon Process:

(a) For each of the seven calendar years of sales data immediately prior to the January 1 assessment date, calculate the EAV for each year.

(b) Calculate a least squares regression line of seven EAV's established in subsection (5)(a) of this rule for Eastern Oregon to determine the annual value change ratio (delta V) for the sales data collection period. The annual change ratio (delta V) is the calculated value along the regression line at year 7 divided by the calculated value at year 6.

(c) The annual rate of change in subsection (5)(b) of this rule will be applied to the certified immediately prior year SAV for Eastern Oregon (EOR PSAV) for a preliminary estimate of the current year SAV:

EOR PSAV x (delta V) = Preliminary current year EOR SAV.

(d) The value obtained in subsection (5)(c) of this rule, rounded to the nearest whole dollar, is the preliminary value for the January 1 assessment date.

(6) Response to Preliminary Values:

(a) Data pertinent to the forestland valuation process that was not evaluated previously may be collected during a review by the Forestland Value Advisory Committee (ORS 321.213) or through written comments submitted during the public hearing on proposed specially assessed forestland values (ORS 321.210). Pertinent data may be added to the forestland database to recalculate the WAV and EAV described in subsection (3)(c) of this rule, to then obtain revised preliminary values.

(b) The department will consider the revised preliminary values and any other information provided by additional research by the department, the Forestland Value Advisory Committee, submitted written comments, or the hearing process to determine the final values to be certified under ORS 321.216.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 305.100, 321.207
Stats. Implemented: ORS 321.805, 321.257, 321.207, 321.210, 321.213
Hist.: REV 10-2002, f. & cert. ef. 12-31-02; REV 6-2003, f. & cert. ef. 12-31-03; REV 12-2004, f. 12-29-04, cert. ef. 12-31-04; Renumbered from 150-321.207(1), REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

150-358.505
Determining Value of Historic Property Qualified for Special Assessment

(1) For purposes of this rule,

(a) "Assessed Value" (AV) is defined in ORS 308.146.

(b) "Maximum Assessed Value" (MAV) is defined in ORS 308.146 without application of ORS 308.146(4).

(c) "Changed Property Ratio" (CPR) is the ratio described in OAR 150-308.156.

(d) "Internal ratio" (IR) is the quotient of MAV/RMV for an individual property, as if the property is not specially assessed. The ratio cannot be more than 1.0.

(e) "Maximum Specially Assessed Value" (MSAV) means maximum assessed value for property subject to special assessment.

(f) "Real Market Value" (RMV) is defined in ORS 308.205(1).

(2) This rule applies to initial and second qualifying periods beginning on or after July 1, 2010, with application being made on or after September 28, 2009.

(3) When a property is subject to historic property special assessment, the county assessor must:

(a) Include a "Historic property — potential additional tax" notation on the tax roll.

(b) Maintain the RMV and a MAV as if the property were not specially assessed. The RMV and MAV as if the property were not specially assessed must be adjusted to include any changes in value as addressed in ORS 308.146, 308.149, 308.153, 308.156, and 308.159 (commonly referred to as exception value).

(c) Calculate MSAV of the property annually while the property remains in the program.

(4) Calculate first period values for SAV, MSAV and AV.

(a) Step 1: Calculate the property's SAV to be used throughout the entire first 10 year period of historic property special assessment.

(A) The SAV equals the AV of the property on the tax roll at the time the application is submitted pursuant to ORS 358.487.

(B) If the property is specially assessed or exempt in the tax year during which an application is made, SAV equals the RMV on the tax roll at the time the application is submitted pursuant to ORS 358.487 multiplied by the CPR for that tax year.

(b) Step 2: Calculate MSAV for the first year of special assessment by multiplying the SAV by the IR. The MSAV is recalculated in the second and subsequent years and equals the greater of:

(A) The AV for the prior year multiplied by 103 percent; or

(B) The MSAV for the prior year

(c) Step 3: Calculate the AV, which is the lesser of the:

(A) SAV calculated in step 1;

(B) MSAV calculated in step 2; or

(C) The RMV.

Example 1: The State Historic Preservation Officer (SHPO), in January 2010, notifies the assessor that the owner of an old warehouse applied for historic property special assessment in October 2009 and qualified for that special assessment. The value of the warehouse as reflected on the 2009-10 tax roll is: RMV $400,000; MAV $302,380; AV $302,380. The first year of special assessment is 2010-11. The RMV for 2010-11 is $416,000.

(a) Step 1: Calculate the SAV. SAV = AV in the tax year the application is submitted = $302,380

(b) Step 2: Calculate MSAV for first year of special assessment.

(A) 2010-11 MAV = AV x 1.03, $302.380 x 1.03 = $311,451

(B) IR = MAV / RMV, $311,451 / $416,000 = 0.749

(C) MSAV = SAV * IR, $302,380 * 0.749 = $226,482

(c) Step 3: Calculate the AV for the current year. It is the lesser of SAV ($302,380), MSAV ($226,482) or RMV ($416,000). AV = $226,482.

Example 2: SHPO, in January 2010, notifies the assessor that the owner of an old mansion no longer used by the Elks as a clubhouse that will be first disqualified from exemption for 2010-11 applied for historic property special assessment in October 2009 and that the property is qualified for special assessment for 2010-11. The CPR for this classification of property, had it been taxable in 2009-10, was 0.656, and the property's RMV for 2009-10 was $300,000. The first year of special assessment is 2010-11. The RMV for 2010-11 is calculated at $295,000 and the countywide CPR for this property classification for 2010-11 is 0.650. Other than the disqualification from exemption and the qualification for historic special assessment, there have been no changes to the property for 2010-11.

(a) Step 1: Calculate MAV for 2010-11 pursuant to ORS 308.156 as a result of disqualification from exemption.

(A) MAV = RMV x CPR, $295,000 x 0.650 = $191,750

(b) Step 2: Calculate SAV

(A) SAV = RMV x CPR from the tax year of application, $300,000 x 0.656 = $196,800

(c) Step 3: Calculate MSAV for first year of special assessment

(A) MSAV = SAV x IR, $196,800 x ($191,750 / $295,000) = $127,920

(d) Step 4: Calculate AV

(A) AV = lesser of SAV (step 2) or MSAV (step 3) or RMV. AV = $127,920.

(5) Calculate Second period values for SAV, MSAV and AV.

(a) Step 1: Calculate SAV for the first year of a second qualifying period.

(A) The SAV equals the RMV of the property for the assessment year in which the application is made.

(B) The SAV will remain constant throughout the second ten-year period of special assessment.

(b) Step 2: Calculate the MSAV for the first year of the second qualifying period of special assessment by multiplying the SAV by the internal ratio. The MSAV is recalculated in the second and subsequent years and equals the greater of:

(A) The AV for the prior year multiplied by 103 percent; or

(B) The MSAV for the prior year

(c) Step 3: Calculate the AV, which is the lesser of the:

(A) SAV calculated in step 1;

(B) MSAV calculated in step 2; or

(C) The RMV.

Example 3: SHPO approves an application filed in March 2020 and qualifies a renovated chateau for a second 10 year period of special assessment beginning with the 2020-21 tax year. The first historic property special assessment period ended in the 2018-19 tax year. For 2020-21, the RMV is $825,000, and MAV without special assessment would be $509,850.

(a) Step 1: Calculate SAV. SAV = RMV for assessment year in which application made. SAV = $825,000

(b) Step 2: Calculate MSAV for the first year of special assessment. MSAV = SAV x IR, $825,000 x ($509,850 / $825,000) = $509,850

(c) AV = lesser of SAV (step 1), MSAV (step 2), or RMV. AV = $509,850.

(6) When a building that is certified for historic property special assessment is divided into condominium units:

(a) The original account is deleted and each condominium becomes a new account.

(b) Each new account is appraised to establish a new RMV and calculate a new MAV.

(c) SAV and MSAV of the original account are apportioned between the new accounts but the total SAV and MSAV does not change as a result of the conversion to condominiums.

(d) The initial sale of each condominium unit by the developer disqualifies that unit from special assessment.

(e) Upon disqualification, the condominium unit is immediately requalified without further application for the remaining term of the original building's current 10 year period of historic property special assessment.

(f) Upon requalification, the SAV of the condominium unit equals its RMV for the tax year in which the sale of the unit occurred multiplied by the CPR for that tax year.

(g) The MSAV for the condominium unit for the first year after initial sale are calculated as described in step 3, using the MAV and RMV of the unit to determine the IR.

(h) The AV for the condominium unit for the first year after initial sale is calculated based on the lower of the SAV, MSAV, or RMV of the unit for that year.

Example 4: An account with an old warehouse building is qualified by SHPO for historic property special assessment. Its RMV, MAV, MSAV, SAV, and AV have been calculated as described in previous examples. The building is then converted to condominium units. When the condominium conversion is complete and all approvals are in place, each condominium unit becomes a separate account. New RMV and MAV are calculated for each account. Existing SAV and MSAV of the original warehouse account are apportioned between the new accounts. Total SAV and MSAV do not change as a result of the condominium conversion.

Account (tax lot) 00100, old warehouse building, is in its fourth year of its historic property special assessment. Its most recent tax roll values are as follows: RMV = $400,000; MAV if not specially assessed = $300,000, SAV = $225,000; MSAV = $179,020; AV = $179,020. CPR for this class of property is 0.750. The warehouse has now met all requirements for condominium and the 25 units worth $1,000,000 each are certified for sale. Account 00100 is deleted and replaced with account (tax lot) 90001 through account (tax lot) 90025. All units are identical in this building and each account has an RMV of $1,000,000. Total RMV of the building is now $25,000,000 and MAV is $18,750,000. Each account has a SAV of $9,000 and a MSAV of $7,160.

Total value of the building and site as condominiums (account 00100 deleted):

RMV = unit value * number of units, $1,000,000 x 25 = $25,000,000

MAV = RMV x CPR, $25,000,000 x 0.750 = $18,750,000

Value of each unit (each new account, 90001 through 90025):

RMV = $1,000,000

MAV = RMV x CPR, $1,000,000 x 0.750 = $750,000

SAV = total building SAV apportioned by unit value, $225,000 / ($25,000,000 / $1,000,000) = $9,000

MSAV = total building MSAV apportioned by unit value, $179,020 / ($25,000,000 / $1,000,000) = $7,160

AV = $7,160

Example 5: A condominium unit in the building described in example 4 is sold by the developer for $1,000,000 on July 20, 2015. The unit is disqualified from the historic property special assessment due to the sale and then immediately requalified for the remaining term. Upon requalification, the SAV, MSAV, and AV are calculated for this unit. As of January 1, 2015 the individual unit had an RMV of $1,000,000 and an MAV of $750,000. Historic property special assessed values are reflected in an SAV of $750,000 and an MSAV of $562,500. The SAV calculated for the 2015-16 tax year will remain the same, frozen, throughout the remaining years of the building's 10 year term.

Unit values:

RMV = $1,000,000

MAV = RMV * CPR, $1,000,000 * 0.750 = $750,000

SAV = RMV * CPR, $1,000,000 * 0.750 = $750,000

MSAV = SAV * IR, $750,000 * ($750,000 / $1,000,000) = $562,500

AV = $562,500

The building was in its 4th year of its 10 year historic property special assessment term; the new SAV for the condominium unit will remain the same, $750,000, for the remaining years of the building special assessment or until the building is otherwise disqualified.

The remaining accounts in the building are not affected by this sale.

(7) This rule is effective January 1, 2016.
Stat. Auth.: ORS 305.100, 358.505
Stats. Implemented: ORS 358.505
Hist.: REV 11-2009, f. 12-21-09, cert. ef. 1-1-10; REV 4-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Corporate income/excise tax and Estate Tax: Listed jurisdictions, Apportionment, Credits, Sales factor, Estimated tax payments
Adm. Order No.: REV 5-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 150-314.280-(O), 150-317.152, 150-317.717
Rules Amended: 150-118.140, 150-314.665(1)-(A)
Rules Repealed: 150-118.NOTE, 150-314.665(2)-(C)
Rules Ren. & Amend: 150-314.515(2) to 150-314.515-(A)
Subject: 150-118.NOTE — Is obsolete and should be repealed.

150-118.140 — Incorporates changes made by the 2015 Oregon Legislature to the Estate Tax Credit for Natural Resource Property.

150-314.280-(O) — Moves the provisions under current OAR 150-314.665(2)-(C) to this rule applicable only to public utilities.

150-314.515(2) renumbered to 150-314.515-(A) — Modifies the criteria for the crediting of overpayments of tax to estimated tax installments for amended or delinquent returns; also makes clear that an overpayment of tax will be subject to offset prior to the overpayment being credited to an estimated tax installment.

150-314.665(1)-(A) — Prescribes that sales taxes are excluded from the sales factor as of January 1, 2014.

150-314.665(2)-(C) — Is repealed upon adoption of 150-314.280-(O) to make clear that the rule now applies to public utilities under ORS 314.280.

150-317.152 — Provides that the Qualified Research Credit may be calculated in any manner that is allowed under IRC 41; applicable percentage is 5%.

150-317.717 — Prescribes a procedure to solicit feedback from potential listed jurisdictions and other stakeholders prior to the Department of Revenue's biennial listed jurisdiction report.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-118.140
Estate Tax Credit for Natural Resource Property

(1) Definitions. The following definitions apply for purposes of ORS 118.140:

(a) "Active Management" is defined by Internal Revenue Code (IRC) Section 2032A(e)(12) to mean the making of the management decisions of a business (other than the daily operating decisions).

(b) "Ancestor" means a person from whom the decedent is directly descended, such as a parent, grandparent, or great-grandparent. The term does not include aunts, uncles, or cousins.

(c) "Cash equivalents" means accounts receivable, inventory, marketable securities, capital or sinking funds, prepaid expenses and other assets that are spent, maintained, used or available for use, in the operation of a farm business, forestry business, or fishing business.

(d) "Disposition" means to sell, exchange, transfer, convey, or otherwise dispose of natural resource property that was used to compute the natural resource property credit, if such disposition results in the property no longer qualifying for the credit.

(e) "Domestic partner" means an individual who has entered into a domestic partnership as defined in ORS 106.310. Per the general applicability provision of ORS 106.340, "spouse" as used in these rules includes domestic partner.

(f) "Family member" means a member of the family as defined in IRC section 2032A, and for purposes of ORS 118.140 includes:

(A) An ancestor of the decedent;

(B) The spouse of the decedent;

(C) A lineal descendant of the decedent or of the decedent's spouse;

(D) A lineal descendant of a parent of the decedent; or

(E) The spouse of any lineal descendant described in paragraph (C) or (D). For purposes of the preceding sentence, a legally adopted child of an individual is a lineal descendant of the adoptive parent(s).

(g) "Lineal descendant" means a person in a direct line of descent from the decedent, such as a child, grandchild or great-grandchild.

(h) "Lineal descendant of a parent of the decedent" means a decedent's siblings, children and grandchildren of those siblings, and any other person in a direct line of descent from the decedent's siblings.

(2) Estates of decedents who die on or after January 1, 2015 may only claim the natural resource property tax credit with respect to natural resource property located in Oregon that equals at least 50 percent of the adjusted gross estate that is in Oregon. All relevant provisions of this rule continue to apply to estates of decedents who die on or after January 1, 2015.

(3) Material participation by a Family Member. In order to qualify under ORS 118.140(8), at least one family member must materially participate in the business after the transfer.

(a) Material participation is a factual determination, and the types of activities which will support such a finding will vary. No single factor is determinative.

(b) Actual employment of the family member on a substantially full-time basis (35 hours a week or more) or to any lesser extent necessary personally to manage fully the farm or business in which the real property to be valued under section 2032A is used constitutes material participation.

(c) Payment of self-employment tax for employment with respect to the farm business, forestry business or fishing business is not conclusive as to the presence of material participation, and the requirement can be met even though no self-employment tax is payable by the family member with respect to income derived from the business.

(d) As provided by section 2032A of the Internal Revenue Code, active management shall be treated as material participation.

(e) The rules for determining material participation are illustrated by the examples found in CFR 20.2032A-3(g).

(f) Examples of active management decisions that can be used to demonstrate material participation include the following: inspecting growing crops, animals, forests, or equipment; reviewing and approving annual crop plans in advance of planting; making a substantial number of the management decisions of the business operation; approving expenditures for other than nominal operating expenses in advance of the time the amounts are expended; deciding what crops to plant or how many cattle to raise; determining what fields to leave fallow; determining where and when to market crops and other business products; determining how to finance business operations; and determining what capital expenditures the trade or business should make.

(4) If a transferee disposes of property resulting in additional tax as described in ORS 118.140(9)(a), the transferee must file a report with the department and pay the additional tax. The report may be made by filing a copy of the form described in ORS 118.140(10), identifying the asset or assets that no longer qualify for the credit, and including a calculation of the additional tax as described in ORS 118.140(9)(e). The report and payment of the tax are due within six months of the disposition. Interest and penalties under ORS 118.260 apply if the report is not filed and tax is not paid on or before the due date prescribed in ORS 118.140(9)(e).

[Publications: Contact the Oregon Department of Revenue for information on obtaining copies of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]
Stat. Auth.: ORS 305.100 & 118.140
Stats. Implemented: ORS 118.140
Hist.: REV 4-2008(Temp), f. & cert. ef. 5-23-08 thru 11-17-08; REV 13-2008, f. & cert. ef. 11-3-08; REV 8-2010, f. 7-23-10, cert. ef. 7-31-10; REV 6-2012, f. 7-20-12, cert. ef. 8-1-12; REV 8-2013, f. & cert. ef. 12-26-13; REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.280-(O)
Public Utilities: Sale of Commodities

(1) The sale of a commodity such as electricity, water, steam, oil, oil products or gas, including but not limited to natural and liquid gas, which is delivered or shipped to a purchaser with a contractually specified point of physical delivery in Oregon, is a sale in this state. It does not matter whether the purchaser uses the property in Oregon, transfers the property to another state, or resells the property in Oregon. If the contract states the point of delivery is at the Oregon border with another state, the sale is presumed to be in Oregon unless the taxpayer can demonstrate to the satisfaction of the department that delivery occurred in some other place.

Example 1: A provider of wholesale electricity enters into a contract to deliver a specified amount and duration of a supply of electricity to a purchaser who takes possession at a contractually specified point of physical delivery in Oregon. The sale is an Oregon sale.

(2) A taxpayer who contracts to sell electricity to and also buy electricity from the same entity during the same period or partial period of time will have an offsetting contractual amount, also known as a book-out transaction. The gross sales of electricity, without regard to the offsetting purchase amount, are considered to be Oregon sales if the contractually specified point of physical delivery is in Oregon.

Example 2: Company A signed a contract on January 2, 2016, to purchase 50 megawatts of electricity for a period of 10 hours starting November 15, 2016, from Company B with a delivery point of Malin, Oregon. For this same time period, Company A signed a contract on March 15, 2014, to sell 30 megawatts of electricity to Company B with a point of delivery at Malin, Oregon. The 30 megawatts of power is recorded as a book-out transaction on both companies' books for reporting to Oregon. The offsetting transaction for the 30 megawatts is deemed to be delivered in Oregon for the purposes of computing the Oregon sales factor. Company A will report the sale of 30 megawatts in its Oregon sales factor numerator and Company B will report the sale of 50 megawatts (20 megawatts to complete the sales contract plus 30 megawatts from the book-out transaction) of electricity in its Oregon sales factor numerator.

(3) This rule is effective for tax years beginning on or after January 1, 2016.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100, 314.280

Stats. Implemented: ORS 314.280

Hist.: REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.515-(A)

Estimated Tax: Application of Payments

(1) Overpayments of tax

(a) Election. When a corporation files its completed excise or income tax return and the tax shown due thereon is less than the amounts previously paid for that year, the corporation may make an irrevocable election to have the overpayment of tax either refunded or applied as a payment of estimated tax. The election is made by entering the amount in the appropriate space provided on the corporation excise tax return or corporation income tax return.

(b) Application to estimated tax installment. The department will apply the elected amount to the estimated tax installment that next becomes due on or after the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later, unless the overpayment is subject to an offset under ORS 314.415 and related rules. The amount will be credited to the estimated tax installment as of the due date of the return (not including extensions) or the date the overpayment of tax was made, whichever is later. In the case of an amended or delinquent return, the amount will be credited to the estimated tax installment as of the date the amended or delinquent return was filed or the date a payment was received, whichever is later.

(c) Short-year returns — application to estimated tax installment. If a taxpayer files a tax return for a period of less than twelve months and that return requests an overpayment of tax be applied to an installment of estimated tax, the department will credit the overpayment of tax to the estimated tax installment as explained in subsection (1)(b) of this rule unless the taxpayer requests that the department apply the amount to the estimated tax installment due immediately following the installment that next becomes due.

Example: Corporation Zee is a fiscal year taxpayer that changed its accounting period to a calendar year. Zee's short year return is a four-month return. Zee files its short year return on November 15th (the due date of the short year return). Zee requests its overpayment of tax be applied to estimated tax. As explained in subsection (1)(b) of this rule, the department will credit the amount to the installment of estimated tax due December 15th. Alternatively, Zee could request that the department instead credit the amount to the first installment for the following tax period; April 15th, the first estimated tax installment due date for calendar year filers.

(2) Payments of estimated tax. The department will credit estimated tax payments as of the date that they are received. The department will apply estimated tax payments to any prior underpayment and the remainder, if any, will be applied to the next required installment.

Example: Corporation A is a calendar year taxpayer. A's return is filed timely on April 15, 2014. Its 2013 tax after credits is $12,000. The corporation must make the following estimated tax payments on or before the indicated dates to avoid having an underpayment of estimated tax:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $3,000.
Dec. 15, 2013 — $3,000.
Corporation A pays as follows:
April 15, 2013 — $3,000.
June 16, 2013 — $3,000.
Sept. 15, 2013 — $0.
Sept. 30, 2013 — $3,500.
Dec. 15, 2013 — $0.
The $3,500 payment will be credited as of September 30, 2013. Of the $3,500 payment, $3,000 is applied to the payment due September 15, 2013. The $500 remainder is applied to the payment due December 15, 2013.

(3) Effective date. This rule applies to all returns that are filed on or after January 1, 2016.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.415 & 314.515

Hist.: RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 15-1987, f. 12-10-87, cert. ef. 12-31-87; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-1999, f. 12-30-99, cert. ef. 12-31-99; REV 16-2008, f. 12-26-08, cert. ef. 1-1-09; REV 6-2014, f. 12-23-14, cert. ef. 1-1-15; Renumbered from 150-314.515(2), REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.665(1)-(A)

Sales Factor; In General

(1) Subsection (7) of ORS 314.610 defines the term "sales" to mean all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645. Thus, for the purposes of the sales factor of the apportionment formula for each trade or business of the taxpayer, the term "sales" means all gross receipts derived by a taxpayer from transactions and activity in the regular course of such trade or business. See OAR 150-314.665(6) regarding inclusion of income from the disposition of intangible assets in the sales factor. The following are rules for determining "sales" in various situations:

(a) In the case of a taxpayer engaged in manufacturing and selling or purchasing and reselling goods or products, "sales" includes all gross receipts from the sales of such goods or products (or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the tax period) held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business. Gross receipts for this purpose means gross sales, less returns and allowances and includes all interest income, service charges, carrying charges, or time-price differential charges incidental to such sales. Federal and state excise taxes (excluding sales taxes) will be included as part of such receipts if such taxes are passed on to or collected from the buyer or included as part of the selling price of the product. The exclusion of sales taxes from the sales factor is effective January 1, 2014 and applies to tax years beginning on or after that date.

(b) In the case of cost plus fixed fee contracts, such as the operation of a government-owned plant for a fee, "sales" includes the entire reimbursed cost, plus the fee.

(c) In the case of a taxpayer engaged in providing services, such as the operation of an advertising agency, or the performance of equipment service contracts, research and development contracts, "sales" includes the gross receipts from the performance of such services including fees, commissions, and similar items.

(d) In the case of a taxpayer engaged in renting real or tangible property, "sales" includes the gross receipts from the rental, lease, or licensing the use of the property.

(e) In the case of a taxpayer engaged in the sale, assignment, or licensing of intangible personal property such as patents and copyrights, "sales" includes the gross receipts therefrom.

(f) If a taxpayer derives receipts from the sale of equipment used in its business, such receipts constitute "sales." For example, a truck express company owns a fleet of trucks and sells its trucks under a regular replacement program. The gross receipts from the sales of the trucks are included in the sales factor.

(g) If a taxpayer derives income from the operations of casinos, "gross drop" rather than "net drop" will be used in computing the gross receipts factor. "Gross drop" is computed as follows:

(A) Keno. Gross drop is the cumulative total cash paid in at the keno windows determined by totaling the amounts set forth on the customer's tickets.

(B) Slots. Gross drop is the cumulative total of all coins removed from the machines, plus jackpots paid less the coins previously added to the machines.

(C) Table games. Gross drop is the cumulative total of all cash funds and credit slips dropped in the cash boxes. When the cash method is used, only credit slips relating to chips removed from the tables should be considered.

(2)(a) Where substantial amounts of gross receipts arise from an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business, such gross receipts will be excluded from the sales factor. For example, gross receipts from the sale of a factory or plant will be excluded.

(b) Insubstantial amounts of gross receipts arising from incidental or occasional transactions or activities may be excluded from the sales factor unless such exclusion would materially affect the amount of income apportioned to this state. For example, the taxpayer ordinarily may include or exclude from the sales factor gross receipts from such transactions as the sale of office furniture, business automobiles, etc.

(c) Under the authority provided in ORS 314.667, for tax years beginning on or after January 1, 2014, the treatment prescribed in paragraphs (a) and (b) of this section for an incidental or occasional sale of a fixed asset used in the regular course of the taxpayer's trade or business applies to any intangible assets associated with that sale including, but not limited to, goodwill.

(3) In filing returns with this state, if the taxpayer departs from or modifies the basis for excluding or including gross receipts in the sales factor used in returns for prior years, the taxpayer will disclose in the return for the current year the nature and extent of the modification.

(4) If the returns or reports filed by the taxpayer with all states to which the taxpayer reports under Article IV of the Multistate Tax Compact or the Uniform Division of Income for Tax Purposes Act are not uniform in the inclusion or exclusion of gross receipts, the taxpayer will disclose in its return to this state the nature and extent of the variance.

(5) The denominator of the sales factor will include the total gross receipts derived by the taxpayer from transactions and activity in the regular course of its trade or business.

(6) Gross premium receipts. Gross premium receipts are all receipts paid in by the subscribers to the various coverages offered by the company, and are assigned to the state of the domicile of the subscriber. In the case of a group policy, the assignment is to the state of the domicile of the employer-agent who collects and remits the premiums to the company.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100 & ORS 314.665

Stats. Implemented: ORS 314.665 & 314.667

Hist.: 12-70; 8-73; RD 7-1983, f. 12-20-83, cert. ef. 12-31-83; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 12-2000, f. 12-29-00, cert. ef. 12-31-00; REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

150-317.152

Qualified Research Credit

The Qualified Research credit may be calculated in any manner allowed under the applicable version of IRC 41. The applicable percentage for Oregon purposes is 5% regardless of the method used to calculate the credit.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100 & ORS 317.152

Stats. Implemented: ORS 317.152

Hist.: REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

150-317.717

Stakeholder feedback regarding listed jurisdictions

The department will solicit comments from a jurisdiction, the tax section of the Oregon State Bar and the Oregon Society of Certified Public Accountants prior to recommending that the jurisdiction be included in the list of jurisdictions at Section 2(1)(b), Chapter 755, Oregon Laws 2015. The department will include any comments received by it with the report required by ORS 317.717. The department will solicit comments from the jurisdiction by contacting the senior U.S. diplomatic representative of the jurisdiction in question. The department will allow the jurisdiction and other stakeholders at least 30 days from the department's initial contact to the U.S. diplomatic representative to respond to the department's solicitation of comments from the jurisdiction.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 317.717

Hist.: REV 5-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Personal Income Tax: Public Notification of Delinquent Taxpayers pilot project. Renumber Discretionary Penalty Waiver rule.

Adm. Order No.: REV 6-2015

Filed with Sec. of State: 12-23-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 11-1-2015

Rules Adopted: 150-305.120

Rules Renumbered: 150-305.145(5) to 150-305.145-(A)

Subject: 150-305.120 — Is required to provide rules and criteria for posting the names of delinquent taxpayers to the Department of Revenue's website to incentivize these individuals to contact the department to become compliant. This rule also provides clarity on how the delinquent taxpayer can be removed from this list and what information will be posted.

150-305.145(5) — Discretionary Penalty Waivers for Information Returns will be renumbered to 150-305.145-(A) to conform to department rule numbering policies.

Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.120

Public Notification of Delinquent Taxpayers

(1) Definitions

(a) For purposes of this rule, a tax delinquency means the total tax amount owed by a taxpayer to the Department of Revenue for which a warrant has been recorded in the County Clerk Lien Record of any county in this state.

(b) For purposes of this rule, "taxpayer" means:

(A) An individual, corporation, partnership or other business entity;

(B) An employer, including an individual defined as an employer under ORS 316.162(3) and OAR 150-316.162(3), required to deduct, retain and remit employee income taxes to the department as provided under ORS 316.167 and 316.168.

(2) The Department of Revenue may make available as a matter of public record and update, at least four times each calendar year, a list or lists of the largest tax delinquencies under any Oregon law imposing a tax upon or measured by net income including income tax withholding. The list or lists must reside on the Internet at a site that is created and maintained by the Department of Revenue.

(3) For purposes of this rule, a tax delinquency does not include:

(a) A delinquency for which a payment plan has been approved by both the taxpayer and the Department of Revenue and the taxpayer is in compliance with that payment plan;

(b) A delinquency of a taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code and for which a stay of collection is in effect;

(c) A delinquency for which the taxpayer has an open appeal being considered by the Department of Revenue, Oregon Tax Court or higher court;

(d) A delinquency for which a notice of tax warrant has not been recorded in the County Clerk Lien Record of any county in this state; or

(e) A delinquency for which the Department of Revenue has suspended collection action under ORS 305.155.

(4) The list or lists may, with respect to each tax delinquency, include the following information taken from the recorded tax warrant:

(a) The name and address of the taxpayer or taxpayers liable for payment of the tax;

(b) The type of tax that is delinquent; and

(c) The cumulative amount of the tax delinquency as shown on the notice or notices of tax warrant including any applicable penalties and interest.

(5) The Department of Revenue must provide written notice to the taxpayer or taxpayers liable for the tax by regular mail to the taxpayer or taxpayers' last known address, as defined under OAR 150-305.265(11), at least 30 days before inclusion of a tax delinquency on a list. A tax delinquency will be included on a list if within 30 day of the date of the notice the taxpayer or taxpayers fail to either:

(a) Remit the full amount due; or

(b) Enter into an approved payment plan with the Department of Revenue and is in compliance with the approved payment plan.

(6) The Department of Revenue must remove a taxpayer's information from a list of tax delinquencies no later than 10 business days after any one of the following events occur:

(a) The tax delinquency is paid in full with bankable funds;

(b) The taxpayer or taxpayers liable for the tax delinquency have contacted the Department of Revenue, a payment plan for the tax delinquency has been approved by the taxpayer or taxpayers and the Department of Revenue and the taxpayer or taxpayers are in compliance with the payment plan with payments made using bankable funds;

(c) The taxpayer has informed the Department of Revenue that an active bankruptcy proceeding under Title 11 of the United States Code has been initiated and a stay of collection is in effect or a bankruptcy proceeding has been completed and the tax delinquencies have been discharged;

(d) The Department of Revenue has determined the tax delinquencies are uncollectible; or

(e) The Department of Revenue has suspended collection action under ORS 305.155.

(7) A taxpayer whose tax delinquency appeared on the list and whose information has been removed pursuant to subsection (b) of section (6) of this rule must continue to comply with the terms of the approved payment plan. If the taxpayer fails to comply with the approved payment plan, the Department of Revenue may re-list the taxpayer's tax delinquency without providing the written notice otherwise required by section (5) of this rule.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.120
Hist.: REV 6-2015, f. 12-23-15, cert. ef. 1-1-16

150-305.145-(A)
Discretionary Penalty Waivers for Information Returns

(1) An employer or other payer, or a representative authorized under ORS 305.230, may request that a penalty assessed under ORS 314.360(4)(a) or 316.202(5)(a) be waived. The department's decision will be based upon the facts and circumstances in each case. To qualify for consideration of a waiver for penalties in this rule, the employer or other payer must:

(a) Submit a written waiver request that explains the reason(s) for:

(A) Filing an information return or W-2 after the due date for that return, or

(B) Filing an incorrect or incomplete information return or W-2.

(b) Meet all filing requirements under ORS 314.360 and 316.202.

(2) The waiver request must be received by the department within one year of the date of the department's written notice of assessment of the penalty.

(3) Penalties assessed under ORS 314.360(4)(b) or 316.202(5)(b) are not eligible for waiver consideration.

(4) Where applicable, the department will consider waiving penalties under ORS 314.360(4)(a) or 316.202(5)(a) for circumstances beyond the control of an employer or other payer, as described in OAR 150-305.145(4)(5).

(5) One-time penalty waiver for information returns or W-2s. When an employer or other payer does not qualify for relief under any other section of this rule, the department will consider waiver of the penalty under ORS 314.360(4)(a) or 316.202(5)(a) for one tax period if the employer or other payer has not already received relief under this section for any tax period; and

(a) The employer or other payer did not know they were subject to reporting requirements under ORS 314.360(4)(a) or 316.202(5)(a) for which the penalty was imposed; or

(b) The employer or other payer has a history of timely filing the type of return or form for which the penalty was imposed.

(6) The provisions of this rule apply to discretionary waiver requests received by the department after April 1, 2015.

Stat. Auth.: ORS 305.100, 305.145
Stats. Implemented: ORS 314.360, 316.202
Hist.: REV 2-2014, f. & cert. ef. 7-31-14; Renumbered from 150-305.145(5) by REV 6-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Tax Collections: Suspended collection status, refund offset priority, reciprocal offset programs
Adm. Order No.: REV 7-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 150-305.155-(A)
Rules Amended: 150-314.415(2)(f)-(B), 150-305.612
Subject: 150-305.155-(A) — Clarifies which assets will not be included in $5,000 asset allowance under ORS 305.155(2) (enrolled HB 2089; 2015 session)

150-314.415(2)(f)-(B) — Adds Senior Property Tax Deferral Revolving Account and state reciprocal offset programs to the refund offset priority list. Clarifies definition of self-assessed debt.

150-305.612 — Clarifies that state debt reciprocal offset notices may be sent by regular mail or certified mail.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-305.155-(A)
Suspended Collection Status

(1) For the purpose of ORS 305.155:

(a) "Assets" do not include the following:

(A) The home the debtor lives in and the land the home is on, regardless of value;

(B) Household goods and personal effects of the debtor as defined in 20 CFR 416.1216 (e.g. an individual's wedding rings and engagement rings), regardless of value;

(C) One vehicle owned by the debtor, regardless of value;

(D) Other personal property of the debtor listed or described in ORS 18.345 or 18.845, with a value below the limits listed therein, unless otherwise provided for in this rule;

(E) Burial spaces for the debtor and the debtor's immediate family as the term "immediate family" is defined in ORS 163.730;

(F) Burial funds for the debtor and debtor's spouse, each valued at $1,500 or less;

(G) Life insurance policies payable to the debtor that have no more than $1,500 total face value owned on any one person; and

(H) Grants, scholarships, fellowships, or gifts set aside to pay educational expenses of the debtor for nine months after receipt.

(b) A debtor that has an asset that exceeds the limit listed or described in ORS 18.345 or 18.845 may choose to use part of their $5,000 asset allowance for the amount of value above the asset value limit listed in ORS 18.345 or 18.845.

Example 1: Jean receives a $1,200 monthly Social Security benefit. She owns one home and one car. She also owns one rifle (valued at $600) and one pistol (valued at $500). The combined value of the weapons is greater than the $1,000 asset limit set forth in ORS 18.845 by $100. She will qualify for suspended collection status under ORS 305.155(2) as long as her remaining assets do not exceed $4,900. ($5,000 minus $100 above the firearms value amount listed in ORS 18.845 equals $4,900.)

(2) To be considered for suspended collection status, the debtor may be required to submit a financial statement and attach proof of income, assets, and asset values.

(3) If the department determines that a debtor does not qualify for suspended collection status, the debtor may submit a new financial statement containing new, additional or revised information and request to be reconsidered for suspended collection status.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]
Stat. Auth: ORS 305.100
Stats. Implemented: ORS 305.155
Hist.: REV 7-2105, f. 12-23-15, cert. ef. 1-1-16

150-305.612
Offset of State Debt Through U.S. Treasury Offset Program

(1) For the purpose of this rule:

(a) A debt is "liquidated" if the debt meets the criteria for liquidated debt under the Oregon Accounting Manual, Chapter 35, the debtor is not currently in bankruptcy, and the department has issued a warrant for the debt.

(b) "Federal payments" do not include payments that are exempt from offset under federal law, including but not limited to social security payments, and veterans' affairs benefit payments to the extent such payments are exempt from offset under federal law.

(2) The department may submit liquidated state debt for offset against federal tax refunds through the "Treasury Offset Program" under 26 USC 6402(e) and 31 CFR 285.8 and federal payments under 31 USC 3716(h) and 31 CFR 285.6.

(3) Notice of intent to offset federal tax refunds. Before submitting an Oregon tax debt to the Debt Management Services, U.S. Treasury for offset against a federal tax refund, the department must send written notice of intent to offset to the taxpayer by certified mail.

(4) Notice of intent to offset federal non-tax payments. Before submitting a liquidated state debt to the Debt Management Services, U.S. Treasury for offset against a federal non-tax payment, the department must send written notice of intent to offset to the debtor by regular mail or certified mail.

(5) Disagreement procedures. If a debtor disagrees with the notice of intent to offset and wants reconsideration of the decision to offset, the debtor must submit a letter of disagreement to the department within 60 days of the date shown on the notice of intent to offset. The debtor must provide, and the department will limit consideration to, evidence that the debt scheduled for offset is not:

(a) Past due; or

(b) Legally enforceable.

(6) If the debtor claims that a tax debt is not legally enforceable because the debtor is an enrolled member of an Indian tribe whose income is not subject to Oregon tax under ORS 316.777 or 316.785, the department will consider the merits of such a claim unless the issue has already been finally adjudicated by a court in a proceeding to which the department is a party.

(7) Review of disagreement. For each letter of disagreement, the department will:

(a) Review all evidence provided by the debtor, and

(b) Remove the debtor's name from the federal offset list for the debt if the department determines that the debt is not past due or is not legally enforceable.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 305.612
Hist.: REV 5-2002(Temp), f. & cert. ef. 9-23-02 thru 3-1-03; REV 8-2002 f. & cert. ef. 12-31-02; REV 7-2105, f. 12-23-15, cert. ef. 1-1-16

150-314.415(2)(f)-(B)
Refund Offset Priority

(1) As used in this rule:

(a) "Appropriation accounts" means accounts that are established by an appropriation of the state legislature.

(b) "Nonassessed accounts" means: tax accounts for which the department has determined a deficiency exists but that have not yet been assessed.

(c) "Assessed accounts" means:

(A) Tax accounts that have not been paid for which an appeal has not been made or is final and a written notice of assessment stating the amount so assessed has been issued to the taxpayer; and

(B) Self-assessed accounts that have not had a written notice of assessment issued to the taxpayer.

(d) "Oldest account" means the account with the earliest set-up date. If more than one account has the same set-up date, the earliest tax year is the oldest account.

(e) "Set-up date" means the date the account was established or created.

(2) The department will offset a refund to assessed accounts, unless the taxpayer has a currently pending appeal of the assessment. The department may also offset a refund to nonassessed accounts when the taxpayer sends the department a written authorization to offset the refund. Offsets will be made using the following guidelines:

(a) First offset to the oldest account within the program that has the refund.

(b) After all accounts are satisfied within the program that has the refund, offset to other programs, oldest account first, following the priorities shown in section (4) below.

(3) A taxpayer's refund will be offset only to accounts owed by that taxpayer. An individual refund will not be offset to a corporate account nor a corporate refund offset to accounts of a subsidiary.

(4) The priority criteria is:

(a) Funds due the general fund, excluding funds due other state of Oregon agencies. This includes all funds due from the cigarette and amusement device tax that is allocated part to the general fund and part to local governments.

(b) Funds due an appropriation account that will revert to the general fund.

(c) Funds due the Senior Property Tax Deferral Revolving Account authorized under ORS 311.701.

(d) Funds due a state of Oregon tax program for distribution to local governments.

(e) Funds due other state of Oregon agencies.

(f) Funds due local jurisdictions for which the department collects under ORS 293.250.

(g) Funds due entities which serve a garnishment or levy on the Department of Revenue.

(h) Funds due charitable check-off programs designated by the taxpayer in lieu of receiving a refund check.

(i) Funds due the federal government under the state reciprocal offset program under ORS 305.612.

Example: A taxpayer has a personal income tax refund due for the year. The amount of the refund owed is $200. The taxpayer also has two liability accounts. The taxpayer owes $100 to the Department of Revenue on an assessed personal income tax account for the previous year. The Taxpayer also owes $300 to the Department of Education. This is how the offset of the refund would look:
$200.00 Refund
Less <$100.00> Personal Tax liability on assessed account
Less <$100.00> Department of Education
Refund = -0-

(5) If the refund balance as adjusted by the department in processing and after other offsets is insufficient to pay the designated charitable check-off contributions in full, payment will be prorated. The proration will be the ratio of the designated contribution to a specific fund divided by the total contribution to all funds.

(6) State tax refunds will not be offset to accounts for TriMet Transportation District or the Lane Transit District without the written permission of the taxpayer. Refunds from these programs will be offset to accounts within the same program but not to an account for a different tax program.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.415
Hist.: 10-5-83, 12-31-83; 12-31-85, Renumbered from 150-314.415(1)(d)-(B); RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 7-1992, f. & cert. ef. 12-29-92; REV 2-2003, f. & cert. ef. 7-31-03; Renumbered from 150-314.415(1)(e)-(B), REV 4-2005, f. 12-30-05, cert. ef. 1-1-06; REV 7-2105, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Telephone Excise Tax — Definitions and Administrative Provisions
Adm. Order No.: REV 8-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date:
Rules Renumbered: 150-401.794 to 150-403.205
Subject: The rule includes definitions and administrative provisions related to the telephone excise tax. The purpose of renumbering is to correspond to the statute which has been renumbered.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-403.205
Telephone Excise Tax — Definitions and Administrative Provisions

(1) The Oregon telephone excise tax does not apply to:

(a) Federal, state and municipal government bodies or public corporations as defined in section (2).

(b) Counties and political subdivisions.

(c) Certain federally chartered corporations specifically exempt from state excise taxes by federal law.

Examples: Federal Deposit Insurance Corp., Federal Savings and Loan Insurance Corp., federal banks and banking associations created under the Farm Credit System and exempt under Title 12, U.S. Code § 2023, 2077, 2098 or 2134.

(d) Federally recognized Native-American Tribes, and tribal members who live within federally recognized Indian country and are enrolled members of the tribe with sovereignty over that Indian country.

(e) Foreign government offices and representatives that are exempt from state taxation by treaty provisions.

(f) Regional housing authorities exempt from all state taxes and assessments by ORS 456.225.

(g) The connection between utilities that is used to provide service. This includes the connection between radio common carriers and the interexchange carrier as well as between two or more utilities.

(2) For purposes of this rule, "public corporation" means a corporation formed by a state or local government authority for the public's benefit or for a public purpose.

(3) Any other agency, organization or person claiming an exemption is required to identify the authority for its claim to a provider. If a provider is unable to determine the status of a subscriber the Department of Revenue will determine whether the subscriber is exempt.

(4) "Provider" means any corporation, individual or group of individuals providing telecommunication access to the 9-1-1- Emergency Reporting System.

(a) A radio common carrier that leases telephone exchange access lines from a wire telephone company is a provider if the carrier sells that access to its customers. Access for this purpose includes (but is not limited to) traditional telephone services ("POTS"), cellular telephone service, personal communications system service (PCS), personal communications network service (PCN), cable/broadband service, private branch exchanges (PBX), and mobile radio common carriers. A carrier that has access to the 9-1-1 Emergency Reporting System and does not resell the access is not considered to be a provider; instead it is considered to be a subscriber and must pay the tax.

(b) A cellular telephone service company is a provider that provides access to 9-1-1 services through various switching mechanisms between cellular radio sites and exchanges access services.

(5) The return required by ORS 401.792 must be signed by the taxpayer or an authorized agent and made under penalties for false swearing. Returns received after the due date are subject to delinquency charges as provided in ORS Chapter 305, 314 and 316 the same as if the tax were a tax imposed upon or measured by net income. Returns received by mail are accepted without imposition of such charges if postmarked before midnight of the due date.

(6) Related providers may request permission from the department to file one telephone excise tax return per quarter.

(7) Except as provided in subsection (b) of this section, if a provider elects to pay the tax based on the amount actually collected as payment for exchange access services during the quarter and the provider receives only a partial payment from a subscriber:

(a) The provider must apply the payment proportionately to the Oregon telephone excise tax and to all other charges appearing on the subscriber's bill.

(b) If the provider determines that the only unpaid portion of a subscriber's bill for all telephone services is in the amount of the Oregon telephone excise tax, the provider is not required to apportion the payment and may apply the payment first to all other charges appearing on the subscriber's bill.

(8) The provider must submit with its quarterly return to the department a list of all those subscribers that refuse to pay their Oregon telephone excise tax in whole or part. Such lists must include the name, address, telephone or service number of the subscriber, and the amount of Oregon excise tax owing. Any amount so reported to the department must be written off by the provider and the collection will be enforced by the department.

(9) When a provider proceeds to write off, charge off or cancel an uncollectible account, any amount of Oregon telephone excise tax unpaid on that account must be reported to the department as provided in section (8) of this rule.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 403.205
Hist.: 2-11-82(Temp); 5-5-82; 12-31-84, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533) to 150-401.000 Note (Or. Laws 1981, Ch. 533)-(A); 12-31-85; RD 7-1994, f. 12-15-94, cert. ef. 12-30-94; RD 5-1995, f. 12-29-95, cert. ef. 12-31-95, Renumbered from 150-401.000 Note (Or. Laws 1981, Ch. 533); Renumbered to 150-401.794, REV 11-2006, f. 12-27-06, cert. ef. 1-1-07; Renumbered from 150-401.794 by REV 8-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Personal Tax: Farm Income Averaging, Amended Schedule, Failure to Pay, Refund Applications, Substantial Underpayment
Adm. Order No.: REV 9-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Repealed: 150-314.402
Rules Ren. & Amend: 150-314.297(6) to 150-314.297, 150-314.380(2)(B) to 150-314.380-(A), 150-314.400(1) to 150-314.400, 150-316.583(2) to 150-316.583, 150-314.402(1) to 150-314.402-(A), 150-314.402(6) to 150-314.402-(C)
Subject: 150-314.297(6) renumbered to 150-314.297 — Eliminates requirement to file Form FIA-40 with tax return and amends to require retention with records.

150-380(2)(B) renumbered to 150-314.380-(A) — Eliminates the requirement to attach an amended schedule with an amended return.

150-314.400(1) renumbered to 150-314.400 — Clarifies how to calculate the 90% paid exception to the failure to pay penalty. Ties this exception to the authority provided in ORS 305.299.

150-314.402 — Repealed due to statute change from substantial understatement of income to substantial understatement of tax. Provisions incorporated into other related rules.

150-402(1) renumbered to 150-314.402-(A) — Amends the rule to comply with requirements of statute change from substantial understatement of income to substantial understatement of tax.

150-314.402(6) renumbered to 150-314.402-(C) — Amends the rule to comply with requirements of statute change from substantial understatement of income to substantial understatement of tax.

150-316.583(2) renumbered to 150-316.583 — Modifies what year a carryforward is applied toward, application dates, payment of interest and offsets.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-314.297
Farm Income Averaging

(1)(a) Overview. An individual engaged in a farming business may elect to compute his or her current year (election year) income tax liability under ORS Chapter 316 by averaging, over the prior three-year period (base years), all or a portion of the individual's current year electable farm income (as defined in section (4) of this rule). To average farm income, the individual:

(A) Designates all or a portion of his or her elected farm income for the election year as elected farm income; and

(B) Allocates one-third of the elected farm income to each of the three base years; and

(C) Determines the election year tax under ORS Chapter 316 by determining the sum of:

(i) The election year ORS Chapter 316 tax without regard to the elected farm income; plus

(ii) For each base year, the increase in ORS Chapter 316 tax attributable to the elected farm income allocated to each year.

(b) Individual engaged in a farming business. An individual engaged in a farming business includes a sole proprietor of a farming business, a partner in a partnership engaged in a farming business, and a shareholder of an S corporation engaged in a farming business. Estates and trusts may not use farm income averaging. An individual is not required to have been engaged in a farming business in any of the base years in order to make a farm income averaging election.

(c) Making, changing, or revoking an election. A farm income averaging election is made by indicating the election on an individual's timely filed (including extensions) Oregon income tax return for the election year.

(A) An individual who has an adjustment for an election year or any base year may make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, if the period of limitation prescribed in ORS 314.415 has not expired for the election year. For purposes of this paragraph, an adjustment is any change in taxable income or tax liability that is permitted to be made by filing an amended Oregon income tax return or a change in taxable income or tax liability made as the result of an examination or a federal audit report received from the Internal Revenue Service.

(B) If the individual does not have an adjustment as described in paragraph (A), the individual may not make a late farm income averaging election, change the amount of elected farm income in a previous election, or revoke a previous election, without the consent of the department.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and 183.355(1)(b).]
Stat. Auth.: ORS 305.100, 314.297
Stats. Implemented: ORS 314.297
Hist.: REV 8-2001, f. & cert. ef. 12-31-01; Renumbered from 150-314.297(6) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.380-(A)
Report of Changes in Federal Taxable Income

(1) Report Requirements. The report of change or correction required by ORS 314.380(2) must be:

(a) Filed in writing with the department;

(b) Signed by the taxpayer or the taxpayer's authorized representative; and,

(c) Filed separately from any statement or attachment forming a part of the taxpayer's original tax return.

(2) The report may be in the form of an amended return showing the adjustments and the recomputation of the tax. The report must include either a copy of the report of the Internal Revenue Service (IRS) adjustment, federal revenue agent's report or the audit report of the other state's taxing authority, whichever is applicable, or other information sufficient to inform the department of each item on the tax return that has been changed or corrected.

(3) If the taxpayer does not concede the accuracy of any change or correction made by the IRS or other state's taxing authority, the report filed with the department must include a full explanation of the reason why the taxpayer believes such change or correction to be erroneous. If the report is not filed in the manner stated in this rule, the department will not be considered to have been notified by the taxpayer.

(4) A report of a change or correction is treated as a timely claim for refund, pursuant to ORS 314.415, if filed with the department within two years after the date of the IRS adjustment or the audit report of the other state's taxing authority.

Stat. Auth.: ORS 305.100
Stats. Implemented: ORS 314.380
Hist.: 6-68; 12-70, Renumbered from 150-314.380(2); RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 10-1986, f. & cert. ef. 12-31-86; REV 9-1999, f. 12-30-99, cert. ef. 12-31-99; REV 10-2013, f. 12-26-13, cert. ef. 1-1-14; Runumbered from 150-314.380(2)(B) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.400
Delinquency Penalty

(1) Although ORS 314.400(1) refers to a delinquency penalty for (A) failure to file a report or return by the due date or (B) failure to pay a tax due by the due date, only one five-percent penalty is added, even though there is a failure as to both requirements.

Example 1: Joe did not obtain an extension to file his tax return, which was due on April 15. On July 1, he filed the return and paid $2,000 of tax plus interest of $40. Joe will be charged a penalty of $100 ($2,000 x 5 percent).

(2)(a) The delinquency penalty is based on the tax required to be shown on the return, reduced by credits claimed on the return and by any amount of the tax that is paid on or before the due date for payment. If the department determines that the tax shown on the return is greater than the tax required to be shown, the lesser amount is used to determine the penalty.

Example 2: Jeanette filed her tax return on time. The tax shown on the return was $800. Jeanette claimed credits of $150, withholding of $150, and showed a balance due of $500. She did not pay the $500 with the filing of the return. The department determined in processing the return that the tax required to be shown on the return was $600. The delinquency penalty of $15 is based on five percent of $300 ($600 tax required to be shown on the return, less credits of $150 and withholding of $150).

(b) The 20-percent penalty is in addition to the five-percent penalty. A 20-percent penalty is charged when:

(A) A tax return that is required to be filed annually or for a one-year period is not filed within three months of the due date (determined with regard to any extension of time to file granted to the taxpayer); or

(B) A tax return that is required to be filed more frequently than annually is not filed within one month of the due date (determined with regard to extensions).

Example 3: Pierre did not request an extension to file his return, which was due on April 15. He filed the return on November 1, showing tax of $900, credits of $300, and withholding of $200. Pierre sent a check for the balance due of $400 with the tax return. A total penalty of $100 will be charged; $20 for failure to pay the tax when due ($400 x 5 percent), and $80 for failing to file the return within three months of the due date ($400 x 20 percent).

Example 4: Same facts as Example 3, except Pierre received an extension to file until October 15. Pierre will be charged a five-percent penalty for failure to pay the tax when due. The 20-percent penalty for failure to file the return will not be charged because Pierre filed the return within three months of the extended due date.

Example 5: French Bakery did not file its Oregon Quarterly Tax Report for 1st quarter 2008 withholding, which was due on April 30, 2008. It filed the return on July 1, 2008, showing tax of $800 and prepayments of $500. French Bakery sent a check for the balance due of $300 with the tax return. A total penalty of $75 will be charged; $15 for failure to pay the tax when due ($300 x five percent), and $60 for failing to file the return within one month of the due date ($300 x 20 percent).

(c) If a taxpayer is required to file a federal income tax return for a period of less than 12 months under section 443 of the Internal Revenue Code, the Oregon personal income or corporate excise or income tax return required to be filed for that period is considered an annual filing thus subject to the additional 20-percent penalty.

(d) If a return or report is required to be filed on a one-time basis such as with inheritance returns, the return or report is considered an annual filing thus subject to the 20-percent penalty.

(e) If a taxpayer fails to file a return and the department must determine and assess the amount of tax, the penalties are based on the tax required to be shown on the return. The tax required to be shown on the return is reduced by any credits that may be lawfully claimed on the return and by any amount of the tax that is paid on or before the due date for payment.

Example 6: Isabelle filed her 2005 tax return on July 1, 2007. The tax shown on the return was $800 and Isabelle claimed credits of $300 and withholding of $400. She paid the balance due of $100 when she filed the return. Isabelle will be charged a five-percent failure-to-pay penalty, plus a 20 percent penalty for filing the return more than three months after the due date. The total penalty of $25 is based on $100 ($800 tax shown on the return less credits of $300 and withholding of $400).

Example 7: Same facts as Example 6, except that Isabelle did not file her 2005 tax return after being requested to do so by the department. The department determined that the tax required to be shown on the return was $900, allowable credits were $150 and withholding was $400. The penalty will be based on $350.

(3) Exceptions to the penalty for failure to pay tax when due, pursuant to the authority provided by 305.229.

(a) Payment of 90 percent of the tax determined, after withholdings and credits are subtracted from the tax otherwise due, as shown on the return. Income and excise tax returns filed within the period of an extension granted are not considered delinquent with regard to the time of filing. However, an extension of time to file a return does not extend the time for paying the tax. Thus, if the tax is not paid by the original due date of the return, a delinquency penalty of five percent is added to the total unpaid tax unless the taxpayer has met all of the following conditions:

(A) Filed for a federal automatic extension of time to file or filed for a separate Oregon extension, in accordance with current Oregon tax return instructions;

(B) At least 90 percent of the tax after credits as shown on the return was paid on or before the original due date of the return;

(C) The taxpayer's return is filed timely within the extension period;

(D) The balance of the tax as shown on the return is paid when the return is filed and any interest due is either paid when the return is filed or within 30 days of billing by the department.

Example 8: Henry filed an extension request with Oregon on April 15, along with a payment of $600. He filed his tax return on October 15. The tax shown on the return was $1,200 and Henry claimed total tax credits on the return of $200. Henry paid the balance due of $400 with the return. A five-percent penalty would be charged on the $400 paid on October 15 because Henry did not pay at least $900 (90 percent of the tax shown on the return {$1200}, less withholdings and credits {$200} or 90% of {$1200-$200}, which is $900), on or before the original due date of the return. Interest on the unpaid balance would be due from April 16 to October 15.

Example 9: Jan was granted an extension to file her federal tax return until October 15. She filed her Oregon return on June 14. The tax shown on the return was $2,500 and she had made estimated tax payments totaling $2,300. Jan paid the $200 tax due with the return. The five-percent penalty will not be charged on the $200 paid on June 14 if interest from April 16 to June 14 accompanies the $200 payment or if Jan pays the interest due on the unpaid balance of $200 within 30 days of billing by the department.

(b) Amended tax returns. If a taxpayer (individual or corporate) files an amended income or excise tax return accompanied by less than full payment of tax and interest, the department must send a billing notice indicating the amount of tax plus accrued interest to be paid. If the taxpayer pays the full amount of tax plus interest within 30 days of the date on the billing notice, the five-percent penalty for failure to pay the tax with the amended return will not apply.

Example 10: ABC Corporation filed an amended income tax return showing a balance of tax due of $1,000. A payment of $1,000 was submitted with the return. The $1,000 payment is first applied to interest that has accrued from the original due date of the return. The department determines that $200 of interest has accrued on the $1,000 of additional tax. Because the corporation has underpaid the tax by $200, ($1,000 payment less $200 applied to interest equals $800 of tax paid with the return), a five-percent penalty applies to the $200 of tax due. However, if ABC Corporation pays the $200 of tax plus any additional interest within 30 days of the date on the billing notice, the five-percent penalty will not apply.

(c) Deficiencies. If the department issues a Notice of Deficiency and the taxpayer pays the full amount of tax plus interest within 30 days of the date on the Notice of Deficiency, the five-percent penalty for failure to pay the tax required to be shown on the return will not apply. If the taxpayer pays only a portion of the tax plus interest, the five-percent penalty for failure to pay the tax required to be shown on the return will apply only to the unpaid portion of the tax.

Example 11: Hanna filed her original return timely but the department issued a Notice of Deficiency for $500 plus $75 interest. Hanna paid $300 within 30 days of the Notice of Deficiency. The five-percent penalty will apply to the unpaid deficiency ($$575 deficiency plus interest - $300 payment = $275 unpaid deficiency) because she did not pay the deficiency plus interest in full within 30 days of the Notice of Deficiency.

(d) Differences in the amount of prepaid tax. If a taxpayer (individual or corporate) files an income tax return or an excise tax return and the taxpayer overstates the amount of tax that was paid on or before the due date, the department must send a billing notice indicating the amount of additional tax and interest due. If the taxpayer pays the full amount of tax plus interest within 30 days of the date on the billing notice, the five-percent penalty for failure to pay the tax by the due date does not apply.

Example 12: Maria filed her individual income tax return on April 15. The tax shown on the return was $1,300. She claimed credits of $300 and state income tax withholding of $600. The $400 balance of tax due as shown on the return was paid with the return. During processing of the return, the correct amount of state income tax withholding is determined to be $350. Because Maria did not pay $250 of tax by the due date, a five-percent penalty applies. If Maria pays the additional tax due of $250 plus any additional interest within 30 days of the date on the department's notice, the five-percent penalty will not be charged.

Example 13: Same facts as Example 12, except Maria did not pay the $400 balance due when she filed the return. A penalty of $20 ($400 x 5 percent) is charged for failure to pay the $400 of tax when due. The $250 of additional tax resulting from the error in the amount of withholding will not have a five-percent penalty added if Maria pays the $250 of tax plus additional interest within 30 days of the department's notice.

(4) The penalties provided under ORS 305.265(13) and 314.400(6) are not combined. Only one 100 percent penalty may be assessed on a particular report or return.

Stat. Auth.: ORS 305.100, 305.229

Stats. Implemented: ORS 314.400

Hist.: 11-71; 12-19-75; TC 9-1981, f. 12-7-81, cert. ef. 12-31-81; RD 16-1982, f. 12-6-82, cert. ef. 12-31-82; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 12-1985, f. 12-16-85, cert. ef. 12-31-85; RD 9-1987(Temp), f. & cert. ef. 7-8-87; RD 11-1987, f. & cert. ef. 11-1-87; RD 12-1990, f. 12-20-90, cert. ef. 12-31-90; RD 7-1993, f. 12-30-93, cert. ef. 12-31-93; RD 3-1995, f. 12-29-95, cert. ef. 12-31-95; REV 3-2006, f. & cert .ef. 7-31-06; REV 5-2008, f. 8-29-08; Runumbered from 150-314.400(1) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.402-(A)
Substantial Understatement Penalty (SUP)

(1) The department will assess a penalty if a substantial understatement of net tax exists for any taxable year. The penalty is equal to 20 percent of the amount of any underpayment of net tax attributable to the understatement. A substantial understatement exists only if incurred on the return of the individual, corporation, or reporting entity required to file a return and pay tax.

(2) Net Tax. In determining if a substantial understatement of net tax exists, net tax equals the total tax as calculated in accordance with the applicable provisions of ORS Chapters 314, 315, 316, 317, and 318, reduced by nonrefundable and refundable credits.

(3) Substantial Understatement of Net Tax. An understatement of net tax is substantial if the understatement exceeds $3,500 for corporations (other than S corporations, as defined in section 1361 of the Internal

Revenue Code, or a personal holding company, as defined in section 542 of the Internal Revenue Code), or exceeds $2,400 for individuals and all other taxable entities.

(4) Penalty. The substantial understatement penalty is equal to 20 percent of the amount of the understatement of net tax.

(a) The total understatement of net tax is the amount of net tax due as determined by the department, minus:

(1) Net tax as reported on the return by the taxpayer for the taxable year,

(2) The tax attributable to any item for which there is or was substantial authority, and

(3) The tax attributable to any item for which the relevant facts affecting the item's tax treatment are adequately disclosed on the return or in a statement attached to the return, and there is a reasonable basis for the tax treatment of the item by the taxpayer.

(b) Net tax as reported on the return is the amount of net tax reported by the taxpayer and determined before the taxpayer was first notified by the department concerning their tax liability. If the return shows no net income tax, the amount of net tax shown on the return is considered to be zero. In all cases, net tax as reported is computed without regard to:

(A) Withholdings;

(B) Estimated tax paid by the taxpayer; or

(C) The state surplus refund pursuant to ORS 291.349.

(5) The department will not impose a penalty under ORS 314.402 unless a return has been filed.

Example 1: A partnership return is adjusted for a $50,000 increase in unreported income. The partnership is owned by Renton, Mark, and Paul. The partnership adjustment results in an increase in net tax of $2,700 on Renton's individual return, $1,350 on Mark's individual return, and $900 on Paul's individual return. The SUP penalty is only assessed on Renton's tax due because only his return had an understatement of net tax exceeding $2,400 (the understatement threshold for the tax year). The adjustment to Mark and Paul's individual returns will not include the SUP penalty, although all three may be subject to other penalties as provided by law.

Example 2: Bobbie is a full-year resident who reported a federal adjusted gross income of $25,000, and claimed a $3,200 credit for taxes paid to California. Bobbie reported a net tax of zero on his personal income tax return because the $3,200 credit was larger than the $1,394 tax calculated on his taxable income. Upon audit, it was determined Bobbie did not qualify for the credit for taxes paid to California, and his return was adjusted to reflect a reduction of nonrefundable credits of $3,200. Bobby's net tax was understated by $1,394, the amount of net tax that would have been reported, had he not claimed the credit. Bobbie is not assessed an SUP penalty because his understatement was not more than $2,400 (the understatement threshold for the tax year).

Example 3: Tyler and Leah are full-year residents who filed a joint return reporting a federal adjusted gross income of $38,000. Tyler and Leah claimed a $200 child and dependent care credit, a $4,800 working family childcare credit, and a $1,200 earned income credit. Tyler and Leah reported tax before credits of $1,514 and a zero net tax, because their refundable credits were more than the tax calculated on their taxable income. Upon audit it was determined Tyler and Leah had $25,000 unreported Schedule C income and they no longer qualified for the child and dependent care credit, the working family child care credit, or the earned income credit. After the audit adjustment, Tyler and Leah's tax before credits is $3,773 and their net tax is $2,818. Tyler and Leah's net tax understatement is $2,818 because the net tax reported on their return was zero. Tyler and Leah will be assessed an understatement of net tax penalty of $564 ($2,818 x 20%) because their understatement exceeded the understatement threshold for the tax year.

Example 4: Meghan moved from Idaho to Oregon on May 1st. Meghan filed Oregon Form 40P on April 15th of the following year. Meghan reported $86,000 in wages and $55,000 of Schedule E rental income in the federal column of her return, and $45,000 of wages and no Schedule E rental income in the Oregon column. Meghan also claimed $16,500 in moving expenses in both the federal and Oregon columns. Meghan's income after subtractions is $124,500 in the federal column and $28,500 in the Oregon Column. Meghan's Oregon percentage is 23% (28,500/124,500). After deductions, Meghan reported $94,150 in taxable income and $1,950 tax before credits. Meghan claimed $3,500 in withholding payments, a $191 exemption credit, and an $800 credit for taxes paid to Idaho on mutually taxed income. Meghan's net tax as reported is $959 (1,950 - 191 - 800). Upon audit, the department determined $32,000 of Meghan's Schedule E income should have been reported in the Oregon column. Meghan's return was adjusted to report a total of $60,500 in the Oregon column, and her Oregon percentage was revised to 49%. Meghan's taxable income did not change because the adjustment only affected the Oregon column. However, her tax before credits was increased to $4,152 because of the increase to the Oregon percentage. Meghan's net tax as determined by the department is $3,161 (4,152 - 191 - 800). Meghan's withholding payment is not regarded in calculating net tax for the purpose of the substantial understatement penalty. Meghan did not have substantial authority for excluding the Schedule E income from the Oregon column and there was not adequate disclosure and a reasonable basis for the position. Meghan's understatement of net tax is $2,202. Meghan is not assessed an SUP as her understatement of net tax is less than the understatement threshold for the tax year.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.402

Hist.: RD 11-1988, f. 12-19-88, cert. ef. 12-31-88; REV 19-2008, f. 12-26-08, cert. ef. 1-1-09; REV 16-2010, f. 12-17-10, cert. ef. 1-1-11; Runumbered from 150-314.402(1) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

150-314.402-(C)
Waiver of 20 Percent Substantial Understatement of Net Tax Penalty Imposed under ORS 314.402

(1) The department will waive the penalty if the taxpayer shows that there was reasonable cause for the understatement and that the taxpayer acted in good faith.

(2) The department will not waive the penalty if the taxpayer was involved in an abusive transaction as defined in ORS 314.402(4) for the tax year at issue.

(3) Reasonable cause and good faith. A taxpayer's reasonable cause and good faith for a substantial understatement of net tax is demonstrated by the extent of the taxpayer's efforts to determine the taxpayer's correct tax liability under the law.

(a) The following circumstances demonstrate reasonable cause and good faith:

(A) The taxpayer relied on a position contained in a proposed federal regulation or state rule.

(B) The taxpayer honestly misunderstood the facts or law affecting the understatement, and the misunderstanding was reasonable in light of the taxpayer's experience, knowledge and education.

(C) The taxpayer or taxpayer's return preparer made a computational or transcriptional error in preparing the return.

(b) Generally, reliance on an information return, incorrect facts or advice of a professional does not demonstrate reasonable cause and good faith, unless under all the circumstances the taxpayer's reliance was reasonable. The following examples demonstrate reasonable cause and good faith:

Example 1: The taxpayer relied on erroneous information that was inadvertently included in the financial records of the taxpayer's business by others, if procedures existed that were designed to identify factual errors.

Example 2: The taxpayer relied on erroneous information reported on a Form 1099 provided by another person, if the taxpayer did not know or have reason to know that the information was incorrect.

(c) A taxpayer is considered to know or have reason to know that information is incorrect only if such information is inconsistent with other information reported to the taxpayer or is inconsistent with the taxpayer's knowledge of the underlying facts.

Stat. Auth.: ORS 305.100

Stats. Implemented: ORS 314.402

Hist.: REV 6-2007, f. 7-30-07, cert. ef. 7-31-07; Runumbered from 150-314.402(6) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

150-316.583
Estimated Tax: Application of Prior Year Overpayment (Refund)

(1) Definitions for purposes of this rule:

(a) "Open estimated tax account" is an account to which estimated tax installments may be made under ORS 316.579.

(b) "Estimated tax underpayment period" is the period after the due date for the fourth estimated tax installment but prior to the due date for filing the related tax return, excluding extensions, for that period. This period is generally January 16 through April 15.

(2) If a taxpayer elects on a return to have an overpayment of tax applied to an estimated tax account, the department generally will apply the overpayment to the subsequent year's open estimated tax account.

(3) Exceptions:

(a) Before the taxpayer's overpayment is applied to the open estimated tax account, the overpayment will first be subject to offset under ORS 314.415 and related rules.

(b) If there are two open estimated tax accounts for the same taxpayer (between January 1 to January 15), any amount requested to be applied to an estimated tax account will be posted to the tax year which is the later of the two open estimated tax accounts unless the taxpayer has requested in writing that the overpayment be applied to the earlier of the two open estimated tax accounts.

(c) If a taxpayer files a delinquent or amended return claiming a refund between the due date for a subsequent tax year's fourth estimated tax installment and the due date for filing the return for the subsequent tax year, excluding extension, the taxpayer may request in writing to have the overpayment applied against the estimated tax underpayment period to reduce interest on any underpayment of the estimated tax liability.

(4) Refunds from original returns. If a taxpayer requests to apply an overpayment from an original return filed on or before the return due date (including extensions), the department will apply the overpayment as of the first estimated tax installment due date of the open estimated tax account (generally April 15).

Example 1: The taxpayer files the 2015 Oregon personal income tax return on March 31, 2016. The return shows a refund due. The taxpayer elects on the return to have the refund applied to an estimated tax account. Because the return was filed before the due date of April 15, 2016, the refund will be credited to the open estimated tax

account as of April 15, 2016, the due date of the first installment of estimated tax due for tax year 2016.

(5) Refunds from delinquent returns. If a taxpayer requests to apply an overpayment from a delinquent return to an open estimated tax account, the department will apply the overpayment to the estimated tax account as of the date the delinquent return is filed.

Example 2: The taxpayer files a 2015 Oregon personal income tax return late, on October 25, 2016, showing a refund due. The taxpayer elects on the delinquent return that the refund be applied to the taxpayer's estimated tax account. The overpayment is credited to the 2016 estimated tax account as of October 25, 2016, and is applied to the fourth installment of estimated tax due for tax year 2016.

Example 3: The taxpayer files a 2014 Oregon personal income tax return on January 10, 2016, showing a refund. The taxpayer elects on the delinquent return to have the refund applied to the taxpayer's estimated tax account. As of January 10, 2016, there are two open estimated accounts for the taxpayer: 1) the fourth installment for tax year 2015 and 2) the first installment for tax year 2016. The refund is credited as of January 10, 2016, against the first installment of estimated tax due for tax year 2016, due April 15, 2016. After the return has processed, the taxpayer writes to the department and requests that the 2014 refund instead be applied to the fourth installment for tax year 2015. The department moves the estimated tax payment from tax year 2016 to tax year 2015. The payment is applied as of January 10, 2016, the date the delinquent return was filed.

Example 4: The taxpayer files a 2014 Oregon personal income tax return on March 1, 2016, showing a refund. The taxpayer elects on the delinquent return to have the refund applied to the taxpayer's estimated tax account. The taxpayer has not yet filed the 2015 Oregon personal income tax return. The overpayment is credited consistent with section (3)(b) of this rule to the 2016 estimated tax account as of March 1, 2016. After the 2014 Oregon return has processed, the taxpayer writes to the department to indicate the taxpayer would like the refund applied to the 2015 estimated tax underpayment period. The department moves the application from tax year 2016 to tax year 2015 and applies the payment as of March 1, 2016, the date the delinquent return was filed.

(6) Refunds from amended returns. If the taxpayer elects on an amended return to have an overpayment applied to estimated tax, the department will apply the overpayment to an open estimated tax account. The overpayment shall be applied as of the date the amended return is filed. If interest is due on the overpayment, the interest will stop accruing on the date the amended return is filed.

Example 5: A taxpayer files a 2015 Oregon personal income tax original return timely on March 13, 2016. The taxpayer then files a 2015 Oregon amended return on October 15, 2016, claiming a $500 overpayment and electing to have the entire refund applied to the open estimated tax account. The refund is reduced to $400 in processing and approved on November 15, 2016. The 2014 refund is applied to the taxpayer's 2016 estimated tax account as of October 15, 2016, the date the amended return was filed. Interest on the overpayment is calculated starting June 2, 2016, 45 days after the return due date (excluding extension), and ending October 15, 2016, the date the return was filed.

[Publications: Contact the Oregon Department of Revenue to learn how to obtain a copy of the publication referred to or incorporated by reference in this rule pursuant to ORS 183.360(2) and ORS 183.355(1)(b).]

Stat. Auth.: ORS 305.100, ORS 316.583

Stats. Implemented: ORS 316.583, ORS 316.579, ORS 314.415

Hist.: RD 12-1984, f. 12-5-84, cert. ef. 12-31-84; RD 7-1989, f. 12-18-89, cert. ef. 12-31-89; RD 7-1991, f. 12-30-91, cert. ef. 12-31-91; RD 9-1992, f. 12-29-92, cert. ef. 12-31-92; Runumbered from 150-316.583(2) by REV 9-2015, f. 12-23-15, cert. ef. 1-1-16

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Rule Caption: Personal Income Tax: Amnesty program, Biomass Credit transfer, University Venture Fund
Adm. Order No.: REV 10-2015
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 150-315.144
Rules Repealed: 150-305.100(C), 150-315.521
Subject: 150-315.144 — Modifies when a Biomass credit transfer schedule must be filed with the Department of Revenue.

150-305.100(C) — Repeal of the rule for the amnesty program that is no longer in effect.

150-315.521 — Repeal the rule for the University Venture Fund credit as it sunsets December 31, 2015.
Rules Coordinator: Deanna Mack—(503) 947-2082

150-315.144
Transfer of Biomass Credit

(1) As provided by ORS 315.053, a person that has obtained a tax credit under ORS 315.141 may transfer the credit to:

(a) A C corporation;

(b) An S corporation; or

(c) A personal income taxpayer.

(2) Transfers. The value of the credit earned under ORS 315.141 is the greater of the market value upon transfer or the minimum discounted rate established by the Department of Energy. A credit may be transferred or sold only once. In order for the transfer to be effective:

(a) The Department of Energy must certify the credit;

(b) The person who earned the credit must complete the transfer schedule on the back of the certificate provided by the Department of Energy and retain the schedule with their records;

(c) The person who earned the credit and the taxpayer claiming the credit must complete and file a joint statement on a form provided by the Department of Revenue to be filed with the department within 30 days of the transfer. Both parties must retain a copy with their records; and,

(d) The credit must be transferred on or before the due date of the tax return (including extensions) for the first tax year in which the credit may first be claimed. After that date, no portion of the credit allowed under ORS 315.141 may be transferred.

Stat. Auth.: ORS 305.100, 315.144

Stats. Implemented: ORS 315.144

Hist.: REV 10-2010, f. 7-23-10, cert. ef. 7-31-10; REV 10-2015, f. 12-23-15, cert. ef. 1-1-16

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Department of State Lands
Chapter 141

Rule Caption: Placer Mining General Authorization: Implement Moratorium and Process Changes; Eliminate Specific Limitations
Adm. Order No.: DSL 4-2015(Temp)
Filed with Sec. of State: 12-28-2015
Certified to be Effective: 1-2-16 thru 6-29-16
Notice Publication Date:
Rules Amended: 141-089-0820, 141-089-0825, 141-089-0835
Subject: A legislatively established moratorium (Enrolled Senate Bill 838 2013) on some motorized placer mining will begin on January 2, 2016. It was necessary to revise the Department's General Authorization in response to SB 838 statutory changes, including implementing the moratorium for some motorized placer mining. The temporary rule clarifies the process for determining eligibility for the General Authorization and removes certain limitations on placer mining that were established for the period ending January 2, 2016. The agency will be conducting permanent rulemaking and taking public comment in response to any relevant new legislation that may result from the 2016 session. Since at the time of this filing the results of the 2016 Legislative Session are unknown, the agency is filing this temporary rule so it goes into effect by January 2, 2016. The permanent rule will go into effect no more than 180-days from the date of this filing.
Rules Coordinator: Sabrina L. Owings—(503) 986-5200

141-089-0820
Purpose

(1) These rules set forth conditions under which a person may, without an individual removal-fill permit from the Department, fill, remove and move material in waters of this state for the purpose of recreational placer mining within areas designated as Essential Indigenous Anadromous Salmonid Habitat (ESH) that is not designated as State Scenic Waterway (SSW) and that is not subject to a legislatively established moratorium.

(2) There is a legislatively established moratorium from January 2, 2016, to January 2, 2021. This moratorium applies for all placer deposits of the beds or banks of all waters of this state, or other placer deposits, up to the line of ordinary high water, and 100 yards upland perpendicular to the line of ordinary high water, that is located above the lowest extent of the spawning habitat in any river and tributary thereof in this state containing either essential indigenous anadromous salmonid habitat or naturally reproducing populations of bull trout, except for the following two areas:

(a) Areas that do not support populations of anadromous salmonids or naturally reproducing populations of bull trout due to a naturally occurring or lawfully placed barrier to fish passage.

(b) Any area where an operating permit that was issued by the State Department of Geology and Mineral Industries under ORS 517.702 to 517.989 authorizes a person to conduct recreational placer mining.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990

Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990

Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14; DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

141-089-0825
Eligibility Requirements

(1) Purpose. The activity is for the specific purpose of recreational placer mining.

(2) Limited Number. Notwithstanding OAR 141-089-0640, the Department shall limit the total number of authorizations and permits for

motorized mining in any river and tributary thereof, of which any portion contains ESH or naturally reproducing populations of bull trout, to 850 annually using the following process:

(a) For eligible notifications that are received between January 1 and the last business day in February of each year, priority, to the greatest extent practicable, will be given to persons who have held a general authorization for recreational placer mining or an individual permit for motorized placer mining from the Department of State Lands, or a 700PM permit from the Department of Environmental Quality, for the longest period of time between 2006 and 2014. The Department will assign one point for each year a person has held an authorization or permit from either agency between 2006 and 2014, for a possible total of up to nine points.

(b) The persons that receive the highest number of points will receive authorizations or permits. If there are more persons that have the same number of points compared to the number of permits or authorizations available, permits or authorizations will be awarded through random selection.

(c) If fewer than 850 eligible notifications are received between January 1 and the last business day in February of each year and there is a balance of permits or authorizations to distribute, priority will be given according to date of notification.

(d) Individual permit applications for motorized placer mining received between January 1 and the last business day in February of each year will be included in the process described in (a) through (b) above, and those received after the last business day in February of each year will be included in the process described in (c) above.

(e) The Department will notify persons of the issuance or denial of an authorization by April 30 of each year. The notice is served when deposited in the United States Mail.

(3) Threshold. The activity will remove, fill or move cumulatively less than twenty-five (25) cubic yards of material annually from or within the bed and banks of waters of this state that are designated as ESH.

(4) Expiration of Recreational Placer Mining Authorizations and Permits. Authorizations issued under the Recreational Placer Mining GA expire on December 31 of each year. Individual permits issued for recreational placer mining shall expire December 31 of each year.

(5) Report. A completed Recreational Placer Mining Report for the previous year must be submitted to the Department by the last business day in February of each year.

(6) Transfer of Authorization is not Allowed. An authorization cannot be transferred to another person.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14; DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

141-089-0835
Activity-Specific Conditions

Proposed projects eligible for this General Authorization must adhere to the general conditions in OAR 141-089-0650, unless otherwise specified in these rules. The following activity-specific conditions also apply:

(1) Prevent Fish Stranding. Upon completion of the activity at any given location, the responsible party must level all piles and fill all furrows, potholes and other depressions created by the activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(2) Wet Perimeter. The activity is confined to the wet perimeter. The wet perimeter is the area of the stream that is under water or is exposed as a non-vegetated, dry gravel-bar island surrounded on all sides by actively moving water at the time the activity occurs.

(3) Disturbance of the Bank and Riparian Vegetation. The activity must not disturb the bank. Undercutting or eroding banks and removal or disturbance of boulders, rooted vegetation or embedded woody material and other habitat structure from the bank is prohibited. Creation of new access routes that disturb or destroy woody riparian vegetation is not allowed.

(4) Fish Passage. The activity does not divert a waterway or obstruct fish passage.

(5) Minimization of Impounded Water. The activity may impound only the minimal area of water necessary to operate the dredge under the following conditions:

(a) The temporary dam does not extend across more than 75% of the wetted perimeter;

(b) The designs for the temporary dam are consistent with ODFW requirements set forth in ORS 509.580 through 509.901 and OAR 635-412-0005 through 635-412-0040;

(c) The impoundment structure is removed immediately upon completion of the mining activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(6) No Disturbance of Stream Structure. No movement of boulders, logs, stumps or other woody material from the bed is allowed, other than movement by hand and non-motorized equipment. The boulders and other stream structure must be returned to its original position upon completion of the mining activity. The activity is complete if the responsible party does not return to that location to conduct the activity within 24 hours.

(7) Dredge Intake Nozzle Limited. The suction dredge must have an intake nozzle that has an inside diameter not exceeding four inches.

(8) Refueling. All fuel and oil must be stored in an impermeable container and must be located at least 25 feet from the wet perimeter of the stream. For dredge locations where a 25 foot buffer is not possible, secondary containment is required.

(9) Annual Report Required. The responsible party must maintain a monitoring log and record the date, location, nozzle diameter and amount of material disturbed for each day of operation. By February 28 of each year, the responsible party must submit to the Department an annual report, on a form provided by the Department, which states the estimated amount of material that was filled, removed or moved in each specific waterway during the preceding calendar year. If no jurisdictional activity was conducted, the report must be submitted reporting zero cubic yards for the year. Authorizations will not be renewed for the following calendar year if the annual report is not filed by February 28.

(10) Responsible Party Must be Present. Alternate persons may operate the suction dredge, provided the responsible party listed on the authorization is present at all times during suction dredge operation.

(11) Limited to One Suction Device. Only one suction dredge, one hose, and one nozzle may be operated at any given time under this authorization.

(12) Wheeled or Tracked Equipment not Allowed. Operation of motorized wheeled or tracked equipment, except for the suction dredge and life support systems, is prohibited below ordinary high water.

(13) Operation Limited to Locations Listed. The operation is limited to the locations listed on the authorization. Written requests to modify locations for this authorization will be reviewed within 14 days of the request, upon which time the Department may issue a revised authorization.

(14) Obstructions to Navigation and Recreation Prohibited. In no circumstance shall anchoring or operation of suction dredges interfere with navigation or cause a safety hazard to public recreation.

Stat. Auth.: ORS 196.600 - 196.692, 196.795 - 196.990
Stats. Implemented: ORS 196.600 - 196.692, 196.795 - 196.990
Hist.: DSL 2-2011, f. & cert. ef. 3-1-11; DSL 3-2012, f. 9-28-12, cert. ef. 9-29-12; DSL 4-2013, f. 12-13-13, cert. ef. 1-1-14; DSL 4-2015(Temp), f. 12-28-15, cert. ef. 1-2-16 thru 6-29-16

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Rule Caption: Amend existing special use rules to include geothermal resources installations.
Adm. Order No.: DSL 5-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 12-29-15
Notice Publication Date: 5-1-2014
Rules Amended: 141-125-0170
Subject: With the recent renewed interest in Oregon's geothermal resources, several companies wanting to explore for and develop geothermal resources on state-owned land have contacted the Department.

In reviewing the geothermal rules, both the Department and applicants have found them to be difficult to understand and unduly complicated. Additionally, many of the terms and conditions provided in the rules are inconsistent with those currently used by the Department in other leasing programs.

On June 8, 2010, the State Land Board authorized the Department to initiate rulemaking to amend the administrative rules governing the exploration for and development of geothermal resources. These rules have not been amended since their adoption by the Land Board on October 11, 1974.

During the initial phase of rulemaking, staff made the recommendation to incorporate geothermal resources into the Department's Special Use Rules (Division 125) rather than updating the existing geothermal rules. These rules already govern the exploration for and development of other types of renewable energy, including wind tur-

bines and wind farms, solar energy installations and biomass generating facilities. The administrative procedures and policies are current in Division 125 (these rules were last amended in 2008). As stated above, the geothermal rules were last revised in 1974, and will require a major re-write in order to be consistent with the Department's current administrative policies and procedures. It is expected that the Department will save money and staff time by incorporating geothermal resources into Division 125.

Upon completion of the rulemaking effort, the Department will repeal the administrative rules governing the exploration for and development of geothermal resources (OAR 141-075-0010 through 141-075-0575). The content of these rules will be added to the special use rules to include the exploration for and development of geothermal resources (OAR 141-125).

Rules Coordinator: Sabrina L. Owings—(503) 986-5200

141-125-0170
General Terms and Conditions

(1) The term of a special use lease will not exceed 30 years unless otherwise approved by the Director. The Department will determine the length of a lease based on the nature of the use intended for the requested site. The Department may, at its discretion, provide as a provision of the lease that it may be renewed for a term to be determined by the Department.

(2) The term of a license will be less than three years. A license may, upon receipt by the Department of a written request, be renewed up to two times at the discretion of the Department for a maximum term of one year each time.

(3) Leases and licenses will be offered by the Department for the minimum area determined by the Department to be required for the requested use.

(4) A special use authorization issued by the Department will be on a form supplied by the Department that has been approved for legal sufficiency by the Department of Justice pursuant to ORS 291.045 to 291.047 (Public Contract Approval).

(5) The holder of a lease or license may request the Department close all or portions of the authorized area to public entry or restrict recreational use by the public to protect the persons, property, developments and/or crops from harm.

(6) The Department or its authorized representative(s) will have the right to enter into and upon the authorized area at any time for the purposes of inspection or management, or to conduct noxious plant or pest abatement, or for wildfire control.

(7) The holder of a special use authorization must dispose of all waste in a proper manner and must not permit debris, garbage or other refuse to either accumulate within the authorized area or be discharged into any waterway.

(8) Unless otherwise agreed to in writing as a provision of the authorization, the holder of a special use authorization may not interfere with lawful public use of an authorized area, or obstruct free transit across state land, or intimidate or otherwise threaten or harm public users of state land.

(9) The holder of a special use authorization must cooperate and comply with:

(a) Appropriate county agencies and the Oregon Department of Agriculture in the detection, prevention and control of noxious plants. The Department will rely on the Oregon Department of Agriculture for information concerning which noxious plants present on an authorized area require corrective action by the lessee or licensee, or the Oregon Department of Agriculture or its agents;

(b) The Oregon Department of Agriculture and the Department in the management of plant pests and diseases; and

(c) The Department and other agencies in the detection, prevention and control of wildfires on an authorized area.

(10) Unless otherwise agreed to in writing in the special use authorization, the holder of the authorization, must remove any or all developments as directed by the Department within 90 calendar days of the date of the expiration or termination of the authorization. The holder of a lease for a renewable energy project must remove any or all developments as directed by the Department within one year of the date of the expiration or termination of the authorization. If the holder of the special use authorization refuses to remove the subject developments, the Department may remove them and charge the holder for doing so.

(11) The holder of a special use authorization will not allow any other use to be made of, or occur on the site or facility that is not specifically authorized:

(a) By that authorization; or

(b) By the Department in writing prior to the use.

(12) The holder of a special use authorization must conduct all operations within the authorized area in a manner that conserves fish and wildlife habitat; protects water quality; and does not contribute to insect or animal infestation, soil erosion or the growth of noxious plants.

(13) The holder of a special use authorization must maintain all buildings, machinery, equipment and similar structures and improvements located within the authorized area in a good state of repair as determined by the Department.

(14) If requested by the Department, a holder of a special use authorization must present evidence to the Department prior to the use that they have obtained:

(a) All authorizations required by local, state, and federal governing bodies to undertake the proposed use;

(b) Any authorization that may be required to obtain access or to cross land belonging to a person other than the Department to undertake the use; and

(c) A surety bond and comprehensive or commercial general liability insurance required by the Department.

(15) The Department may require that a person who is granted a:

(a) Special use license by the Department to conduct an investigation or demonstration project using wind, solar energy or biomass to generate electricity to provide the results obtained from the investigation or demonstration project, or both, to the Department, or

(b) Short term access authorization by the Department for scientific or research purposes to provide the data obtained or developed from the investigation (for example, geological core logs or biological surveys) to the Department.

(16) The holder of a lease or license will indemnify the State of Oregon and the Department of State Lands against any claim or costs arising from or related to a release of a hazardous substance on or from the authorized area. Additionally, the Department may require that the holder of a short term access agreement also provide the same indemnification contingent on the use of the authorized area requested.

(17) A holder of a lease or license that provides for a renewal must reapply to the Department using a form provided by the Department and remit the required application processing fee to the Department. Unless otherwise allowed by the Director, this form must be received by the Department along with the required application processing fee at least 180 calendar days prior to the expiration of the lease or license for which renewal is requested.

Stat. Auth.: ORS 273
Stats. Implemented: OR Const. Art. VIII, Sec. 2 & 5
Hist.: DSL 1-2002, f. 2-7-02, cert. ef. 3-1-02; DSL 3-2008, f. & cert. ef. 10-15-08; DSL 5-2015, f. & cert. ef. 12-29-15

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Department of State Police, Office of State Fire Marshal
Chapter 837

Rule Caption: Implement HB 2432 to expand fireworks use for pest control, remove language, housekeeping.
Adm. Order No.: OSFM 2-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 837-012-0305, 837-012-0310, 837-012-0315, 837-012-0320, 837-012-0325, 837-012-0330, 837-012-0340, 837-012-0350, 837-012-0360, 837-012-0370, 837-012-0500, 837-012-0510, 837-012-0515, 837-012-0520, 837-012-0525, 837-012-0530, 837-012-0535, 837-012-0540, 837-012-0545, 837-012-0550, 837-012-0555, 837-012-0560, 837-012-0565, 837-012-0570, 837-012-0600, 837-012-0610, 837-012-0615, 837-012-0620, 837-012-0625, 837-012-0630, 837-012-0635, 837-012-0640, 837-012-0645, 837-012-0650, 837-012-0655, 837-012-0660, 837-012-0665, 837-012-0670, 837-012-0675, 837-012-0700, 837-012-0710, 837-012-0720, 837-012-0730, 837-012-0740, 837-012-0750, 837-012-0760, 837-012-0770, 837-012-0780, 837-012-0790, 837-012-0800, 837-012-0810, 837-012-0820, 837-012-0830, 837-012-0835, 837-012-0840, 837-012-0850, 837-012-0855, 837-012-0860, 837-012-0865, 837-012-0870, 837-012-0875, 837-012-0880, 837-012-0890, 837-012-0900, 837-012-0910, 837-012-0920, 837-012-0940, 837-012-0950, 837-012-0960, 837-012-0970, 837-012-1000, 837-012-1010, 837-012-

1020, 837-012-1030, 837-012-1040, 837-012-1050, 837-012-1060, 837-012-1070, 837-012-1080, 837-012-1090, 837-012-1100, 837-012-1110, 837-012-1120, 837-012-1130, 837-012-1140, 837-012-1150, 837-012-1160

Subject: Implements HB 2432 (2015 OL Ch. 57) which repeals ORS 480.122 allowing the use of fireworks to deter birds and animals.

Removes requirement for wait period stating the Office of State Fire Marshal will wait for check to clear financial institution before processing application for licenses and permits.

Removes language prohibiting firework displays during burn ban.

Performed routine housekeeping to clean-up rules and provide uniformity and better readability.

Rules Coordinator: Valerie Abrahamson—(503) 934-8211

837-012-0305
Purpose and Scope

(1) These rules establish permit and other requirements for the use of pest control fireworks, as allowed under HB 2432 (2015 OL Ch. 57) and 480.124, to repel birds or other animals from certain properties.

(2) A pest control fireworks permit allows the permit holder to engage only in those activities including the purchase, transportation, possession, storage and use of pest control fireworks (1.4E) when those activities are otherwise in conformance with the requirements of HB 2432 (2015 OL Ch. 57) and ORS 480.124, these rules, and any other applicable state, federal, or local requirements.

(3) An individual member of the general public may not buy or use pest control fireworks unless they have applied for and obtained a pest control fireworks permit from the Office of State Fire Marshal pursuant to these rules. Violation of these rules may result in confiscation of the fireworks, and the assessment of penalties in accordance with ORS 480.990 and OAR 837-012-0560.

Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0005; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0310
Pest Control Fireworks Permit Applications

(1) Any person engaged in, or intending to engage in, the use of pest control fireworks must apply for and obtain pest control fireworks permit issued by the Office of State Fire Marshal.

(2) Upon receipt of a properly completed and approved application, the Office of State Fire Marshal will issue a nontransferable permit to the applicant or persons designated to discharge the fireworks. The State Fire Marshal may deny any application for a permit to discharge pest control fireworks upon determining the proposed purchase or use is not in accordance with these rules or applicable statutes. A separate pest control fireworks permit must be applied for and obtained for each property where a person desires to use pest control fireworks. A separate permit is not necessary for multiple contiguous properties if the applicant has responsible charge of all the properties.

(3) The application for a pest control fireworks permit must be made on a form provided by the Office of State Fire Marshal.

(4) All information provided by the applicant on the permit application must be true and correct to the permit applicant's knowledge.

(5) All applications must include a statement describing the bird or animal activities that the applicant deems to be injurious or destructive to the property on which the pest control fireworks are to be used. Such statement shall also include the types of birds or animals to be repelled by pest control fireworks.

(6) If a permit holder wishes to repel birds or animals not identified on the current permit, or wishes to address destructive or injurious activities not identified on the current permit, the permit holder must request the Office of State Fire Marshal revise the permit. Prior to the Office of State Fire Marshal revising the permit, the permit holder must submit a supplemental written statement identifying the birds or animals, or the activities that the applicant deems to be injurious or destructive to the property, on which the pest control fireworks are to be used.

(7) The Office of State Fire Marshal may grant or deny permit applications within 10 business days following receipt of a properly completed and submitted permit application. Any denial will be in conformance with ORS 183.310 to 183.550.

Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0010; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0315
Definitions

(1) "Agent" means an individual designated by the permit holder to pick up the pest control fireworks authorized by the pest control fireworks permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the pest control fireworks.

(2) "Airport" means any area of land or water that is used, or intended for use, for the landing and take-off of aircraft, and any appurtenant areas that are used, or intended for use, for airport buildings or other airport facilities or rights of way, together with all airport buildings and facilities located thereon.

(3) "Commercially valuable" means a product that, based on public demand, would generate profit if sold.

(4) "Estuary" means:

(a) For waters other than the Columbia River, the body of water from the ocean to the head of tidewater that is partially enclosed by land and within which salt water is usually diluted by fresh water from the land, including all associated estuarine waters, tidelands, tidal marshes and submerged lands; and

(b) For the Columbia River, all waters from the mouth of the river up to the western edge of Puget Island, including all associated estuarine waters, tidelands, tidal marshes, and submerged lands.

(5) "Farm" means:

(a) Any tract of land whether consisting of one or more parcels devoted to agricultural purposes generally under the management of a tenant or the owner, or

(b) A plot of land devoted to the raising of domestic or other animals, or

(c) A tract of water reserved for the artificial cultivation of some aquatic life-form.

(6) "Fire Protection District" means any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas.

(7) "Fireworks" has the meaning provided in ORS 480.111(7).

(8) "Forest" or "forestland" means any woodland, brushland, timberland, grazing land or clearing that, during any time of the year, contains enough forest growth, slashing or vegetation to constitute, in the judgment of the forester, a fire hazard, regardless of how the land is zoned or taxed.

(9) "Golf course" means an area of land laid out for the game of golf with a series of holes each including tee, fairway, and green and often one or more natural or artificial hazards. "Golf course" does not mean a privately-owned golf practice facility constructed for personal use.

(10) "Illegal fireworks" has the meaning provided in OAR 837-012-0610.

(11) "Individual" means a real, actual person

(12) "Individual member of the general public" means any person who has not been issued a wholesale permit, a general, limited or special effects display permit, a retail permit or an pest control fireworks permit by the Office of State Fire Marshal.

(13) "Local fire authority" means the local fire authority having jurisdiction over the pest control fireworks use and storage sites.

(14) "May" means a regulation of conduct and implies probability or permission.

(15) "May not" means a prohibition of conduct.

(16) "Must" means a mandatory requirement.

(17) "Permit application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of an pest control fireworks permit.

(18) "Permit holder" means the person referred to in HB 2432 (2015 OL Ch. 57) who:

(a) Desires to purchase, maintain, use, and explode pest control fireworks for the purpose of scaring away or repelling birds or animals from a property as described in OAR 837-012-0305.

(b) Has applied to the State Fire Marshal for a pest control fireworks permit;

(c) The State Fire Marshal has issued a pest control fireworks referred to in HB 2432 (2015 OL Ch. 57);

(d) Is responsible for any activities conducted under the pest control fireworks permit.

(19) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(20) "Pest control fireworks" means:

(a) Fireworks with a cardboard/pasteboard-type tube up to 4" in length and 3/4 inch in diameter or a shotgun shell type container,

(b) Fireworks containing only pyrotechnic compositions, e g., black powder, flash powder, or smokeless powder, with an audible report containing up to 40 grains, or 2.592 grams, of explosive composition,

(c) Fireworks tested, classified and approved by the United States Department of Transportation,

(d) Fireworks designed and intended solely for use in:

(A) Controlling predatory animals allowed by ORS 480.124 or,

(B) Controlling birds or animals as allowed by HB 2432 (2015 OL Ch. 57).

(e) Fireworks referred to as explosive pest control devices,

(f) Fireworks not including retail fireworks, display fireworks, or exempt fireworks.

(21) "Pest control fireworks permit" means the official written document issued by the Office of State Fire Marshal pursuant to HB 2432 (2015 OL Ch. 57) and ORS 480.124 and OAR 837-012-0305 through 837-012-0370 granting permission to a person to purchase and use pest control fireworks.

(22) "Recycling facility" is a specialized plant that handles recyclable materials by doing one or more of the following: receiving, separating or preparing recyclable material for sale to end users.

(23) "Responsible charge" has the meaning given in HB 2432 (2015 OL Ch. 57).

(24) "Sell" means to transfer possession of property from one person to another person for consideration.

(25) "Waste facility" means land and facilities used for the disposal, handling or transfer of, or energy recovery, material recovery and recycling from solid wastes, including but not limited to dumps, landfills, sludge lagoons, sludge treatment facilities, disposal sites for septic tank pumping or cesspool cleaning service, transfer stations, energy recovery facilities, incinerators for solid waste delivered by the public or by a collection service, composting plants and land and facilities previously used for solid waste disposal at a land disposal site.

(26) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means fireworks, retail fireworks, display fireworks, or pest control fireworks.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0015; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 8-2010(Temp), f. 12-20-10, cert. ef. 1-1-11 thru 6-29-11; OSFM 3-2011, f. 4-22-11, cert. ef. 6-29-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0320
Storage of Pest Control Fireworks

Pest control fireworks must be stored in accordance with the requirements of these rules, the Oregon Fire Code as adopted by the State Fire Marshal pursuant to OAR 837-040-0010 and the Oregon Structural Specialty Code as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0020; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0325
Permits-Denial, Suspension, Revocation

(1) The State Fire Marshal may deny, suspend or revoke a pest control fireworks permit for violation of ORS 480.111 through 480.165 and OAR chapter 837, division 12, or upon a determination the proposed or permitted use does not conform with federal or state law or local regulations. Any such revocation, suspension or denial will be in conformance with ORS 183.310 to 183.550.

(2) The period of denial, suspension or revocation may not exceed three years.

(3) The following criteria are used by the Office of State Fire Marshal to determine the appropriate sanction:

(a) The severity of the violation or violations and the impact on public safety, particularly if the circumstances of a violation presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations; alleged to have been committed in the current transaction or occurrence;

(c) Whether the violation or violations were willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the pest control fireworks permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation or violations.

(4) Suspension or revocation of a pest control fireworks permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0025; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0330
General

(1) Pest control fireworks may only be used to repel birds or animals from properties if the birds or animals are or may be injurious or destructive to a property, including crops and livestock located on the property, identified in HB 2432 (2015 OL Ch. 57).

(2) Pest control fireworks may only be used by the permit holder to deter the destructive or injurious activities specified on the permit application by the types of birds or animals listed on the permit application.

(3) Pest control fireworks permit holders desiring to engage in other types of fireworks activities, including wholesale sales, fireworks displays or retail sales, must meet all applicable requirements in ORS 480.111 through 480.165 and OAR chapter 837, division 12.

(4) Pest control fireworks permit holders must notify the Office of State Fire Marshal, in writing, within 24 hours of the date of change, of:

(a) The pest control fireworks permit holder's mailing address, telephone number,

(b) The storage address of the pest control fireworks.

(5) Change of the storage location of the pest control fireworks is subject to prior written approval by the local fire authority and the Office of State Fire Marshal.

(6) Pest control fireworks permit holders must comply with all applicable federal, state and local laws, rules and regulations including, without limitation:

(a) ORS 480.111 through 480.165;

(b) OAR chapter 837, division 12;

(c) Oregon Fire Code as adopted by the State Fire Marshal pursuant to OAR 837-040-0010; and

(d) Oregon Structural Specialty Code as adopted by the Oregon Building Codes Division pursuant to OAR 918-040-0010.

(7) Pest control fireworks permit holders must purchase pest control fireworks only from wholesalers having the necessary and current permits required by ORS 480.111 to 480.160 and OAR 837-012-0500 through 837-012-0570.

(8) Pest control fireworks permit holders or their agent must have the agricultural pest control fireworks permit (or a copy) issued by the State Fire Marshal in their possession at the time the agricultural pest control fireworks are picked up from the wholesaler.

(9) Pest control fireworks permit holders may request a duplicate copy of their pest control fireworks permit by certifying to the Office of State Fire Marshal, in writing, their pest control fireworks permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the pest control fireworks permit holder.

(10) The issuance of a pest control fireworks permit does not in any way constitute approval by the Office of State Fire Marshal of any pest control fireworks purchased, sold, or provided pursuant to the pest control fireworks permit.

(11) A pest control fireworks permit allows the permit holder to engage in the purchase, transportation, possession, storage and use of pest control fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12 and any other federal, state or local laws, rules or regulations pertaining to fireworks.

(12) A pest control fireworks permit does not authorize the:

(a) Purchase, possession or sale of illegal fireworks by or to any person; or

(b) The sale, re-sale, or provision of pest control fireworks by or to any person other than the pest control fireworks permit holder.

(13) Any pest control fireworks permit holder, other than an individual, is required by the State Fire Marshal to list the name, age, address, and phone number of one individual in a management position within their company or organization, on the permit application.

(14) Individuals firing pest control fireworks must be a minimum of 18 years of age.

(15) Only the pest control fireworks permit holder, and any employees of the pest control fireworks permit holder, may engage in activities authorized by the pest control fireworks permit.

(16) Pest control fireworks permits, and the rights conveyed by the pest control fireworks permit, are not transferable.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: HB 2432 (2015 OL Ch. 57) & 480.124

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 42, f. 4-15-70, ef. 5-11-70; Renumbered from 837-031-0030; OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 7-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 8-2010(Temp), f. 12-20-10, cert. ef. 1-1-11 thru 6-29-11; OSFM 3-2011, f. 4-22-11, cert. ef. 6-29-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0340

Permit Fees

There are no fees for this application.

Stat. Auth.: HB 2432 (2015 OL Ch. 57)

Stats. Implemented: ORS 480.122 & 480.124

Hist.:OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0350

Issuance of Pest Control Fireworks Permits

(1) Each pest control fireworks permit is assigned a unique number by the Office of State Fire Marshal.

(2) The pest control fireworks permit is valid only for the property or properties listed on the pest control fireworks permit.

(3) The pest control fireworks permit will be mailed, electronically mailed, or sent by facsimile to the permit holder.

(4) An initial pest control fireworks permit issued by the Office of State Fire Marshal is valid from the date of issue up to three years as determined by the OSFM.

(5) Upon renewal, pest control fireworks permits are valid for a period not to exceed three years.

Stat. Auth.: HB 2432 (2015 OL Ch. 57)

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0360

Purchase of Pest Control Fireworks

(1) Permit holders must be 18 years of age or older.

(2) Pest control fireworks permit holders may purchase or otherwise obtain pest control fireworks only from wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal. Exception: In the case of state game management or federal game management authorities who provide agency approved game management assistance to permit holders; once a permit has been issued – state game management or federal game management authorities may supply pest control fireworks to the permit holder under the following criteria:

(a) Pest control fireworks permit holders may only obtain pest control fireworks listed on their pest control fireworks permit.

(b) The state game management or federal game management authority who supplies pest control fireworks must maintain a record of all pest control fireworks supplied and make such records available to the Office of State Fire Marshal upon request.

(c) Any decision by a state game management or federal game management authority to supply pest control fireworks must be in conformance with their specific agency policies and procedures for the distribution of pest control fireworks.

(3) Once a pest control fireworks permit has been issued and the wholesaler selected; if an pest control fireworks permit holder desires to obtain pest control fireworks from another wholesaler, the pest control fireworks permit holder must notify the Office of State Fire Marshal at least 24 hours prior to purchasing the pest control fireworks from another licensed pest control fireworks wholesaler.

Stat. Auth.: HB 2432 (2015 OL Ch. 57)

Stats. Implemented: ORS 480.122 & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0370

Prohibited Acts and Limitations

(1) A pest control fireworks permit does not allow the permit holder to purchase, possess, or sell any other types of fireworks.

(2) Pest control fireworks may not be utilized for any purpose other than the use as stated on the permit application.

(3) Pest control fireworks utilized for any other use than the permitted use may result in the immediate suspension of the pest control fireworks permit and confiscation of the unused pest control fireworks.

(4) A permit holder may not sell or provide by any other means pest control fireworks or any other fireworks to any other person including other permit holders.

(5) The pest control fireworks permit does not authorize the manufacture, sale, use, discharge or possession of pest control fireworks in any forest protection district, city or county where pest control fireworks are prohibited by law or ordinance.

(6) No permit holder may maintain or allow the existence of a fire hazard at any location under their control where pest control fireworks are stored, transported, or used.

(7) Permit holders may not provide pest control fireworks to anyone other than an authorized employee or owner of the permit holder's business for the purpose specified on the permit applications.

(8) Nothing in OAR 837-012-0305 to 837-012-1150, nor in any permit issued thereunder, shall authorize the use of pest control fireworks on any property in which the use of pest control fireworks is prohibited by federal or state law or local regulations.

Stat. Auth.: HB 2432 (2015 OL Ch. 57)

Stats. Implemented: HB 2432 (2015 OL Ch. 57) & 480.124

Hist.: OSFM 10-2001(Temp), f. & cert. ef. 12-12-01 thru 6-9-02; OSFM 3-2002, f. & cert. ef. 2-25-02; OSFM 15-2006, f. 12-22-06, cert. ef. 1-1-07; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0500

Purpose and Scope

These rules establish permit and other requirements for persons who sell or provide by any other means, or intend to sell or provide by any other means, at wholesale, fireworks, retail fireworks, display fireworks, or pest control fireworks in or into Oregon, or from Oregon for delivery into another state.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0510

Definitions

For purposes of ORS 480.111 through 480.165 and OAR 837-012-0500 through 837-012-0570, the following definitions apply:

(1) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) "Carton, container, or case" means any box, parcel, bundle, or other package used to hold or contain fireworks, retail fireworks, display fireworks, or pest control fireworks for purposes of transportation and storage. The term does not include:

(a) The wrapping or packaging used to hold or contain a single or small number of fireworks, retail fireworks, display fireworks, or pest control fireworks; or

(b) A vehicle or other mobile container used to transport fireworks, retail fireworks, display fireworks, or pest control fireworks.

(3) "Display fireworks" means fireworks defined in ORS 480.111(4) that are authorized under a general, limited, or special effects display permit issued pursuant to 480.130, 480.140 and 480.150.

(4) "Domicile" means a person's legal home; the particular place that a person intends to make the person's fixed and permanent home and abode.

(5) "Exempt fireworks" has the meaning provided in ORS 480.111(5).

(6) "Fireworks" has the meaning provided in ORS 480.111(7).

(7) "Illegal fireworks" means any fireworks other than consumer fireworks including but not limited to, any firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(8) "Individual" means a single human being.

(9) "Individual member of the general public" means:

(a) For persons in Oregon, any person who has not been issued a wholesale permit, a general, limited or special effects display permit, a retail permit, or a pest control fireworks permit by the Office of State Fire Marshal.

(b) For persons outside of Oregon, any person who has not been issued a license or permit when such a license or permit is required, authorizing the person to sell, purchase, obtain, transport, possess, use or discharge fireworks, retail fireworks, display fireworks, or pest control fireworks.

(10) "In-state wholesaler" means a wholesaler who owns, possesses, or occupies a wholesale site located in Oregon.

(11) "Local fire authority" means the local fire official having jurisdiction over the wholesale site and wholesale operations.

(12) "Manager" means the individual identified on the permit application who is responsible for and directs the operations at the wholesale site.

(13) "Manufacture" has the meaning provided in ORS 480.111(13).

(14) "NFPA" means the National Fire Protection Association.

(15) "Novelties and trick noisemakers" means those items described in ORS 480.111(5) and the American Pyrotechnics Association Standard 87-1. It also means exempt fireworks.

(16) "Out-of-state wholesaler" means a wholesaler who owns, occupies, or possesses a wholesale site located outside of Oregon.

(17) "Permit application" means the application forms and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a wholesale permit.

(18) "Pest control Fireworks" has the meaning given in OAR 837-012-0315.

(19) "Pyrotechnic articles" has the meaning provided in ORS 480.111(14).

(20) "Pyrotechnic composition" has the meaning provided in ORS 480.111(15).

(21) "Pyrotechnic device" has the meaning provided in ORS 480.111(16).

(22) "Residence" means the particular dwelling place where a person lives and has a present intent to remain for a period of time.

(23) "Resident" means any person who occupies a dwelling in a state and has a present intent to remain in the state for a period of time.

(24) "Retail fireworks" means consumer fireworks as defined in ORS 480.111(2). The term includes a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(25) "Retailer" means any person who, sells, transfers, or provides by any other means, or intends to sell, transfer or provide by any other means, retail fireworks to individual members of the general public.

(26) "Sales representative" means an individual who is an employee of the wholesale permit holder and is authorized to conduct sales for the wholesale permit holder.

(27) "Sell" means to transfer possession of property from one person to another person for consideration.

(28) "Special effects" has the meaning defined in ORS 480.111(17).

(29) "Wholesale operations" means the sale of fireworks, retail fireworks, display fireworks, or pest control fireworks and related activities, including the purchase, possession, storage and transportation of such fireworks.

(30) "Wholesale permit" means the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of fireworks, retail fireworks, display fireworks, or pest control fireworks when otherwise in compliance with all applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations.

(31) "Wholesale site" means the location where a wholesaler's sales and storage facilities are operated and maintained.

(32) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means, fireworks, retail fireworks, display fireworks, or pest control fireworks.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0515
General

(1) Definitions. For purposes of this administrative rule, the following definitions apply:

(a) "Fireworks" has the definition contained in ORS 480.111(7).

(b) "Person" means any business, entity, or individual.

(c) "Wholesaler" means a person that possesses an Oregon wholesale permit issued by the State Fire Marshal.

(2) Any person intending to sell or provide fireworks by any means within the state of Oregon, must first obtain an Oregon wholesale permit.

(3) Any person intending to sell or provide items described in ORS 480.111(2) by any means within the state of Oregon, must first obtain an Oregon wholesale permit, unless that person possesses an Oregon retail sales permit.

(4) A wholesaler may sell or provide by any means fireworks as defined in ORS 480.111(7) in the state of Oregon only to persons having obtained one of the following State Fire Marshal issued permits:

(a) Fireworks display permit, including general, limited, close proximity, and special effects;

(b) Retail sales permit for the sale of retail fireworks to the general public; or

(c) Pest control fireworks permit to repel birds or other animals as allowed under HB 2432 (2015 OL Ch. 57).

(5) Wholesalers desiring to engage in any fireworks activities, including retail sales, pest control use, or fireworks displays must meet all applicable requirements of ORS 480.111 through 480.165 and OAR chapter 837, division 12, including obtaining permits for such activities from local, federal, and state authorities.

(6) Wholesale permit holders must comply with all applicable federal, state, and local laws, rules and regulations pertaining to fireworks, including:

(a) ORS 480.111 through 480.165; and

(b) OAR chapter 837, division 12

(7) Wholesalers must notify the State Fire Marshal, in writing, within two weeks of the date of change of:

(a) Identity of the wholesaler's manager;

(b) The wholesaler's mailing address or telephone number;

(c) Ownership of the wholesaler's site;

(d) Ownership of the wholesaler's operation; or

(e) The addition or subtraction of a sales representative for the wholesaler.

(8) Exempt fireworks are exempt from the permit requirements set forth in ORS 480.111 through 480.165 and OAR chapter 837, division 12. Exempt fireworks may be sold and purchased at any time, and do not require a permit.

(9) Wholesalers who provide 1.3g fireworks must provide a minimum of one general operator certification training course annually as required by OAR 837-012-0780.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85; FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0125; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 4-2012(Temp), f. & cert. ef. 2-6-12 thru 8-3-12; OSFM 6-2012, f. 4-23-12, cert. ef. 8-3-12; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0520
Wholesale Permit Applications

(1) Any in-state wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of fireworks, retail fireworks, display fireworks, or pest control fireworks, within Oregon, or from Oregon for delivery into another state, must first apply for and obtain a wholesale permit issued by the Office of State Fire Marshal.

(2) Any out-of-state wholesaler engaged in, or intending to engage in, the sale, provision, or shipment of fireworks, retail fireworks, display fireworks, or pest control fireworks, in or into Oregon must first apply for and obtain a wholesale permit issued by the Office of State Fire Marshal.

(3) A separate wholesale permit must be applied for and obtained for each wholesale Ssite that may conduct wholesale operations within, from, or into Oregon.

(4) The application for a wholesale permit must be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the permit application must be true and correct to the applicant's knowledge.

(6) In addition to completion of the wholesale permit application forms, applicants must submit:

(a) A copy of a current photographic identification card of all applicants. The Office of State Fire Marshal may only accept photo identification issued by the Department of Motor Vehicles in the applicant's state of residency. For purposes of this rule, if the applicant is a corporation, the applicant must submit copies of photographic identification of all the corporate officers. If the applicant is a partnership, the applicant must submit copies of the photographic identification of all partners.

(b) A description of the types, pursuant to United States Department of Transportation classification, and the maximum quantities, by total gross weight, of fireworks, retail fireworks, display fireworks, or pest control fireworks to be stored at the wholesale site for which a wholesale permit has been applied;

(7) As part of the permit application process, the applicant must obtain the approval of the local fire authority and the local building official prior to submitting their application to the Office of State Fire Marshal.

(8) Exception to 837-012-0520(7): If the applicant's wholesale site address was continuous during the year preceding the year for which the wholesale permit renewal is sought, the applicant is required only to re-submit to the Office of State Fire Marshal, as part of the wholesale permit renewal application, the approval of the local fire authority.

(9) As part of the permit application, wholesale permit applicants who intend to sell or provide 1.3G fireworks must submit to the Office of State Fire Marshal a copy of their appropriate license issued by BATFE.

(10) Additional wholesale requirements pertaining to fireworks, where applicable, must include:

(a) Provide $1M premises liability insurance as part of wholesale permit application;

(b) Compliance with federal DOT insurance requirements of $5,000,000 per shipment of 1.3G fireworks and $1,000,000 per shipment of 1.4G fireworks;

(c) Hazardous Material Certificate of Registration required by 49 CFR Part 107, Subpart G; as part of wholesale permit application;

(d) File Federal DOT MCS 90, MCS 150B;

(e) Provide proof of wholesale permit to offer manufactured pyrotechnics into commerce as required by ORS 480.120;

(f) Compliance with BATFE 5400;

(g) Annually file the Oregon Hazardous Substance Possession Survey;

(h) Submit a Certificate of Occupancy for all buildings as part of wholesale permit application;

(i) Compliance with NFPA 68 guide for explosive venting hazardous group H as part of wholesale permit application;

(j) Compliance with NFPA 1124 manufacturing and storage requirements;

(k) Any structures utilized as storage exceeding 30 days must be classified as permanent storage and meet NFPA 1124 requirements;

(l) Compliance with Oregon Structural Specialty Code Section 307 as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010;

(m) Compliance with Oregon OSHA requirements.

(11) "BE" and "EX" numbers must be obtained before any manufactured pyrotechnic device is entered into commerce or transported.

(12) Applicants must submit the completed permit application to the local fire authority for review and signature approving the wholesale site prior to submission of the permit application to the Office of State Fire Marshal.

(13) Permit applications must be signed by all applicants.

(a) If the applicant is a partnership, the application must be signed by every partner.

(b) If the applicant is a corporation, the application must be signed by an officer of the corporation.

(c) If the applicant is an out-of-state wholesaler, the application must be signed by the applicant and the manager.

(14) Permit applications may not be submitted to the Office of State Fire Marshal prior to October 1 of the year preceeding the year for which the wholesale permit is sought.

(15) Permit applications must be postmarked by a United States Postmark, or received at the Office of State Fire Marshal, no later than December 18 of the year preceding the year for which the wholesale permit is sought. If December 18 falls on a day when a postmark cannot be obtained, applications must be postmarked on the preceding business day when a postmark can be obtained. If December 18 falls on a day when the Office of State Fire Marshal is closed, and the applicant wishes to hand deliver their application, it must be delivered to the Office of State Fire Marshal at the Salem office on the preceding business day. However, due to limited resources in the fireworks program, it is recommended that wholesale fireworks permit applications be postmarked or submitted to the OSFM by December 1 of the year preceding the year for which the permit is sought.

(16) Relocation of the wholesale site requires submission of a new permit application and wholesale permit fee.

(17) Only one wholesale permit may be applied for or issued for each wholesale site.

Stat. Auth.: ORS 476, 478 & 480

Stats. Implemented: ORS 480.110–480.165

Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85, FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Renumbered from 837-012-0120; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 1-2008(Temp), f. & cert. ef. 1-25-08 thru 7-3-08; OSFM 2-2008, f. 4-3-08, cert. ef. 5-1-08; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0525

Wholesale Permits

(1) Within 30 days of receipt of a properly completed and timely submitted permit application and wholesale permit fee, the Office of State Fire Marshal must issue or propose to deny the wholesale permit.

(2) The Office of State Fire Marshal may not approve a permit application or issue a wholesale permit without the prior approval of the local fire authority.

(3) The Office of State Fire Marshal will assign a unique number to each wholesale permit issued.

(4) The Office of State Fire Marshal will mail the original wholesale permit to the applicant at the mailing address listed on the permit application.

(5) Wholesale permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen or destroyed. Written requests must be signed and dated by the applicant pursuant to OAR 837-012-0520(12).

(6) The issuance of a wholesale permit does not in any way constitute approval by the Office of State Fire Marshal of any fireworks, retail fireworks, display fireworks, or pest control fireworks purchased, sold or provided by any other means pursuant to the permit.

(7) A wholesale permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of fireworks, retail fireworks, display fireworks, or pest control fireworks, when those activities are otherwise in conformance with applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to Fireworks.

(8) A wholesale permit authorizes the holder of the permit to sell or provide by any other means, fireworks, retail fireworks, display fireworks, or pest control fireworks, within or into Oregon, only to holders of:

(a) General, limited, or special effects display permits;

(b) Retail permits;

(c) Wholesale permits; or

(d) Pest control permits.

(9) A wholesale permit does not authorize the sale or provision by any other means, of fireworks, retail fireworks, display fireworks, or pest control fireworks to individual members of the general public.

(10) The wholesale permit and permit number issued by the Office of State Fire Marshal are valid from January 1 to December 31 of the year for which they are issued. All wholesale permit and permit numbers expire on December 31 of the year in which they are valid. A wholesale permit holder may be issued the same permit number every year if the permit holder applies for and obtains a wholesale permit in consecutive years.

(11) The wholesale permit is not transferable to another person nor can another person perform any activities authorized by the wholesale permit unless that person listed in the permit application.

(12) Only the wholesale permit holder and the employees of the wholesale permit holder may engage in wholesale operations authorized by the wholesale permit.

(13) The wholesale permit holder's name, mailing address and wholesale permit number must be imprinted or affixed by the wholesale permit holder to:

(a) All sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the wholesale permit holder in conducting its wholesale operations; and

(b) The outside of all cartons, containers, or cases of fireworks, retail fireworks, display fireworks, or pest control fireworks being shipped, transported, or otherwise provided by the wholesale permit holder.

(c) Care should be taken to ensure any other required labeling is not obscured when marking items required by 837-012-0525(13) (a) and (b).

(14) All shipments by a wholesale permit holder of fireworks, retail fireworks, display fireworks, or pest control fireworks must show on the outside of each cartons, containers, or cases, sales forms, orders, invoices, inventory sheets and any other similar or related documents issued, used or completed by the wholesale permit holder the full name and permit number of the permit holder to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are being provided.

(a) If fireworks, retail fireworks, display fireworks, or pest control fireworks are being shipped, transported or otherwise provided in or into Oregon, the shipment must show an Office of State Fire Marshal-issued permit number.

(b) If the fireworks, retail fireworks, display fireworks, or pest control fireworks are being shipped, transported or otherwise provided from Oregon for delivery into another state, the shipment must show the appropriate license or permit number, if the person to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are being provided is required under the laws of the other state to possess a license or permit.

(c) Care should be taken to ensure any other required labeling is not obscured when marking items required by 837-012-0525(14) (a) and (b).

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented:
Hist.: FM 2-1982(Temp), f. & ef. 3-5-82; FM 3-1982(Temp), f. & ef. 4-16-82; FM 3-1985, f. & ef. 4-17-85, FM 1-1986, f. & ef. 1-9-86; FM 6-1986(Temp), f. & ef. 6-10-86; FM 9-1986, f. & ef. 12-10-86; Suspended by FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; Amended and renumbered from 837-012-0120;OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0530
Permit Fees

(1) Permit fees may be paid at, or mailed to, the Office of State Fire Marshal and must accompany the the permit application.

(2) Payment may be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal.

(3) The permit fee is $3,000.

(4) Permit fees are non-refundable. Exception: The State Fire Marshal may refund all or part of the permit fee if it is determined the application is not appropriate or the permit is denied.

(5) Permit fees are non-transferable to any other individual or business.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented:
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 6-2004(Temp), f. & cert. ef. 11-17-04 thru 5-15-05; Administrative correction 5-20-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0535
Denial, Suspension and/or Revocation of Wholesale Permit

(1) The Office of State Fire Marshal may deny, suspend or revoke a wholesale permit if a wholesale permit holder, or an applicant for a wholesale permit, fails to comply with ORS 480.111 through 480.165 or OAR chapter 837, division 12.

(2) The period of denial, suspension or revocation may not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal may consider the following criteria:

(a) The severity of the violation or violations and the impact on public safety, particularly whether the circumstances of the violation or violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation or violations were willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the wholesale permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation or violations.

(3) Suspension or revocation of a wholesale permit may include suspension or revocation of the current permit and the right to apply for a renewal permit.

(4) The Office of State Fire Marshal may deny, suspend or revoke all wholesale permits issued to a wholesale permit holder or applicant for each of the permit holder's or applicant's wholesale sites pursuant to OAR 837-012-0520(3).

(5) At any time after the expiration of any period of denial of a permit application, or suspension or revocation of a wholesale permit, imposed by the Office of State Fire Marshal, the applicant or wholesale permit holder subject to the denial, suspension or revocation may submit a permit application to the Office of State Fire Marshal. The Office of State Fire Marshal must either grant or deny the application pursuant to OAR 837-012-0525(1). If granted, the wholesale permit is valid for the remainder of the calendar year.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0540
Wholesale Sites Located in Oregon

(1) The location of a wholesale site may not present a significant risk to surrounding life and property or to the ability of local emergency response agencies to respond.

(2) The wholesale site must be designed, constructed, operated, maintained and separated in conformance with the applicable requirements of:

(a) NFPA 1124, Code for the Manufacture, Transportation, and Storage of Fireworks, 2013 Edition (The separation distances must be met as required by NFPA 1124, 2013 Edition. All fireworks stored at the wholesale site must be considered in calculating the separation distances);

(b) NFPA 68, Guide for Explosion Venting, 2013 Edition;

(c) Oregon Structural Specialty Code, as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010;

(d) Oregon Fire Code, as adopted by the State Fire Marshal pursuant to OAR 837-040-0010;

NOTE: Wholesale sites that are currently approved may not be required to be altered or updated to comply with these standards.

(3) Temporary structures, including tents, vehicles and trailers of less than 10,000 pound gross carrying capacity, and buildings, structures, vehicles, or trailers not approved by the local fire authority and the Office of State Fire Marshal may not be used as wholesale sites.

(4) Security for storage facilities must be provided by construction and maintenance of a solid or chain-link fence, at least six feet high with locking gates, that surrounds the facility. Security may be provided by an alternative means only if first approved by the local fire authority.

(5) Smoking, other ignition sources, or the use of the fireworks, retail fireworks, display fireworks, or pest control fireworks may not be allowed within 100 feet of the storage or sales facilities.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 8-2002, f. & cert. ef. 10-4-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0545
Sales and Records — General

(1) All individuals involved in wholesale operations must be at least 18 years of age. See OAR 837-012-0555(5) and (6).

(2) The manager and sales representatives of the wholesale operations, while not required to be present at all times the site is open for business must be located at the wholesale site.

(3) A copy of the wholesale permit must be posted in an area readily visible to all individuals entering the sales facility.

(4) The fireworks, retail fireworks, display fireworks, or pest control fireworks may be displayed in the sales facility in accordance with the following requirements:

(a) 1.3G fireworks may not be displayed;

(b) 1.4G fireworks may be displayed. Only one of each type of firework may be displayed unless multiples of one type of firework are contained in a single package. In that case, only the smallest available package may be displayed and in accordance with local fire authority and Office of State Fire Marshal requirements.

(5) All sales or provision of the fireworks, retail fireworks, display fireworks, or pest control fireworks, including donation, by wholesale permit holders must be recorded on a form provided by the Office of State Fire Marshal or, for sales of 1.3G fireworks, the BATFE form 5400.4. Sales or provision of the fireworks, retail fireworks, display fireworks, or pest control fireworks may be recorded on an alternative form if approved, in writing, by the Office of State Fire Marshal or the BATFE.

(6) The records described in subsection (5) of this rule must include, at a minimum:

(a) The name, address, and license or permit number, if required, of the person to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are being sold or otherwise provided, including the state that issued the license or permit, the date of issuance and the expiration date of the license or permit;

(b) The address, including street number, city and state, and telephone number of the destination for the fireworks, retail fireworks, display fireworks, or pest control fireworks;

(c) The permit number of the wholesale permit holder, including the date of issuance and expiration date; and

(d) A list of the types, trade names and quantity of the fireworks, retail fireworks, display fireworks, or pest control fireworks sold or otherwise provided.

(7) The record form described under subsection (5) of this rule must be completed in full by the wholesale permit holder and signed by the person purchasing or obtaining the fireworks, retail fireworks, display fireworks, or pest control fireworks.

(8) All records described under subsection (5) of this rule, whether originals or copies, must be clear, legible and accurate.

(9) Records described under subsection (5) of this rule must be maintained at the wholesale site. Records must be retained for five years from the date of sale or provision. Upon request, records must be immediately provided to the local fire authority, law enforcement authority or representative of the Office of State Fire Marshal.

(10) Wholesale permit holders must maintain at the wholesale site at all times a list of all employees involved in the wholesale operations, including their names, addresses, phone numbers (including home), driver's license numbers, and birth dates. Upon request a legible copy of the list must be provided immediately to the Office of State Fire Marshal.

(11) Wholesale permit holders must maintain at the wholesale site at all times a list of all vehicles used to transport the fireworks, retail fireworks, display fireworks, or pest control fireworks, including year, make, model, license number and lease agreement, if applicable. A legible copy of the list must be provided immediately to the Office of State Fire Marshal, upon request.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 7-2004(Temp), f. & cert. ef. 12-13-04 thru 6-10-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0550
Sales to Out-of-State Residents by In-State Wholesalers

(1) In addition to any other requirements set forth in these rules, the sale or provision by any other means, of the fireworks, retail fireworks, display fireworks, or pest control fireworks to out-of-state residents must comply with the laws of the state where the person to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are to be sold or provided resides and the laws of the state where the fireworks, retail fireworks, display fireworks, or pest control fireworks are to be transported or shipped, if the fireworks, retail fireworks, display fireworks, or pest control fireworks are to be transported or shipped to a state other than where the person resides.

(2) The person to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are sold or otherwise provided must present to the wholesale permit holder for inspection, at the time of sale or provision, the original or a certified copy of the person's valid license or permit when such license or permit is required by the laws of the other state.

(3) The person to whom the fireworks, retail fireworks, display fireworks, or pest control fireworks are sold or otherwise provided must present to the wholesaler for inspection, at the time of sale or provision, proof of the person's identity. Such proof must be an official, signed and sealed photo-identification card, such as a driver's license issued by the person's state of residence or domicile.

(4) Wholesale permit holders with wholesale sites located 50 miles or less from the borders of the State of Oregon must make a good faith effort to determine if customers are Oregon residents or out-of-state residents.

(5) Fireworks, retail fireworks, display fireworks, or pest control fireworks may not be sold or otherwise provided to out-of-state residents whose state of residents prohibits the sale, provision, purchase, possession, or use of fireworks, retail fireworks, display fireworks, or pest control fireworks. Exception: This does not apply to an out-of-state resident that has applied for and been granted a permit pursuant to ORS 480.111 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0555
Prohibited Acts and Limitations

(1) Wholesale permit holders may not create, maintain, or allow the existence of a fire hazard at any location under their control where fireworks, retail fireworks, display fireworks, or pest control fireworks are stored, transported, sold, or used.

(2) No wholesale permit holder may sell or provide by any other means, including donation:

(a) Fireworks or display fireworks to any individual under 21 years of age;

(b) Retail fireworks or pest control fireworks to any individual under 18 years of age if the sale or provision of retail fireworks or pest control fireworks is to an individual in Oregon;

(c) Fireworks, retail fireworks, display fireworks, or pest control fireworks to any person who does not possess a valid permit for such fireworks, retail fireworks, display fireworks, or pest control fireworks issued by the Office of State Fire Marshal, or if required, a valid license or permit issued by the equivalent agency in the person's state of residence or the state of destination for the fireworks, retail fireworks, display fireworks, or pest control fireworks;

(d) Fireworks, retail fireworks, display fireworks, or pest control fireworks which have been altered in any manner.

(3) No person who has been convicted of a violation of ORS 480.111 through 480.165 or OAR chapter 837, division 12, or who has had any Ffireworks permit or operator certificate suspended, denied or revoked, may participate in any manner in wholesale operations, for a period not to exceed three years.

(4) A wholesale permit holder may not knowingly employ, or have direct business ties with, any person whose wholesale or retail fireworks permit or operator certificate is revoked or suspended.

(5) No individual under 18 years of age may participate in any manner in wholesale operations involving fireworks, retail fireworks, or pest control fireworks.

(6) No individual under 21 years of age may participate in any manner in wholesale operations involving display fireworks.

(7) A wholesale permit holder may not fill out, complete or submit a general, limited, or special effects display permit, retail permit, or pest control fireworks permit previously filled out or completed by a different wholesaler unless the wholesale permit holder has applied for and received approval from the Office of State Fire Marshal to do so.

(8) Wholesale permit holders may not sell, provide, ship, transport, keep, offer for sale, expose for sale, possess, use, explode or have exploded any fireworks, retail fireworks, display fireworks, or pest control fireworks that have not been approved, certified or listed for transport by the United States Department of Transportation and the United States Consumer Product Safety Commission, or if the fireworks, retail fireworks, display fireworks, or pest control fireworks do not have a United States Bureau of Explosives Temporary Transfer Permit.

(9) A wholesale permit or permit number that has expired or has not been issued does not authorize the purchase, use, discharge, transportation, storage, possession, sale or provision by any other means, including donation, of fireworks, retail fireworks, display fireworks, or pest control fireworks.

(10) Every person who knows of, engages in, allows, or is otherwise a party to, wholesale operations not in conformance with ORS 480.111 through 480.165 and OAR chapter 837, division 12, may be subject to denial, revocation, or suspension of the person's fireworks permit or operator certificate issued by the Office of State Fire Marshal, and a civil penalty.

(11) No person may purchase or otherwise obtain, possess, use, discharge, transport, offer for sale, sell, transfer or otherwise provide fireworks, retail fireworks, display fireworks, or pest control fireworks without first applying for and obtaining the appropriate permit issued by the Office of State Fire Marshal pursuant to ORS 480.111 through 480.165 and OAR chapter 837, division 12.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 1-2005(Temp), f. & cert. ef. 1-13-05 thru 7-11-05; OSFM 8-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 4-2006, f. & cert. ef. 3-10-06; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0560
Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, local fire authority, or law enforcement authority may confiscate, remove or have removed any fireworks, retail fireworks, display fireworks, or pest control fireworks offered for sale, sold, provided, transported, purchased or otherwise obtained, stored, possessed, used or discharged in violation of ORS 480.111 through 480.165 or OAR chapter 837, division 12.

(2) The wholesale permit holder, or any other person responsible for any violation or violations, may be responsible for payment of the agency's costs in confiscating or removing any fireworks, retail fireworks, display fireworks, or pest control fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated fireworks, retail fireworks, display fireworks, or pest control fireworks be:

(a) Returned to the manufacturer of the fireworks, retail fireworks, display fireworks, or pest control fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the fireworks, retail fireworks, display fireworks, or pest control fireworks.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0565
Transportation

(1) All shipments of fireworks, retail fireworks, display fireworks, or pest control fireworks within or into Oregon, or from Oregon for delivery to another state may be transported only by persons who comply with all applicable United States Department of Transportation requirements and any other federal, state, or local laws, rules, or regulations pertaining to the transportation of fireworks.

(2) All persons engaged in the transportation of fireworks, retail fireworks, display fireworks, or pest control fireworks within, into or out of Oregon must verify that the outside of all cartons, containers or cases, containing such fireworks and any accompanying documentation, are marked with all the information required under OAR 837-012-0525(13) and (14).

(3) Wholesale permit holders may not sell or provide fireworks, retail fireworks, display fireworks, or pest control fireworks to any person for transport when the permit holder knows or should know that the person cannot or will not transport fireworks, retail fireworks, display fireworks, or pest control fireworks in accordance with United States Department of Transportation requirements or any other applicable federal, state or local laws, rules or regulations.

(4) Common carriers must immediately notify, verbally or in writing, the local fire authority or the Office of State Fire Marshal of all shipments of fireworks, retail fireworks, display fireworks, or pest control fireworks to be delivered within or into Oregon. Such shipments shall be subject to examination by the local fire authority and the Office of State Fire Marshal to determine compliance with all applicable federal, state and local laws, rules, and regulations pertaining to fireworks, retail fireworks, display fireworks, or pest control fireworks. If necessary, the Consumer Product Safety Commission, United States Customs, the United States Department of Transportation and the Oregon Department of Transportation may be contacted for assistance.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 6-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 5-2010(Temp), f. & cert. ef. 11-3-10 thru 5-2-11; OSFM 1-2011, f. 3-15-11, cert. ef. 5-2-11; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0570
Hazardous Materials Reporting for Wholesalers with Oregon Storage Sites

All persons possessing more than ten pounds of 1.3G fireworks or 1.4G fireworks, as classified by the United States Department of Transportation, must annually complete the Hazardous Substance Survey pursuant to ORS 453.307 to 453.372 and OAR chapter 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

Stat. Auth.: ORS 476, 478 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1989(Temp), f. & cert. ef. 3-20-89; FM 5-1989, f. & cert. ef. 9-15-89; OSFM 15-2000, f. & cert. ef. 12-4-00; OSFM 6-2002, f. & cert. ef. 6-14-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0600
Purpose and Scope

These rules establish permit and other requirements for persons who sell or otherwise provide, intend to sell or otherwise provide, retail fireworks to individual members of the general public.

Stat. Auth.: ORS 476, 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0610
Definitions

For purposes of ORS 480.111 through 480.165 and OAR 837-012-0600 through 837-012-0675, the following definitions apply:

(1) "BATFE" means the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(2) "Building" has the same meaning provided in the Oregon Structural Specialty Code, as adopted by the Oregon Building Code Division pursuant to ORS 918-460-0010. The term does not include a tent, canopy, stand or trailer.

(3) "Canopy" means a temporary structure, enclosure or shelter; constructed of fabric or pliable materials; supported by any manner, except by air or the contents it protects, and is open without sidewalls or drops on 75 percent or more of the perimeter.

(4) "Carton, container, or case" means any box, parcel, bundle, or other package used to hold or contain fireworks, retail fireworks, display fireworks, or pest control fireworks for purposes of transportation or storage. The term does not include:

(a) The wrapping or packaging used to hold or contain a single, or small number of, fireworks, retail fireworks, display fireworks, or pest control fireworks; or

(b) A vehicle or other mobile container used to transport fireworks, retail fireworks, display fireworks, or pest control fireworks.

(5) "Combination Iitem" means a consumer fireworks device that contains combinations of two or more effects.

(6) "Cone fountain" has the meaning provided in ORS 480.111(1).

(7) "Consumer fireworks" has the meaning provided in ORS 480.111(2).

(8) "Cylindrical fountain" has the meaning provided in ORS 480.111(3).

(9) "Display fireworks" has the meaning provided in ORS 480.111(4).

(10) "Employee" means an individual hired by a retail permit holder to sell retail fireworks from a retail sales outlet, or to otherwise engage in retail operations.

(11) "Exempt fireworks" has the meaning provided in ORS 480.111(5).

(12) "Exit" means an opening or passageway that:

(a) Provides a means of leaving an enclosed space or area; and

(b) Is required to be constructed in accordance with the Oregon Structural Specialty Code, as adopted by the Oregon Building Code Division pursuant to ORS 918-460-0010. The term may include a check stand exit.

(13) "Explosive mixture" has the meaning provided in ORS 480.111(6).

(14) "Fire protection district" means any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas.

(15) "Fireworks" has the meaning provided in ORS 480.111(7).

(16) "Flitter sparkler" has the meaning provided in ORS 480.111(9).

(17) "Ground spinner" has the meaning provided in ORS 480.111(10). The term does not include "crazy jacks," "jumping jacks" and similar spinning devices that do not have a means to prevent uncontrolled and unpredictable behavior during discharge, and due to uncontrolled and unpredictable behavior, present a severe hazard of fire and injury. The sale of such devices is therefore prohibited.

(18) "Illegal fireworks" means any fireworks other than consumer fireworks including but not limited to, any firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(19) "Illuminating torch" has the meaning provided in ORS 480.111(11).

(20) "Individual" means a single human being.

(21) "Individual member of the general public" means any person who has not been issued a wholesale permit, a general, limited or special effects display permit, a retail permit or a pest control fireworks permit by the Office of State Fire Marshal.

(22) "Individual responsible for sales" means the individual identified on the permit application who is responsible for the operation of the retail sales outlet listed on the permit application.

(23) "Indoor sales" means sales of retail fireworks from inside a building or tent.

(24) "Local fire authority" means the local fire official having jurisdiction over the retail site or the retail fireworks storage location.

(25) "NFPA" means the National Fire Protection Association.

(26) "Novelties and trick noisemakers" means those items described in the American Pyrotechnics Association Standard 87-1. It also means exempt fireworks.

(27) "Outdoor sales" means sales of retail fireworks from a tent, canopy, stand or trailer.

(28) "Permit application" means the application form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a retail permit.

(29) "Pest control fireworks" has the meaning given in OAR 837-012-0315.

(30) "Pyrotechnic device" has the meaning provided in ORS 480.111(16).

(31) "Retail fireworks" means consumer fireworks, as defined in ORS 480.111(2). The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(32) "Retail operations" means the sale of retail fireworks from a retail sales outlet to individual members of the general public and related activities, including the purchase, possession, storage and transportation of retail fireworks.

(33) "Retail permit" means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storage and sale of retail fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12, and any other applicable federal, state and local laws, rules and regulations pertaining to fireworks.

(34) "Retail sales outlet" means a permanently or temporarily erected structure or enclosure located at the retail site and from which retail fireworks are sold to individual members of the general public. The term includes stands, tents, canopies, buildings, and trailers.

(35) "Retail site" means the physical location or address of the retail site outlet listed on the retail permit where retail fireworks are sold.

(36) "Retailer" means any person who sells, transfers, or provides by any other means, or intends to sell, transfer or provide by any other means, retail fireworks to individual members of the general public.

(37) "Sales display" means the placement at a retail site outlet of retail fireworks to allow individual members of the general public to view, handle and purchase the retail fireworks.

(38) "Sell" means to transfer possession of property from one person to another person for consideration.

(39) "Stand" means a booth temporarily erected and used for the sale of retail fireworks to individual members of the general public.

(40) "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects and is in compliance with Oregon Fire Code requirements for tents.

(41) "Volunteer" means a member of a non-profit organization that has applied for and obtained a retail permit.

(42) "Wheel" has the meaning provided in ORS 480.111(18).

(43) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means fireworks, retail fireworks, display fireworks, or pest control fireworks and has obtained a fireworks wholesale permit issued by the Office of State Fire Marshal.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0615
General

(1) Retailers desiring to engage in other types of fireworks activities, including wholesale sales, displays or pest control use, must meet all applicable requirements in ORS 480.111 through 480.165 and OAR chapter 837, division 12, including those pertaining to obtaining permits for such activities from local and state authorities.

(2) Retail permit holders must comply with all applicable federal, state and local laws, rules and regulations, pertaining to fireworks, including:

(a) ORS 480.111 through 480.165;

(b) All applicable requirements of OAR chapter 837, division 12;

(c) Oregon Fire Code, as adopted by the State Fire Marshal pursuant to OAR 837-040-0010 and

(d) Oregon Structural Specialty Code, as adopted by the Oregon Building Code Division pursuant to ORS 918-460-0010.

(3) Retail permit holders must notify the Office of State Fire Marshal, verbally or in writing, within 24 hours of the date of change, of:

(a) The retail permit holder's mailing address or telephone number; or

(b) The mailing address or 24-hour contact number for the individual responsible for sales.

(4) Retail permit holders must notify the Office of State Fire Marshal and the local fire authority, in writing of a change in the identity of the individual responsible for sales at least 24 hours before the new individual becomes the individual responsible for sales. Such a change is subject to the prior approval of the local fire authority and the Office of State Fire Marshal.

(5) Exempt fireworks are exempt from the permit requirements set forth in ORS 480.111 through 480.165 and OAR chapter 837, division 12. Exempt fireworks may be sold and purchased without either the seller or purchaser having to first obtain a permit issued by the Office of State Fire Marshal.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0620
Retail Permit Applications

(1) Any person engaged in, or intending to engage in, the sale or provision by any other means of retail fireworks to individual members of the general public must apply for and obtain a retail permit issued by the Office of State Fire Marshal.

(2) A separate retail permit must be applied for and obtained for each retail sales outlet that may conduct sales of retail fireworks in Oregon.

(3) Only one application for a retail permit may be made for each retail site except pursuant to OAR 837-012-0630(3).

(4) The application for a retail permit must be made on a form provided by the Office of State Fire Marshal.

(5) All information provided by the applicant on the permit application must be true and correct to the applicant's knowledge.

(6) In addition to completion of the application form, applicants must submit copies of a sketch of the retail site in accordance with subsection (7) of this rule.

(7) The sketch of the retail site, required pursuant to subsection (6) of this rule, must include without limitation, the following:

(a) A diagram of the retail sales outlet and its relationship to adjacent areas located at the retail site;

(b) For all outdoor sales, the location and distances of all structures, buildings, highways, streets, trees, and other vegetation within 50 feet of the retail sales outlet;

(c) For all indoor sales, the location of the sales display and the location and distances of all highly combustible materials within a 20-foot radius of the sales display;

(A) For retail sales outlets located within structures or buildings of less than 1,000 square feet, all exits from the building or structure;

(B) For retail sales outlets located in structures or buildings of greater than 1,000 square feet, all exits from the building or structure located within 75 feet of the sales display;

(C) For tents, all exits from the tent.

(D) A list of the general types of merchandise located within 20 feet of the sales display. This requirement does not apply to tents.

(d) The location of any open flames, exposed heating elements or other direct sources of ignition, including, but not limited to, coffee makers, food warmers, cookers and broilers located inside the retail Ssales outlet or, for indoor sales, within 20 feet of the sales display.

(8) Any applicant for a retail permit, other than an individual, must list on the application form the name, address, and phone number of one individual holding a management position within the permit holder's company or organization. See definition of "person" in ORS 174.100(4) and "individual" in OAR 837-012-0610(21).

(9) As part of the permit application process, the applicant must apply for and obtain, in writing when available;

(a) All required local and state building code, fire code and business licensing inspections, approvals, permits and licenses; and

(b) All required state and local land use and zoning permits, licenses and approvals for the retail site.

(10) Applicants must submit their completed permit application to the local fire authority for review and signature approving the retail site prior to submission of the permit application to the Office of State Fire Marshal.

(11) The required local fire authority signatures are:

(a) For retail sales conducted inside city limits, the permit application must be signed by the city fire chief or his authorized representative;

(b) For retail sales conducted outside city limits, but inside a rural fire protection district, the permit application must be signed by the district fire chief or his authorized representative;

(c) For retail sales conducted outside both city limits and a rural fire protection district, the permit application must be signed by the district Deputy State Fire Marshal.

(d) Applicants must also obtain the signature of the local fire authority with jurisdiction over the retail fireworks storage location, regardless of whether the storage location is the same as the retail site.

(12) Proof of identification of the individual responsible for sales that will occur at temporary outdoor locations such as tents or stands must be provided to the local fire authority at the time the permit application is submitted to the local fire authority for review and signature. The proof of identification must be a current and recognizable photographic identification.

(13) Permit applications may not be submitted to the Office of State Fire Marshal prior to January 1 of the year for which the permit is sought.

(14) ORS 480.127 requires retail fireworks sales applicants to apply in writing to the State Fire Marshal for a permit at least 15 days in advance of the proposed sale. However, due to limited resources in the fireworks program, it is recommended that retail fireworks permit applications be postmarked or submitted to the OSFM by April 15 of the year for which the permit is sought.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef.12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; Administrative correction 6-14-01; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 5-2006, f. & cert. ef. 3-10-06; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0625

Retail Permit Fees

(1) Permit fees may be paid at, or mailed to, the Office of State Fire Marshal and must accompany the permit application.

(2) Payment may be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal.

(3) The permit fee for each permit application is $100.

(4) Permit fees are non-refundable and non-transferable.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 2-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06; OSFM 5-2006, f. & cert. ef. 3-10-06; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0630

Issuance of Retail Permits

(1) The Office of State Fire Marshal may not approve a permit application, or issue a retail permit, without the prior approval of the local fire authority.

(2) The Office of State Fire Marshal will assign a unique number to each retail permit issued.

(3) Only one retail permit may be issued for each retail site with the following exception: More than one retail sales outlet may be erected and operated at the same retail site, whether indoors or outdoors, when there is sufficient space to allow each retail sales outlet to conform to the requirements of ORS 480.111 to 480.165 and these rules. For example, retail permits may be issued for both outdoor sales and indoor sales located at the same retail site.

(4) The Office of State Fire Marshal will mail the original retail permit to the applicant at the mailing address listed on the permit application.

(5) Retail permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the retail permit holder.

(6) The issuance of a retail permit does not in any way constitute approval by the Office of State Fire Marshal of any retail fireworks purchased, sold or provided pursuant to the retail permit.

(7) A retail permit allows the holder of the permit to engage in the purchase, transportation, possession, storage and sales of retail fireworks when those activities are otherwise in conformance with the applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12 and any other applicable federal, state or local laws, rules or regulations pertaining to fireworks.

(8) A retail permit holder is authorized only to sell or otherwise provide retail fireworks to individual members of the general public.

(9) A retail permit does not authorize the:

(a) Purchase, possession or sale of illegal fireworks by or to any person; or

(b) Sale or provision of retail fireworks to any person other than an individual member of the general public.

(10) The retail permit and permit number issued by the Office of State Fire Marshal are valid for the sale of retail fireworks from June 23 through July 6 of the year in which the permit was issued.

(11) A retail permit is valid only for the retail sales outlet and retail site listed on the permit.

(12) Only the retail permit holder, and any employees or volunteers of the retail permit holder, may engage in retail operations authorized by the retail permit.

(13) Retail permit, and the rights conveyed by the permits, are not transferable.

(14) Retail permit holders must contract directly with the wholesaler listed on the retail permit for the purchase of retail fireworks.

(15) Retail permit holders may not contract, subcontract, lease, sublease or convey by any other means to another person any rights granted under the retail permit.

(16) The retail permit issued by the Office of State Fire Marshal does not require property owners or others to allow sales of retail fireworks on their property. The Office of State Fire Marshal will not intercede on the behalf of retail permit holders with property owners who refuse to allow sales of retail fireworks on their property, or, in the case of two permit applications submitted or two retail permit inadvertently issued for the same retail site, when there is a question of which applicant or retail permit holder has permission from the property owner to conduct sales at the retail site.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; FM 1-1997, f. & cert. ef. 1-28-97; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0635
Purchase of Retail Fireworks by Retail Permit Holder

(1) Retail permit holders must purchase or otherwise obtain retail fireworks only from wholesalers who possess a valid and current wholesale permit issued by the Office of State Fire Marshal.

(2) A retail permit holder must purchase or otherwise obtain retail fireworks only from the wholesaler listed on the retail permit.

(3) If the wholesaler who supplies the retail fireworks to the retail permit holder is different from the wholesaler listed on the retail permit, the retail permit holder must notify, in writing, the Office of State Fire Marshal and local fire authority of the change at least 24 hours prior to purchasing the retail fireworks from the wholesaler.

(4) Prior to acceptance of retail fireworks from a wholesaler, the retail permit holder must confirm that the outside of all cartons, containers, or cases of retail fireworks, and any accompanying documentation are imprinted or affixed with the wholesale permit number pursuant to OAR 837-012-0525(13).

(5) Prior to acceptance of retail fireworks from a wholesaler, the retail permit holder must confirm that the outside of all cartons, containers, or cases of retail fireworks and any accompanying documentation are imprinted or affixed with the full name and retail permit number of the retail permit holder.

(6) Retail permit holders may not accept any cartons, containers, or cases of retail fireworks or accompanying documentation that does not show the information required pursuant to subsections (4) and (5) of this rule.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0640
Permits — Denial, Suspension and/or Revocation

(1) The Office of State Fire Marshal may deny, suspend or revoke a retail permit if a retail permit holder, or an applicant, fails to comply with ORS 480.111 through 480.165 or OAR chapter 837, division 12.

(2) The period of denial, suspension or revocation may not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal must consider the following criteria:

(a) The severity of a violation and the impact on public safety, particularly whether the circumstances of the violation presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the retail permit holder or applicant; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation.

(3) Suspension or revocation of a retail permit may include suspension or revocation of the current permit and the right to apply for a subsequent permit.

(4) The Office of State Fire Marshal may deny, suspend, or revoke all retail permits issued to a retail permit holder for each of the permit holder's or applicant's retail sales outlet pursuant to OAR 837-012-0620(2).

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0645
Sales and Storage of Retail Fireworks

(1) A retail sales outlet may never be left unattended during the business hours of the outlet. Any retail sales outlet in violation of these rules may be subject to closure.

(2) The retail permit holder or the individual responsible for sales must be present at the retail sales outlet at least 50% of the outlet's business hours each day. When not present at the outlet, the individual responsible for sales must be readily available, day or night, by telephone or other reliable means of communication. The individual responsible for sales may be absent from the retail sales outlet for up to 48 consecutive hours twice during the period of time the retail permit is valid. The two 48-hour time periods may not be consecutive. The individual responsible for sales, when not at the retail site, must be available through their 24-hour contact number listed on their permit application.

(3) Any time the individual responsible for sales is not present at the retail sales outlet during the business hours of the outlet, at least one individual, 18 years of age or older, must be present at the outlet. Such individual must be an employee or volunteer of the retail permit holder's volunteer non-profit organization. Such individual must be directly responsible for, and in charge of, the retail sales outlet and be present in the retail sales outlet at all times.

(4) The individual responsible for sales may be:

(a) The retail permit holder listed on the retail permit; or

(b) An employee of the retail permit holder; or

(c) If the retail permit holder is a volunteer, non-profit organization, an individual who is a member of the retail permit holder's volunteer non-profit organization.

(5) The individual responsible for sales may only be responsible for the retail sales outlet listed on the retail permit.

(6) The retail site may be changed if:

(a) The new retail site is located in the same fire jurisdiction as the retail site listed in the retail permit;

(b) The local fire authority approves the new retail site and indicates that approval in writing; and

(c) The Office of State Fire Marshal is notified of the change at least 24 hours prior to the commencement of retail sales.

(7) Retail fireworks may only be sold at a retail sales outlet for which a retail permit has been issued.

(8) Retail fireworks may not be sold or otherwise provided from an establishment or business that serves alcoholic beverages, single or multi-family residences, an internet site, or automobiles.

(9) All retail sales outlets must comply with all applicable federal, state and local laws, rules and regulations pertaining to fireworks including:

(a) ORS 480.111 through 480.165;

(b) OAR chapter 837, division 12;

(c) Oregon Structural Specialty Code, as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010; and

(d) Oregon Fire Code, as adopted by the State Fire Marshal pursuant to OAR 837-040-0010.

(10) All retail fireworks not sold during the time the retail permit is valid, must be returned to the supplying wholesaler no later than July 31 of the year in which the permit is valid.

(11) At all times during the business hours of the retail sales outlet, exits may not be locked or blocked and all exits must be passable.

(12) No fireworks may be discharged within 100 feet of any retail sales outlet.

(13) The retail permit holder, individual responsible for sales, and any employees or volunteers of the retail permit holder must ensure that all retail fireworks sold or otherwise provided, possessed, transported, stored or offered for sale comply with ORS 480.111 through 480.165 and these rules.

(14) The type of retail sales outlet (tent, stand, canopy or trailer) to be utilized must be described on the permit application, including its outside dimensions. The dimensions of the retail sales outlet listed on the permit application may not be increased, but they may be decreased, after the permit application is submitted to the Office of State Fire Marshal.

(15) Retail permit holders may store their retail fireworks from June 1 through July 31 of the year in which their retail permit is valid. The local fire authority must approve the storage and the storage location of the retail fireworks and indicate that approval by signing the permit application.

(16) Retail fireworks shall be stored:

(a) In compliance with Section 307.1.2 of the Oregon Structural Specialty Code as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010; or

(b) In an explosives magazine pursuant to NFPA 495, 2013 Edition.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 2-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0650
Outdoor Sales

(1) The location of an outdoor retail sales outlet must not present a significant risk of fire or injury to those individuals conducting sales of

retail fireworks, individual members of the general public, and any surrounding property.

(2) Every outdoor retail sales outlet must maintain at least one exit opening, or outward swinging exit door, for each 1,000 square feet of area covered or each 20 feet of structure length. The exit opening must be at least two feet wide and five feet high or as required by the local fire authority.

(3) Trailers must have their wheels blocked or removed, or the tongue locked. Trailers must be disconnected from any power source which can potentially move the trailer any distance. Any fuel tanks or other ignition sources, including those for propane, must be removed and placed a minimum of 20 feet from the trailer. Individual members of the general public may not have access to the interior of the trailer.

(4) Tent and canopy fabrics and any materials used on the floor of the tent or canopy, such as sawdust, must be treated to be fire retardant.

(5) Tents having three or more enclosing sides must comply with the requirements for both indoor sales and outdoor sales.

(6) Fire extinguishers must be provided at each outdoor retail sales outlet. At a minimum, at least one 2A rated water type extinguisher, or an equivalent water type extinguishing system as approved by the local fire authority must be placed at each retail sales outlet.

(7) All electrical wiring, lighting and other electrical fixtures and installations must be in accordance with the Oregon Electrical Specialty Code, 2011 Edition and any other applicable state or local requirements.

(8) Outdoor retail sales outlets that operate at night must erect and maintain sufficient light fixtures to enable customers and those individuals selling retail fireworks to see all areas of the outlet. Standard electrical installations, battery powered lanterns, street or parking lot lighting or nearby building interior and exterior lighting may be used for this purpose.

(9) Outdoor retail sales outlets must be located:

(a) At least 50 feet from any dispensary of flammable liquids or gases;

(b) At least 15 feet, or as otherwise specified by the local fire authority, from any street or public right-of-way;

(c) At least 10 feet from any combustible structures;

(d) At least 10 feet from any entrances to, or exits and openings from, any surrounding buildings or structures; and

(e) At least 20 feet from exposed heating elements or any other such sources of ignition including fuel-powered electrical generators.

(10) A stand including any vertical extensions may not be more than one story in height unless it has sufficient size, weight or tie-downs to prevent toppling in the wind.

(11) "No Smoking" signs must be posted on the outside of all enclosing sides of an outdoor retail sales outlets. The signs must be visible to all individuals located at the retail sales outlet. Sign lettering must be red and at least 2-1/2 inches high on a white background.

(12) Smoking, open flames, and other such ignition sources or the use of fireworks are prohibited within 100 feet of the retail sales outlet.

(13) All fuel used to power electrical generators must be stored in containers listed and approved by Underwriter's Laboratories.

(14) Heaters having exposed electrical elements or open flames may not be used at any outdoor retail sales outlet.

(15) Outdoor retail sales outlet, and parking for customers of the retail sales outlet, may not impede or endanger the normal flow of traffic on public streets or highways, or parking lots.

(16) The retail sales outlet permit holder, individual responsible for sales and any employees or volunteers of the retail permit holder are responsible for maintaining the grounds within 20 feet of the retail sales outlet permit in a clean and orderly manner.

(17) Retail permit holders, their employees or volunteers may not sleep inside an outdoor retail sales outlet.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0655
Indoor Sales

(1) The location of an indoor retail sales outlet may not present a significant risk of fire or injury to those individuals conducting sales of retail fireworks, individual members of the general public, and any surrounding property.

(2) A specific area inside the building must be designated and maintained as the sales display area.

(3) The location of the sales display area shall not hinder or block any exit, including, if applicable, a required check-stand exit.

(4) The individual responsible for sales must regularly monitor and oversee retail operations at the retail sales outlet to ensure the sales display and storage areas are orderly and maintained in accordance with these rules.

(5) Retail fireworks, in excess of those needed for the sales display, may be stored inside the retail sales outlet only if they are separated from all sales display areas, exits, flammable and highly combustible materials and public access areas to the building, in accordance with local fire authority requirements and these rules. This subsection does not apply to tents or canopies.

(6) Fire extinguishers must be placed throughout the indoor retail sales outlet in the quantities and locations required by NFPA 10, 2013 Edition and any applicable local ordinances and rules. At a minimum, at least one 2A rated water type fire extinguisher, or an equivalent water type fire extinguishing system, as approved by the local fire authority must be placed at the outlet.

(7) Smoking at an indoor retail sales outlet by the retail permit holder, individual responsible for sales or an employee or volunteer of the retail permit holder may be the basis for suspension or revocation of the retail permit.

(8) All trash, rubbish, empty boxes and discarded retail fireworks wrapping or packaging must be removed daily or more often as needed, to maintain the sales display and storage areas in a neat and clean manner.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0660
Records and Postings

(1) The retail permit must be posted at the retail sales outlet and must be readily visible to all individuals approaching or entering the outlet.

(2) A copy of the retail permit may be posted instead of the original if the original is maintained at the outlet and is immediately available for inspection by the local fire authority or the Office of State Fire Marshal, upon request.

(3) A record of each shipment of retail fireworks received by the retail permit holder must be maintained. The record shall include the wholesaler's name, address and wholesale permit number, the retail permit holder's name and permit number, and a complete list of the names and quantities of each type of retail fireworks received.

(4) All records described under subsection (3) of this rule must be maintained by either the retail permit holder or the wholesaler who supplied the retail fireworks. The records must be maintained for three years from the date of the retail permit holder's receipt of the shipment.

(5) Upon request, the records described in subsection (3) of this rule, must be readily available for review and inspection by the local fire authority or representatives of the Office of State Fire Marshal. All records must be clear, legible, and accurate.

(6) Retail permit holders must maintain at all times a list of employees or volunteers, including their names, addresses, ages, and phone numbers. Upon request, a legible copy of the list must be provided immediately to the Office of State Fire Marshal or the local fire authority.

(7) All persons possessing, for 30 days or more, more than ten pounds of retail fireworks must annually complete and submit the hazardous substance survey pursuant to ORS 453.307 to 435.372 and OAR chapter 837, division 85. Contact the Office of State Fire Marshal for survey forms and instructions.

Stat. Auth.: ORS 476 & 480

Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165

Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0665
Advertisements

(1) No person may publish or cause to be published:

(a) Any advertisement, for distribution to individual members of the general public, concerning the sale of fireworks which have been declared

unlawful by ORS 480.111 to 480.165, or these rules, for individual members of the general public to purchase, use, store, transport, sell, discharge, or possess;

(b) Any advertisement for the sale of consumer fireworks in any county, municipality or fire protection district that by law or ordinance has declared the sale, use, or possession of such items to be prohibited.

(2) Section (1) of this rule does not apply to advertisements placed in media when the primary distribution of that media is into areas which allow the fireworks even though some secondary distributions of that media may occur into areas which prohibit these fireworks.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0670
Prohibited Acts and Limitations

(1) Retail permit holders may not create, maintain or allow the existence of a fire hazard at any location under their control where retail fireworks are stored, transported, sold, or used.

(2) Retail permit holders may not sell or provide by any other means including donation:

(a) Retail fireworks to any individual members of the general public under 16 years of age;

(b) Illegal fireworks to any individual members of the general public;

(c) Any retail fireworks that have been altered;

(d) Any retail fireworks not supplied and distributed to the retail permit holder by a wholesaler who possesses a valid and current wholesale permit issued by the Office of State Fire Marshal pursuant to OAR 837-012-0635(1) through (3).

(3) No person who has been convicted of a violation of ORS 480.111 through 480.165 or OAR chapter 837, division 12, or who has had any fireworks permit or operator certificate suspended, denied or revoked, may participate in any manner in the storage, distribution, transportation or sale of retail fireworks for a period not to exceed three years.

(4) Retail permit holders may not sell, provide, keep, or offer for sale, expose for sale, possess, use, explode or have exploded any retail firework that has not been approved, certified or listed for transport by the United States Department of Transportation and the United States Consumer Product Safety Commission, or does not have a United States Bureau of Explosives Temporary Transfer Permit.

(5) No retail sales outlet may be erected prior to the issuance of a retail permit for that retail sales outlet location.

(6) No person may sell, transfer or otherwise provide retail fireworks to individual members of the general public without first obtaining a retail permit.

(7) A retail permit holder may not employ or have direct business ties with any person whose wholesaler or retail fireworks permit or operator certificate is revoked or suspended.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 7-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 14-2000, f. & cert. ef. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2005, f. & cert. ef. 2-15-05; OSFM 9-2005, f. 5-24-05, cert. ef. 6-7-05; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0675
Civil and Criminal Enforcement Actions

(1) The Office of State Fire Marshal, local fire authority or law enforcement officials may confiscate, remove or have removed any fireworks offered for sale, sold, provided, transported, purchased or otherwise obtained, stored, used, discharged or possessed in violation of ORS 480.111 through 480.165 or these rules.

(2) The retail permit holder, or person responsible for the violation, is responsible for payment of the agency's costs in confiscating or removing any retail fireworks pursuant to subsection (1) of this rule.

(3) Upon finding a violation, the Office of State Fire Marshal may order that any confiscated fireworks be:

(a) Returned to the wholesaler who supplied the fireworks; or

(b) Disposed of in any manner approved by the Office of State Fire Marshal, including destruction of the fireworks.

Stat. Auth.: ORS 476 & 480
Stats. Implemented: ORS 480.110, 480.120, 480.127, 480.130, 480.150, 480.152, 480.154, 480.156, 480.158, 480.160 & 480.165
Hist.: FM 1-1990(Temp), f. & cert. ef. 1-12-90; FM 4-1990, f. & cert. ef. 7-10-90; OSFM 5-1998(Temp), f. & cert. ef. 12-14-98 thru 6-12-99; OSFM 2-1999, f. & cert. ef. 6-21-99; OSFM 14-2000, f. & cert. 12-4-00; OSFM 11-2001, f. & cert. ef. 12-14-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0700
Purpose and Scope

(1) The purpose of OAR 837-012-0700 through 837-012-0970 is to adopt rules to implement the standards, policies and procedures for fireworks displays.

(2) These rules establish application, permit and other requirements for fireworks displays, certification requirements for fireworks displays operators and requirements for fireworks displays assistants.

Stat. Auth.: ORS 476 & 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0710
Effective Dates

OAR 837-012-0700 through 837-012-0970 are effective July 1, 2014.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0720
Definitions

For the purpose of these rules, the following definitions apply to OAR 837-012-0700 through 837-012-0970:

(1) "Aerial fireworks" means fireworks that function in the air.

(2) "Aerial shell" means a cylindrical or spherical cartridge containing pyrotechnic compositions, a lead fuse or electric match wires, and a black powder lift charge.

(3) "Approved applicant" means any individual that meets the requirements of OAR chapter 837, division 12.

(4) "Assistant" means an individual as set forth by OAR 837-012-0780 who works under the direction of an operator to put on a fireworks display.

(5) "Barge" means a floating vessel or a floating platform.

(6) "Barrage" means a rapid-fire sequence of aerial fireworks. Mortars are loaded prior to the display and the aerial shells are chain fused to fire in rapid sequence.

(7) "Black match" means fuse made from string impregnated with black powder and used for igniting fireworks devices.

(8) "Break" means an individual burst from an aerial shell, generally either producing a visual effect (stars) or noise (salute). Aerial shells can be either single-break (having only one burst) or multi- break (having two or more bursts).

(9) "Burst" means break.

(10) "Burst charge" means the composition in an aerial shell that, when ignited by the time fuse, ruptures the shell casing, ignites the shell contents and disperses the shell contents into the sky.

(11) "Cake device" means multi-shot device.

(12) "Chain fusing" means a series of two or more aerial shells or pyrotechnic devices used to fire in sequence from a single ignition. Finales and barrages typically are chain fused.

(13) "Comet" means a firework consisting of a large pellet of pyrotechnic composition that is ignited and propelled from a mortar tube by a black powder charge.

(14) "Designated agent" means the individual designated by the permit holder to pick up the fireworks authorized by the permit from an Oregon licensed wholesaler when the permit holder is unable to pick up the fireworks. The designated agent must have the permit authorized by the State Fire Marshal in their possession at the time the fireworks are picked up from the wholesaler.

(15) "Discharge site" means the area immediately surrounding the area where fireworks are ignited for an outdoor display.

(16) "Display" means an outdoor general or limited fireworks display or an indoor or outdoor fireworks display using special effects fireworks.

(17) "Display fireworks" has the meaning provided in ORS 480.111(4).

(18) "Display permit application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a limited, general, or special effects display permit.

(19) "Display site" means the immediate area where a fireworks display is conducted and includes the discharge site, the fallout area, and the required separation distance from fireworks discharge site to spectator viewing areas. The display site does not include spectator viewing areas or vehicle parking areas.

(20) "Dud" means a firework that leaves the mortar and returns to earth without producing the intended break or effect.

(21) "Electric match" means a device consisting of wires terminating at a relatively high resistance element surrounded with a small quantity of heat-sensitive fireworks composition. When a sufficient electric current is passed through the wire circuit, the heat that is generated ignites the fireworks composition, producing a small burst of flame.

(22) "Electrical firing unit" means the source of electrical current used to ignite electric matches. Generally, the firing unit will have switches to control the firing order and have test circuits and warning indicator, etc.

(23) "Electrical ignition" means a technique used to discharge fireworks in which an electric match and source of electric current are used to ignite fuses or lift charges.

(24) "Exempt fireworks" has the meaning provided in ORS 480.111(5).

(25) "Fall-out area" means the area over which aerial shells are fired. The shells burst over this area, and unsafe debris and malfunctioning aerial shells fall into this area. The fall-out area is the location where a typical aerial shell dud will fall to the ground considering wind and the angle of mortar placement. At a minimum, the fall out area must be the required separation distance based on table of distances listed in OAR 837-012-0840.

(26) "Finale" means a rapid-fire sequence (barrage) of aerial fireworks, typically fired at the end of a display. The mortars are loaded prior to the display, and the aerial fireworks are chain fused to fire in rapid sequence.

(27) "Fire protection district" means any district created under the laws of Oregon or the United States, including rural fire protection districts and any federal, state or private forest patrol areas.

(28) "Fireworks" has the meaning provided in ORS 480.111(7).

(29) "Fireworks detonation" means the entire contents of the aerial shell and the lift charge are consumed in one simultaneous explosion at or near the bottom of the mortar.

(30) "Fireworks display" has the meaning provided in ORS 480.111(8).

(31) "Flash powder" means explosive composition intended for use in firecrackers and salutes. flash powder produces an audible report and a flash of light when ignited. Typical flash powder composition contains potassium chlorate or potassium perchlorate, sulfur or antimony sulfide, and powdered aluminum.

(32) "Flower pot" means an aerial shell that bursts before it leaves the mortar, projecting its contents out of the mortar similar to a mine. The force of the aerial shell bursting usually does not rupture the mortar.

(33) "Fusee" means a highway distress flare, sometimes used to ignite fireworks at outdoor displays.

(34) "General display operator" means an individual who has been issued a general display operator certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an operator on a general or limited display.

(35) "General display permit" means a permit to hold an outdoor display using 1.3g fireworks. General displays may also include 1.4g fireworks or special effects fireworks.

(36) "General fireworks display" means a display held outdoors, utilizing 1.3g fireworks and may include 1.4g fireworks and special effects fireworks and may only be conducted by a general display operator.

(37) "General operator certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an operator at a general fireworks display.

(38) "Ground display piece" means a firework that functions on the ground (as opposed to an aerial shell that functions in the air). Typical ground fireworks display pieces include fountains, wheels, and "set pieces".

(39) "Individual" means a single human being.

(40) "Individual member of the general public" means any person who has not been issued a wholesale permit, a display permit, a retail permit or a pest control fireworks permit by the Office of State Fire Marshal.

(41) "Instructor" means the individual who delivers the training required under OAR 837-012-0780.

(42) "Lance" means a thin cardboard tube packed with a color producing pyrotechnic composition and used to construct ground display pieces.

(43) "Law enforcement authority" means any law enforcement official having jurisdiction over the fireworks display site.

(44) "Lead fuse" means a fireworks fuse made of quick match that transfers fire from an ignition source to the lift charge of an aerial shell or other fireworks.

(45) "Lift charge" means composition in an aerial shell that propels the aerial fireworks into the air when ignited.

(46) "Limited fireworks display" means a display held outdoors limited to 1.4G fireworks labeled UN0336. Fireworks authorized by the limited permit are subject to limitation by the local fire authority and the Office of State Fire Marshal.

(47) "Limited display operator" means an individual who has been issued a limited display operator certificate who meets the requirements of OAR 837-012-0700 through 837-012-0970 and is qualified to be an operator on a limited display.

(48) "Limited display permit" means a permit to hold a display using 1.4g fireworks labeled UN0336.

(49) "Limited operator certificate" means a document issued by the Office of State Fire Marshal authorizing the holder of the certificate to be an operator at a limited fireworks display.

(50) "Local fire authority" means the local fire official having jurisdiction over the display site or the site where fireworks may be stored prior to the date and time of the display.

(51) "Local government" has the meaning provided in ORS 480.111(12).

(52) "Low break" means an aerial shell that functions significantly lower than its prescribed height.

(53) "Manual firing" means using a handheld ignition source such as a fusee or portfire to ignite fireworks.

(54) "Manufacture" has the meaning provided in ORS 480.111(13).

(55) "May" means a regulation of conduct and implies probability or permission.

(56) "May not" means a prohibition of conduct.

(57) "Mine" means a device designed to project stars or other effects, such as whistles and firecrackers into the air from a mortar charged by black powder that ignites the contents of the mine.

(58) "Misfire" means a firework fails to function after an ignition source is applied to the ignition point.

(59) "Monitor" means an individual designated by the sponsors of the display to keep the audience in the intended viewing area and out of the display site, discharge site and fallout area.

(60) "Mortar" means a tube, closed at one end, from which aerial fireworks are fired into the air.

(61) "Mortar rack" means a frame containing mortars and are most often used for barrages and finales and in electrically ignited general fireworks displays.

(62) "Mortar trough" means an aboveground structure filled with sand or similar materials in which mortars are positioned for use in general fireworks displays.

(63) "Multi-break shell" means a cylindrical aerial shell with more than one main compartment connected with internal fusing and performs with successive breaks. An aerial shell with more than one distinctive type of effect contained within one main compartment is not a multi-break shell.

(64) "Multi-shot device" means a firework consisting of more than one tube each containing a firework item. It is ignited once with each of its tubes chain fused together to fire in succession until all tubes have been fired. Multi-shot devices are also referred to as cake devices.

(65) "Must" means a mandatory requirement.

(66) "Muzzle break" means an aerial shell that bursts immediately as it leaves the mortar.

(67) "Operator" means the individual qualified as set forth in OAR 837-012-0780 to conduct the display.

(68) "Operator certificate application" means the form and accompanying documentation required to be completed and submitted to the Office of State Fire Marshal for approval prior to the issuance of a limited operator certificate or a general operator certificate.

(69) "Peanut shell" means two or more aerial shells in a common wrapper propelled by the same lift charge with separate external time fuses.

(70) "Permit" means the official written document issued by the Office of State Fire Marshal authorizing a display allowing the permit holder to purchase fireworks for the display as detailed on the permit when otherwise in conformance with OAR chapter 837 division 12.

(71) "Permit holder" means the person as listed on the display permit as the person to whom the permit is issued.

(72) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group or persons and includes the state, state agencies, counties, municipal corporations, school districts and other public corporations.

(73) "Pest control fireworks" has the meaning given in OAR 837-012-0315.

(74) "Portfire" means a tube containing slow burning pyrotechnic composition sometimes used to ignite fireworks at a limited or general fireworks display.

(75) "Pyrotechnic articles," also referred to as "articles, pyrotechnic" has the meaning provided in ORS 480.111(14).

(76) "Pyrotechnic composition" has the meaning provided in ORS 480.111(15).

(77) "Pyrotechnic device" has the meaning provided in ORS 480.111(16).

(78) "Quick match" means a black match encased in a loose fitting sheath and is used in fuses for aerial fireworks and for rapid sequential ignition of fireworks such as lances in a ground display piece or barrage.

(79) "Ready box" means a container used for the storage of fireworks during a fireworks display.

(80) "Retail fireworks" means those items described in ORS 480.111(2) as consumer fireworks, specifically combination items, cone fountains, cylindrical fountains, flitter sparklers, ground spinners, illuminating torches, and wheels. The term does include a firework designed with the means to roll or move while remaining on the ground, that travels 12' or less horizontally on smooth surfaces.

(81) "Roman candle" means a cardboard tube containing pyrotechnic devices which, when lit, are expelled into the air at timed intervals.

(82) "Safety cap" means a paper tube, closed at one end, which is placed over the end of a fireworks fuse to protect the fuse from damage or accidental ignition.

(83) "Salute" means a special firework that is designed to produce a loud report.

(84) "Set piece" means a ground display piece usually consisting of lances and quick match arranged on a frame.

(85) "Sell" means to transfer possession of property from one person to another person for consideration.

(86) "Special effects display" means a display held either indoors or outdoors limited to special effects fireworks authorized by the special effects permit.

(87) "Special effects fireworks" has the meaning provided in ORS 480.111(17).

(88) "Special effects permit" means a permit issued by the State Fire Marshal to hold a display using special effects fireworks.

(89) "Sponsor" means the person that has applied for and been issued a display permit.

(90) "Sticky match" means the trademarked name for a type of match that uses a continuous black powder trail inside a wrapper that is prepared with exposed adhesive along its length. The adhesive is used to attach sticky match to fireworks devices.

(91) "Supervision" means displays must be under the supervision of the law enforcement authority, local fire authority, or the Office of State Fire Marshal.

(92) "Training course" means the course required under OAR 837-012-0780.

(93) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means fireworks, retail fireworks, display fireworks, or pest control fireworks.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0730
General

(1) The location of the display site, the operator or assistant for a display, the date or time of the display, or the quantity of fireworks to be discharged at the display, may be changed if:

(a) For the location of the display site only, the proposed new display site is located in the same fire jurisdiction as the display site listed on the display permit;

(b) For the operators only, the individual to replace the operator listed on the display permit possesses a current and valid operator certificate.

(c) The local fire authority having jurisdiction over the display site and the Office of State Fire Marshal approves the change prior to the beginning of the display as listed on the display permit; and

(d) The change is documented in the after-show report pursuant to OAR 837-012-0970.

(2) All displays, all participants in a display, including but not limited to, the monitors, sponsor, wholesaler, operator and assistants must comply with the following:

(a) ORS 480.111 through 480.165.

(b) All applicable requirements of OAR chapter 837, division 12;

(c) Any other applicable federal, state or local, law, rule or regulation pertaining to fireworks.

(3) Display permit holders or operator certificate holders desiring to engage in other types of fireworks activities, including wholesale or retail sales or pest control use, must meet all applicable requirements in ORS 480.111 to 480.165 and OAR chapter 837, division 12, including those requiring permit to be obtained from local, state, and federal authorities.

(4) Display permit holders may purchase fireworks only from wholesalers having the necessary and current permit required by ORS 480.111 to 480.165 and OAR 837-012-0500 through 837-012-0570.

(5) Issuance of a display permit does not constitute an endorsement of the fireworks purchased or sold.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0740
Display Permit Applications

(1) Any person intending to have, put on, or sponsor a display must apply for and obtain a display permit from the Office of State Fire Marshal.

(2) A separate display permit must be applied for and obtained for each display that may be conducted in Oregon.

(3) Each display permit must be for a specific date and time of day. Permit may not be continuous throughout the date of display.

(4) The application for display permit must be made on a form provided by the Office of State Fire Marshal.

(5) The display permit application may be completed by the sponsor, wholesaler, operator or assistant for the intended display as listed on the application.

(6) All information provided by the applicant on the display permit application must be true and correct to the applicant's knowledge.

(7) In addition to completion of the application, applicants must submit: A diagram of the display site in accordance with subsection (9) of this rule;

(8) As part of the display permit application process, applicants must apply for and obtain, in writing when available;

(a) All required state and local licenses, permits and approvals; and

(b) Liability insurance, if required pursuant to ORS 480.150(1).

(9) The diagram of the display site, required pursuant to subsection (7) of this rule, must include without limitation, the following:

(a) The location and size of the discharge site. All the other distances required by the subsection below must be measured from the outside perimeter of the discharge site;

(b) The location of the fallout area;

(c) The location of all buildings, structures, highways, streets or other means of travel in and within 100 feet of the discharge site and fallout area;

(d) The location of the spectator viewing areas and their distance from the discharge site and fallout area; and

(e) The location of all trees, power lines of any type and any other overhead obstructions 25 feet or higher in and within 100 feet of the discharge site and fallout area.

(10) Applicants must submit their completed display permit application to the local fire authority and law enforcement authority for review and signature approving, but not limited to, the proposed display site, discharge site, spectator viewing areas, parking areas and fallout areas, prior to submission of the display permit application to the Office of State Fire Marshal.

(11) The local fire authority and the law enforcement authority may not sign a display permit application if, but not limited to, the display site, discharge site, spectator viewing areas, parking areas or fallout areas or the display permit application does not comply with ORS 480.111–480.165, OAR 837 division 12 or any other applicable federal, state or local laws, rules or regulations pertaining to fireworks.

(12) Display permit applications must be postmarked by a United States Postmark or received at the Salem Office of State Fire Marshal a minimum of 15 days prior to the date of the proposed display.

(13) Display permit applications postmarked or received after the deadline set forth under subsection (12) of this rule may be returned unprocessed.

(14) A permit is not transferable from the permit holder to another permit holder or person.

(15) Another person or permit holder cannot perform any acts allowed by the display permit unless that person is listed on the display permit or is a designated agent for the permit holder.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0750
Display Permit Application Fees

(1) Display permit application fees may be paid at, or mailed to, the Office of State Fire Marshal and must accompany the display permit application.

(2) Payment may be made by personal check, business check, cashier's check or money order made payable to the Office of State Fire Marshal.

(3) The display permit application fee for a display permit is $100.

(4) Display permit application fees are non-refundable and non-transferable.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 2-2005, f. & cert. ef. 2-15-05; OSFM 13-2005(Temp), f. & cert. ef. 8-16-05 thru 2-11-06; OSFM 3-2006(Temp), f. & cert. ef. 2-13-06 thru 3-10-06; OSFM 6-2006, f. & cert. ef. 3-10-06; OSFM 9-2008(Temp), f. 11-14-08, cert. ef. 11-17-08 thru 5-8-09; OSFM 1-2009, f. 4-9-09, cert. ef. 4-10-09; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0760
Issuance of Display Permits

(1) Within 15 days of receipt of a properly completed and timely submitted display permit application and display permit application fee, the Office of State Fire Marshal may either grant or deny the application.

(2) The Office of State Fire Marshal may not approve a permit application, or issue a display permit, without the prior approval of the local fire authority and law enforcement authority.

(3) The Office of State Fire Marshal will assign a unique number to each display permit issued.

(4) Only one display permit may be issued for a display site for a particular date and time. Multiple permits may be issued for the same display site and the same day, but not for the same time.

(5) The Office of State Fire Marshal will mail the original display permit to the individual who completed the display permit application at the mailing address of the individual completing the display permit application listed on the display permit application.

(6) Display permit holders may request a duplicate copy of their permit by certifying to the Office of State Fire Marshal, in writing, that their permit has been lost, stolen, or destroyed. Written requests must be signed and dated by the display permit holder.

(7) A display permit is valid only for the date, time, and display site listed on the permit.

(8) A display permit authorizes the display permit holder to purchase, transport, possess and store display fireworks, for the purposes of holding the approved display, when those activities are otherwise in conformance with the applicable requirements of ORS 480.111 - 480.165, OAR chapter 837, division 12 and any other federal, state or local laws, rules or regulations pertaining to fireworks.

(9) A display permit authorizes a display only:

(a) At the display site diagrammed on the display permit application and listed on the display permit;

(b) On the date and time listed on the display permit; and

(c) Conducted by the operator and assistants listed on the display permit.

(10) A display permit authorizes the use and discharge of only the type and quantity of display fireworks listed on the display permit.

(11) A display permit does not authorize the sale, purchase, possession, storage, discharge or provision by any other means of any fireworks except as specifically stated on the display permit.

(12) The issuance of a display permit does not in any way constitute approval by the Office of State Fire Marshal of any display fireworks sold, purchased, possessed, stored provided or discharged pursuant to the display permit.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02 ; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0770
Operator Certificate Applications

(1) The application for an operator certificate must be made on a form provided by the Office of State Fire Marshal.

(2) Any individual who intends to participate as the operator at a general display or limited display must first apply for and obtain an operator certificate issued by the Office of State Fire Marshal.

(3) All information provided by the applicant on the operator certificate application must be true and correct to the applicant's knowledge.

(4) Completed operator certificate applications must be postmarked by a United States Postmark, or received by the Office of State Fire Marshal at least 90 days prior to the date of the first display at which the applicant intends to participate as the operator.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0780
Operator and Assistant Qualifications

(1) To be eligible for a general operator certificate, an applicant must comply with the following:

(a) Must be at least 21 years of age;

(b) Must have participated as an assistant in three or more general displays in Oregon within three years of the date of application:

(A) Participation means completing any of the following duties: firing of the display, installation of mortars, installation of set pieces, loading shells, after-display clean-up and inspection, installation of electrical firing system, and tending the magazine, which may include reloading the mortars.

(B) At a minimum, an applicant must have installed mortars, loaded shells, and participated in after-display clean-up and inspection on all three displays in Oregon.

(C) At a minimum, an applicant must have manually fired on at least one of the three displays required for certification.

(D) The Office of State Fire Marshal may review after-show reports as proof of an applicant's requisite participation.

(c) Must have passed a written examination, administered by the Office of State Fire Marshal; and

(A) The purpose of the examination is to assess the applicant's knowledge of ORS 480.111–480.165 and OAR 837-012-0700–837-012-0970.

(B) To pass the examination, the applicant must answer 80% or more of the examination questions correctly.

(d) Must have attended and completed one training course, approved by the Office of State Fire Marshal and administered by an instructor certified by the Office of State Fire Marshal.

(2) To be eligible for a limited operator certificate, an applicant must comply with the following:

(a) Must be at least 18 years of age; and

(b) Must certify that the applicant is knowledgeable of the applicable requirements of ORS 480.111– 480.165 and OAR chapter 837, division 12.

(3) Any individual who desires to participate in a general display or limited display as an assistant must comply with the following:

(a) Be at least 18 years of age; and

(b) Work under the direct supervision and control of a general operator or limited operator.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0790
Issuance of Operator Certificate

(1) Upon receipt of a properly completed and timely submitted operator certificate application, the Office of State Fire Marshal may either grant or deny the application.

(2) The Office of State Fire Marshal will assign a unique number to each operator certificate issued.

(3) The Office of State Fire Marshal will mail the original operator certificate to the applicant at the mailing address listed on the operator certificate application.

(4) Holders of an operator certificate may request a duplicate copy of the certificate by certifying to the Office of State Fire Marshal, in writing, their operator certificate has been lost, stolen or destroyed. Written requests must be signed and dated by the holder of the operator certificate.

(5) An operator certificate allows the holder of the certificate to possess, store, use and discharge display fireworks for purposes of a display when those activities are otherwise in conformance with the applicable requirements of ORS 480.111–480.165, OAR chapter 837, division 12 and any other applicable federal, state or local laws, rules or regulations pertaining to fireworks.

(6) A general operator certificate authorizes the holder of the certificate to participate as the operator at either a general display or a limited Ddisplay.

(7) A limited operator certificate authorizes the holder of the certificate to participate as the operator only at a limited display.

(8) Only the holder of the operator certificate may engage in the activities authorized by the certificate.

(9) An operator certificate does not authorize:

(a) The sale or provision of fireworks; or

(b) The purchase, transportation, possession or storage of fireworks.

(10) An operator certificate, and the rights conveyed by the certificate, is not transferable.

(11) An operator certificate is valid for three years from the date of issue unless revoked or suspended.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0800
Renewal of Operator Certificate

(1) An operator certificate must be renewed every three years.

(2) The holder of a general operator certificate is not required to retake the examination required under OAR 837-012-0780(1) (c) unless the current certificate expires. General operators whose certificate expires are required to retake the qualifying examination.

(3) Applications for renewal of an operator certificate must be received by the Office of State Fire Marshal at least 90 days prior to the expiration date of their current certificate.

(4) All other requirements for the issuance of a renewal operator certificate are the same as for the issuance of the original certificate, with the exception of the manual firing requirement.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; FM 1-1995, f. 8-14-95, cert. ef. 8-15-95; FM 1-1996, f. & cert. ef. 1-18-96; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0810
Training Course Instructor

(1) Individuals who intend to provide the training course required under OAR 837-012-0780 must work under the direction and control of an Oregon permitted wholesaler who supplies 1.3g fireworks.

(2) At a minimum, Instructors must meet the following requirements:

(a) Be currently certified as a general display operator under OAR 837-012-0790; and

(b) Has been a general display operator consecutively for six years prior to the date of training. If the instructor has not been consecutively certified for six years prior to the date of training, then the instructor must be approved by the Office of State Fire Marshal prior to providing the general operator certification training or the training may not be accepted by the Office of State Fire Marshal for general operator certification.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02 ; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0820
Pyrotechnician Training Course Requirements

(1) The training course required by OAR 837-012-0780(1)(d) is developed by the Office of State Fire Marshal.

(2) All individuals providing operator certification training required under OAR 837-012-0780 must provide at a minimum the training course developed by the Office of State Fire Marshal.

(3) Any training course not developed by the Office of State Fire Marshal does not comply with OAR 837-012-0780(1)(d).

(4) The Office of State Fire Marshal may update the training course annually to ensure it is consistent and current with federal and state laws, rules and regulations pertaining to fireworks displays.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 2-1993(Temp), f. & cert. ef. 6-10-93; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0830
Denial, Suspension or Revocation of Display Permit or General or Limited Operator Certificate

(1) The State Fire Marshal may deny, revoke or suspend a display permit or general or limited operator certificate when a person listed on the display permit or operator certificate fails to comply with ORS 480.111 through 480.165, OAR chapter 837, division 12 or any other applicable federal, state or local law, rule or regulation pertaining to fireworks.

(2) Any such denial, revocation, or suspension must be in conformance with ORS 183.310 to 183.550.

(3) Grounds for denial, suspension, or revocation of a display permit or operator certificate include, but are not limited to the following:

(a) A person named on the permit application fails to comply with applicable federal, state, or local laws, rules, ordinances or regulations pertaining to the manufacture, sale, use, discharge, transportation, storage or possession of fireworks; or

(b) The Office of State Fire Marshal is presented with evidence and a recommendation to deny, suspend or revoke an application, or permit by fire or law enforcement authority. The evidence must support the conclusion that the sponsor permit holder, or applicant has violated applicable rules or statutes; or

(c) The permit holder knowingly hires, employs, or utilizes someone who has had a wholesale, retail or display permit revoked, denied or suspended within the last three years; or

(d) There has been a failure to obtain and maintain necessary local or state on-site inspections, approvals, proof of liability insurance and other required permits; or

(e) Sells, donates or otherwise provides fireworks to any person; or

(f) A permit, or permit number that has expired, or that does not exist, or which has not been issued, is used to support the purchase, use, discharge, transportation, storage, possession or sale of fireworks; or

(g) The applicant submitted a fraudulent permit application; or

(h) Any other violation of the fireworks statutes or rules.

(4) The period of denial, revocation or suspension may not exceed three years. In determining the appropriate sanction, the Office of State Fire Marshal may consider the following criteria:

(a) The severity of the violations or its impact on public safety, particularly whether the circumstances of the violations presented a significant fire hazard or other public safety danger;

(b) The number of similar or related violations alleged to have been committed in the current transaction, event or occurrence;

(c) Whether the violation was willful or intentional;

(d) The prior history of sanctions imposed by the Office of State Fire Marshal against the holder of, or applicant for, a display permit or operator certificate; and

(e) Other circumstances determined by the Office of State Fire Marshal to be applicable to the particular violation.

(5) Suspension or revocation of a display permit or operator certificate may include suspension or revocation of the current permit or certificate and the right to apply for a subsequent permit or certificate.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0835
Purchase, Transportation and Storage of Display Fireworks

(1) General and limited display permit holders must purchase or otherwise obtain display fireworks only from wholesalers who possess a current and valid wholesale permit issued by the Office of State Fire Marshal.

(2) General and limited display permit holders must purchase or otherwise obtain display fireworks only from the wholesaler listed on the display permit.

(3) If the wholesaler who supplies the display fireworks is different from the wholesaler listed on the display permit, the display permit holder must notify, in writing, the Office of State Fire Marshal and the local fire authority of the change at least 24 hours prior to purchasing the display fireworks from the wholesaler.

(4) The designated agent may pick up fireworks from the wholesaler and deliver only to the storage site as listed on the display permit or directly to the display site as listed on the permit.

(5) The permit holder, or their designated agent, must possess the display permit at the time the display fireworks are picked up from or delivered by the wholesaler.

(6) The permit holder, or their designated agent, may transport the display fireworks only to the:

(a) Storage site approved by the local fire authority and the Office of State Fire Marshal and listed on the display permit; or

(b) The display site listed on the display permit.

(7) The permit holder or their designated agent must comply with all applicable federal, state and local laws, rules and regulations pertaining to the transportation of fireworks.

(8) Prior to acceptance of display fireworks from a wholesaler, the permit holder, or their designated agent, must confirm that the outside of all cartons, containers or cases of display fireworks, and any accompanying documentation, are affixed with the full permit holder name and display permit number of the display permit corresponding to the permit holder authorizing the display fireworks being received and the wholesaler name and their Oregon wholesale permit number of the Oregon wholesaler who supplied the display fireworks.

(9) Display permit holders, or their designated agent, may not accept any cartons, containers or cases of display fireworks or accompanying documentation that do not show the required information pursuant to subsections (8) of this rule. If the required permit holder name and display permit number is not on the outside of all cartons, containers or cases of display fireworks, and any accompanying documentation, the permit holder must refuse to accept the display fireworks.

(10) Permit holder name and display permit number and the wholesaler name and permit number must be maintained on any carton, containers or cases containing display fireworks authorized by a display permit.

(11) The storage of display fireworks must comply with the following:

(a) OAR chapter 837, division 12;

(b) Oregon Fire Code, as adopted by the State Fire Marshal pursuant to OAR 837-040-0010.

(c) Oregon Structural Specialty Code, as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010.

(d) NFPA 1124, Code for the Manufacture, Transportation and Storage of Fireworks 2013Edition; and

(e) United States Department of Transportation laws and regulations. See also CFR Title 17, Part 18, Subparts J and JJ.

(12) The transportation of display fireworks must comply with the following:

(a) ORS 480.111 through 480.165;

(b) OAR chapter 837, division 12;

(c) NFPA 1124, Code for the Manufacture, Transportation and Storage of Fireworks; and

(d) United States Department of Transportation laws and regulations. See also CFR Title 17, Part 18, Subparts J and JJ.

(13) Fireworks may be delivered to the display Ssite up to a maximum of 72 hours prior to the date and time of the permitted display. Security at the display site will be continuous until the date and time of the display. Fireworks may be delivered to the display site up 72 hours prior only after a security plan has been submitted to the Bureau of Alcohol, Tobacco, Firearms and Explosives and approved by the local fire authority.

(14) Special consideration may be given for increasing the 72 hours maximum as allowed in 837-012-0835(13) for exceptionally large displays. Approval must be granted prior to arriving at the display site and must be approved by the Office of State Fire Marshal, the local fire authority, and the Bureau of Alcohol, Tobacco, Firearms and Explosives.

(15) All fireworks at the display site must meet the requirements of NFPA 1124, Code for the Manufacture, Transportation and Storage of Fireworks, 2013 Edition.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 476.030 & 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0840
Selection of Display Site and Set Up

(1) Prior to the display, the areas selected for the discharge site, fallout area, spectator viewing and parking may be inspected and approved by the local fire authority and law enforcement authority.

(2) The purpose of this rule is to provide guidance for clearances upon which the local fire authority and law enforcement authority may base their approval or denial of the display site.

(3) The required minimum separation distance between the discharge site and any spectators, vehicles or readily combustible materials is set forth in Table 1. This distance is determined by the largest size aerial shell to be discharged at the intended display. At a minimum, the fallout area for a display must be the required minimum separation distance set forth in Table 1.

(a) Where added safety precautions have been taken, or particularly favorable conditions exist, the local fire authority may decrease the required separation distance pursuant to Table 1. In no case may the required separation distance be less than 70' per inch of aerial shell diameter. Final approval of the decrease in distance is the responsibility of the Office of State Fire Marshal.

(b) When unusual or safety threatening conditions exist, the local fire authority may increase the required separation distance pursuant to Table 1 as necessary to provide adequate safety for the display site, spectators, and surrounding property.

(4) The required minimum distance from the discharge site to any health care, detention or correctional facility must be at least twice the distance set forth in Table 1.

(5) The required minimum distance from the discharge site to any bulk storage area of materials that pose a flammability, explosive, or toxic hazard must be at least twice the distance set forth in Table 1.

NOTE: To determine whether materials pose these hazards, see NFPA's Fire Protection Guide to Hazardous Materials. Table not included. See ED. NOTE.

(6) Figure 1 demonstrates some of the location requirements for a suitable display Ssite where mortars are placed vertically, such as may be the case for an electrically ignited display: Figure not included. See ED. NOTE.

(7) The discharge site must be located so the trajectories of the aerial shells do not come within 25 feet of any overhead object.

(8) Ground display pieces must be located at a minimum distance of 75 feet from spectator viewing and parking areas.

EXCEPTION: For ground display pieces with greater hazard potential (such as large wheels with powerful drivers, and items employing large salutes), and roman candles and multi-shot devices, the minimum separation distance must be increased to 140 feet minimum or 100 feet per inch of shell diameter. Example: 1.75" artillery type mortar shells must have a minimum separation distance of 175'.

EXCEPTION: Limited display permit that authorize only retail fireworks may not be subject to the 140 foot separation requirement. Separation requirements for limited display permit authorizing only the use of retail fireworks are at the discretion of the local fire authority.

(9) Where aerial shells are to be stored at the discharge site for subsequent loading into mortars during the display, the mortars must be placed at least 1/6, but not more than 1/3, the distance from the center of the display site toward the main spectator area. The mortars must be angled such that any dud shells will fall at a point approximately equal to the offset of the mortars from the center of the display site but in the opposite direction.

(10) Figure 2 demonstrates some of the location requirements for a suitable display site when aerial shells are to be stored at the discharge site for subsequent loading into mortars during the display, such as may be the case with a manually ignited display: Figure not included. See ED. NOTE.

(11) Fireworks may not be discharged within 100 feet of any tent or canvas shelter. Unauthorized tents may not be located within the display site.

(12) Fallout areas:

(a) The fallout area must be a large, open area;

(b) Spectators, vehicles, or readily combustible materials may not be located within the fall out area during the display.

[ED. NOTE: Figures & tables referenced are available from the agency.]
[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0850

Construction of Fireworks Aerial Shells

(1) Shells may be classified and described only in terms of the inside diameter of the mortar in which they can be safely used, such as three inch shells are only for use in three inch mortars) ;

(2) Aerial shells must be constructed so that they fit easily into the appropriate size mortar and so that the lift charge and internal delay fuse are appropriate to propel the shell to a safe altitude before functioning.

(3) Shells must be labeled with the type of shell, the shell size and the name of the manufacturer or distributor.

(4) The label or wrapper of any type of aerial shell must be conspicuously marked with a number to indicate the shell size (the diameter of the mortar to be used).

(5) The label or wrapper of any type of aerial salute must be conspicuously marked with the word "salute";

(6) For aerial shells using quick match fuse to ignite the lift charge, that fuse must be long enough to allow not less than six inches of fuse to protrude from the mortar after the shell has been properly inserted.

EXCEPTION: This requirement does not apply when shells are to be fired electrically.

(7) In order to allow the individual igniting the aerial shells to safely retreat, the time delay between igniting the tip of the shell's fuse and the firing of the shell may not be less than three seconds or more than six seconds.

EXCEPTION: For electrically ignited displays, there is no requirement for a delay period.

(8) A safety cap must be installed over the exposed end of the fuse. The safety cap must be of a different color than that of the fuse. The safety cap must be installed in such a manner so the fuse is not damaged;

EXCEPTION: For electrically fired displays, there is no requirement for safety caps except there must be no exposed pyrotechnic composition.

(9) Single break salute shells may not exceed three inches in diameter or three inches in length (exclusive of the lift charge). The maximum quantity of salute powder in such salutes may not exceed 3 ounces;

(10) Storage of fireworks and aerial shells not in mortars:

(a) All fireworks must be stored and transported according to the requirements prior to reaching the display site. (See also CFR Title 27, Part 18, Subparts J and JJ.);

(b) As soon as the fireworks have been delivered to the display site, they may not be left unattended or allowed to become wet;

(c) All fireworks must be inspected when practical after delivery to the site but always prior to the start of loading shells by the operator or a qualified assistant. Any shells having tears, leaks, broken fuses, or showing signs of having been wet must be set aside and must not be fired. After the display, any such shells must either be returned to the wholesaler or destroyed according to the wholesaler's instructions;

EXCEPTION: Minor repairs to fuses may be allowed. Also, for electrically ignited displays, attachment of electric matches and other similar tasks may be permitted.

(d) Upon delivery to the display site, all shells must be separated according to size and as to whether they are salutes. Until they are loaded into mortars, shells must be stored in covered containers such as ready boxes or corrugated cartons meeting U.S. Department of Transportation requirements for the transportation of fireworks;

(e) During performance of an outdoor display, Ready Boxes must be located at a distance of not less than 30 feet upwind from the mortar placements. If the wind should shift during a display, the ready boxes must be relocated to be 30 feet upwind from the discharge site.

EXCEPTIONS:

(A) When acceptable to the local fire authority, alternate measures may be taken.

(B) When there are no shells needing storage during a display, such as for an electrically ignited display, or where all shells are preloaded into their mortars prior to the start of the display, there is no need for ready boxes.

(11) Installation of mortars:

(a) Prior to placement mortars must be carefully inspected for defects, such as dents, bent ends, damaged interiors, and damaged plugs. Mortars found to be defective must not be used;

(b) Mortars must be positioned vertically or so that shells are propelled away from spectators and over a fallout area. Under no circumstances may mortars be angled toward the spectator viewing areas;

NOTE: It is generally believed that when manually firing aerial fireworks, mortars should be angled 2 to 4 degrees.

(c) Mortars must be buried to a depth of a minimum of 2/3 of their length, either in the ground or in aboveground troughs or drums;

EXCEPTION: Securely positioned mortar racks may be used for the firing of single break shells not exceeding six inches in diameter.

(d) Refer to NFPA 1123, Table A.4.3.9 for minimum inside mortar length requirements.

(e) Under conditions when paper mortars may be damaged by placement in damp ground, paper mortars must be placed inside a moisture-resistant bag prior to placement in damp ground;

(f) Whenever there is the likelihood of ground water leaking into the mortar, the mortar must be placed inside a water-resistant bag prior to placement in the ground;

(g) Weather-resistant coverings must be placed over the mouth of mortars whenever there is imminent danger of water collecting in the mortars;

(h) In soft ground, when there is significant danger of the mortars being driven further into the ground when they are fired, sufficient added support must be placed beneath the mortars;

EXCEPTION: When a mortar is only to be used once, such as for an electrically fired display, added support is optional.

(i) Mortars that are buried in the ground, in troughs, or in drums must be separated from adjacent mortars by a distance at least equal to the diameter of the mortar. Mortars in troughs or drums must be positioned to afford the maximum protection to the operator;

EXCEPTION: The requirements do not apply when electrical firing is used.

(j) If troughs and drums are used, they must be filled with sand or soft dirt; in no case may stones or other possible dangerous debris be used;

(k) Whenever more than three shells are to be chain fused, such as for sequential firing, additional measures are required to prevent adjacent mortars from being repositioned in the event a shell detonates in a mortar, causing the mortar to burst. For buried mortars, this must be accomplished by placing the mortars with a minimum separation of four times their diameter. For mortars in racks, this must be accomplished by using mortar racks that have sufficient strength to successfully withstand such a failure;

EXCEPTIONS:

(A) When there is doubt concerning the strength of racks holding chain fused mortars, the separation distances for those racks from spectator or parking areas must be twice those listed in Table 1.

(B) When the separation distance is two times that required in Table 1, buried mortars must be separated from each other by a minimum of one times the internal diameter of the largest mortar in the sequence.

(l) When mortars are to be reloaded during a display, mortars of various sizes may not be intermixed. Mortars of the same size must be placed in groups, and the groups must be separated from each other;

(m) When operators or assistants are to be in the immediate area of the mortars during a display, sand bags or other suitable protection must be placed around the mortars up to the approximate level of the mouth of the mortar in each direction where operators or assistants could be located;

(n) Mortars must be inspected before the first shells are loaded to be certain that no water or debris has accumulated in the bottom of the mortar;

(o) Mortars must be of sufficient strength and durability to safely fire the aerial shells to be used;

(p) Cast iron mortars may not be used;

(q) Metal mortars may be either seamed or seamless; however, seamed mortars must be placed so the seam is facing either right or left as one faces the line of mortars;

(r) Mortars must be of sufficient length to cause aerial shells to be propelled to safe heights;

(s) A cleaning tool must be provided for the cleaning of debris from mortars as necessary;

EXCEPTION: When mortars are not to be reloaded during a display, there is no requirement for a cleaning tool.

(t) Numerals indicating the inside diameter of the mortar may be conspicuously painted or otherwise marked near the top of all mortars.

(12) When more than one operator or assistant will be igniting the aerial shells for a display, it is preferred the line of mortars be separated in some manner and that only one operator or assistant light shells in each designated area.

(13) Electrical firing unit:

(a) The purpose of this section is to provide guidance for the design of electrical firing units to be used when it is decided to electrically fire displays;

(b) At no point may electrical contact be allowed to occur between any wiring associated with the electrical firing unit and any metal object in contact with the ground;

(c) If the electrical firing unit is powered from AC power lines, some form of line isolation must be employed such as a line isolation transformer;

(d) The electrical firing unit must include a key-operated switch or other similar device that greatly reduces the possibility that unauthorized or unintentional firings can occur;

EXCEPTION: When the electrical firing unit is very small in size and attached to the wire running to electric matches for the brief duration of the actual firing, there is no requirement for a key-operated switch.

(e) Manually activated electrical firing units must be designed such that at least two positive actions must be taken to apply electric current to an electric match. For example, this may be accomplished with two switches in series, both of which must be operated in order to pass current;

(f) Computer-activated automatic sequencing type electrical firing units must have some form of "dead-man-switch," such that firings will cease the moment the switch is released;

(g) If the electrical firing unit has a built-in-test circuit, the unit must be designed to limit the test current (into a short circuit) to 0.05 ampere or to 20 percent of the no-fire current of the electric match, whichever is less;

(h) Multi-testers, such as Volt-O-meters, may not be used for testing unless their maximum current delivering potential has been measured and found to meet the requirements of subsection (g) of this section;

(i) When any testing of firing circuits is performed, no person may be present in the immediate area of fireworks that have been attached to the electrical firing unit.

[ED. NOTE: Figures referenced are available from the agency.]

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2004, f. & cert. ef. 1-14-04; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0855

Barge Requirements

(1) Barges may be permitted to be manned or unmanned as long as the barge operators remain in control of the barge, and the operator and assistants remain in control of the barge display site and firing of the display.

(2) The movement and location of a barge must be controlled at all times, whether self-propelled, controlled by another vessel, or secured by anchoring or mooring.

(3) The means of controlling the movement and location of a barge pursuant to subsection (2) of this rule must be done so by means approved by the local fire authority prior to the display.

(4) Barges may be used as a discharge site only if the barge is sufficiently stable and seaworthy so the type of fireworks and the placement of the fireworks, mortars, and accompanying equipment on the barge does not compromise the stability or seaworthiness of the barge when the fireworks are discharged.

(5) When a barge is manned during the firing of the display, a safety shelter must be present on the barge. The safety shelter must:

(a) Be of sufficient size to accommodate all individuals present during the actual firing of the display;

(b) Have a minimum of three sides and a roof; and

(c) Have walls and a roof constructed of at least 3/4 in. (19 mm) plywood or equivalent material.

(6) Separation between mortars and a safety shelter must be 2ft/in. (0.6 m/25 mm) of diameter of any mortars up to 6 in. (152 mm) in diameter. For shells larger than 6 in. (152 mm) in diameter, the minimum separation distance must be 4 ft/in. (1.22 m/25 mm) of shell diameter.

EXCEPTION: If the safety shelter is constructed of stronger material, the separation distance between mortars and the shelter may be permitted to be reduced at the discretion of the local fire authority and the Office of State Fire Marshal.

(7) The required minimum size for a barge (in square feet) for a particular display must be determined by the following calculations;

(a) Minimum discharge site (in square ft) = sum of (total number of each size mortar times its inside diameter) divided by two (2).

EXCEPTIONS: Multi-shot devices up to 3 in. in diameter must be calculated at twice the actual footprint of each such device (length X width). Ground display pieces may be excluded from the calculations for minimum display set-up area.

(b) Total # of 3 in. Mortar x 3 + total number of 4 in. Mortars x 4 + total number of 5 in. Mortars x 5 + etc.)/2

EXAMPLE: A display containing 100 - 3 in. shells, 50 - 4 in. shells, 20 - 5 in. shells, 10- 6 in. shells, and 5- 8 in. shells would require the following minimum display set-up area. Table not included. See ED. NOTE.

(8) Barges must be configured, and the display arranged, so operators, assistants and any other individuals on the barge can readily exit the barge in case of an emergency.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 476.030 & 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0860

Operation of Fireworks Display

(1) The sponsor of the display must provide adequate fire protection for the display.

(2) The sponsor or the operator must consult with the fire authority to determine the level of fire protection required.

(3) Monitors whose sole duty is enforcement of crowd control must be located around the display area by the sponsor. The fire authority must approve the provisions for crowd control.

(4) Monitors must be located around the display site to prevent spectators or any other unauthorized individuals from entering the display site. The display site must be so restricted throughout the display and until the display site has been inspected after the display. Where practical, fences and rope barriers may be used to aid in crowd control.

(5) During the period before the display, when fireworks materials are present, public access to the display site must not be allowed.

(6) The operator has the primary responsibility for safety. While the operator is allowed to actively participate in the firing of the display, safety must be the primary concern.

(7) The operator is responsible for ensuring that a sufficient number of assistants are on hand for the safe conduct of the display. Only the operator and necessary assistants may be permitted in the discharge area while the display is in progress.

NOTE: In some situations, it is believed it is appropriate to have one individual tending each ready box or shell storage area in use at a given time. Similarly, it is believed there should be two individuals reloading shells into mortars for each individual igniting the aerial shells. Unless racks of chain fused shells are being fired, it generally is believed a single individual can safely ignite no more than about ten shells per minute. If a greater rate of firing is desired, it is appropriate to have more than one individual lighting the shells.

(8) The display operator is responsible for meeting the administrative rules, statutory requirements and any other applicable requirements for the display including ensuring all assistants are fully trained in the proper performance of their assigned tasks and they are knowledgeable of safety hazards.

(9) If at any time before or during the display, the operator, local fire authority, or the law enforcement authority knows or should know an adverse condition exists that significantly affects safety, the display must be postponed until the condition is corrected.

(10) If at any time before or during the display, the operator, local fire authority, or the law enforcement authority knows or should know the lack of crowd control poses a danger, the display must immediately be discontinued until such time as the situation is corrected.

(11) If at any time before or during the display, the operator, local fire authority, or the law enforcement authority knows or should know that high winds, precipitation, or other adverse weather conditions prevail, such that a significant safety danger exists; the display must be postponed until weather conditions improve to an acceptable level.

NOTE: Changes that occur as a result of sections (9), (10) and (11) of this rule must meet the requirements of OAR 837-012-0740.

(12) Operators and assistants may use only flashlights or electric or chemical-luminescent lighting for artificial illumination.

(13) Smoking is not allowed within 100 feet of any area where fireworks or other pyrotechnic materials are present.

(14) Measures must be taken to protect all fireworks and materials to be used in the display from adverse weather conditions. Moisture-damaged materials must not be used.

(15) No individual may be allowed in the discharge area while under the influence of alcohol, narcotics, or drugs.

(16) The fire official having jurisdiction may require an effective means of communication between the operator, the local fire authority, and others as deemed necessary. That method may consist of cellular or digital telephones, walkie-talkies, marine radio, or similar methods approved by the local fire authority.

(17) Operators must be continuously responsible for the display from the beginning of the display through completion of the display including the after display cleanup and inspection.

Stat. Auth.: ORS 480.150

Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0865

Operations for Barge Displays

(1) Manual firing of displays may be allowed only under the following conditions:

(a) Shells must be loaded into mortars and put into place prior to the display. Reloading of any kind during a barge display is prohibited;

(b) Shells may be single-break only and may not exceed 6" in diameter;

(c) The barge must meet double the size requirements established by OAR 837-012-0855;

(d) All individuals, other than operators and assistants must be behind protective barriers during the display. Protective barriers must meet the strength requirements of 3/4 inch (19mm) plywood or equivalent.

(e) Electrical firing and manual firing on the same barge is allowed when the mortars to be used for manual firing are separated from mortars to be used for electrical firing by a minimum of 25 feet.

(f) All aerial shells greater than 6" in diameter must be fired using electrical ignition or other means of remote ignition that place the operator and assistants at least 75 feet away from the mortar or behind a sturdy barricade at the time of ignition of the lift charge.

(2) A U.S. Coast Guard approved personal flotation device (PFD) must be provided and available for each individual working on the barge. PFD's must be properly worn anytime the barge is not moored at the dock. PFD's must have or include a visual location device.

(3) A watercraft must be ready and capable of providing a rapid emergency response during the display.

(4) During the display only necessary individuals may be present on the barge. No spectators may be present on the barge.

(5) Necessary individuals may include:

(a) Operator and assistants;

(b) Local fire authority department personnel;

(c) Barge operators; and

(d) Local fire authority, Coast Guard, law enforcement, or other regulatory authority acting within the scope of their official capacity.

(6) Barges must be free of all nonessential combustible materials.

(7) Fuel tanks are deemed essential material to perform the display for vessels controlling, marshaling, or adjoining the barge from which fireworks are being discharged.

(8) Barges constructed of wood or other combustible material may be permitted to be used as a fireworks display site when the requirements of these rules and any other applicable state, local, and federal requirements pertaining to fireworks are met.

(9) Barges constructed of wood or other combustible material can be used provided the surface of the barge has been protected from fire by means acceptable to the local fire authority. The barge should also be of sufficient construction and configuration to safely allow the firing of the display. Consideration should be given to the conditions that could affect the separation distance of the barge from the public. Greater distance might be required to allow for the effects of sea conditions, wind, and drift of the barge.

(10) Whenever, in the opinion of the local fire authority, the operator, or the barge captain, conditions such as high seas or rapid current pose a potential safety hazard to the operator and assistants, spectators, surrounding area, or any other individuals, the display must be postponed until conditions improve.

Stat. Auth.: ORS 476.030 & 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0870
Loading and Firing of Shells

(1) Shells must be carried from the storage area to the discharge site only by their bodies, never by their fuses.

EXCEPTION: It is generally believed it is not safe to be loading mortars within ten feet of mortars being fired. When loading a shell into a recently fired mortar, the person should crouch alongside the mortar with his back toward the area where shells are being fired.

(2) Shells must be checked for proper fit in their mortars prior to the display.

(3) When being loaded into the mortars, shells must be held by their fuses or lowering cord if provided and carefully lowered into the mortar. At no time may the person loading the shells place any part of their body over the mouth of the mortar.

(4) The person loading shells must be reasonably certain the shells are properly seated in the bottom of the mortars.

(5) Shells must not, under any circumstances, be forced into a mortar too small to accept them. Shells that do not fit properly into the mortars must not be fired.

(6) The safety cap protecting the fuse must not be removed until immediately before the shell is to be fired.

EXCEPTION: Where electrical ignition is used, there is no requirement for a safety cap.

(7) Shells may be ignited by lighting the tip of the fuse with a fusee, torch, portfire, or similar device. The operator must never place any part of their body over the mortar at any time. As soon as the fuse is ignited, the operator must turn away from or retreat from the mortar area.

EXCEPTION: Alternatively, electrical ignition may be used.

(8) The first shell fired must be observed carefully by the operator to determine that its trajectory is such that the shell functions over the fall-out area and that any dangerous debris or unexploded shells will land in the fall-out area. The operator must determine whether or not to begin the display and must monitor the display continuously to determine if the display continues to meet all requirements for the continuance of the display.

(9) The display must be interrupted and the mortars must be re-angled or repositioned as necessary for safety any time during a display. In the case of a barge, the display must be interrupted and the barge must be repositioned as necessary for safety any time during display.

(10) In the event of a shell failing to ignite in the mortar, the mortar must be marked in some manner to indicate the presence of an unfired shell, and the mortar may not be reloaded or reused so long as the misfired shell remains. Immediately following the display but no sooner than 15 minutes after the attempted firing, if the shell still has not fired, the mortar must be cautiously flooded with water and let stand for a minimum of five minutes before it is cautiously emptied of the shell. The operator must be knowledgeable in the proper disposal methods.

NOTE: Flooding the mortar with water may not be advisable in all cases, perhaps allow the mortar to stand additional time before removing the shell if it is not to be flooded.

EXCEPTION: When electrical ignition is used and the firing failure is electrical in nature or the aerial shell was intentionally not fired, the shell may be salvaged by the operator.

(11) It is the responsibility of the person igniting the aerial shells to detect when a shell does not fire from a mortar. That person must warn others in the area and immediately cause the mortar to be marked to indicate the presence of an unfired aerial shell.

EXCEPTION: When electrically firing, it is not necessary to mark the mortar. However, individuals entering the area after the fireworks display must conduct themselves as though unfired shells remain until advised to the contrary by the operator.

(12) Manual re-ignition of chain fused aerial shells may only be attempted at properly installed ignition points.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0875
Mortar Racks for Barge Displays

(1) Mortar racks must be constructed in a thorough manner to be capable of holding multiple mortars in position during normal functioning.

(2) Mortar racks that are not inherently stable must be secured or braced to stabilize them. Stabilization may be accomplished by using stakes, legs, A-frames, side-boards, or equivalent means. Inherently stable means if the base of the rack, before being loaded with fireworks, were tipped 50 degrees from the horizontal in any direction, it would then return to the horizontal position.

(3) Mortar racks must be oriented, angled, or oriented and angled in such a way to maximize spectator safety.

Stat. Auth.: ORS 476.030 & 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0880
Ground Display Fireworks

When ground display pieces are to be fired electrically, they may be located in the fall-out area.

(b) When aerial shells have been preloaded, ground display pieces may be located in the discharge area.

(2) Dry grass must be wet down or removed before the display.

(3) Combustible materials must be removed or adequately protected as approved by the fire authority if deemed a fire hazard by the fire authority.

(4) Poles for ground display pieces must be securely placed and firmly braced so they will not fall over during functioning of the firework device.

(5) Specific instructions from the supplier must accompany all ground display pieces. A list of required accessories also must be supplied.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0890
Site Clean-Up

(1) Following the display, the operator, and assistants must conduct an inspection of the fall-out area for the purpose of locating any unexploded aerial shells or components. This inspection must be conducted before any public access to the site is allowed. Any shells or components found during the search must not be handled until at least fifteen minutes have elapsed from the time the shells or components were fired. The fireworks must then be doused with water and allowed to remain for at least five more minutes before being cautiously placed in a plastic bucket or fiberboard box. The wholesaler who supplied the fireworks must be contacted as soon as possible for disposal instructions.

(2) Mortar inspection and removal may be conducted upon the elapse of not less than 10 minutes from the completion of the display to allow for mortar cool-down or misfires.

(3) When fireworks are displayed at night and it is not possible to thoroughly inspect the site, the operator must ensure the entire site is re-inspected very early the following morning.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0900
Transportation and Storage

(1) Storage of fireworks in residential locations, mini-storage units or other structures is prohibited unless such storage is in accordance with the Oregon Fire Code, as adopted by the State Fire Marshal pursuant to OAR 837-040-0010, Oregon Structural Specialty Code as adopted by the Oregon Building Codes Division pursuant to OAR 918-460-0010, and NFPA 1124 Manufacture, Transportation, and Storage of Fireworks and Pyrotechnic Articles, 2013 Edition, these rules or requirements of the local fire authority.

(2) Applicants must also provide a complete and detailed description of how and where they will store Fireworks in their possession before, during and after the display. The description must include:

(a) The address of the storage site and the location of the storage areas at the storage site;

(b) The dates the fireworks will be at each storage site; and

(c) The type of magazine in which the fireworks are to be stored.

(3) Fireworks may be stored up to a maximum of 30 days prior to the display.

(4) Unused fireworks must be returned to the wholesaler who provided them within 7 days after the display date.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0910
Prohibited Acts and Limitations

(1) No individuals may be allowed in the discharge area while under the influence of alcohol, narcotics, or drugs.

(2) Smoking is not allowed within 100 feet of any area where fireworks or other pyrotechnic materials are present.

(3) Only authorized individuals will be allowed within the discharge site.

(4) No individual may maintain or allow the existence of a fire hazard at any location under their control where fireworks are stored, transported, sold, or used.

(5) No permit holder may use:

(a) Any fireworks that have been altered;

(b) Any fireworks other than those supplied or distributed by a person with a current Oregon wholesale fireworks permit.

(6) No person who has been cited or arrested for fireworks violations or who has had a wholesale, retail fireworks permit or operator certificate suspended or revoked may participate in any manner in the fireworks display, including storage, distribution, or transportation of pyrotechnics for a period not to exceed three years.

(7) The permit does not authorize the manufacture, sale, use, discharge or possession of fireworks in any city or county in which such devices are prohibited by law or ordinance.

(8) Permit holders may not use, explode or have exploded any fireworks device that has not been approved, certified or listed for transport by the U.S. Department of Transportation or has a U.S. Bureau of Explosive Temporary Transfer Permit.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 6-2006, f. & cert. ef. 3-10-06; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0920
Records Keeping

(1) Permit holders must keep a record of each shipment of fireworks received. The record must include the wholesaler's name, address, display permit number and a list of the fireworks received including the name and quantity of each fireworks.

(2) Upon request, the records for each shipment received must be readily available for review and inspection by the local fire authority or representatives of the State Fire Marshal.

(3) All records must be clear, legible, accurate, and maintained for three years from the date of receipt of the fireworks. The records must be submitted to the local fire authority or the State Fire Marshal upon request.

NOTE: The Wholesaler from whom the Fireworks were purchased may maintain the records.
Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0940
Civil and Criminal Enforcement Actions

(1) In addition to denying, revoking or suspending permit and certification pursuant to administrative hearing and appeals procedures as specified in law, the State Fire Marshal, fire or law enforcement authority may:

(a) Confiscate, remove or have removed at the violator's expense all fireworks offered for sale, used, transported, stored, or possessed in violation of these rules; and

(b) Destroy seized fireworks when it has been determined that destruction is necessary for the preservation of public safety or health, that the sale, transport, storage or possession of the seized fireworks was in violation of the laws and rules of the State of Oregon or the ordinances of local municipalities.

NOTE: Upon the confiscation or prior to the destruction of any seized pyrotechnics, the person responsible for the confiscation or destruction, may contact the person who the fireworks were seized from.

(2) All civil disputes arising as a result of the administration and enforcement of these rules and regulations may be referred to the State Fire Marshal who has the final administrative authority in all cases.

(3) Violation of any provision of ORS 480.111 through 480.160 is a Class B misdemeanor. Violations thereof may be prosecuted in state or municipal courts when violations occur within the municipality served thereby. Justice and district courts have concurrent jurisdiction with circuit courts in all proceedings arising within ORS 480.111 to 480.160:

(a) The sentence for a Class B misdemeanor is set forth by ORS 161.615;

(b) The sentence to pay a fine for a Class B misdemeanor is set forth by ORS 161.635 and 161.655.

(4) If a person has gained money or property through commission of a misdemeanor or violation, then upon conviction thereof, the court, instead of imposing the fine authorized by these rules, may sentence the defendant to pay an amount fixed by the court, not exceeding double the amount of the defendant's gain from the commission of the offense in accordance with ORS 161.635 and 161.655.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2003, f. & cert. ef. 2-10-03; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0950
Insurance Requirements

The governing body of any municipality or of any county, may require liability insurance or other form of indemnity deemed adequate by the municipality, or the county, from any person, in a sum not less than $500, conditioned for payment of all damages which may be caused either to a person or property by reason of the authorized fireworks display and arising from any acts of any person or agents, employees or subcontractors of the person.

NOTE: Local Fire Authorities often require the industry standard amount of liability insurance of $1 million.
Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165

Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0960
Fire Protection

Fire extinguishers must be provided in numbers and locations throughout the display site as required by the local fire authority.

NOTE: At a minimum, at least two 2A rated water type extinguishers, or equivalent water type extinguishing system, or an alternative determined by the Local Fire Authority Must be provided.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-0970
Reports for General Displays

(1) Within 10 days following each general display, the operator in charge of the display must complete a report on forms provided by the State Fire Marshal, submit to the State Fire Marshal, and certify the information contained in the report is accurate. Certification and future permits may be denied, suspended, or revoked for false reporting or failure to complete the report.

(2) The operator must provide the information on the report form provided by the State Fire Marshal. At a minimum, each report must contain the following:

(a) The printed name, signature, mailing address, certification number and telephone number of the operator in charge of the display and who is completing the report;

(b) Name of permit holder to whom the permit was issued;

(c) The number assigned to the permit by the State Fire Marshal;

(d) The date and time of day the display was actually held;

(e) The location of the display. Include address or description sufficient to locate;

(f) A list of all fireworks discharged including the size and number of shells and set pieces;

(g) A list of all operators that assisted in assembling, discharging, or supervising the display. The list must include the name, certification number, and description of duties performed for each operator;

(h) A list of all assistants that assisted operators with the display. The list must include the name, mailing address, telephone number, and a description of duties performed for each assistant;

(i) A list of all fireworks that were duds, malfunctioned, or were defective. For each firework listed, the report must include, type of firework and size of firework, if applicable (example six inch shell);

(j) A description of any injuries caused by fireworks authorized by the permit. Each injury must be listed separately, and include the name of the firework, when known, that injured the person, the cause of the injury, and name, address, age and telephone number of the injured person;

(k) A description of any fires caused by fireworks authorized by the permit. Each fire must be listed separately and include the name of the firework, when known, that started the fire, the cause of the fire, and a brief description of the damage that occurred.

Stat. Auth.: ORS 480.150
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 2-1992, f. & cert. ef. 3-10-92; FM 6-1993, f. & cert. ef. 12-10-93; OSFM 4-2002(Temp), f. & cert. ef. 2-25-02 thru 8-19-02; OSFM 7-2002, f. & cert. f. 6-20-02; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1000
Authority and Application

(1) These rules are promulgated under the State Fire Marshal's authority contained in ORS 476.030 and 480.165.

(2) These rules apply to any person who violates any provision of ORS 480.111 through 480.165 and the rules adopted thereto including, but not limited to, those for fireworks displays, pest control use of fireworks, wholesale and retail sales of fireworks, special effect fireworks, and manufacturing of fireworks.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1010
Purpose and Scope

(1) These rules establish the basis and process by which citations and penalties will be determined and issued for violations of ORS 480.111 through 480.165 and OAR chapter 837, division 12.

(2) These rules provide for fire authorities, as defined in ORS 476.060, to issue citations and proposed penalties.

(3) Each violation is classified and penalty assessed according to violation type and instance.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1020
Effective Dates

OAR 837-12-1000 through 837-12-1110 are effective July 1, 2014.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1030
Definitions

(1) "Citation" means a document issued by the Office of State Fire Marshal or a fire authority pursuant to ORS 480.165 to issue a civil penalty for a violation of ORS 480.111 through 480.165 and OAR chapter 837, division 12. A citation may include, but is not limited to, a description of each violation and a notice of civil penalty assessment.

(2) "Display fireworks" has the meaning provided in ORS 480.111(4).

(3) "Exempt fireworks" has the meaning provided in ORS 480.111(5).

(4) "Fireworks has the meaning provided in ORS 480.110(7).

(5) "Formal hearing" means a hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(6) "Hazard" means a condition which could result in fire loss injury or damage to a person or property.

(7) "Hearings request" means the written request for a formal hearing to contest a civil penalty.

(8) "Illegal fireworks" means any fireworks other than consumer fireworks including but not limited to, any firework that flies into the air, or explodes or behaves in an uncontrolled and unpredictable manner.

(9) "Individual" means a single human being.

(10) "Informal hearing" means a conference to discuss if there is a basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means.

(11) "Instance" means the number of times a person has been cited. These are identified as 1st, 2nd, and 3rd instances.

(12) "Local fire authority" means the local fire official having jurisdiction.

(13) "May" means a regulation of conduct and implies probability or permission.

(14) "Must" means a mandatory requirement.

(15) "Person" means one or more individuals, legal representatives, partnerships, joint ventures, associations, corporations (whether or not organized for profit), business trusts, or any organized group of persons and includes the state, state agencies, counties, municipal corporations, school districts, and other public corporations.

(16) "Retail permit " means the official written document issued by the Office of State Fire Marshal pursuant to ORS 480.127 that authorizes the purchase, transport, possession, storing and sale of retail fireworks, at retail, when otherwise in conformance with all applicable requirements of ORS 480.111 through 480.165, OAR chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(17) "State Fire Marshal" means the State Fire Marshal or his/her administrative designee.

(18) "Type" means the classification of violation, i.e., least, minimal, moderate, or severe. These are identified as type I, II, III or IV.

(19) "Violation" types mean:

(a) "Least violation" means a type I violation which poses very little hazard or threat;

(b) "Minimal violation" means a type II violation which poses a minor hazard or threat;

(c) "Moderate violation" means a type III violation which poses a significant hazard or threat;

(d) "Severe violation" means a type IV violation which poses a substantial hazard or threat.

(20) "Wholesale permit " means the official written document issued by the Office of State Fire Marshal that authorizes the purchase, transport, possession, packaging, storing and sale of fireworks, retail fireworks, display fireworks, or pest control fireworks when otherwise in compliance with all applicable requirements of ORS 480.111 through 480.165, OAR

chapter 837, division 12, and any other federal, state and local laws, rules and regulations.

(21) "Wholesaler" means any person who sells or provides by any other means, or intends to sell or provide by any other means, fireworks, retail fireworks, display fireworks, or pest control fireworks.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1040
General

(1) These rules establish civil penalty criteria for types I, II, III and IV violations and the instances for each type of violation.

(2) These rules apply to persons who violate the requirements of ORS 480.111 through 480.165 or OAR chapter 837, division 12.

(3) Fire authorities may apply these rules per ORS 476.060.

(4) A citation describing the violation and assessed penalty may be issued to persons in non-compliance with ORS 480.111 through 480.165 or OAR chapter 837, division 12.

(5) Each separate instance of non-compliance with ORS 480.111 through 480.165 or OAR chapter 837, division 12 is considered a separate violation.

(6) Each day that a violation continues is considered a separate violation.

(7) The distribution, sale, use, manufacture, or possession of any amount of illegal fireworks is prohibited and subject to citation and penalty.

(8) In addition to the issuance of citations and penalties under these rules, the State Fire Marshal and fire authority acting in accordance with ORS 476.060 and 480.154(2) and OAR 837-12-560(1)(a) and 837-12-675(1)(a):

(a) May confiscate any amount of illegal fireworks; and

(b) May confiscate other fireworks possessed by person violating ORS 480.111 through 480.165 and OAR chapter 837, division 12.

(9) In addition to the issuance of citations, penalties, and the confiscation of fireworks, the State Fire Marshal may also revoke, suspend, or deny any fireworks permit provided for under ORS 480.111 through 480.165 to any person who fails to pay a penalty assessed under these rules.

(10) The penalty for each violation ranges from $0 to $500 a day depending upon the type and instance of the violation.

(11) Any person who willfully or negligently sets a fire or causes a fire to be set for which efforts to control or extinguish the fire in order to protect forestland within a forest protection district from fire are exerted by the forester or any forest protective association or agency under contract or agreement with the State Board of Forestry is liable for the actual costs incurred by the forester, association or agency in such efforts in accordance with ORS 477.085.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1050
Violation Types, Instances, and Penalty Assessments

(1) Penalties may be assessed according to violation type and instance in Table 2 and OAR 837-12-1130 through 837-12-1160, except as provided in OAR 837-12-1100.

(2) The types of violations are:

(a) Least — type I;

(b) Minimal — type II;

(c) Moderate — type III;

(d) Severe — type IV.

(3) The violation instance is determined based on the number of times a person has committed a violation. *Table 2 is a guideline for penalty assessments. Also refer to OAR 837-12-1130 through 837-12-1160. Table not included. See ED. NOTE.

[ED. NOTE: Tables referenced are available from the agency.]
Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 8-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1060
Issuance of Civil Penalty Citation and Forwarding to the Office of State Fire Marshal

(1) Local fire authority, pursuant to ORS 476.060, has the authority to issue civil penalty citations for violation of ORS 480.111 through 480.165 and OAR chapter 837, division 12.

(2) A citation may impose a penalty or provide a warning (OAR 837-12-1050, Table 2).

(3) The citation must be forwarded to the Office of State Fire Marshal within ten days of issuance. Where possible, each citation may be accompanied by a copy of the issuing authority's written report, inspection sheets, Fire District Property Report (or evidence receipt — Form #920-021-06) or any other forms that are completed during the process of issuing citations.

(4) The Office of State Fire Marshal will issue a notice of civil penalty based upon the information contained in the citation and any accompanying documentation.

[ED. NOTE: Tables and Forms referenced are available from the agency.]
Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1070
Hearings

(1) Any person may request a hearing regarding the assessment of a civil penalty.

(2) Hearings requests must be filed at the Salem Office of State Fire Marshal within 20 days from the date of service of the notice of civil penalty.

(3) Any person who requests a hearing is entitled to a hearing.

(4) The hearing process may include:

(a) An informal conference to discuss if there is a basis for informal disposition of a civil penalty by stipulation, agreed settlement, or other means;

(b) A formal hearing before a hearings officer where the laws, rules, and evidence are presented, considered, and a proposed opinion and order issued.

(5) The formal hearing must be conducted as a contested case hearing according to the provision of the Administrative Procedures Act (APA) ORS 183.413 to 183.470.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1080
Informal Conference

1) The Office of State Fire Marshal will provide an opportunity for a person to informally discuss a civil penalty assessed against them.

(2) An informal conference may be requested prior to a request for a formal hearing; however, a formal hearing must be requested within 20 days of the date of service of the notice of civil penalty.

(3) The request for an informal conference may be in any form; and

(a) Must be addressed to the Office of State Fire Marshal; and

(b) Must clearly state the subject to be discussed.

(4) An informal conference concerning civil penalties may not extend the 20 days allowed for filing a formal hearing request.

(5) If the parties agree, an informal conference may be held by telephone.

(6) As the result of an informal conference, the State Fire Marshal may, for good cause, amend, withdraw, or reduce a civil penalty. Such action is done in accordance with the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1090
Formal Hearing

(1) A person may request a formal hearing at any time before or after an informal conference, as long as the 20 day period for requesting a hearing has not lapsed.

(2) The Office of State Fire Marshal will arrange for a hearings officer to conduct the formal hearing.

(3) The Office of State Fire Marshal will set a date, time, and location for the formal hearing.

(4) The Office of State Fire Marshal will notify, by letter, the person requesting the hearing (or their designated representative) of the date, time, location, and the hearings officer conducting the formal hearing.

(5) The hearings officer will hear the case and render a proposed opinion and order, including recommended findings of fact and conclusions of law, according to the Administrative Procedures Act (APA), ORS 183.025 to 183.725.

(6) The formal hearing will be conducted as follows:

(a) The hearings officer will act as an impartial third party;

(b) It is not necessary for the person that requested the hearing to be represented by legal counsel;

(c) The Office of State Fire Marshal may or may not elect to be represented by legal counsel;

(d) Testimony must be taken under oath;

(e) All evidence of a type commonly relied upon by a reasonably prudent person in the conduct of their serious affairs is admissible;

(f) Hearsay evidence is admissible if it meets statutory standards for being reliable and trustworthy.

(7) The proposed opinion and order must be reviewed by the State Fire Marshal and, if accepted, finalized and issued as a final order.

NOTE: Final orders must be forwarded to the authority issuing the citation within ten days of signing of the final order.
tion within ten days of signing of the Final Order.
Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1100
Penalty Adjustments

(1) The assessment or adjustment of penalties for amounts other than those set by OAR 837-12-1050 may be done only by the State Fire Marshal through a hearings process either formally or informally.

(2) The assessment of penalties not in conformance with OAR 837-12-1050 may be made only after considering:

(a) The gravity and magnitude of the violation;

(b) The person's previous record;

(c) Such other considerations as the State Fire Marshal may consider appropriate.

(3) During a formal hearing or informal conference, the Office of State Fire Marshal may modify or adjust the citation, cited violations, or penalties assessed in order to meet the requirements of these rules and to ensure uniformity and consistency in their application statewide.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1110
Judicial Review

Judicial review of an agency order made after a hearing may be provided according to ORS 183.480 or 183.497.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-1

837-012-1120
Payment of Civil Penalty

(1) The penalty must be paid to the Office of State Fire Marshal within ten days after an order assessing a civil penalty becomes final by operation of law or on an appeal.

(2) Penalties not paid within ten days after the order becomes final may be recorded with the county clerk in any county in Oregon.

(3) Upon recording of the penalty, the county clerk must record the name of the person incurring the penalty and the amount of the penalty in the County Clerk Lien Record.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1130
Type I Violations

(1) Type I violations are subject to penalties ranging from $0 to $75 a day depending upon instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type I violations include but are not limited to:

(a) Failure to post "No Smoking" signs at the retail fireworks sales stand;

(b) Failure to provide required fire extinguishing equipment at the retail fireworks sales stand;

(c) Failure to maintain a clean, orderly area within 20 feet of the retail sales area;

(d) Failure to keep a copy of the retail sales permit at the retail sales stand while the stand is open;

(e) Possession of illegal fireworks worth less than $50.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1140
Type II Violations

(1) Type II violations are subject to penalties ranging from $25 to $150 a day depending upon instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type II violations include but are not limited to:

(a) Failure to have person 18 years of age or over inside the retail sales stand during business hours;

(b) Omission of the required wholesale permit number, address and name of the wholesaler on any fireworks shipped within or into the State of Oregon;

(c) Omission of the name of the retail sales permit holder and retail sales permit number on fireworks cartons, containers, cases, and associated paperwork purchased by the permit holder and shipped within or into the State of Oregon;

(d) Possession of more than $50 but less than $100 worth of illegal fireworks;

(e) Discharge of less than $50 worth of illegal fireworks;

(f) Smoking or the ignition of fireworks within 100 feet of any fireworks stand.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1150
Type III Violations

(1) Type III violations are subject to penalties ranging from $75 to $250 a day depending upon instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type III violations include but are not limited to:

(a) Possession of $100 or more of illegal 1.4g fireworks;

(b) Sale of any amount of 1.4g fireworks without the necessary permits issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction;

(c) Sales of allowed fireworks to children less than 16 years of age;

(d) The purchase of fireworks by an Oregon Retail permit holder from an unlicensed wholesaler;

(e) Purchase of any amount of 1.4g fireworks without the necessary permits issued by the Office of State Fire Marshal or, where required, the local authority having jurisdiction;

(f) Manufacturing or altering any fireworks;

(g) Storage of any amount of 1.3g fireworks without the necessary permits issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction;

(h) Use of fireworks in a manner that presents a danger to life or property.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 8-2000(Temp), f. 6-5-00, cert. ef. 6-5-00 thru 12-1-00; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

837-012-1160
Type IV Violations

(1) Type IV violations are subject to penalties ranging from $125 to $500 a day depending upon instance and in accordance with OAR 837-12-1050(3).

(2) Examples of Type IV violations include but are not limited to:

(a) Possession of $50 or more of 1.3g fireworks without the necessary permits issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction;

(b) Conducting a fireworks display without the necessary permits or pyrotechnician certification issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction

(c) Purchase of any amount of 1.3g fireworks without the necessary permits issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction;

(d) Conducting the sale of any amount of 1.3g fireworks without the necessary permits issued by the Office of State Fire Marshal and, where required, the local authority having jurisdiction;

(e) Conducting a fireworks display using illegal or unauthorized fireworks;

(f) Intentional or indiscriminate use of fireworks which injure someone or cause more than $250 in property damage;

(g) Wholesale sales of fireworks without an Oregon wholesale permit;

(h) Storage of fireworks by a wholesaler in an unapproved location.

Stat. Auth.: ORS 183.090 & 480.110 - 480.165
Stats. Implemented: ORS 480.110 - 480.165
Hist.: FM 3-1993, f. & cert. ef. 6-10-93; OSFM 1-2001, f. & cert. ef. 1-23-01; OSFM 3-2014, f. & cert. ef. 7-1-14; OSFM 2-2015, f. 12-22-15, cert. ef. 1-1-16

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Department of Transportation
Chapter 731

Rule Caption: Procedures for grants under the Connect Oregon program
Adm. Order No.: DOT 3-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 12-17-15
Notice Publication Date: 11-1-2014
Rules Amended: 731-035-0010, 731-035-0020, 731-035-0030, 731-035-0040, 731-035-0050, 731-035-0060, 731-035-0070, 731-035-0080
Subject: These amendments implement 2015 HB 2274 and HB 5030 by adding language specifying bicycle and pedestrian projects as eligible projects, revising the name from Multimodal Fund to Connect Oregon Fund, increasing required match to 30 percent and moving Columbia County to Connect Oregon Region 2. The amendments also revise the project considerations to add useful life, adjust final review committee membership eligibility and implement changes regarding applicant eligibility related to applicable tax liability.
Rules Coordinator: Lauri Kunze—(503) 986-3171

731-035-0010
Purpose

ORS 367.080 to 367.086 creates the Connect Oregon Fund, hereinafter "ConnectOregon" Fund, allowing for the issuance of lottery bonds for the purpose of financing grants to fund Transportation Projects that involve air, marine, rail, public transit, or bicycle and pedestrian modes. The purpose of division 35 rules is to establish the ConnectOregon Fund Program.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 6-2013, f. & cert. ef. 12-20-13; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0020
Definitions

For the purposes of division 35 rules, the following terms have the following definitions, unless the context clearly indicates otherwise:

(1) "Agreement" means a legally binding contract between the Department and Recipient that contains the terms and conditions under which the Department is providing funds from the ConnectOregon Fund for an Approved Project.

(2) "Applicant" means a Person or Public Body that applies for funds from the ConnectOregon Fund.

(3) "Approved Project" means a Project that the Commission has selected to receive funding through either a grant or loan from the ConnectOregon Fund.

(4) "Area Commissions on Transportation" means advisory bodies chartered by the Oregon Transportation Commission (OTC) through the Policy on Formation and Operation of Area Commissions on Transportation (ACTs) approved by the OTC on June 18, 2003.

(5) "Aviation" is defined in ORS 836.005(5).

(6) "Bicycle" has the meaning given in ORS 801.150.

(7) "Oregon Bicycle and Pedestrian Advisory Committee" means the committee created in ORS 366.112.

(8) "Collateral" means real or personal property subject to a pledge, lien or security interest, and includes any property included in the definition of collateral in ORS 79.0102(1), and with respect to a Public Body, any real or personal property as defined in ORS 288.594.

(9) "Commission" means the Oregon Transportation Commission.

(10) "Department" means the Oregon Department of Transportation.

(11) "Director" means the Director of the Oregon Department of Transportation.

(12) "Department of Aviation" means the Oregon Department of Aviation (ODA).

(13) "Oregon Business Development Department" means the department defined in ORS 285A.070.

(14) "Freight Advisory Committee" means the committee created in ORS 366.212.

(15) "Person" has the meaning given in ORS 174.100(5), limited to those Persons that are registered with the Oregon Secretary of State to conduct business within the State of Oregon.

(16) "Program" means the ConnectOregon Fund Program established by division 35 rules to administer the ConnectOregon Fund.

(17) "Program Funds" means the money appropriated by the Legislature to the ConnectOregon Fund. These funds may be used as either grants or loans to eligible projects.

(18) "Public Body" is defined in ORS 174.109.

(19) "Public Transit Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs related to public transportation in Oregon.

(20) "Rail Advisory Committee" means a committee appointed by the Director and approved by the Commission to advise the Department on issues, policies and programs that affect rail freight and rail passenger facilities and services in Oregon.

(21) "Recipient" means an Applicant that enters into Agreement with the Department to receive funds from the ConnectOregon Fund.

(22) "Recipient's Total Project Costs" means the funds received from the ConnectOregon Fund program plus the matching funds required under Oregon Administrative Rule 731-035-0070(3)(a)(B) and any additional funds, if applicable.

(23) "Receive Federal Grants" means execution of a grant agreement with any agency of the United States.

(24) "Regional Solutions Team" means the teams created in Chapter 82 Oregon Laws 2014 (Enrolled HB 4015).

(25) "State Aviation Board" means the board created in ORS 835.102.

(26) "Transportation Project" or "project" is defined in ORS 367.080(1)(b). A ConnectOregon Program Project must involve one or more of the following modes of transportation: air, marine, rail, public transit or bicycle and pedestrian. The term includes, but is not limited to, a project for capital infrastructure and other projects that facilitate the transportation of materials, animals, or people. A transportation project does not include costs associated with operating expenses or the purchase of bicycles.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0030
Application Submission Periods

(1) The Department will announce periods for submitting applications for funding from the ConnectOregon Fund.

(2) Project applications will be reviewed for compliance with the requirements in OAR 731-035-0040 and as prescribed in 731-035-0050.

(3) Applications not funded may be resubmitted during subsequent application submission periods announced by the Department.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0040
Application Requirements

Applicants interested in receiving funds from the ConnectOregon Fund must submit a written application to the Department. The application must be in a format prescribed by the Department and contain or be accompanied by such information as the Department may require, including the

expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, documented desire for and support of the Project from the businesses and entities to be served by the Project, and documentation to validate the Project schedule and costs.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0050
Application Review

(1) The Department will review applications received to determine whether the application is complete and the Applicant and the Project are eligible for Program Funds.

(2) Applicants that meet all of the following criteria are eligible:

(a) The Applicant is a Public Body or Person within the state of Oregon.

(b) The Applicant, if applicable, is current on all state and local taxes, fees and assessments.

(c) The Applicant has sufficient management and financial capacity to complete the Project including without limitation the ability to contribute 30 percent of the Recipient's Total Project Cost.

(d) The Applicant is not a railroad owner that operates a railroad wholly within the boundaries of Benton and Linn counties that:

(A) Charges landowners a fee for an easement to cross a railroad that is necessary for the landowner to access the landowner's property; and

(B) Has imposed or collected fees for such an easement on or after January 1, 2013.

(3) Projects that meet all of the following criteria are eligible:

(a) The project is a Transportation Project.

(b) The Project will assist in developing a multimodal transportation system that supports state and local government efforts to attract new businesses to Oregon or that keeps and encourages expansion of existing businesses.

(c) The Project is eligible for funding with lottery bond proceeds under the Oregon Constitution and laws of the State of Oregon.

(d) The Project will not require or rely upon continuing subsidies from the Department for ongoing operations.

(e) The Project is not a public road or other project that is eligible for funding from revenues described in section 3a, Article IX of the Oregon Constitution, i.e. the State Highway Trust Fund.

(f) The Project is feasible, including the estimated cost of the Project, the expected results from the proposed Project for each of the considerations as prescribed in 731-035-0060, the Project schedule, and all applicable and required permits may be obtained within the Project schedule.

(4) If an Applicant or Project is not eligible for Program Funds, the Department will, within 15 days of determination:

(a) Specify the additional information the Applicant must provide to establish eligibility; or

(b) Notify the Applicant that the application request is ineligible.

(5) The Department may deem an application ineligible if the Applicant fails to meet eligibility requirements of subsections (2) and (3) of this rule, or fails to provide requested information in writing by the date required by the Department, or if the application contains false or misleading information.

(6) The Director will consider protests of the eligibility determination for the Program. Only the Applicant may protest. Protests must be submitted in writing to the Director within 15 days of the event or action that is being protested. The Director's decision is final.

(7) The Department will make all eligible applications available for review, as applicable under OAR 731-035-0060, to the State Aviation Board, the Freight Advisory Committee, the Public Transit Advisory Committee, the Rail Advisory Committee, the Oregon Business Development Department, the Oregon Bicycle and Pedestrian Advisory Committee, and any other transportation stakeholder and advocate entities identified by the Commission to provide recommendations on Project funding including the Area Commissions on Transportation.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005
Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0060
Project Selection

(1) The Commission will select Projects to be funded through a grant with moneys in the ConnectOregon Fund.

(2) Prior to selecting Projects to be funded with moneys in the ConnectOregon Fund, the Commission shall solicit recommendations from:

(a) The State Aviation Board for aviation Transportation Projects.

(b) The Freight Advisory Committee for freight Transportation Projects.

(c) The Public Transit Advisory Committee for public transit Transportation Projects.

(d) The Rail Advisory Committee for rail Transportation Projects.

(e) The Oregon Business Development Department for marine transportation projects.

(f) The Oregon Bicycle and Pedestrian Advisory Committee.

(3) Prior to selecting Projects to be funded with moneys in the ConnectOregon Fund, the Commission may solicit recommendations from transportation stakeholder and advocate entities not otherwise specified in section (2) of this rule including the Area Commissions on Transportation and Regional Solutions Teams.

(4) On behalf of the Commission, the Department shall solicit recommendations from the committees and entities in section (2) of this rule before soliciting recommendations from entities in section (3) of this rule. The Department shall provide the recommendations from the committees and entities in section (2) of this rule to the entities in section (3) of this rule.

(5) The Director, in consultation with committees and entities in section (2) of this rule and the Area Commissions on Transportation, shall appoint a Final Review Committee that includes representatives from each of the committees and entities in section (2) and section (3) of this rule. Persons are not eligible for Final Review Committee membership if the person: (a) represents an entity that submitted an application for a ConnectOregon Fund grant that is being considered for funding by the Final Review Committee; or (2) has a direct financial interest in an application that is being considered for funding by the Final Review Committee. Following the receipt of recommendations from the entities in section (3) of this rule and prior to selecting Projects to be funded with moneys in the ConnectOregon Fund, the Commission shall solicit a Final Recommendation Report from the Final Review Committee. The Department shall provide the Final Review Committee a list of recommendations from all committees and entities in section (2) and section (3) of this rule. The list shall include the evaluation results and recommendations from each of the committees and entities in sections (2) and (3) of this rule. The Final Review Committee shall provide the Commission its Final Recommendation Report of projects to be funded with moneys in the ConnectOregon Fund listing in priority order eligible Projects together with a reasonable number of alternate Projects in priority order.

(6) The Department shall determine the organizational guidance for the committees' and entities' processes and protocols.

(7) The committees and entities in sections (2), (3) and (5) of this rule shall follow the organizational guidance determined by the Department under section (6) of this rule.

(8) The Commission will consider all of the following in its determination of eligible Projects to approve for receipt of funds from the ConnectOregon Fund:

(a) Whether a proposed Project reduces transportation costs for Oregon businesses or improves access to jobs and sources of labor.

(b) Whether a proposed transportation project results in an economic benefit to this state.

(c) Whether a proposed Project is a critical link connecting elements of Oregon's transportation system that will measurably improve utilization and efficiency of the system.

(d) How much of the cost of a proposed Project can be borne by the Applicant for the grant from any source other than the ConnectOregon Fund.

(e) Whether a proposed transportation project is ready for construction, or if the Project does not involve construction, whether the Project is ready for implementation.

(f) Whether a proposed transportation project has a useful life expectancy that offers maximum benefit to the state; and

(g) Whether a Project leverages other investment and public benefits from the state, other government units, or private business.

(h) Whether the Applicant proposes to contribute more than the minimum 30 percent of the eligible grant Project costs established in OAR 731-035-0070(4).

(9) To award funds that become available due to loan repayment from a previous Project, completion of an approved Project with less funds than the amount awarded, earnings on moneys held in the ConnectOregon Fund, withdrawal, termination as prescribed in OAR 731-035-0070(1) or sanction as prescribed in 731-035-0080(5) of an approved Project the Commission shall select projects for grants in accordance with ORS 367.084 solely, notwithstanding any other provision of division 35 rules.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005

Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0070
Grant Awards and Match

(1) Once a project is selected by the Commission under 731-035-0060 the amount of monies identified by the Commission is considered allocated from the Fund to a Recipient. If an Agreement with a Recipient has not been executed within 180 days from such date, the grant is deemed terminated, and the funds may be reassigned by the Commission as prescribed in 731-035-0060(9).

(2) To the extent that proposed Projects meet the qualifications established in OAR 731-035-0050 and 731-035-0060, at least 10 percent of the total net proceeds of the lottery bonds will be allocated to each of the five regions as specified in Chapter 624, OL 2011. The regions consist of the following counties:

(a) Region one consists of Clackamas, Hood River, Multnomah and Washington Counties;

(b) Region two consists of Benton, Clatsop, Columbia, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill Counties;

(c) Region three consists of Coos, Curry, Douglas, Jackson and Josephine Counties;

(d) Region four consists of Crook, Deschutes, Gilliam, Jefferson, Klamath, Lake, Sherman, Wasco and Wheeler Counties; and

(e) Region five consists of Baker, Grant, Harney, Malheur, Morrow, Umatilla, Union and Wallowa Counties.

(3) Grants will be awarded only when there are sufficient funds available in the ConnectOregon Fund to cover the costs of the grants.

(a) Grant awards must not exceed 70 percent of the total eligible Project costs.

(b) Applicant matching funds must be provided by the Applicant in the form of monetary outlay for elements necessary for implementation of the Project, including land, excavation, permits, engineering, payroll, special equipment purchase or rental, and cover at least 30 percent of the eligible Project costs.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005

Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013

Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 3-2009, f. & cert. ef. 11-17-09; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 4-2010, f. & cert. ef. 12-22-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 3-2015, f. & cert. ef. 12-17-15

731-035-0080
Project Administration

(1) The Department will administer all Projects.

(2) The Department and an Applicant of an Approved Project will execute an Agreement prior to the disbursal of Program Funds for an Approved Project. The Agreement is effective on the date all required signatures are obtained or at such later date as specified in the Agreement. Applicant will not be reimbursed for any funds expended prior to the execution of the Agreement except for a Director-granted waiver for emergency situations.

(3) The Agreement will contain provisions and requirements, including but not limited to:

(a) Documentation of the projected costs for an Approved Project must be submitted to the Department prior to the disbursal of Program Funds.

(b) Except as identified in subsection (2) of this rule, only Project costs incurred on or after the effective date of the Agreement are eligible for grant funds.

(c) Disbursal of Program Funds for grants and loans will be paid on a reimbursement basis and will not exceed one disbursal per month. The Director or the OTC may make exceptions to the reimbursement basis if the Department finds that the applicant would have difficulty meeting this requirement.

(d) Five percent (5%) of funds received from the ConnectOregon Fund will be withheld from each reimbursement request and shall be released to grant recipient as the following condition are met:

(A) Eighty percent (80%) of funds withheld shall be released to recipient upon final project acceptance by the Department.

(B) Twenty percent (20%) of funds withheld shall be released upon receipt and approval by the Department of a project report that, at a minimum, describes project performance measures and jobs retained or created as a result of the project within 18 months of project acceptance by the Department.

(e) Upon request, a Recipient must provide the Department with a copy of documents, studies, reports and materials developed during the Project, including a written report on the activities or results of the Project and any other information that may be reasonably requested by the Department.

(f) Recipients must separately account for all moneys received from the ConnectOregon Fund in Project accounts in accordance with Generally Accepted Accounting Principles.

(g) Any Program Funds disbursed but not used for an Approved Project must be returned to the Department.

(h) Amendments to Agreements are required to change an Approved Project's cost, scope, objectives or timeframe.

(i) Recipients must covenant, represent and agree to use Project funds in a manner that will not adversely affect the tax-exempt status of any bonds issued under the Program.

(j) Recipients, if applicable, must covenant, represent and agree to remain current on all state and local taxes, fees and assessments for the useful life of the Project as prescribed in the Agreement.

(4) The Department may invoke sanctions against a Recipient that fails to comply with the requirements governing the Program. The Department will not impose sanctions until the Recipient has been notified in writing of such failure to comply with the Program requirements as specified in this Rule and has been given a reasonable time to respond and correct the deficiencies noted. The following circumstances may warrant sanctions:

(a) Work on the Approved Project has not been substantially initiated within six months of the effective date of the Agreement;

(b) State statutory requirements have not been met;

(c) There is a significant deviation from the terms and conditions of the Agreement; or

(d) The Department finds that significant corrective actions are necessary to protect the integrity of the Program Funds for the Approved Project and those corrective actions are not, or will not be, made within a reasonable time.

(e) The Department finds that a railroad operating wholly within Benton and Linn counties has charged landowners an easement fee on or after January 1, 2013 to access a landowner's property.

(f) Applicant fails to submit a project report as described in OAR 731-035-0080(3)(d)(B).

(g) The Department finds that a Recipient is not current on all applicable state and local taxes, fees and assessments during the term of the Agreement.

(5) The Department may impose one or more of the following sanctions:

(a) Revoke an existing award.

(b) Withhold unexpended Program Funds.

(c) Require return of unexpended Program Funds or repayment of expended Program Funds.

(d) Bar the Applicant from applying for future assistance.

(e) Other remedies that may be incorporated into grant Agreements.

(6) The remedies set forth in this rule are cumulative, are not exclusive, and are in addition to any other rights and remedies provided by law or under the agreement.

(7) The Director will consider protests of the funding and Project administration decisions for the Program. Only the Applicant or Recipient may protest. Protests must be submitted in writing to the Director within 15 days of the event or action that is being protested. The Director's decision is final. Jurisdiction for review of the Director's decision is in the circuit court for Marion County pursuant to ORS 183.484.

(8) The Director may waive non-statutory requirements of this Program if it is demonstrated such a waiver would serve to further the goals and objectives of the Program.

Stat. Auth.: ORS 184.616, 184.619, 367.082, Ch. 816 OL 2005

Stats. Implemented: ORS 367.080 – 367.086, Ch. 816 OL 2005, Ch. 723, Ch. 765, & Ch. 786 OL 2013
Hist.: DOT 8-2005(Temp), f. 11-17-05, cert. ef. 11-21-05 thru 5-19-06; DOT 3-2006, f. & cert. ef. 1-24-06; DOT 5-2007, f. & cert. ef. 11-15-07; DOT 2-2010, f. & cert. ef. 7-30-10; DOT 5-2011, f. & cert. ef. 12-22-11; DOT 6-2013, f. & cert. ef. 12-20-13; DOT 3-2015, f. & cert. ef. 12-17-15

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Department of Transportation,
Driver and Motor Vehicle Services Division
Chapter 735

Rule Caption: Proof of School Attendance, Completion or Exemption Needed for Driving Privileges if Under 18
Adm. Order No.: DMV 10-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 735-062-0035
Subject: Chapter 716, Oregon Laws 2015 (HB 2465) amends ORS 807.066 so that a parent or legal guardian of an applicant under 18 years of age can certify that the applicant attends school, rather than the applicant needing to provide a form that must be completed by a representative at the school. Many teens apply for driving privileges during the summer months and often are unable to complete the process as there is no one at the school available to provide the necessary proof of school attendance. Allowing a parent or legal guardian to certify that the applicant is attending school is much more efficient for both DMV and the applicant. However, if DMV suspends the driving privileges of a person under 18 years of age based on notice from a school that a student has withdrawn from school, DMV will not accept a certification from a parent or legal guardian to reinstate driving privileges. Because of the change in ORS 807.066 DMV has amended OAR 735-062-0035 to align with statute.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0035
Proof of School Attendance, Completion or Exemption

(1) DMV may not issue a driving privilege to an applicant under 18 years of age unless the applicant provides proof of graduation from high school, proof of receipt of a General Education Development (GED) certificate, or a certification from a parent or legal guardian that the applicant is attending school or is exempt from school attendance requirements.

(2) The following are proof of high school graduation:

(a) The applicant's high school diploma or a copy thereof;

(b) A certified copy of the applicant's high school transcript showing that the applicant has graduated; or

(c) A letter on school letterhead and signed by the principal or the principal's designee stating the applicant has graduated from high school.

(3) The following are proof of receipt of a GED certificate:

(a) The applicant's GED certificate or copy thereof; or

(b) A letter from the Department of Community Colleges and Workforce Development, on agency letterhead and signed by an authorized representative, stating that the applicant has received a GED certificate.

(4) An applicant under 18 years of age who is married or is emancipated may certify meeting school attendance requirements without needing the signature of a parent or legal guardian.

(5) DMV cannot reinstate driving privileges that have been suspended for withdrawal from school unless the person provides proof of graduation from high school as provided in section (2) of this rule, proof of receipt of a GED as provided in section (3) of this rule, or provides one of the following:

(a) The Statement of Enrollment form (DMV form #735-7185) signed by the principal or designee of the principal of the secondary school attended by the applicant.

(b) The Statement of Enrollment form (DMV form #735-7185) signed by an authorized representative of a community college attended by the applicant showing that the applicant is making satisfactory progress toward a GED certificate.

(c) The Statement of Enrollment form (DMV form #735-7185) signed by the authorized representative of a community college attended by the applicant showing that the applicant is making satisfactory progress toward a high school diploma.

(d) The Statement of Enrollment form (DMV form #735-7185) signed by the authorized representative of the education service district or school district having jurisdiction over the area of the applicant's residence showing that the applicant is being taught by a private teacher or parent in compliance with ORS 339.035.

(e) A statement signed by the applicant, along with any supporting documentation, describing why the applicant cannot attend school due to circumstances beyond the applicant's control. Based upon the information submitted, DMV will determine whether or not the applicant is exempt from school attendance. This determination is only for the purpose of issuing driving privileges and does not exempt the applicant from any requirement to attend school.

(f) The Statement of Enrollment form (DMV form #735-7185) signed by the authorized representative of the education service district or school district having jurisdiction over the area of the applicant's residence showing that the applicant has been granted an exemption from school attendance under ORS 339.030(2).

(6) DMV will waive the reinstatement fee for a person whose driving privileges were suspended under ORS 809.423(3) if the person provides:

(a) Proof of high school graduation as provided in section (2) of this rule; or

(b) Proof of a GED certificate as provided in section (3) of this rule.

[ED. NOTE: Forms referenced are available from the agency.]
Stat. Auth.: ORS 184.616, 184.619 & 807.066
Stats. Implemented: ORS 807.066
Hist.: DMV 6-2000(Temp), f. 8-10-00, cert. ef. 9-1-00 thru 2-27-01; DMV 13-2000, f. & cert. ef. 10-13-00; DMV 26-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 10-2015, f. 12-17-15, cert. ef. 1-1-16

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Rule Caption: Requirements for Proof of SSN; Replacement Driver License; License without Photograph
Adm. Order No.: DMV 11-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 735-062-0005, 735-062-0110, 735-062-0120
Subject: Chapter 455, Oregon Laws 2015 (SB 494) amends ORS 807.110 to authorize DMV to issue a driver license without a photograph to a person in the military who is stationed outside of Oregon and does not have a photograph on file with DMV that meets the requirements to issue a license using the previous photo. DMV has amended 735-062-0120 to coincide with the law change.

DMV currently issues replacement driver licenses or identification cards using the previous photo on file. DMV has amended OAR 735-062-0110 to allow a replacement driver license, driver permit or identification card with a new photograph if the person realizes that at the time of the next renewal that he or she will be outside of Oregon and will need an updated photograph at the time to qualify for a renewal license using the previous photo in accordance with OAR 735-062-0125. DMV further amended OAR 735-062-0110 to issue a replacement driver license, driver permit or identification card with a photograph when a person between the ages of 21 and 27 requests a replacement. Such a replacement will update the driver license, driver permit or identification card so that the wording "Under 21 until" or "Under 18 until" will no longer be present, plus the photograph will be contemporary. This change will make certain that a photograph taken when the person was a minor is not used on a license or identification card issued when the person is an adult. DMV will issue a replacement driver license, driver permit or identification card with a new photograph when a person is changing his or her name as part of transitioning to a different gender. There are also a few situations where a person may need a new photograph on a replacement driver license, driver permit or identification card when a suspension is rescinded or reinstated and those are specified in the amendments to OAR 735-062-0110.

DMV has amended OAR 735-062-0005 after learning that the Social Security Administration does not issue a letter stating that a person is not eligible for a social security number, and to specify that DMV will not accept proof of ineligibility for a social security number from a person who presents proof of being a citizen or lawful per-

manent resident of the United States or proof of being legally present with authorization for employment in the United States.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-062-0005
SSN — Requirements for Collection and Verification of SSN or Proof of Ineligibility for a SSN

(1) When a person who is eligible for a SSN applies for any original, renewal or replacement driver license, driver permit or identification card, the person must provide his or her SSN on the application form.

(2) A person who applies for any original, renewal or replacement non-commercial driver license or driver permit or identification card and claims to be ineligible for a SSN must provide proof that he or she is not eligible for a SSN. A person may prove his or her ineligibility for a SSN by presenting documents issued by the Department of Homeland Security or other federal agencies, which demonstrate that the person is not eligible to be assigned a SSN by the SSA. The person must also certify that he or she is ineligible for a SSN.

(3) DMV will not accept proof of ineligibility for a SSN from any applicant who presents proof of being a citizen or lawful permanent resident of the United States or proof of being legally present with authorization for employment in the United States.

(4) When an applicant provides a SSN as required by section (1) of this rule, DMV will submit the SSN to the SSA for verification, unless the applicant is a citizen or permanent legal resident of the United States whose SSN was previously verified under this rule. An applicant's SSN is verified when SSA notifies DMV that the applicant's SSN, name and date of birth are confirmed by SSA's records.

(5) Notwithstanding section (4) of this rule a SSN is not considered verified if the SSA notifies DMV that the SSN provided is inactive, invalid, impossible, not verifiable for other reasons or if there is a system error.

(6) Before issuing a temporary applicant permit as provided in OAR 735-062-0032 or 735-062-0033, DMV will require proof of the person's SSN if the SSN provided on the application is not verified as described in section (4) of this rule. Proof that the SSN is the one assigned to the person by the SSA may include, but is not limited to, one or more of the following documents:

(a) Social Security Card or other SSA documentation;

(b) Income tax form filed with the Internal Revenue Service or a state tax agency;

(c) Employment document;

(d) Military document (DD214); or

(e) Any document containing full SSN acceptable as proof of legal presence or identity and date of birth as listed in OAR 735-062-0015 or 735-062-0020.

(7) DMV will not issue, renew or replace any driver license, driver permit or identification card, except as provided in OAR 735-062-0032 and 735-062-0033, unless:

(a) The applicant has proved his or her legal presence in the United States as provided in OAR 735-062-0015, and DMV has verified the applicant's SSN as provided in section (3) of this rule; or

(b) If the applicant claims to be ineligible for a SSN, the applicant has proved his or her ineligibility for a SSN as provided in section (2) of this rule and his or her legal presence in the United States as provided in OAR 735-062-0015. DMV will not issue, renew or replace a commercial driver license or commercial driver permit to an applicant who claims to be ineligible for a SSN.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.050
Stats. Implemented: ORS 802.200, 807.021, 807.022 & 807.050
Hist.: MV 6-1990, f. & cert. ef. 4-2-90; DMV 11-1995, f. & cert. ef. 11-15-95; DMV 19-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 27-2008, f. 12-15-08, cert. ef. 1-1-09; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 14-2014, f. & cert. ef. 12-1-14; DMV 11-2015, f. 12-17-15, cert. ef. 1-1-16

735-062-0110
Replacement Driver Permits, Driver Licenses, and Identification Cards

(1) DMV will issue a replacement driver permit, driver license or identification card for one of the reasons listed in section (2) of this rule if the applicant meets the requirements set forth in ORS 807.160 and this rule and the person is eligible for the driver license, driver permit or identification card.

(2) DMV may issue a replacement driver license, driver permit or identification card when the applicant:

(a) Furnishes proof satisfactory to the department of the loss, destruction or mutilation of the person's driver license, driver permit or identification card.

(b) Changes a residence address or mailing address from the address noted on the person's driver license, driver permit or identification card or adds a mailing address.

(c) Is a corrections officer, eligible employee, or household member of a corrections officer or eligible employee killed in the line of duty who has requested, in accordance with ORS 802.250 or 802.253, that department records show the address of the corrections officer's or eligible employee's employer.

(d) Changes names from the name noted on the person's driver license, driver permit or identification card.

(e) Is applying for or is required to add or remove a restriction on the person's driver license or driver permit.

(f) Is applying for or is required to add or remove an endorsement other than a motorcycle or farm endorsement on the person's driver license or driver permit.

(g) Requests that a veteran designation be added to or removed from his or her driver license, driver permit or identification card. To add a veteran designation, the applicant must provide proof the person is a veteran as set forth in OAR 735-062-0012(2).

(h) Furnishes proof satisfactory to the department or the department determines that the department made an error when issuing the person's driver license, driver permit or identification card.

(i) Surrenders the person's driver license that was issued without a photograph under OAR 735-062-0120 and requests a driver license with a photograph.

(j) Surrenders a driver license, driver permit or identification card to the department following a suspension and the person becomes eligible for driving privileges or an identification card.

(k) Has a driver license, driver permit or identification card that was confiscated by a police officer, a court or other agency and the person is eligible for a driver license, driver permit or an identification card.

(L) Requests to change any physical description, notation, photograph or signature on the driver license, driver permit, or identification card or to add or delete an anatomical donor designation.

(m) Has not received his or her driver license, driver permit or identification card in the mail and the applicant does not meet the requirements under OAR 735-062-0092(3) for a reissued driver license, driver permit or identification card.

(n) Has a reason satisfactory to DMV to be issued a driver license, driver permit or identification card with a different distinguishing number than the one being replaced.

(o) Requests a downgrade from one license class to another (e.g., a Commercial Driver License to a non-commercial Class C driver license).

(p) Requests restoration of a Commercial Driver License following a suspension of the Commercial Driver License or a downgrade to non-commercial driving privileges and the person is eligible for commercial driving privileges.

(q) Requests to correct information on the driver license, driver permit or identification card that was provided to DMV in error.

(3) An applicant for a replacement driver license, driver permit, or identification card must:

(a) Provide a verifiable SSN, or proof that the person is not eligible for a SSN, as provided in OAR 735-062-0005(2);

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Submit to the collection of biometric data for the purpose of establishing identity as provided in ORS 807.024 and OAR 735-062-0016; and

(d) Provide proof of identity and date of birth as provided in OAR 735-062-0020.

(4) An applicant for a replacement commercial driver license or commercial instruction permit must:

(a) Certify driving type; and

(b) Provide proof of medical qualification as described in OAR 735-063-0060.

(5) An applicant for a replacement driver license, driver permit, or identification card that includes a change of residence address must also present to DMV one of the proofs of residence address listed in OAR 735-062-0030 that shows the person's current residence address. Current residence address is the address where the person actually lives and DMV will include that address on the license, permit, or identification card issued.

(6) An applicant for a replacement driver license, driver permit, or identification card must surrender the license, driver permit or identification card replaced to DMV, if possible.

(7) Before issuing a replacement driver license or driver permit, DMV will make an inquiry to the National Driver Register/Problem Driver Pointer System (NDR/PDPS) or the Commercial Driver License Information System (CDLIS), or both, to determine if the applicant's driving privileges are suspended, revoked, canceled or otherwise not valid in any other jurisdiction. Before processing a replacement commercial driver license or commercial driver permit, DMV will make an inquiry to CDLIS to determine if the applicant has been issued a CDL in another jurisdiction.

(8) If the applicant's driving privileges are suspended, revoked, canceled or otherwise invalid in any other jurisdiction, DMV will not issue a replacement driver license or driver permit until the applicant submits a clearance letter that complies with OAR 735-062-0160 or a DMV inquiry to the NDR/PDPS or CDLIS, or both, shows that the applicant's driving privileges are reinstated or otherwise valid in the other jurisdiction.

(9) Notwithstanding section (8) of this rule, DMV will issue a replacement license or driver permit to an applicant whose driving privileges are suspended, revoked, canceled or otherwise invalid if the only remaining reinstatement requirement in the other jurisdiction is proof of future financial responsibility.

(10) Notwithstanding subsection (3)(c) of this rule, when an applicant applies for a replacement driver license, driver permit or identification card at a DMV office, DMV will issue the replacement driver license, driver permit or identification card using the applicant's previous photograph on file with DMV unless:

(a) The last photograph on file with DMV is older than nine years two months, or does not meet current quality standards for capturing a photograph as described in OAR 735-062-0016;

(b) The applicant requesting the replacement driver license, driver permit or identification card is between the ages of 21 and 27 and is not eligible for a renewal;

(c) The applicant is requesting the replacement driver license, driver permit or identification card because of a significant change in his or her physical appearance;

(d) The applicant is requesting the replacement driver license, driver permit or identification card because he or she is changing the gender designation on record with DMV or applicant is changing his or her name as part of transitioning to the desired gender;

(e) The applicant is requesting the replacement driver license, driver permit or identification card after a suspension imposed under ORS 809.310(3)(a) or 809.310(3)(b) or 809.415(5) has been rescinded or reinstated.

(f) The applicant:

(A) Will not be in this state for circumstances constituting "good cause" under OAR 735-062-0125 when the applicant's driver license, driver permit or identification card must be renewed; and

(B) Is applying for the replacement driver license, driver permit or identification card to update the applicant's photograph on file with DMV so he or she will be eligible for issuance of a Valid with Previous Photograph renewal as authorized under OAR 735-062-0125.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.021 & 807.160
Stats. Implemented: ORS 807.160, 807.021, 807.220, 807.230, 807.280 & 807.400
Hist.: MV 14-1987, f. 9-21-87, ef. 9-27-87; Administrative Renumbering 3-1988, Renumbered from 735-031-0013; DMV 24-2003, f. 12-15-03 cert. ef. 1-1-04; DMV 2-2005, f. 1-20-05, cert. ef. 1-31-05; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 1-2008(Temp), f. 1-18-08, cert. ef. 2-4-08 thru 8-1-08; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 24-2008, f. 9-11-08, cert. ef. 10-1-08; DMV 19-2010, f. 10-25-10, cert. ef. 1-1-11; DMV 1-2012, f. 1-27-12, cert. ef. 1-30-12; DMV 14-2014, f. & cert. ef. 12-1-14; DMV 11-2015, f. 12-17-15, cert. ef. 1-1-16

735-062-0120
Standards for Issuance of Driver's Licenses Without a Photograph

(1) DMV may, upon receipt of a written request, and for good cause, provide for issuance of a valid driver license without a photograph to any person qualified to hold an Oregon driver license:

(a) Who is a member of a religious denomination that prohibits photographing of its members because it is contrary to its religious tenets;

(b) Whose religious beliefs require the person to wear a head covering, clothing or similar material that partially or completely covers the person's face, preventing the person from being photographed as described in OAR 735-062-0016(3);

(c) Who has severe facial disfigurement; or

(d) Who is stationed outside of this state while in the active military service in the Armed Forces of the United States or the National Guard, and the department is unable to issue the driver license using the previous photo on file as provided under OAR 735-062-0125.

(2) In addition to satisfying the requirements of section (1), an applicant for issuance of a driver license under this rule must:

(a) Provide a verifiable SSN, or proof of ineligibility for a SSN, as provided in OAR 735-062-0005;

(b) Provide proof of legal presence as provided in OAR 735-062-0015;

(c) Provide proof of identity and date of birth as provided in OAR 735-062-0020; and

(d) Provide proof of residence address as provided in OAR 735-062-0030(1).

(3) An applicant applying for a replacement or renewed driver license under section (1)(d) of this rule must also provide proof of being a resident of or domiciled in Oregon as described in OAR 735-016-0040.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 807.110
Stats. Implemented: ORS 807.110
Hist.: MV 80, f. & ef. 10-4-77; MV 15-1986, f. 9-16-86, ef. 10-1-86; Administrative Renumbering 3-1988, Renumbered from 735-031-0038; DMV 21-2001, f. & cert. ef. 10-18-01; DMV 16-2005(Temp), f. & cert. ef. 6-17-05 thru 12-13-05; DMV 23-2005, f. & cert. ef. 11-18-05; DMV 16-2008, f. 6-23-08, cert. ef. 7-1-08; DMV 17-2010, f. & cert. ef. 9-27-10; DMV 16-2011, f. 12-22-11, cert. ef. 1-1-12; DMV 11-2015, f. 12-17-15, cert. ef. 1-1-16

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Rule Caption: Medical Exemption from IID; Test Violation as Part of a Negative Report from IID
Adm. Order No.: DMV 12-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 735-064-0070, 735-070-0080, 735-070-0082, 735-118-0000, 735-118-0050
Subject: Chapter 577, Oregon Laws 2015 (SB 397) places new requirements on providers of ignition interlock devices (IIDs) to submit negative reports to those specified in law or to provide a certificate of no negative report at certain times. A person with a requirement to have an IID installed will continue to have the requirement unless a certificate of no negative report for the period prescribed in law is received by DMV. Chapter 577, Oregon Laws 2015 authorizes DMV to define by rule a test violation that would be considered a negative report. The law also requires that DMV prescribe by rule what form the report and certificates will take. DMV has amended OAR 735-118-0000 to include definitions for tampering, unauthorized removal, lockout and test violation. DMV has amended OAR 735-118-0050 to designate when and on what form reports required by Chapter 577, Oregon Laws 2015 must be made and to specify what constitutes a "negative report."

DMV has amended 735-064-0070 to clarify that a person who is eligible for a hardship, probationary or hardship/probationary permit may need to install an IID if the requirement for the device is continuing indefinitely as the result of DMV not receiving the necessary report to end the requirement that the person has had no negative report for 90 consecutive days.

DMV also amended OAR 735-070-0080 and 735-070-0082 for two reasons: 1) To align those rules with the law changes and changes to OAR 735-118-0040 effective January 1, 2016; and 2) To indicate that when DMV or the court issues a medical exemption from the requirement to install an IID, that the granting of the exemption may be used to terminate the requirement at the end of the period specified in law.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-064-0070
Ignition Interlock Device (IID) Requirement for Issuance of Hardship, Probationary or Hardship/Probationary Permits

(1) When a person whose driving privileges are suspended or revoked applies for a hardship, probationary or hardship/probationary permit, DMV will require the applicant to install an ignition interlock device (IID) in any vehicle operated by the applicant if the applicant's driving record shows any of the following:

(a) A current suspension based on a conviction for DUII in an Oregon court;

(b) A current IID required:

(A) As a condition of a DUII Diversion Agreement;

(B) By ORS 813.602(1) or (2) following the end of a suspension or revocation of driving privileges based on a conviction for DUII or any

crime that carries a statutory minimum one, two or five year IID requirement; or

(C) As a result of DMV not receiving a IID Certification — No Negative Report (DMV form 735-7379) that would end the applicant's IID requirement.

(2) As a condition of a hardship, probationary or hardship/probationary permit, the IID must be installed, maintained and used in any vehicle the person operates for the duration of the person's IID requirement. The IID requirement may exceed the period the person's hardship, probationary or hardship/probationary permit is valid.

(3) When installation of an IID is required, DMV will not issue a hardship, probationary or hardship/probationary permit to the person until a provider submits an installation report form showing an approved device has been installed in each vehicle the person intends to operate during the permit period.

(4) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or a hardship/probationary permit to a person who has not installed an IID if the person will only operate a vehicle(s) owned or leased by his or her employer during the course and scope of the person's employment. For purposes of ORS 813.606, DMV will place a notation on the driving record and on the hardship, probationary or hardship/probationary permit issued to the person that the person's employer has been informed of the IID requirement. To qualify, DMV must receive:

(a) A letter on business letterhead, signed by the employer, stating that the employer has been informed of the IID requirement and that the person is required to operate the employer's vehicle(s) in the course and scope of employment; or

(b) An Employer IID Exemption, (DMV form 735-6874) submitted by the employer.

(5) For purposes of ORS 813.606, a person who is self-employed is not an employee and DMV will not place an employer IID notification notation on the person's driving record.

(6) Notwithstanding section (1) of this rule, DMV may issue a hardship, probationary or hardship/probationary permit to a person who has not installed an IID if the person has been issued a medical exemption under OAR 735-070-0082.

(7) The hardship, probationary or hardship/probationary permit will contain a restriction that the person may only operate vehicles equipped with an IID. If the person operates a vehicle owned or leased by the person's employer in the course and scope of employment or has been issued a medical exemption, the hardship, probationary or hardship/probationary permit driving restrictions will state that the person must have in his or her possession a copy of the employer's IID exemption letter, a completed DMV Employer IID Exemption Form, an IID medical exemption letter issued by DMV, or an IID medical exemption approval issued by a court.

(8) The IID restriction in a hardship, probationary, or hardship/probationary permit will specify the length of time allowed for the person to travel to and from an IID provider's facility to have the IID checked or maintained.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 807.240, 807.270 & 813.602
Stats. Implemented: ORS 807.240, 807.270 & 813.602
Hist.: MV 40-1987, f. 12-11-87, ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0107; MV 18-1989(Temp), f. 8-31-89, cert. ef. 9-5-89; MV 2-1990, f. & cert. ef. 2-1-90; MV 4-1991, f. 6-18-91, cert. ef. 7-1-91; DMV 5-1994, f. & cert. ef. 7-21-94; DMV 12-1996, f. & cert. ef. 12-20-96; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 12-2007, f. 11-30-07, cert. ef. 1-1-08; DMV 21-2013, f. 12-20-13, cert. ef. 1-1-14; DMV 12-2015, f. 12-17-15, cert. ef. 1-1-16

735-070-0080
Ignition Interlock Device (IID) as Requirement Following DUII Suspension

(1) A person convicted by an Oregon Court of Driving Under the Influence of Intoxicants (DUII) must install and use an IID for the period of time specified in ORS 813.602(1) or (2).

(2) DMV will suspend driving privileges for the period of time specified in Section 8, Chapter 577, Oregon Laws 2015 for failure to install an IID if proof that an approved IID has been installed in the person's vehicle is not submitted to DMV by the ending date of the DUII suspension. The proof must be an installation report form showing an approved device, as described in OAR 735-118-0010.

(3) A person may operate a vehicle(s) without an IID, if the person is medically unable to operate a vehicle equipped with an IID, and DMV grants a medical exemption from the IID requirement. To avoid suspension of driving privileges for failure to install an IID, the person must apply before the last day of the DUII suspension and submit to DMV:

(a) A written, signed statement from an IID provider that the provider is unable to adapt an IID to accommodate usage by the person because of the person's medical condition; and

(b) A written, signed statement from the person's medical doctor, doctor of osteopathy, naturopathic doctor, physician assistant or nurse practitioner containing the following information:

(A) The name of the exempting condition;

(B) Whether the condition is temporary or permanent and if temporary, when the condition will no longer prevent usage of an IID; and

(C) Whether the exemption is required because the condition results in the inability to sustain an exhaled breath sampling of five pounds of pressure for five seconds required to operate the device or results in a ketone level in the person's breath which will not allow the driver to successfully complete the test.

(4) When the application for a medical exemption is made under section (3) of this rule and approved by DMV, DMV will issue a medical exemption letter. The person must carry a copy of DMV's medical exemption letter while operating a vehicle that would otherwise require installation and use of an IID.

(5) DMV will reinstate driving privileges if during the suspension period for failure to install an IID, the person installs an IID or DMV grants the person a medical exemption.

(6) DMV will terminate the IID requirement at the end of the requirement described in ORS 813.602 if DMV has granted the person a medical exemption and the physician report indicates the medical condition or impairment is permanent.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602
Stats. Implemented: ORS 813.602
Hist.: MV 39-1987, f. 12-11-87, cert. ef. 1-1-88; Administrative Renumbering 3-1988, Renumbered from 735-031-0078; MV 20-1988, f. & cert. ef. 6-1-88; MV 14-1989, f. & cert. ef. 5-17-89; MV 18-1989(Temp), f. 8-31-89, cert. ef. 9-5-89; MV 4-1990, f. & cert. ef. 3-2-90; DMV 5-1994, f. & cert. ef. 7-21-94; DMV 15-2001, f. & cert. ef. 9-21-01; DMV 12-2007, f. 11-30-07, cert. ef. 1-1-08; DMV 8-2013, f. & cert. ef. 5-23-13; DMV 12-2015, f. 12-17-15, cert. ef. 1-1-16

735-070-0082
Medical Exemption from IID Requirement

(1) A person may qualify for a medical exemption from the ignition interlock device (IID) requirement under ORS 813.602(1) and (2) if the person provides satisfactory evidence to DMV that due to a medical condition or impairment the person is unable to operate an IID or unable to safely operate a motor vehicle equipped with an IID. The following definitions apply:

(a) A "health care provider" is a person licensed, certified or otherwise authorized or permitted by law to administer health care in the State of Oregon. For purposes of these rules, the term health care provider is limited to: a chiropractic physician, nurse practitioner, and physician assistant.

(b) A "primary care provider" is a physician or health care provider who is responsible for supervising, coordinating and providing a person's initial and ongoing health care.

(c) "Unable to safely operate a motor vehicle equipped with an IID" means the person's medical condition or functional impairment prevents the person from safely operating a motor vehicle when requested to perform an IID rolling retest while operating a motor vehicle equipped with an IID.

(2) To apply for a medical exemption a person must submit a completed IID Medical Exemption form (DMV form 735-6941). The form must be completed by both the person and the person's primary care provider or the physician or health care provider providing specialized treatment to the person for the particular medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(3) The person must fully complete the information in Section 1 of the IID Medical Exemption form, including:

(a) The reason(s) the person is required to install an IID; and

(b) An explanation of why the person believes he or she has a medical condition or functional impairment that prevents the operation of an IID or prevents safe operation of a vehicle equipped with an IID.

(4) Section 2 of the IID Medical Exemption form must be completed by the person's primary care provider, or a physician or health care provider providing specialized treatment to the person for a medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID. The physician or health care provider must determine that in his or her professional opinion the person is unable to operate an IID or is unable to safely operate a vehicle equipped with an IID because of the person's med-

ical condition or functional impairment, including but not limited to a determination that:

(a) The person has a medical condition or functional impairment that does not allow the person to provide the necessary alveolar air or deep lung air sample to properly operate the device; or

(b) The person consistently has a ketone level in his or her breath which creates a false positive reading of over .020 blood alcohol concentration even though the person has had no alcohol.

(5) If the determination of the physician or health care provider described in section (4) of this rule is not based on subsection (a) or (b), the physician or health care provider must provide a detailed description of why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(6) In completing Section 2 of the IID Medical Exemption form, the physician or health care provider must:

(a) Specify the medical condition or functional impairment that prevents the person from operating an IID or prevents the person from safely operating a vehicle equipped with an IID;

(b) State whether the medical condition or functional impairment is permanent or temporary, and if temporary, the projected length of time; and

(c) Specify why the medical condition or functional impairment prevents the person from operating an IID or prevents the person from safely operating a motor vehicle equipped with an IID.

(7) From the information provided on the IID Medical Exemption form, DMV will determine if the person qualifies for a medical exemption. If DMV determines from the information on the form that the person qualifies, DMV will issue a medical exemption. If DMV is unable to determine from the information provided that the person qualifies, DMV will deny the medical exemption.

(8) If the person's medical condition or functional impairment is temporary, DMV will issue a temporary IID medical exemption that expires on the date specified in Section 2 of the IID Medical Exemption form, or a date six months from the date of issuance if no date is provided. If the temporary condition or functional impairment continues beyond the expiration date of the temporary IID medical exemption, the person may submit a signed statement from the physician or health care provider who completed the Request for IID Medical Exemption form describing the person's continuing need for a medical exemption, or the person may submit a new application as set forth in sections (2) through (4) of this rule. From the information submitted DMV will determine if the person continues to qualify for a temporary IID medical exemption.

(9) Before granting or denying an IID medical exemption, DMV may require the person to provide additional information from a physician or health care provider or to obtain a statement from an IID provider that the device cannot be adjusted to accommodate the person's medical condition or functional impairment.

(10) A person who is granted an IID medical exemption by DMV will be issued a medical exemption letter. The person must carry the IID medical exemption letter issued by DMV when driving.

(11) A person who must install and use an IID as a condition of a DUII diversion agreement must obtain an IID medical exemption from the court. The person must submit a completed IID Medical Exemption form directly to the court that approved the DUII diversion agreement. The court must approve or deny the IID medical exemption request. DMV will not forward an IID Medical Exemption form to a court if it is submitted to DMV in error.

(12) A person may need both an IID medical exemption letter issued by DMV and an IID medical exemption approval issued by a court. An IID medical exemption letter issued by DMV is not valid if the person is required to install an IID as a condition of a DUII diversion. A medical exemption issued by a court is not valid if the requirement to install and use an IID is required for any reason other than a DUII diversion agreement. Both an IID medical exemption letter issued by DMV and IID medical exemption approval issued by a court must be carried by the person when driving.

(13) DMV may use a court-issued IID medical exemption letter to terminate an IID requirement at the end of the diversion agreement if there is no indication of either:

(a) The exemption granted by the court being temporary; or

(b) Prior to the end of the diversion agreement the person was required to install an ignition interlock device.

Stat. Auth.: ORS 184.616, 184.619, 802.010 & 813.602
Stats. Implemented: ORS 813.602
Hist.: DMV 21-2013, f. 12-20-13, cert. ef. 1-1-14; DMV 12-2015, f. 12-17-15, cert. ef. 1-1-16

735-118-0000
Definitions Relevant to Ignition Interlock Devices

For purposes of these rules, OAR 735-118-0000 through 735-118-0050, the following definitions apply:

(1) "Alcohol" means ethanol or ethyl alcohol.

(2) "Alcohol set point" means the breath alcohol concentration at which an ignition interlock device is set to prevent a vehicle from starting.

(3) "Breath Alcohol Concentration (BrAC)" means the amount of alcohol in a given amount of breath, expressed in weight per volume based upon grams of alcohol per 210 liters of breath.

(4) "Breath sample" means normal expired human breath primarily containing air from the deep lung.

(5) "Calibration" means service to a device provided by the provider to ensure the device is in proper working order, including a process to ensure the ignition interlock device remains capable of accurately analyzing a breath sample and downloading all the data collected on the device either from installation or last calibration of the device.

(6) "Device" means an Ignition Interlock Device.

(7) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(8) "Ignition Interlock Device" means an instrument designed to measure the BrAC of an individual and which prevents a motorized vehicle from starting when the BrAC exceeds a predetermined and preset level.

(9) "Lockout" means the device prevented the vehicle from starting as described in OAR 735-118-0040(4)(f);

(10) "Manufacturer" means a person, company, or corporation who manufactures or produces an ignition interlock device.

(11) "Manufacturer's representative" is the individual designated by the manufacturer to act on behalf of or to represent the manufacturer in all matters regarding device certificate.

(12) "Provider" means a person, company, corporation or representative who provides, installs, calibrates, rents or leases a device in the State of Oregon.

(13) "Purge" means any mechanism by which a device cleanses or removes a previous breath sample from the device and specifically removes residual alcohol.

(14) "Restart" means the ability to start the engine again without giving another breath sample when after a test is successfully completed and the vehicle is started, the engine later stops for any reason (including stalling) and must be restarted.

(15) "Retest" means a breath sample required by the device after the initial engine start-up breath sample and while the engine is running.

(16) "Tampering" means doing anything to a device that was ordered installed pursuant to ORS 813.602 that circumvents the operation of the device;

(17) "Test Violation" means:

(a) Any attempt to start the vehicle by a person with a BrAC of 0.040 or higher unless a subsequent test performed within 10 minutes registers a BrAC lower than 0.040 and the digital images confirm the same person provided both samples;

(b) Failure to take any random retest unless a review of the digital image confirms that the vehicle was not being operated by the person required to have the IID at the time of the missed test; or

(c) Failure to pass any random retest due to a BrAC of 0.020 or higher unless a subsequent test performed within 10 minutes registers a BrAC lower than 0.020, and the digital images confirm the same person provided both samples.

Stat. Auth.: ORS 184.616, 184.619 & 813.600
Stats. Implemented: ORS 813.600
Hist.: MV 36-1987(Temp), f. & ef. 12-1-87; Administrative Renumbering 3-1988, Renumbered from 735-169-0000; MV 17-1988, f. & cert. ef. 5-18-88; DMV 11-2001, f. & cert. ef. 7-18-01; DMV 9-2005, f. & cert. ef. 2-16-05; DMV 8-2014, f. 8-29-14, cert. ef. 9-1-14; DMV 12-2015, f. 12-17-15, cert. ef. 1-1-16

735-118-0050
Requirement and Reports

(1) The requirement that an approved ignition interlock device be installed and used in any vehicle operated by a person is a DMV requirement when:

(a) The person is applying to DMV for a hardship permit and an ignition interlock device is required for the person to qualify for a hardship permit; or

(b) The person is applying for full reinstatement following a suspension or revocation of driving privileges and due to the conviction(s) that caused the suspension or revocation the person is required to install an ignition interlock device.

(2) The requirement that an approved ignition interlock device be installed and used in any vehicle operated by a person is a court requirement when the person has entered a diversion agreement with a court.

(3) A provider must download the data collected by a device each time the provider calibrates the device, even if the provider determines calibration is unnecessary.

(4) For a person who has an ignition interlock device installed as a condition of a diversion agreement, a manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must report installation of the device or IID Negative Report (DMV Form 735-7378) by a person to both the court that required the installation (or the court's designee) and to the district attorney or city prosecutor in the court's jurisdiction as required by Section 2, Chapter 577, Oregon Laws 2015.

(5) A manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must complete and submit to DMV the IID Certification — No Negative Report (DMV form 735-7379) when a person required to install an IID has no negative report during the last 90 days of any requirement or, if the requirement has been extended, as soon as 90 days without a negative report occurs.

(6) A manufacturer, manufacturer's representative (or a provider authorized by a manufacturer or manufacturer's representative) must, upon request, provide to the person a IID Certification — No Negative Report (DMV form 735-7379) if the person had the device installed due to a diversion agreement and there is no negative report for at least six consecutive months.

(7) For purposes of this rule, a "negative report" is a report of tampering with an ignition interlock device, unauthorized removal of an ignition interlock device, lockout or a test violation recorded by an ignition interlock device.

Stat. Auth.: ORS 184.616, 184.619 & 813.600
Stats. Implemented: ORS 813.600 & 813.602
Hist.: DMV 8-2014, f. 8-29-14, cert. ef. 9-1-14; DMV 12-2015, f. 12-17-15, cert. ef. 1-1-16

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Rule Caption: Implements Chapter 111, Oregon Laws 2015, Relating to Vehicle Dealer-Only Auctions
Adm. Order No.: DMV 13-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 10-1-2015
Rules Amended: 735-150-0010, 735-150-0017, 735-150-0020, 735-150-0047, 735-150-0110
Subject: ORS 822.015 as amended by Chapter 111, Oregon Laws 2015, changes the requirements for who can buy and sell vehicles in a vehicle auction held by a certified Oregon vehicle dealer (dealer-only auction) without holding an Oregon vehicle dealer certificate. Prior to the legislative change, ORS 822.015 provided an exemption from Oregon vehicle dealer certification requirements for dealers licensed in other jurisdictions and their authorized representatives when participating in a dealer-only auction. Under amended ORS 822.015, only certified Oregon vehicle dealers or dealers licensed in another jurisdiction or their employees may participate in a dealer-only auction. DMV has amended its vehicle dealer rules to conform to the law change.
Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0010
Definitions

As used in this division and ORS Chapter 822:

(1) "Additional (or supplemental) place of business" or "additional (or supplemental) location" means a location, other than one exempted under OAR 735-150-0020, that is more than 500 feet from any other business location of the dealer that is operated under the same name as the main business location.

(2) "Advertise" means to offer a vehicle for sale or to communicate to the public that a person is acting as a vehicle dealer, by any oral, written, or graphic means including, but not limited to, handbills, the Internet, newspapers, signs, television, billboards, radio, and telephone directories.

(3) "Agent" means any dealer possessing a current valid vehicle dealer certificate issued under ORS 822.020, who accepts applications and fees for the titling and registration of vehicles sold by the dealer and who performs such other duties related to the titling and registration of vehicles as DMV authorizes under the rules set forth in division 150.

(4) "Broker" has the same meaning as "motor vehicle broker" as defined in ORS 822.047(1).

(5) "Brokerage services" has the same meaning as defined in ORS 822.047(1).

(6) "Business day" means Monday through Saturday and does not include Sundays or State of Oregon and Federal legal holidays.

(7) "Buyer," "purchaser" and "lessee" have the same meaning as "owner" as defined in ORS 801.375.

(8) "Cancellation" has the same meaning as "revocation" as defined in section (30) of this rule.

(9) "Certified dealer" means a vehicle dealer who holds a vehicle dealer certificate issued or renewed under ORS Chapter 822.020 or 822.040.

(10) "Circumstances beyond the dealer's control," as used in ORS 822.045(3)(b) and OAR 735-150-0050(5) means:

(a) That the dealer could not get the title from any state and the prior security interest holder was paid in full by the dealer; and

(b) The delay was a result of the security interest holder failing to release title; or

(c) DMV may consider the follow mitigating circumstances if those circumstances result in the physical destruction of, or inaccessibility to, vehicle records necessary to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5):

(A) The direct result of clearly-established fraud or other criminal activity against the vehicle dealer, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or the person who actually engaged in the criminal activity. This mitigating circumstance does not apply if the dealer is the perpetrator of the wrongdoing described in this paragraph; or

(B) The direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to vehicle records to prove compliance with ORS 822.045(1) and OAR 735-150-0050(5).

(11) "Closure" means a vehicle dealership that no longer has legal authority to conduct dealer-related activity. For example, a dealer's certificate issued under ORS 822.020 is expired, cancelled, suspended or revoked.

(12) "Clearly marked" means the notice and dealer contact information required under ORS 822.040(4)(b) and OAR 735-150-0033 is conspicuously posted on the window of each display vehicle, is in plain view of the public and is legible at a distance of six feet or more.

(13) "Date of sale," or use of similar terms to indicate the day that the sale occurred, means the date that the purchaser takes possession of the vehicle. This does not apply to vehicles purchased by a dealer at wholesale auction. With respect to auto auctions and for purposes of consignor payment under ORS 822.060(1)(d), "date of sale" means the date upon which the consigning party delivers the necessary title documents to the purchasing dealer.

(14) "Dealer" means a person who engages in any of the activities described in ORS 822.005, except those persons exempted by ORS 822.015.

(15) "Dealership," "place of business" or "business location" means a location within the State of Oregon where activities specified in ORS 822.005 take place.

(16) "Designated dealer" means a certified dealer who has been authorized to act as an agent of DMV under OAR 735-150-0040.

(17) "DMV" means the Driver and Motor Vehicle Services Division of the Oregon Department of Transportation.

(18) "DMV Administrator" means the administrator of the Driver and Motor Vehicles Services Division of the Oregon Department of Transportation.

(19) "Employee" for purposes of ORS 822.015 and OAR division 150 means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

(a) Determining the frequency, method and amount of compensation;

(b) Determining whether the person's work is continuous or intermittent;

(c) Determining the hours or frequency of a person's work; or

(d) Retaining the ability to terminate the relationship.

(20) "Good faith effort" as used in ORS 822.045(3) means action satisfactory to DMV that a vehicle dealer complied with the requirements set forth in OAR 735-150-0050(1) and (2).

(a) DMV will determine that the dealer's efforts are in good faith if written documentation is provided that verifies:

(A) Action(s) was taken by the dealer within ten (10) days of sale to resolve problems with providing transfer of ownership; and

(B) The dealer provided complete and timely information to the customer concerning any problems encountered and actions being taken to resolve them.

(b) DMV will not accept a good faith effort by a dealer if, before the sale of the vehicle, the dealer knows or reasonably should know that title transfer could not be completed within 30 days.

(21) "Licensed dealer" as used in ORS 822.015, 822.045 and division 150 means a person who is currently licensed as a vehicle dealer in another jurisdiction.

(22) "Location," "main business location" or "main dealership" means a location identified and listed as the dealer's main business location on the most current application for vehicle dealer certificate.

(23) "Normal business hours" means all times during which a dealer engages in any of the activities described in ORS 822.005, except as exempted by ORS 822.015.

(24) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation or any other legal or commercial entity.

(25) "Permanent revocation" means to permanently revoke a vehicle dealer certificate and the right to apply for a vehicle dealer certificate.

(26) "Probation" means a period of time specified by DMV during which a vehicle dealer may continue to operate, but only under the terms or conditions established by DMV.

(27) "Principal" means an owner, partner, corporate officer or other person who controls or manages the business organization or employees or agents of the business organization.

(28) "Purchaser" has the same meaning as buyer or lessee.

(29) "Rebuilder" means a person engaged in conducting a "vehicle rebuilding business" as specified in ORS 822.070.

(30) "Revocation" means to void and terminate a vehicle dealer certificate. Unless permanently revoked, DMV will specify the period of time before the person subject to the revocation may apply for a new vehicle dealer certificate.

(31) "Sanction" means an action taken against a vehicle dealer by DMV in cases of non-compliance, fraud, misuse or abuse of privileges granted by a vehicle dealer certificate pursuant to a violation of the Oregon Vehicle Code or any rule adopted by DMV relating to vehicle dealers or the operation of a vehicle dealership.

(32) "Suspension" means a period of time specified by DMV during which a vehicle dealer is prohibited from:

(a) Buying, selling, trading, exchanging any vehicle or providing brokerage services. This includes, but is not limited to, providing information about price, quality, availability, payment terms, or any other information specific to the sale of a vehicle; and

(b) Acting as DMV's agent.

(33) "Violation" means any violation by a person or vehicle dealer of the Oregon Vehicle Code or any rules adopted by DMV in accordance with ORS 822.009(1) & (2).

(34) "Warning" means a documented oral warning to the principal of a dealership or a written correction notice issued to the principal, or an employee of the dealership.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035 & 2015 Or. Laws, Ch. 111
Stats. Implemented: ORS 822.005 - 822.080 & 2015 Or. Laws, Ch. 111
Hist.: MV 7-1987, f. & ef. 7-13-87; MV 39-1989, f. & cert. ef. 10-3-89; MV 8-1991, f. & cert. ef. 7-19-91; MV 22-1991, f. 9-27-91, cert. ef. 9-29-91; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 17-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 32-2005(Temp), f. 12-14-05, cert. ef. 1-1-06 thru 6-29-06; DMV 4-2006, f. & cert. ef. 5-25-06; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0017
Acting as a Vehicle Dealer

This rule describes certain circumstances under which an owner or lessor of real property is considered to be acting as a vehicle dealer without a certificate pursuant to ORS 822.005(1). The rule is not intended to limit DMV's authority to require a person to obtain a certificate, or to find a person in violation of ORS 822.005 for acting as a vehicle dealer without a valid certificate in any circumstance that violates the terms of ORS 822.005(1), unless the person has an exemption under ORS 822.015.

(1) An owner or lessor of real property must hold a valid vehicle dealer certificate pursuant to ORS 822.005(1), if the owner or lessor receives compensation of any type for the display or sale of vehicles on the property, and performs any of the following:

(a) Advertises or pays for advertising for any individual vehicle(s) displayed for sale either on-site, electronically or in print media;

(b) Answers any questions related to the terms of sale or consignment for any vehicle displayed for sale;

(c) Shows to any person any vehicle displayed for sale;

(d) Provides or pays for individual "for sale" signs for any vehicle displayed for sale;

(e) Cleans, prepares or otherwise physically maintains any vehicle displayed for sale;

(f) Provides or offers to provide financing for any vehicle displayed for sale;

(g) Prepares or provides any forms necessary for the titling or registration of any vehicle displayed for sale; or

(h) Performs any maintenance, body repair or mechanical services related to any vehicle part or component on any vehicle displayed for sale.

(2) This rule does not apply to a person who rents or leases property to a vehicle dealer who possesses a current vehicle dealer certificate, to the extent that the real property or any portion thereof is actually used by the dealer.

Stat. Auth.: ORS 184.616, 184.619, 822.009 & 822.035
Stat. Implemented: ORS 822.005, 822.009, 822.015 & 822.035
Hist: DMV 17-2002, f. & cert. ef. 9-20-02; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0020
Exemptions From Vehicle Dealer Certification Requirement

(1) A person who rents or leases space to a vehicle dealer who holds a current valid certificate is not a dealer as defined in OAR 735-150-0010.

(2) The following apply where there is a formal display of vehicles, such as an auto show, by a group of dealers for a period of ten (10) days or less:

(a) Except as otherwise provided in this section and ORS 822.015(3), a dealer participating in a display must either be a certified vehicle dealer or a manufacturer of vehicles not engaged in sales to the public;

(b) A person who only rents or leases space to a participating dealer does not need a vehicle dealer certificate;

(c) A certified vehicle dealer does not need a supplemental certificate; and

(d) This section does not apply to RV shows held in accordance with OAR 735-150-0045.

(3) The exemption in ORS 822.015(1)(b) will be narrowly construed to exempt from dealer regulatory requirements only those persons who engage in buying, selling or exchanging vehicles as a mere incident to their personal ownership and use of those vehicles. This includes a business or corporate entity that holds such vehicles primarily for its own transportation needs, but not primarily for sale or exchange. No person may apply for certificates of title for the purpose of avoiding dealer regulatory requirements while dealing in vehicles.

(4) A person is not a rebuilder if that person:

(a) Is an employee of a certified vehicle dealer; or

(b) Is engaged solely in the repair of damaged vehicles at the request of the registered owner(s) of the vehicle(s).

(5) An employee of a dealer as defined in 735-150-0010(14) is not required to have a separate dealer certificate in order to buy or sell vehicles on behalf of his or her employer.

(6) A certified vehicle dealer does not need a supplemental certificate for the location of an auction conducted by the dealer. This exemption applies when all the following conditions exist:

(a) Vehicles sold at the auction are consigned to the dealer;

(b) Vehicles are sold on the basis of the highest bid or most favorable offer;

(c) The auction does not exceed three (3) consecutive days; and

(d) The dealer does not own the property where the auction is conducted. If the dealer rents or leases the property where the auction is conducted, the rent/lease period must not exceed three (3) consecutive days.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.035 & 2015 Or. Laws, Ch. 111
Stats. Implemented: ORS 822.015 & 2015 Or. Laws, Ch. 111
Hist.: MV 7-1987, f. & ef. 7-13-87; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 6-1994, f. & cert. ef. 7-21-94; DMV 2-1996, f. & cert. ef. 4-18-96; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0047
Rules Concerning Dealer-Only Auctions

(1) For purposes of ORS 822.015(3), as amended by section 1, chapter 111, Oregon Laws 2015, and this rule, the follow definitions apply:

(a) "Certified dealer" has the same meaning as defined in OAR 735-150-0010.

(b) "Employee" for the purposes of this rule and as defined in OAR 735-150-0010 means a person over whom a dealer exercises the type of control typically associated with an employer, including but not limited to:

(A) Determining the frequency, method and amount of compensation;

(B) Determining whether the person's work is continuous or intermittent;

(C) Determining the hours or frequency of a person's work; or

(D) Retaining the ability to terminate the relationship.

(c) "Licensed dealer" for the purposes of this rule and as defined in OAR 735-150-0010 means a person who is currently licensed as vehicle dealer in another jurisdiction.

(d) "Vehicle auction" means a vehicle auction conducted by a certified dealer as authorized under ORS 822.015, in which only certified dealers, licensed dealers or their employees are permitted to participate.

(2) An employee of a certified or licensed dealer who wishes to participate in a vehicle auction must present proof to the certified dealer conducting the auction before the employee may participate in the auction. Proof that an individual is an employee as defined in section (1)(b) of this rule, includes but is not limited to any of the following:

(a) Written authorization issued from a certified or licensed dealer that names the individual as an employee and a copy of the authorizing dealer's certificate or license, whichever is applicable. The copy must include the following:

(A) The dealer's certificate or the dealer's license, whichever is applicable;

(B) The business name under which the dealer is registered to do business and the street address and telephone number of the business;

(C) The business type of the dealer or dealership, for example, a sole proprietorship, partnership, limited liability company, corporation, etc.); and

(D) The name, address and phone number of an individual authorized by the dealer as the contact person for the dealer on any matter related to a dealer's certificate or license.

(b) A current valid picture identification card issued by a certified dealer, licensed dealer, or a dealer registration identification business that maintains a database of vehicle dealers or dealer employees.

(c) Any other form of authorization, documentation or identification, sufficient to a vehicle auction or DMV that the individual is an employee. Information provided under this subsection is subject to verification by the auction or DMV by telephone, fax, or other electronic means.

(3) In addition to the proof described under section (2) of this rule, upon request of a vehicle auction or DMV, an employee must provide proof of personal identification. Proof of personal identification under this section includes, but is not limited to the following photo identification:

(a) A current valid driver license or identification card issued by Oregon or another jurisdiction;

(b) A current valid vehicle salesperson license or employee license, if required in the jurisdiction;

(c) A current valid passport; or

(d) Any other form of photo identification, sufficient to establish the identity of the individual to the satisfaction of a vehicle auction or DMV.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.015, 822.035 & 2015 Or. Laws, Ch. 111
Stats. Implemented: ORS 822.015 & 2015 Or. Laws, Ch. 111
Hist.: DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0110
Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

(1) Allows or assists a person who is not an employee of the dealer to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.

(2) Fails to submit all taxes or fees due this state or another jurisdiction in connection with the sale or transfer of a vehicle.

(3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.

(4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.

(5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.

(6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.

(7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.

(8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.

(9) Commits any offense specified in ORS 822.045.

(10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.

(11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

(12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.

(13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.

(14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.

(15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.

(16) Sells a vehicle of a type not authorized by the dealer's certificate.

(17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.

(18) Fails to comply with any provision of ORS 822.040(4) or OAR 735-150-0033 concerning the display of a vehicle at a location other than the dealer's place of business for the purpose of advertising.

(19) Provides brokerage services and fails:

(a) To provide the written disclosure described in ORS 822.047(2);

(b) To provide the written statement described in ORS 822.047(3); or

(c) To comply with the requirements for broker fees described in ORS 822.047(4).

(20) Knowingly makes a false statement of material fact in:

(a) An application for a dealer certificate, a dealer certificate renewal or attachments thereof;

(b) An application to Correct Dealer/Rebuilder Vehicle Dealer Certificate (DMV Form 735-371);

(c) Any investigation by DMV or law enforcement; or

(d) Any DMV document.

(21) Commits a felony by violating ORS 822.605.

(22) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.

(23) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(24) Allows or permits the unlawful use of any certificate or registration plate.

(25) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080, 822.035 & 2015 Or. Laws, Ch. 111
Stats. Implemented: ORS 822.005 - 822.080 & 2015 Or. Laws, Ch. 11
Hist.: MV 3-1980, f. 2-15-80, ef. 4-1-80; Suspended by MV 5-1980(Temp), f. & ef. 4-2-80; MV 4-1981, f. 4-1-81, ef. 4-10-81; MV 7-1982, f. & ef. 3-3-82; MV 7-1987, f. & ef. 7-13-87; MV 1-1988, f. & cert. ef. 1-5-88; Administrative Renumbering 3-1988, Renumbered from 735-071-0003; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16

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Rule Caption: Technical changes to DMV vehicle dealer rules
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Notice Publication Date: 11-1-2015
Rules Amended: 735-150-0015, 735-150-0037, 735-150-0110
Subject: DMV has amended:

OAR 735-150-0110(20) for consistency with ORS 822.050(1)(g) and ORS 822.605, related to knowingly certifying false information on a dealer application and false swearing relating to regulation of vehicle related businesses;

OAR 735-150-0015 to specify form numbers required for an application, renewal or correction of a dealer certificate; and

OAR 735-150-0037(2)(c)(D) to restore a sentence that was inadvertently altered when the rule was last amended in 2014.

Rules Coordinator: Lauri Kunze—(503) 986-3171

735-150-0015
Dealer Applications

(1) An applicant for a vehicle dealer certificate under ORS 822.020 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Three Year Vehicle Dealer Certificate (DMV Form 735-370);

(b) A completed and signed DMV Surety Bond (DMV Form 735-370B);

(c) A completed and signed DMV Certificate of Insurance form or DMV Liability Insurance Certification of Exemption (DMV Form 735-7024);

(d) A valid government-issued photo identification for each owner, partner, principal corporate officer, etc.;

(e) All applicable fees; and

(f) The following documentation certifying completion of the education and test requirements prescribed by ORS 822.027:

(A) A certificate of education completion issued by an authorized education provider as evidence that the applicant has completed the education requirements under ORS 822.027(1)(a); or

(B) A completed and signed DMV Education Requirements Certification of Exemption (DMV Form 735-370C), if an applicant is exempt from the education and test requirements under ORS 822.027(2).

(2) An applicant for a renewal of vehicle dealer certificate under ORS 822.040 must submit the following to the DMV Business Regulation Section:

(a) A completed and signed DMV Application for Three Year Vehicle Dealer Certificate (DMV Form 735-370);

(b) A completed and signed DMV Surety Bond form (DMV Form 735-370B), if the applicant is submitting a new bond, or proof acceptable to DMV that a valid surety bond is in effect at the time of renewal. Proof includes, but is not limited to a notation on DMV records or other evidence acceptable to DMV that the required bond is in effect.

(c) A completed and signed DMV Certificate of Insurance form or DMV Liability Insurance Certification of Exemption (DMV Form 735-7024);

(d) A valid government-issued photo identification for each owner, partner, principal corporate officer, etc.;

(e) All applicable fees; and

(f) The following documentation certifying completion of the education and test requirements prescribed by ORS 822.027:

(A) A certificate of education completion issued by an authorized education provider as evidence that the applicant has completed the education requirements under ORS 822.027(1)(b); or

(B) A completed and signed DMV Education Requirements Certification of Exemption (DMV Form 735-370C), if an applicant is exempt from the education and test requirements under ORS 822.027(3).

(3) In addition to the requirements of sections (1) and (2) of this rule, the applicant must submit a completed and signed DMV Supplemental Dealer/Rebuilder Vehicle Dealer Certificate Application (DMV Form 735-372) for each additional business location other than the dealer's primary business location.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.012, 803.030, 822.020, 822.025, 822.027, 822.040
Stats. Implemented: ORS 802.012, 803.030, 822.020, 822.025, 822.027, 822.040 & 822.050
Hist.: DMV 4-1996, f. & cert. ef. 7-26-96; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 5-2011, f. & cert. ef. 4-22-11; DMV 14-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0037
Records; Satisfying Prior Interest; Providing Clear Title

This rule establishes the records vehicle dealers must maintain to comply with ORS 822.045(1) and OAR 735-150-0035.

(1) "Other primary ownership document" as used in ORS 822.040(1)(j), as amended by Chapter 21, Oregon Laws 2014, and this rule has the same meaning as set forth in OAR 735-020-0010.

(2) Vehicle dealers must satisfy the interest in a vehicle they purchase within 15 days of transfer or receipt of clear title pursuant to ORS 822.045(1)(j) and OAR 735-150-0035. To verify that they have complied with this requirement, dealers must maintain records that show:

(a) The date a vehicle consumer transferred any interest in a vehicle or camper to a dealer.

(b) The date a purchasing dealer receives clear title from another dealer on a vehicle or camper. This date is either the date:

(A) The purchasing dealer took physical possession of the certificate of title or other primary ownership document, including who it was received from; or

(B) Written notice was mailed by certified or registered mail, return receipt requested, to the purchasing dealer that the certificate of title was available for pickup at a time and place prearranged by the purchasing dealer and the dealer.

(c) The date the purchasing dealer satisfied:

(A) The interest of any person from whom the dealer purchased or obtained the vehicle or camper;

(B) The interest of any person from whom a vehicle consumer leased the vehicle or camper; and

(C) Except as provided by 822.045(2), all security interests in the vehicle or camper entered into before the date of transfer.

(D) The interest of the dealer from which the purchasing dealer received the certificate of title or other primary ownership document.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 822.035, 822.042, 822.045, 2014 OL Ch. 21
Stats. Implemented: ORS 822.009, 822.035, 822.042, 822.045 & 2014 OL Ch. 21
Hist.: DMV 20-2002, f. & cert. ef. 10-14-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 4-2014(Temp), f. & cert. ef. 5-19-14 thru 11-14-14; DMV 12-2014, f. & cert. ef. 10-28-14; DMV 14-2015, f. 12-17-15, cert. ef. 1-1-16

735-150-0110
Dealer Offenses Subject to Civil Penalty or Sanction

In addition to any other penalties provided by law, a dealer will be subject to the civil penalties or sanctions in OAR 735-150-0120 to 0140 if the dealer:

(1) Allows or assists a person who is not an employee of the dealer to imply or represent an affiliation with the vehicle dealership in order to engage in any activity pursuant to ORS 822.005.

(2) Fails to submit all taxes or fees due this state or another jurisdiction in connection with the sale or transfer of a vehicle.

(3) Signs a name or allows any other person to sign a name of the owner, security interest holder, or lessor on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title without first obtaining a properly signed Power of Attorney. This section does not apply to a dealer who as an owner, security interest holder or lessor signs their own name on a certificate of title, salvage title or any motor vehicle document used by DMV in the transfer of title.

(4) Purchases, sells, disposes of or has in the dealer's possession, any vehicle that the dealer knows or with reasonable diligence should have known has been stolen or appropriated without the consent of the owner.

(5) Fails to comply with state or federal laws, rules or regulations pertaining to the construction or safety of motor homes, trailers or campers.

(6) Buys, sells, receives, disposes of, conceals or has in the dealer's possession any vehicle or component from which an identification number has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identity of the vehicle.

(7) Violates any provision of state or federal law, rule or regulation concerning odometer tampering, repair, readings or notices.

(8) Prints or produces or causes to be printed or produced any certificate of title or certificate of registration without authority, or holds or uses any such certificate or assignment knowing that it has been printed or purchased without authority.

(9) Commits any offense specified in ORS 822.045.

(10) Acts as a vehicle dealer anytime between the day DMV receives notice of cancellation of bond or insurance and the day the vehicle dealer presents proof to DMV of another bond or certificate of insurance.

(11) Issues a temporary registration permit to a person not domiciled in Oregon or who is otherwise not subject to or eligible for Oregon registration.

(12) Fails to notify DMV on a form or in a format approved by DMV within seven (7) calendar days of receipt of a vehicle in inventory, that a vehicle has been transferred to the dealer.

(13) Fails to immediately remove registration plates from vehicles registered in other jurisdictions that are in the dealer's inventory. The dealer may retain the plates until the vehicle is sold.

(14) Fails to destroy registration plates removed from vehicles registered in other jurisdictions at the time of sale if the vehicle is to be titled in Oregon or in a jurisdiction other than that in which the vehicle was previously registered. If the vehicle will be re-registered in the former jurisdiction, the plates may be placed back on the vehicle following the sale.

(15) Completes or allows an employee to complete a DMV Vehicle Identification Number (VIN) Inspection form without physically inspecting the vehicle for its vehicle identification number.

(16) Sells a vehicle of a type not authorized by the dealer's certificate.

(17) Fails to comply with any provision of ORS 822.060 through 822.065 concerning consignment sales.

(18) Fails to comply with any provision of ORS 822.040(4) or OAR 735-150-0033 concerning the display of a vehicle at a location other than the dealer's place of business for the purpose of advertising.

(19) Provides brokerage services and fails:

(a) To provide the written disclosure described in ORS 822.047(2);

(b) To provide the written statement described in ORS 822.047(3); or

(c) To comply with the requirements for broker fees described in ORS 822.047(4).

(20) Knowingly makes a false statement of material fact in:

(a) An application for a dealer certificate, a dealer certificate renewal or attachments thereof;

(b) An application to Correct Dealer/Rebuilder Vehicle Dealer Certificate (DMV Form 735-371);

(c) Any investigation by DMV or law enforcement; or

(d) Any DMV document.

(21) Commits a felony by violating ORS 822.605.

(22) Fails to maintain records described in OAR 735-150-0050(5) or fails to make those records available to DMV, law enforcement personnel or investigators of the Oregon Department of Justice upon their request.

(23) Fails to comply with the requirements of the Oregon Vehicle Code with reference to notices or reports of the transfer of vehicles or campers.

(24) Allows or permits the unlawful use of any certificate or registration plate.

(25) Falsely certifies under ORS 822.033 that the dealer is exempt from filing a certificate of insurance as required by ORS 822.020 or 822.040.

Stat. Auth.: ORS 184.616, 184.619, 802.010, 802.370, 803.600, 803.625, 821.060, 821.080, 822.035 & 2015 Or. Laws, Ch. 111

Stats. Implemented: ORS 822.005 - 822.080 & 2015 Or. Laws, Ch. 11

Hist.: MV 3-1980, f. 2-15-80, ef. 4-1-80; Suspended by MV 5-1980(Temp), f. & ef. 4-2-80; MV 4-1981, f. 4-1-81, ef. 4-10-81; MV 7-1982, f. & ef. 3-3-82; MV 7-1987, f. & ef. 7-13-87; MV 1-1988, f. & cert. ef. 1-5-88; Administrative Renumbering 3-1988, Renumbered from 735-071-0003; MV 39-1989, f. & cert. ef. 10-3-89; MV 19-1992, f. 12-23-92, cert. ef. 1-1-93; DMV 10-1998, f. & cert. ef. 8-20-98; DMV 18-2002, f. & cert. ef. 9-20-02; DMV 20-2004, f. & cert. ef. 8-20-04; DMV 11-2005, f. 4-25-05, cert. ef. 5-1-05; DMV 24-2005, f. 11-18-05, cert. ef. 1-1-06; DMV 31-2009, f. 12-22-09, cert. ef. 1-1-10; DMV 13-2015, f. 12-17-15, cert. ef. 1-1-16; DMV 14-2015, f. 12-17-15, cert. ef. 1-1-16

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Department of Transportation, Highway Division
Chapter 734

Rule Caption: Self-loading log trucks
Adm. Order No.: HWD 6-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 12-17-15
Notice Publication Date: 11-1-2015
Rules Amended: 734-074-0027
Subject: These rule amendments implement House Bill 2259 which modified the authority of the Department to issue a variance permit to operate a self-loading log truck.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-074-0027
Other Permit Eligibility Requirements

(1) No applicant for a permit may have an unsatisfactory rating from US DOT or the equivalent safety rating from Oregon Department of Transportation, Motor Carrier Transportation Division.

(2)(a) An interstate permittee operating triple trailers must have a satisfactory US DOT safety rating, and an intrastate permittee must have an equivalent safety rating from the Oregon Department of Transportation, Motor Carrier Transportation Division;

(b) Motor carriers exempt from regulation by US DOT or the Oregon Department of Transportation, Motor Carrier Transportation Division shall have a Level 1 safety inspection performed by a Commercial Vehicle Safety Alliance (CVSA) certified safety inspector to be eligible for a triple trailer permit. This safety inspection must determine the driver and combination of vehicles are free of defects. The motor carrier becomes eligible for a permit when all repairs or deficiencies written on the inspection form are corrected and verified by a CVSA-certified safety inspector. The successful completion of the Level 1 safety inspection is used to establish a satisfactory safety rating. Successful completion of this Level 1 safety inspection is required every year before the triple trailer permit may be renewed;

(c) For purposes of this rule, a satisfactory safety rating means a safety rating other than unsatisfactory.

(3) Permits for triple trailers require the permittee to have an established safety program that includes drivers and vehicles.

(4) Triple trailer permits may be suspended or revoked for failure to comply with any of the provisions or conditions of OAR chapter 734, division 74. The permittee and driver must comply with all of the motor vehicle laws and the latest motor carrier safety regulations issued by the US DOT.

Stat. Auth.: ORS 184.616, 184.619 & 818.220

Stats. Implemented: ORS 818.200 & 818.220

Hist.: 2HD 6-1983, f. & ef. 2-18-83; HWY 7-1992, f. & cert. ef. 3-27-92; HWY 1-1993, f. & cert. ef. 3-16-93; HWY 3-1995, f. & cert. ef. 10-16-95; HWY 8-1997, f. & cert. ef. 8-26-97; TO 2-2001, f. & cert. ef. 6-14-01; HWD 6-2015, f. & cert. ef. 12-17-15

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Rule Caption: Flip Axles
Adm. Order No.: HWD 7-2015
Filed with Sec. of State: 12-17-2015
Certified to be Effective: 12-17-15
Notice Publication Date: 11-1-2015
Rules Amended: 734-082-0005, 734-082-0040, 734-082-0045, 734-082-0070
Subject: OAR chapter 734, division 82 governs the operation of vehicles transporting loads that exceed legal limits and variance permits issued for vehicles or loads having weight or dimension greater than that allowed by statute. A request was made by Gresham Transfer during a Motor Carrier Transportation Advisory Committee meeting to allow permits to be issued for an unladen trailer over legal length (53 feet), which includes a flip axle deployed. The request was to allow single trip permits (STPs) on an individual basis for flip axle trailers which can't be reduced to 53' without special equipment. New language is added to the OARs to allow STPs and annual permits for a variety of trailers including those with flip axles deployed. Currently, the trailer is required to be reduced to 53 feet or less when operating unladen (the flip axle must be up). Not all trailers are equipped with hydraulics, and it's not always practical for carriers to get equipment onsite to assist with lifting the axle. These amendments describe the circumstances under which permits may be issued, both laden and unladen.
Rules Coordinator: Lauri Kunze—(503) 986-3171

734-082-0005
Definitions

As used in OAR chapter 734, division 82:

(1) "Auxiliary axle(s)" is an axle that qualifies as a booster axle, flip axle, or lift axle.

(2) "Boom dolly" means a separate vehicle designed to carry part of the weight of a boom.

(3) "Booster axle(s)" means a separate vehicle bolted or pinned to another vehicle that redistributes weight from one or more axles to other axles and pivots from side to side at the connection point or has wheels that steer during turning.

(4) "Business day" is any day Monday through Friday, except holidays as defined in section (13) of this rule.

(5) "Chief Engineer" means the Chief Engineer of the Oregon Department of Transportation or a person designated to act for the Chief Engineer.

(6) "Daylight hours" means one-half hour before sunrise until one-half hour after sunset.

(7) "Dolly" means those devices attached to a frame, deck or load converting the frame to a trailer or semitrailer and is included in the meas-

urement of the trailer. The dolly must bear weight when the permitted vehicle is laden.

(8) "Dromedary truck-tractor" means a motor vehicle designed to carry a load on a dromedary box, plate or deck, not exceeding 12'06" in length inclusive of load and designed to pull a semitrailer.

(9) "Equivalent Single-Axle Load" (ESAL) means the relationship between actual or requested weight and an 18,000 pound single-axle load as determined by the American Association of State Highway and Transportation Officials Road Tests reported at the Proceedings Conference of 1962.

(10) "Fire apparatus" means a vehicle or combination of vehicles designed and used exclusively for fire suppression or rescue operations. These emergency vehicles and associated loads or equipment are necessary to protect the public safety and are considered non-divisible loads.

(11) "Flip axle(s)" means an axle that is bolted or pinned to a vehicle and flips from the closed position on the trailer to a deployed position on the ground extending the length or hauling capacity of the trailer.

(12) "Flip neck extension" means a gooseneck extension to the front of a trailer which can be flipped up or down, and can be used to adjust the axle weight(s) of a combination and load.

(13) "Pinned axle(s)" means a separate vehicle pinned to another vehicle adding extra carrying capacity to a vehicle. The additional axle(s) do not pivot from side to side at the connection point or have wheels that steer during turning.

(14) "Expanded trailer" means a trailer or semitrailer which can be extended in length by adding removable deck section(s).

(15) "Special-use trailer" means a trailer or semitrailer which is specifically designed to haul one type of commodity.

(16) "Tow-Away Trailer" means all equipment or tools mounted on wheels designed for towing by a motor vehicle, and which is not designed or used primarily for the transportation of persons or property, but is only incidentally operated or moved upon a highway.

(17) "Stretch Trailer" means a trailer or semitrailer capable of increasing the distance from the kingpin or coupling device to the rearmost axle. This stretch trailer provision is accomplished by using a "telescoping" principle in the trailer. This does not include fixed or sliding extensions to either end of the trailer or semitrailer or semitrailers with removable deck sections.

(18) "Gross Vehicle Weight Rating" (GVWR) means the gross vehicle weight rating as defined in ORS 801.298.

(19) "Holiday" for the purposes of these rules means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, and includes any other days on which the state officially observes the aforementioned holidays by the closure of State offices.

(20) "Idle Reduction System" means an auxiliary power unit or other device or technology that is used to reduce long-duration idling by allowing the main drive engine or auxiliary refrigeration engine to be shut down.

(21) "Jeep axle(s)" means a separate vehicle connected to a motor vehicle by kingpin to fifth wheel connection. A jeep axle(s) must bear all or part of the weight of the load of another vehicle and must be connected to that other vehicle either by kingpin to fifth wheel connection or a pintle hook.

(22) "Lift axle" means an axle that can be raised from or lowered to the surface of the ground.

(23) "MCTD" means the Motor Carrier Transportation Division of the Oregon Department of Transportation.

(24) "Motor truck" means a motor vehicle that is primarily designed or used for carrying loads other than passengers.

(25) "Non-divisible load" means:

(a) Any load or vehicle exceeding applicable size or weight limits that, if separated into smaller loads or vehicles, would:

(A) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(B) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(C) Require more than eight workhours to dismantle using appropriate equipment. The applicant for a non-divisible load permit has the burden of proof as to the number of workhours required to dismantle the load; or

(b) The following loads or vehicles:

(A) Emergency response vehicles, including those loaded with salt, sand, chemicals or a combination thereof, with or without a plow or blade attached in front, and being used for the purpose of spreading the material on highways that are or may become slick or icy;

(B) Casks designed for the transport of spent nuclear materials; and

(C) Military vehicles transporting marked military equipment or materiel.

(26) "Passenger vehicle" or "light vehicle" means a motor vehicle, regardless of design or intended use.

(27) "Permit Weight Table 1" is the table of legal weight found in ORS 818.010.

(28) "Permit Weight Table 2" is the Extended Weight Table used for oversize loads that cannot be reduced in size, except as specified in OAR 734-082-0051 and 734-082-0053, and having authorized divisible load weights. Permit Weight Table 2 is available from MCTD as Form 735-8111.

(29) "Permit Weight Table 3" is a table based on two wheelbase weight formulas. The first formula is 1,000 times (the wheelbase in feet plus 40) for groups of axles or combinations of vehicles having 18 feet or less wheelbase. The second formula is 1,200 times (the wheelbase in feet plus 40) for groups of axles, vehicles or combinations of vehicles having more than 18 feet of wheelbase. Permit Weight Table 3 is available from MCTD as Form 735-8112.

(30) "Permit Weight Table 4" is a table based on three wheelbase weight formulas. The first formula is 1,200 times (the wheelbase in feet plus 40) for groups of axles or combinations of vehicles having nine feet five inches or less wheelbase. The second formula is 2,200 times (the wheelbase in feet plus 20) when wheelbase is more than nine feet five inches but is not more than 30 feet. The third formula is 1,600 times (the wheelbase in feet plus 40) when wheelbase is more than 30 feet. This table limits maximum weights to no more than 21,500 pounds per axle and 43,000 pounds per tandem axle. Permit Weight Table 4 is available from MCTD as Form 735-8113.

(31) "Permit Weight Table 5" is a table based on the same three formulas as Permit Weight Table 4, but describes maximum weights up to 24,000 pounds per axle and 48,000 pounds per tandem axle when the combination consists of a steering axle and four or more consecutive tandem axles. Permit Weight Table 5 is available from MCTD as Form 735-8114.

(32) "Primary haul" means the non-divisible load transported under OAR 734-082-0053.

(33) "Road use assessment fee" means a fee for each ESAL mile of travel as established by ORS 818.225.

(34) "Secondary haul" means the divisible load transported under OAR 734-082-0053.

(35) "Self-propelled fixed load vehicle" means a vehicle with motive power designed and used primarily to support and move a permanent load in the form of equipment or appliances constructed as part of, or permanently attached to, the body of the vehicle.

(36) "Stinger steered" is as defined in ORS 801.507.

(37) "Transport" means to tow, haul, drive, or otherwise move a vehicle or load on the State highway system.

(38) "Truck-tractor" means a motor vehicle designed and used primarily for drawing other vehicles and constructed so as not to carry any load other than a part of the weight of the vehicle or load, or both, as being drawn.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060
Stats. Implemented: ORS 818.220 & 818.225
Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 5-2006, f. 10-19-06, cert. ef. 1-1-07; HWD 4-2007, f. & cert. ef. 7-19-07; HWD 6-2007, f. & cert. ef. 10-17-07; HWD 7-2015, f. & cert. ef. 12-17-15

734-082-0040
Combination of Vehicles

(1) The following vehicles or combinations of vehicles may be authorized for continuous trip permits over authorized routes provided the width does not exceed 14 feet, the height does not exceed 14 feet or, except for self-propelled fixed load vehicles limited by OAR 734-082-0039, 14 feet 6 inches on specifically authorized routes, and the overall length does not exceed that stated below:

(a) A solo vehicle must not exceed 40 feet and vehicle inclusive of load must not exceed 50 feet in overall length.

(b) Truck-tractor and semitrailer combinations, which may include an auxiliary axle, must not exceed the length limits as shown on the reverse of Group Map 1 or Route Map 7, whichever is greater, and the semitrailer must not exceed 53 feet in length including the auxiliary axle. An auxiliary axle attached to the rear of a trailer must be included in the measurement of the trailer unless the combination measurement exceeds 53 feet. Group Map 1 and Route Map 7 available from the Over-Dimension Permit Unit, are by reference made a part of Division 82 rules.

(c) Motor truck and trailer must not exceed 75 feet in overall length.

(d) Truck-tractor with semitrailer and trailer combinations must not exceed the length limits shown on the reverse of Group Map 1 or Route Map 7, whichever is greater.

(e) Passenger or light vehicles towing any trailer must not exceed 70 feet in overall length.

(f) An unladen combination of vehicles used to transport non-divisible loads may consist of the truck-tractor, jeep axle(s), a trailer, booster axle(s), dolly(s), steering axle(s), flip axle(s) or a flip neck extension, pinned axle(s) and other equipment needed to transport the non-divisible load. Trailer length must not exceed 62 feet. The combination must be reduced to the shortest length practicable; however overall length must not exceed 105 feet. Unladen movement is authorized with equipment needed to legally transport the non-divisible load loaded on the trailer.

(2) When the combination of vehicles includes jeep axles, or other vehicles of a size or weight not authorized by section (1) of this rule, movement must be by single trip permit only.

Stat. Auth.: ORS 184.616, 184.619, 810.060
Stats. Implemented: ORS 818.200, 818.220
Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1991(Temp), f. & cert. ef. 8-23-91; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; TO 8-2002, f. & cert. ef. 10-14-02; HWD 2-2005, f. & cert. ef. 3-18-05; HWD 4-2007, f. & cert. ef. 7-19-07; HWD 5-2008, f. & cert. ef. 5-19-08; HWD 5-2009, f. & cert. ef. 3-20-09; HWD 5-2011, f. & cert. ef. 5-27-117; HWD 7-2015, f. & cert. ef. 12-17-15

734-082-0045
Trailer Provisions

(1) Single trip permits for trailers or semitrailers that exceed 53 feet in length for movement of non-divisible loads, or unladen movement, shall be granted on an individual basis.

(2) Permits issued authorizing semitrailers or trailers to exceed 53 feet in length must be warranted by the size or weight of the non-divisible load and meet one or more of the following criteria:

(a) The use of trailer is necessary to reduce the height of a load; or

(b) The use of the trailer is necessary to support the load, otherwise it would be damaged by allowing it to overhang the trailer, or by sagging due to insufficient support; or

(c) The use of the trailer is necessary to accommodate the weight of the load.

(3) When not operating under the terms of a permit, the unladen semitrailer or trailer must be reduced to no greater than 53 feet in length, and the overall length of the combination cannot exceed the length limit allowed for the highway(s) traveled.

(4) A truck-tractor semitrailer or trailer combination under this rule may only be granted permits for trailers over 53 feet in length for the following types of trailers:

(a) Stretch trailers;

(b) Expanded trailers;

(c) Special use trailers;

(d) Tow-away trailers;

(e) Trailers with flip axle(s) deployed;

(f) Trailers with a flip neck extension deployed; or

(g) Trailers that have additional axle(s) which may be pinned, and are removable.

(5) Requests for permits for semitrailers or trailers in a truck-tractor semitrailer or trailer combination that exceed 53 feet in length, which cannot be classified as a semitrailer or trailer under section (4) of this rule, will not be granted unless the Administrator of MCTD determines that the public interest requires the semitrailer or trailer for the impending movement, and the movement can be performed safely.

(6) An unladen truck-tractor and semitrailer or trailer combination under this rule may be granted permits for trailers that exceed 53 feet in length for the following types of trailers:

(a) Special use trailers which cannot be reduced in length; or

(b) Expanded trailers, trailers with flip axle(s) or flip neck extension deployed, pinned (axles), or other components which would require special equipment in order to accommodate reducing the trailer length.

(7) Requests for permits for unladen semitrailers or trailers in a truck-tractor semitrailer or trailer combination that exceed 53 feet in length, which cannot be classified as a trailer under section (6) of this rule, will not be granted unless the Administrator of MCTD determines that the public interest requires the semitrailer or trailer for an impending movement, and the movement can be performed safely.

(8) A combination of vehicles which consists of a truck-tractor, semitrailer or trailer as described in section (4), or a fixed trailer, which also includes at least one of the following vehicles may be granted permits for trailers over 53 feet in length:

(a) Jeep axle(s);

(b) Booster axle(s);

(c) Steering axle(s) dollies

(9) An unladen combination of vehicles as described in section (8) may be granted permits for trailers over 53 feet in length. The combination must be reduced to the shortest length practicable.

(10) Requests for permits for trailers or semitrailers exceeding 53 feet in length for movement of a non-divisible load that does not warrant the size of the trailer as described in section (2), may be authorized on a case-by-case basis as a front haul or back haul movement.

Stat. Auth.: ORS 184.616, 184.619, 810.050 & 810.060
Stats. Implemented: ORS 818.220 & 818.225
Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-987; HWD 7-2015, f. & cert. ef. 12-17-15

734-082-0070
General Permit Provisions

(1) Posted Load Limits: Notwithstanding the weights or dimensions allowed under a permit, the posting of any highway or structure to reduce weights or dimensions will modify the limits allowed under the permit.

(2) Impaired Clearance: Full responsibility for determining adequate clearance, both vertical and horizontal is hereby imposed upon the permittee and the driver of equipment having a width and/or height in excess of the legal limit. When the vertical or horizontal clearance of any bridge or structure is impaired to the extent that full two-way traffic cannot be maintained, the permittee must provide a pilot vehicle for the purpose of preventing approaching vehicles from entering the bridge or structure while it is impaired by the movement covered by this permit.

(3) Spacing Interval: Two or more vehicles required to display warning signs must maintain a distance of one-half mile between combinations traveling in the same direction, except when overtaking or passing or in areas where increased traffic congestion is encountered, where traffic is controlled by signals, or where other conditions may so require. All slow-moving lanes and turn-outs must be used to allow following traffic to pass.

(4) Bond — Highway Damage: Permittee will be held responsible and liable for any and all damage to, or destruction of any highway or any highway structure occasioned by the movement over said highways, and hereby agrees to reimburse the Department of Transportation (Department) for the cost or expense of repairing or restoring any highway structure damaged, or destroyed; such reimbursement to be made by the permittee within ten days after being billed for the same by the Department. When requested to do so, permittee must furnish the State either a certified check or a surety bond, in any amount to be specified by the Department to guarantee the payment of claim for damages which may result from movement of an unusually large or heavy nature.

(5) Insurance: Permittee will also be held responsible and liable for any and all injury to persons or damage to property resulting from the movement on said highways, and will indemnify and hold harmless the State of Oregon, and Oregon Transportation Commission, its members, officers, and employees, jointly and severally, from liability in the event that such injury or damage may occur. In this connection, the granting authority may require the permittee to furnish to the Department evidence of satisfactory public liability and property damage insurance, in amounts as may be required by the Commission, and evidence of satisfactory indemnity insurance indemnifying the State of Oregon and its Transportation Commission, its members, officers, and employees, jointly or severally against liability in the event of any injury or accident occurring by reason of said permittee's operations on a state highway. This permit will automatically terminate, and be of no force and effect in the event that any insurance filed under this provision is canceled or is allowed to lapse.

(6) County Roads and City Streets: This permit does not authorize operations over county roads or city streets unless specifically noted. To operate over a county road a permit must be obtained from the county authority having jurisdiction over the road; likewise, to operate over a city street other than a state highway route, a permit must be obtained from the proper city authority.

(7) Cancellation: This permit may be canceled at any time by the granting authority upon proof satisfactory to it that the permittee has violated any of the terms of the permit, or that the permit was obtained through misrepresentation in the application therefor, or when in the judgment of the granting authority the public interest requires cancellation (ORS 818.220).

(8) Rear-view Mirrors: Vehicles or combinations of vehicles towing or transporting over-width vehicles, machines or loads under authority of this permit must be equipped with rear-view mirrors capable of affording the operator a view to the rear of the vehicle and/or combination of vehi-

cles. Such mirrors may exceed width authorized herein by five inches on either side, but must be retracted to legal width when vehicle or combination of vehicles and/or load is of legal width.

(9) It is the responsibility of the motor carrier to notify the Over-Dimension Permit Unit in the event of striking a structure in the course of a movement. In addition to any other notification required by law, within 24 hours of striking a structure, the motor carrier must initially report the incident to the Over-Dimension Permit Unit at 503-931-1541. The motor carrier will be contacted and provided with a form to report the incident and within 72 hours of the contact must return the completed form by fax to (503) 378-2873 or delivery to the Over-Dimension Permit Unit at 3930 Fairview Industrial Drive SE, Salem, OR 97302-1166.

Stat. Auth.: ORS 184.616, 184.619, 810.060
Stats. Implemented: ORS 818.200, 818.220
Hist.: HWY 1-1990(Temp), f. & cert. ef. 1-5-90; HWY 17-1990, f. & cert. ef. 12-28-90; HWY 2-1991(Temp), f. & cert. ef. 8-23-91; HWY 2-1992, f. & cert. ef. 2-18-92; HWY 11-1992, f. & cert. ef. 9-16-92; HWY 5-1997, f. & cert. ef. 5-9-97; TO 7-1998, f. & cert. ef. 8-20-98; TO 3-2000, f. & cert. ef. 2-11-00; HWD 5-2011, f. & cert. ef. 5-27-11; HWD 7-2015, f. & cert. ef. 12-17-15

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Department of Veterans' Affairs
Chapter 274

Rule Caption: Clarifies contracting rules for bond counsel and financial advisory services.
Adm. Order No.: DVA 4-2015
Filed with Sec. of State: 12-28-2015
Certified to be Effective: 12-28-15
Notice Publication Date: 11-1-2015
Rules Adopted: 274-005-0046
Rules Amended: 274-005-0040
Subject: Rules clarify the department's process for contracting for bond counsel and financial advisory services under ORS 286.130. Process moved from OAR 274-005-0040 to a new rule that is more specific, OAR 274-005-0046.
Rules Coordinator: Laurie Skillman—(503) 373-2016

274-005-0040
Formal Process (Over $75,000)

(1) Except as provided under subsection (3)(b) and section (4) of this rule or OAR 274-005-0045, the Director of Veterans' Affairs (director) shall make a public announcement to obtain a list of contractors interested in providing professional services to the director. The director will request statements of qualifications or proposals, or both, for either single projects or groups of projects. The announcement will be made in trade periodicals or newspapers of general circulation, and electronically through the Department of Administrative Services on-line Vendor Information Program (VIP) and may include the following:

(a) Description of project type(s);

(b) Typical project(s) scope;

(c) Anticipated project start and completion dates;

(d) Any special requirements;

(e) Closing date by which statements of interest and qualifications must be received; and

(f) Evaluation criteria and selection procedure.

(2) Initial screening:

(a) The director shall establish an evaluation committee. The committee shall, for each proposed project, evaluate statements of qualifications and performance data. The committee shall evaluate each firm on areas including, but not limited to:

(A) Approach to the project;

(B) Capability;

(C) Credentials;

(D) Experience;

(E) Performance data (when applicable); and

(F) Proposed project cost.

(b) Based on the established evaluation criteria, the committee shall select, in order of preference, a list of at least three firms (short list) deemed to be most highly qualified to provide the required services;

(c) The evaluation committee will interview the short listed firms and make a recommendation to the director on which one should be hired. When a proposal is requested, the evaluation committee may elect to eliminate the interview step and recommend the most qualified firm to the director.

(3) Final Selection:

(a) The director or designee shall select the most qualified firm and negotiate a contract with that firm. In making the final selection, the director shall consider the estimated value of the services to be rendered, the project scope, and complexity:

(A) Should the director be unable to negotiate a satisfactory contract with the firm considered to be the most qualified, negotiations with that firm will be formally terminated. The director will then undertake negotiations with the second most qualified firm. Failing accord with the second most qualified firm, the director will terminate negotiations. The director will then undertake negotiations with the third most qualified firm.

(B) Should the director be unable to negotiate a satisfactory contract with any of the selected firms, he shall select additional firms in order of their competence and qualifications and continue negotiations in accordance with this section until an agreement is reached or a decision not to contract for professional services is made.

(b) When the director determines that only one firm exists that is capable of performing the required services, within the required time frame, the director may negotiate a sole source contract with that firm. "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. A sole source designation eliminates the necessity for a selection process.

(4) Special Services. In cases where the service needed is one performed only by a specialized group such as Certified Public Accountants and other similar specialties (and a list of qualified persons, companies, or firms interested in providing this service is maintained by a state or federal agency, a company specializing in maintaining such a list, or is available from another source) the director may obtain and use such a list in lieu of making a public announcement. The director may also include on any such list persons, companies, or firms known by the director to be interested or qualified to provide the needed services. The director will utilize the process set out in sections (2) and (3) of this rule to select the contractor.

Stat. Auth.: ORS 406.050 & 406.115
Stats. Implemented: ORS 279A.065 & 286A.130
Hist.: DVA 4-1992(Temp), f. & cert. ef. 4-1-92; DVA 8-1992, f. & cert. ef. 8-3-92; DVA 7-1993, f. 5-18-93, cert. ef. 5-21-93; DVA 5-1996, f. & cert. ef. 7-22-96; DVA 5-2000, f. & cert. ef. 4-24-00; DVA 2-2005, f. & cert. ef. 4-22-05; DVA 1-2015(Temp), f. & cert. ef. 3-26-15 thru 9-21-15; Administrative correction, 10-22-15; DVA 4-2015, f. & cert. ef. 12-28-15

274-005-0046
Bond Counsel and Financial Advisor Procurement and Contracting

(1) Pursuant to ORS 286A.130(7), the Public Contracting Code does not apply to procurement processes and contracts for bond counsel or financial advisor services of the Department of Veterans' Affairs.

(2) Subject to review and approval of the terms and conditions of bond counsel contracts by the State Treasurer and the Attorney General, the department is authorized to establish its own procedures for procurement of and contracting for the services of bond counsel so long as such contracts:

(a) Are for a period of not less than one year during any biennium in which there are bonds outstanding that were issued for the department or during any biennium in which the department expects the State Treasurer to issue bonds for a department program; and

(b) Do not authorize bond counsel to advise or represent the state on matters that are committed by statute to the Attorney General, except as allowed under ORS 286A.130(3).

(3) Subject to the approval of financial advisor contracts by the State Treasurer, the department is authorized to establish its own procedures for procurement of and contracting for the services of financial advisors.

(4) The department chooses to maintain maximum reasonable discretion in the procurement of services from bond counsel and financial advisors and the execution of contracts with same given the statutorily-recognized complex and often unique factors that may be relevant over time in such relationships. Neither the model rules of the Attorney General adopted pursuant to ORS 279A.065 nor OAR 274-005-0040 nor other rules of this division govern the department's procurement and contracting under this section. The department may act in such manner as is deemed by the department to best serve the purposes of the department and will consider the Attorney General's model rules and the processes and standards identified in OAR 274-005-0040 and other rules of this division for guidance in exercising its procurement and contracting discretion under this section. The department may consider other factors and employ other procedures as they may be deemed appropriate by the department in the procurement of or contracting for such services, including, but are not limited to factors and procedures such as:

(a) The value or importance of continuity of services;

(b) Unique or additive knowledge or experience of specific firms or persons;

(c) The subject matter of the proposed contract and appropriate means to ensure successful performance at competitive costs where practical;

(d) Specificity with respect to communication and reservation of rights in any procurement;

(e) Clarity in the naming and description of parties as well as consideration of appropriate preferences;

(f) Ascertaining and obtaining appropriate representations and warranties as to the qualifications of parties;

(g) Specificity with respect to consideration and applicable time periods;

(h) Specificity with respect to terms and covenants, particularly as to standards applicable to the performance of all work or delivery of goods;

(i) Identification of remedies and their suitability to protect Department and program interests; and

(j) Use of appropriate terms with respect to standard provisions such as governing law, venue, waiver, exhibits, merger, etc.

(5) As a general standard, the department will seek to employ procedures as are practical to introduce competitive efficiencies and sound selections given the particular circumstances, complex regulations and governing law applicable to such legal and financial considerations.

Stat. Auth.: ORS 406.050 & 406.115
Stats. Implemented: ORS 279A.065 & 286A.130
Hist.: DVA 4-2015, f. & cert. ef. 12-28-15

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Higher Education Coordinating Commission, Office of Student Access and Completion
Chapter 575

Rule Caption: Housekeeping amendments to reflect changes required by HB 3120 (2013)
Adm. Order No.: OSAC 1-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 7-1-2014
Rules Amended: 575-001-0000, 575-001-0005, 575-001-0010, 575-001-0015, 575-001-0030, 575-001-0035, 575-007-0210, 575-007-0240, 575-007-0280, 575-007-0310, 575-007-0330, 575-007-0340, 575-007-0380, 575-030-0005, 575-031-0005, 575-031-0010, 575-031-0020, 575-031-0022, 575-031-0023, 575-031-0025, 575-031-0045, 575-035-0005, 575-035-0010, 575-035-0015, 575-035-0020, 575-035-0025, 575-035-0030, 575-035-0040, 575-035-0045, 575-035-0046, 575-035-0050, 575-035-0051, 575-035-0055, 575-037-0005, 575-037-0010, 575-037-0020, 575-037-0030, 575-037-0040, 575-038-0000, 575-038-0010, 575-038-0020, 575-038-0030, 575-038-0040, 575-045-0005, 575-050-0005, 575-050-0010, 575-050-0015, 575-050-0020, 575-050-0025, 575-050-0030, 575-050-0035, 575-050-0040, 575-050-0042, 575-050-0045, 575-050-0050, 575-060-0005, 575-060-0020, 575-063-0010, 575-065-0001, 575-065-0045, 575-065-0055, 575-070-0005, 575-070-0010, 575-070-0020, 575-070-0030, 575-070-0040, 575-070-0045, 575-070-0050, 575-070-0060, 575-070-0070, 575-070-0080, 575-070-0090, 575-071-0000, 575-071-0040, 575-072-0000, 575-072-0010, 575-072-0040, 575-072-0050, 575-072-0060, 575-072-0080, 575-072-0090, 575-073-0000, 575-074-0000, 575-075-0001, 575-075-0005, 575-075-0007, 575-075-0008, 575-075-0010, 575-075-0030, 575-075-0040, 575-075-0043, 575-075-0044, 575-075-0045, 575-075-0046, 575-075-0047, 575-075-0049, 575-075-0050, 575-075-0055, 575-076-0010, 575-080-0100, 575-085-0000, 575-085-0020, 575-085-0030, 575-085-0040, 575-085-0050, 575-085-0060, 575-085-0070, 575-090-0020, 575-090-0030, 575-090-0040, 575-090-0050, 575-095-0005
Subject: Housekeeping amendments reflect changes required by HB 3120 (2013), which abolished the Oregon Student Access Commission; renamed it the Office of Student Access and Completion; transferred policy-making and adjudication of disputes authority to the Higher Education Coordinating Commission (HECC); and transferred administrative authority to the Office of Student Access and Completion (OSAC). These rules include re-referencing, as appropriate, to the HECC and the HECC's Executive Director and to the OSAC and OSAC's Executive Director.
Rules Coordinator: Kelly Dickinson—(503) 947-2379

575-001-0000
Rulemaking Notice

(1) Prior to the adoption, amendment, or repeal of any rule, except a temporary rule, the Higher Education Coordinating Commission shall give public notice in the manner provided in this rule and hold a hearing on the proposed action.

(2) The public notice shall include the following:

(a) Subject matter and purpose of the intended action in sufficient detail to inform a person that the person's interest may be affected;

(b) Time, place, and manner in which interested persons may present their views on the intended action;

(c) A citation of the statutory or other legal authority for the agency's rulemaking;

(d) A citation of the statute or other law the rule is intended to implement;

(e) A statement of need for the rule and a statement of how the rule is intended to meet that need;

(f) A list of principal documents prepared by or relied upon by the agency in considering the need for the rule and a statement of the location at which those documents are available for public inspection;

(g) A statement of fiscal impact; and

(h) A statement concerning the use or nonuse of an advisory committee.

(3) The public notice shall be provided by:

(a) Publication in the Administrative Rules Bulletin referred to in ORS 183.360 at least twenty-one (21) days before the effective date of the proposed action;

(b) Mailing a copy, along with a copy of the proposed rule, to persons on the agency's mailing list established under ORS 183.335(7) twenty-eight (28) days before the effective date of the proposed action; and

(c) Mailing a copy of the proposed rule to other persons who request such in writing.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: ORS 183 & 348
Hist.: SSC 8(Temp), f. 1-30-76, ef. 2-15-76 thru 6-14-76; SSC 9, f. & ef. 10-21-76; SSC 13-1994, f. 10-7-94, cert. ef. 10-16-94; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2015, f. & cert. ef. 12-18-15

575-001-0005
Model Rules

The Attorney General's Model Rules of Procedure under the Administrative Procedure Act, effective March 27, 2000, are hereby adopted as rules of procedure of the Higher Education Coordinating Commission and are made a part of these Administrative Rules.

[ED. NOTE: The full text of the Attorney General's Model Rules of Procedure is available from the office of the Attorney General or the Oregon Student Assistance Commission.]
Stat. Auth.: ORS 183.325
Stats. Implemented: ORS 183, 348, 729 & OL 1999
Hist.: SSC 17, f. & ef. 8-1-77; SSC 1-1979, f. & ef. 1-17-79; SSC 1-1980, f. & ef. 1-31-80; SSC 1-1982, f. & ef. 4-28-82; SSC 3-1983, f. & ef. 11-29-83; SSC 1-1986, f. & ef. 2-21-86; SSC 1-1994, f & cert. ef. 1-25-94; SSC 1-1996, f. & cert. ef. 3-12-96; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2001, f. & cert. ef. 3-1-01; OSAC 1-2015, f. & cert. ef. 12-18-15

575-001-0010
Eligibility

(1) Any student or parent in default on any Federal Family Education Loan Program (FFELP) loan (formerly Guaranteed Student Loan/GSL) or any loan made or insured by the Higher Education Coordinating Commission and any student owing a refund on any State grant, or owing a refund or in default on any Title IV federal aid program shall not be eligible to participate in any student assistance program administered by the Commission.

(2) A student or parent who has lost eligibility for the aid programs referenced under section (1) of this rule regains eligibility by meeting the requirements of the Higher Education Act of 1965, as amended, and regulations issued thereunder.

Stat. Auth.: ORS 183 & 348
Stats Implemented: ORS 348.530
Hist.: SSC 17, f. & ef. 8-1-77; SSC 3-1980, f. & ef. 1-31-80; SSC 2-1982(Temp), f. & ef. 5-4-82; SSC 3-1982, f. & ef. 7-15-82; SSC 1-1985, f. & ef. 4-17-85; SSC 2-1986, f. & ef. 2-25-86; SSC 5-1986, f. & ef. 6-12-86; SSC 1-1990, f. & cert. ef. 2-5-90; SSC 3-1990, f. & cert. ef. 5-1-90; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2015, f. & cert. ef. 12-18-15

575-001-0015
Right of Appeal

A student who is denied participation in any student assistance program administered by the Higher Education Coordinating Commission may appeal the denial to the Commission. The appeal shall be submitted in writing a minimum of ten days before the meeting at which the appeal is to be considered.

Stat. Auth.: ORS 348
Stats. Implemented: HB 2249 & the Higher Education Act of 1965 as amended
Hist.: SSC 17, f. & ef. 8-1-77; SSC 2-1986, f. & ef. 2-25-86 ; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2005(Temp), f. & cert. ef. 4-4-05 thru 10-1-05; OSAC 2-2005, f. 9-27-05, cert. ef. 10-1-05; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-001-0030
Licensing, Suspension, and Renewal Requirements

(1) A State of Oregon licensing board, agency, or commission that is authorized by statute shall refuse to renew or may suspend a certificate, license, or registration of a person, or place the person on probation, if the person is in default in repayment of any student loan guaranteed or insured by the Higher Education Coordinating Commission and is not paying in a satisfactory manner as defined by federal regulation.

(2) The Higher Education Coordinating Commission shall identify which entities it is feasible to enter into an agreement with, to design and implement a process for conducting database matches and notification procedures.

(3) The Higher Education Coordinating Commission shall notify the defaulted loan borrower in writing that failure to pay satisfactorily may result in a refusal to issue or renew, a suspension or a placement on probation on any license, certificate or registration. The notice shall provide the defaulted student loan borrower with an administrative process to challenge the default status of any loan and an opportunity to object to the collection of the debt according to 34 CFR 30.20 to 30.33 and 34 CFR 682.410.

(4) The Higher Education Coordinating Commission shall inform defaulted borrowers and participating boards, agencies and commissions as outlined in ORS 348.397 — 348.399.

Stat. Auth.: ORS 183.325, 690.005 - 690.235 & 348
Stats. Implemented: HB 2337, 1995 Legislative Assembly
Hist.: SSC 2-1994, f. & cert. ef. 1-25-94; SSC 2-1996, f. & cert. ef. 6-7-96; OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2015, f. & cert. ef. 12-18-15

575-001-0035
Appointment and Authority of Executive Director

The Executive Director of the Higher Education Coordinating Commission shall appoint a qualified person to hold the position of Executive Director of the Office of Student Access and Completion. The Executive Director shall have the authority to direct all activities of the agency including, but not limited to, developing the agency's biennial and interim budget requests, overseeing all management functions of the agency such as authorizing expenditures and fees, employing and dismissing staff, entering into contracts and any other activity necessary to direct the functions of the agency on a daily basis.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: ORS 183 & 348
Hist.: OSAC 1-1999, f. & cert. ef. 12-8-99; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0210
Definitions

As used in OAR 575-007, unless the context of the rule requires otherwise, the following definitions apply:

(1) "Approved" means that a criminal records check and any required fitness determination has been completed on a subject individual and the subject individual is eligible to be an employee, volunteer, or contractor in positions covered by these rules.

(2) "Authorized Designee" means a person who is authorized by the Commission to receive and process criminal records check request forms signed by subject individuals and other criminal records information. The authorized designee conducts fitness determinations under the authority of the Commission.

(3) "Contact Person" means a person who is authorized by the Commission to receive and process criminal records check request forms signed by subject individuals, but who is not authorized to receive other criminal records information. The contact person is not allowed to make fitness determinations.

(4) "Conviction" means that the subject individual was convicted in a court of law. Entering a plea of "guilty" or "no contest" is also considered a conviction for the purpose of these rules unless a subsequent court decision has dismissed the charges. An expunged juvenile or adult record is not considered a conviction under these rules.

(5) "Criminal Records Check Rules" or "These Rules" means OAR chapter 575, division 007.

(6) "Criminal Records Check" or "CRC" means the Oregon Criminal Records Check and when required, a National Criminal Records Check and/or a State-Specific Criminal Records Check, and the processes and procedures required by these rules.

(7) "Denied" means that a criminal records check and subsequent fitness determination, including a weighing test, has been completed on a subject individual and the subject individual has been found to be not eligible to be an employee or volunteer in positions covered by these rules.

(8) "The Commission" means the Higher Education Coordinating Commission.

(9) "Hiring on a Preliminary Basis" means a subject individual is hired on a preliminary basis and allowed by the authorized designee to participate in the training for, orientation to, and work activities of the positions covered by these rules following submission of a completed OSAC Criminal Records Request form and subject to a final fitness determination. The term "hiring on a preliminary basis" is applicable only during the timeframe prior to a final fitness determination. See OAR 575-007-0310. An employee on trial service cannot appeal a termination except through the terms of the collective bargaining agreement.

(10) "National Criminal Records Check" means obtaining and reviewing criminal records nationwide or from states or jurisdictions other than Oregon. This information may be obtained from the Federal Bureau of Investigation (FBI) through the use of fingerprint cards and from other criminal information resources.

(11) "Oregon Criminal Records Check" means obtaining and reviewing information from the Oregon State Police's Law Enforcement Data System (LEDS). The Oregon Criminal Records Check may also include a review of information from the Oregon Judicial Information Network (OJIN), Oregon Department of Corrections records, Motor Vehicles Division (DMV), local or regional criminal records information systems, or other law enforcement agency or court records in Oregon.

(12) "Potentially Disqualifying Crime" means a crime listed or described in OAR 575-007-0280.

(13) "Records Information" includes criminal justice records, fingerprints, court records, sexual offender registration records, warrants, arrests, DMV information, information provided on the Commission's criminal records check forms, and any other information obtained by or provided to the Commission for the purpose of conducting a fitness determination.

(14) "Related" means spouse, domestic partner, natural parent, child, sibling, adopted child, adoptive parent, stepparent, stepchild, stepbrother, stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent, grandchild, aunt, uncle, niece, nephew or first cousin.

(15) "State-Specific Criminal Records Check" means obtaining and reviewing information from law enforcement agencies, courts or other criminal records information resources located in a state or jurisdiction outside Oregon.

(16) "Subject Individual": see OAR 575-007-0220.

(17) "Weighing Test" means a process carried out by the authorized designee in which information is considered to determine if a subject individual is approved or denied. See OAR 575-007-0320(5)(c).

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0240
Contact Person and Authorized Designee

(1) Requirements. All requirements in this section must be completed within a 90-day time period and prior to performing any duties as a contact person or authorized designee. To be approved by the Commission, all contact persons and authorized designees must:

(a) Apply to and be registered by the Commission. The application must be in writing on a form provided by the Commission.

(b) Be approved by the Commission after completing both an Oregon and a national criminal records check in accordance with these rules or Oregon State Police rules and must have:

(A) No conviction for a potentially disqualifying permanent review crime,

(B) No convictions for any other crime in the past fifteen years, and

(C) No outstanding warrants, registration as a sex offender in Oregon or any other jurisdiction, or any other condition identified in OAR 575-007-0290.

(c) Complete a training program and successfully pass any testing as required by the Commission.

(2) Denial of Contact Person or Authorized Designee Status.

(a) A person's status as a contact person or authorized designee will be denied if the person does not meet the qualifications to be a contact person or authorized designee as listed in this rule. Once denied, the person can no longer perform the duties of a contact person or authorized designee for the Commission.

(b) Denial or termination of contact person or authorized designee status under OAR 575-007-0240(4)(a) is not subject to hearing rights under these rules unless the denial or termination results in loss of employment or position, in which case they have the same hearing rights as other subject individuals under these rules.

(3) Responsibilities.

(a) A contact person is responsible for performing the following duties:

(A) Ensure that adequate measures are taken to protect the confidentiality of the records as required by these rules;

(B) Take reasonable measures to verify the identity of a subject individual. When the application is submitted in person, these measures include asking the subject individual for government-issued photo identification (example: driver's license, passport) and confirming information written on the OSAC Criminal Records Request form with information on the photo identification;

(C) Ensure that, when a subject individual is hired on a preliminary basis, the need for active supervision pursuant to OAR 575-007-0310 is understood by each person responsible for ensuring that active supervision is provided;

(D) Ensure that the subject individual receives a timely, written notice of the final fitness determination. When the decision results in denial or a restriction, the notice must include information regarding how to appeal the decision;

(E) Monitor the status of criminal records check applications and investigate any delays in processing; and

(F) Ensure that documentation required by these rules is processed and maintained in accordance with these rules.

(b) An authorized designee has all the responsibilities of a contact person as listed in (3)(a) of this rule, and in addition must perform the following duties:

(A) Review the OSAC Criminal Records Request form completed by the subject individual (if not already done by a contact person) and conduct a preliminary fitness determination under the authority of the Commission in accordance with OAR 575-007-0320 in order to determine eligibility to be hired on a preliminary basis;

(B) Conduct a final fitness determination under the authority of the Commission in accordance with OAR 575-007-0320; and

(C) Participate in the Commission's appeal process.

(4) Conflict of Interest. An authorized designee must not have access to LEDS information, or make a fitness determination, if there is a conflict of interest between the authorized designee and the subject individual.

(a) A conflict of interest exists when one or more of the following circumstances is true:

(A) The authorized designee or contact person is related to the subject individual, or

(B) The authorized designee or contact person has a financial or close personal relationship, other than an employee-employer relationship, with the subject individual.

(5) Termination of Contact Person or Authorized Designee Status.

(a) When the authorized designee's or contact person's position with the Commission ends, the Commission's registration of a contact person or authorized designee is revoked.

(b) The Commission must suspend or revoke the appointment if a contact person or authorized designee fails to comply with the rules of the Commission or fails to continue to meet the qualifications for the position of authorized designee or contact person, as applicable.

(6) Review of Appointment. The Commission will develop a procedure to review and update appointments of contact persons and authorized designees, up to and including a new application and criminal records check, to assure that all requirements of this rule are met:

(a) Every three years; or

(b) If the Commission has reason to believe the person no longer meets the qualifications to be a contact person or authorized designee, such as but not limited to, any indication of criminal behavior.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL

Stats. Implemented: Ch. 730 2005 OL

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06

575-007-0280

Potentially Disqualifying Crimes

A conviction of any of the following crimes is potentially disqualifying. The lists include offenses that are crimes and are not intended to include offenses that are classified as violations (See ORS 161.505 through 161.565).

(1) Permanent Review. The crimes listed in this section are crimes which require that a fitness determination be completed regardless of date of conviction.

(a) ORS 162.155, Escape II;

(b) ORS 162.165, Escape I;

(c) ORS 162.325, Hindering prosecution;

(d) ORS 163.005, Criminal homicide;

(e) ORS 163.095, Aggravated murder;

(f) ORS 163.115, Murder;

(g) ORS 163.118, Manslaughter I;

(h) ORS 163.125, Manslaughter II;

(i) ORS 163.145, Criminally negligent homicide;

(j) ORS 163.160, Assault IV;

(k) ORS 163.165, Assault III;

(l) ORS 163.175, Assault II;

(m) ORS 163.185, Assault I;

(n) ORS 163.187, Strangulation;

(o) ORS 163.190, Menacing;

(p) ORS 163.200, Criminal mistreatment II;

(q) ORS 163.205, Criminal mistreatment I;

(r) ORS 163.207, Female genital mutilation;

(s) ORS 163.208, Assault of Public Safety Officer;

(t) ORS 163.213, Unlawful use of an electrical stun gun, tear gas, or mace I;

(u) ORS 163.225, Kidnapping II;

(v) ORS 163.235, Kidnapping I;

(w) ORS 163.257, Custodial interference I;

(x) ORS 163.275, Coercion;

(y) ORS 163.355, Rape III;

(z) ORS 163.365, Rape II;

(aa) ORS 163.375, Rape I;

(bb) ORS 163.385, Sodomy III;

(cc) ORS 163.395, Sodomy II;

(dd) ORS 163.405, Sodomy I;

(ee) ORS 163.408, Unlawful Sexual penetration II;

(ff) ORS 163.411, Unlawful Sexual penetration I;

(gg) ORS 163.415, Sexual abuse III;

(hh) ORS 163.425, Sexual abuse II;

(ii) ORS 163.427, Sexual abuse I;

(jj) ORS 163.435, Contributing to the sexual delinquency of a minor;

(kk) ORS 163.465, Public indecency;

(ll) ORS 163.515, Bigamy;

(mm) ORS 163.525, Incest;

(nn) ORS 163.535, Abandonment of a child;

(oo) ORS 163.537, Buying or selling a person under 18 years of age;

(pp) ORS 163.545, Child neglect II;

(rr) ORS 163.547, Child neglect I;

(ss) ORS 163.555, Criminal nonsupport;

(tt) ORS 163.575, Endangering the welfare of a minor;

(uu) ORS 163.670, Using child in display of sexually explicit conduct;

(vv) ORS 163.673, Dealing sexual condition of children;

(ww) ORS 163.675, Sale sexual condition of children;

(xx) ORS 163.680, Paying for sexual view of children;

(yy) ORS 163.684, Encouraging child sexual abuse I;

(zz) ORS 163.686, Encouraging child sexual abuse II;

(aaa) ORS 163.687, Encouraging child sexual abuse III;

(bbb) ORS 163.688, Possession of materials depicting sexually explicit conduct of a child I;

(ccc) ORS 163.689, Possession of materials depicting sexually explicit conduct of a child II;

(ddd) ORS 163.693, Failure to report child pornography;

(eee) ORS 163.732, Stalking;

(fff) ORS 164.057, Aggravated theft I;

(ggg) ORS 164.075, Theft by extortion;

(hhh) ORS 164.125, Theft of services;

(iii) ORS 164.225, Burglary I;

(jjj) ORS 164.325, Arson I;

(kkk) ORS 164.395, Robbery III;

(lll) ORS 164.405, Robbery II;
(mmm) ORS 164.415, Robbery I;
(nnn) ORS 165.581, Cellular counterfeiting I;
(ooo) ORS 166.005, Treason;
(ppp) ORS 166.015, Riot;
(qqq) ORS 166.085, Abuse of corpse II;
(rrr) ORS 166.087, Abuse of corpse I;
(sss) ORS 166.155, Intimidation II;
(ttt) ORS 166.165, Intimidation I;
(uuu) ORS 166.220, Unlawful use of weapon;
(vvv) ORS 166.270, Possession of weapons by certain felons;
(www) ORS 166.272, Unlawful possession of machine guns, certain short-barreled firearms and firearm silencers;
(xxx) ORS 166.275, Possession of weapons by inmates of institutions;
(yyy) ORS 166.429, Firearms used in felony;
(zzz) ORS 166.720, Racketeering activity unlawful;
(aaaa) ORS 167.012, Promoting prostitution;
(bbbb) ORS 167.017, Compelling prostitution;
(cccc) ORS 167.062, Sadomasochistic abuse or sexual conduct in live show;
(dddd) ORS 167.065, Furnishing obscene materials to minors;
(eeee) ORS 167.070, Sending obscene materials to minors;
(ffff) ORS 167.075, Exhibiting an obscene performance to a minor;
(gggg) ORS 167.080, Displaying obscene materials to minors;
(hhhh) ORS 167.087, Disseminating obscene material;
(iiii) ORS 167.262, Adult using minor in commission of controlled substance offense;
(jjjj) ORS 167.315, Animal abuse II;
(kkkk) ORS 167.320, Animal abuse I;
(llll) ORS 167.322, Aggravated animal abuse I;
(mmmm) ORS 167.333, Sexual assault of animal;
(nnnn) ORS 181.599, Failure to report as sex offender;
(oooo) ORS 475.525, Sale of drug paraphernalia prohibited;
(pppp) ORS 475.805, Providing hypodermic device to minor prohibited;
(qqqq) ORS 475.967, Possession of precursor substance with intent to manufacture controlled substance;
(rrrr) ORS 475.973, Unlawful possession or distribution of ephedrine, pseudoephedrine or phenylpropanolamine;
(sss) ORS 475.975, Unlawful possession of iodine in its elemental form;
(tttt) ORS 475.976, Unlawful possession of iodine matrix;
(uuuu) ORS 475.982, Providing drug test falsification equipment;
(vvvv) ORS 475.984, Causing another person to ingest a controlled substance;
(wwww) ORS 475.986, Application of controlled substance to the body of another person;
(xxxx) ORS 475.992, Prohibited acts generally (regarding drug crimes);
(yyyy) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding felony crimes);
(zzzz) ORS 475.995, Distribution to minors;
(aaaaa) ORS 475.999, Penalty for manufacture or delivery of controlled substance within 1000 feet of school;
(bbbbb) ORS 677.080, Prohibited acts (regarding the practice of medicine);
(ccccc) Any federal crime;
(ddddd) Any unclassified felony defined in Oregon Revised Statutes not listed elsewhere in this rule;
(eeeee) Any other felony in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat to safety or security, as determined by the authorized designee.
(fffff) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405, 161.435, or 161.450, including any crime based on criminal liability for conduct of another pursuant to ORS 161.155.
(ggggg) Any crime in any other jurisdiction that is the substantial equivalent of any of the Oregon crimes listed in this section (section (1)) as determined by the authorized designee.
(hhhhh) Any crime that is no longer codified in Oregon or other jurisdiction but that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.
(iiiii) A new crime, adopted by the Legislature following the most recent amendment of these rules, that is the substantial equivalent of any of the crimes listed in this section (section (1)) as determined by the authorized designee.

(2) Ten-Year Review. The crimes listed in this section are crimes that require that a fitness determination be completed if the date of conviction is within ten years of the date the OSAC Criminal Records Request form was signed.
(a) ORS 133.076, Failure to appear on criminal citation
(b) ORS 162.015, Bribe giving;
(c) ORS 162.025, Bribe receiving;
(d) ORS 162.065, Perjury;
(e) ORS 162.075, False swearing;
(f) ORS 162.117, Public investment fraud;
(g) ORS 162.145, Escape III;
(h) ORS 162.175, Unauthorized departure;
(i) ORS 162.185, Supplying contraband;
(j) ORS 162.195, Failure to appear II;
(k) ORS 162.205, Failure to appear I;
(l) ORS 162.247, Interfering with a peace officer;
(m) ORS 162.265, Bribing a witness;
(n) ORS 162.275, Bribe receiving by a witness;
(o) ORS 162.285, Tampering with a witness;
(p) ORS 162.295, Tampering with physical evidence;
(q) ORS 162.305, Tampering with public records;
(r) ORS 162.335, Compounding;
(s) ORS 162.355, Simulating legal process;
(t) ORS 162.365, Criminal impersonation;
(u) ORS 162.367, Criminal impersonation of peace officer;
(v) ORS 162.369, Possession of false law enforcement identification card;
(w) ORS 162.375, Initiating a false report;
(x) ORS 162.385, Giving false information to police officer for a citation;
(y) ORS 162.405, Official misconduct II;
(z) ORS 162.415, Official misconduct I;
(aa) ORS 162.425, Misuse of confidential information;
(bb) ORS 163.195, Recklessly endangering another person;
(cc) ORS 163.212, Unlawful use of an electrical stun gun, tear gas, or mace II;
(dd) ORS 163.245, Custodial interference II;
(gg) ORS 163.445, Sexual misconduct;
(ii) ORS 163.467, Private indecency;
(jj) ORS 163.700, Invasion of personal privacy;
(kk) ORS 163.750, Violating court's stalking protective order;
(ll) ORS 164.043, Theft III;
(mm) ORS 164.045, Theft II;
(nn) ORS 164.055, Theft I;
(oo) ORS 164.085, Theft by deception;
(pp) ORS 164.095, Theft by receiving;
(qq) ORS 164.135, Unauthorized use of a vehicle;
(rr) ORS 164.140, Criminal possession of rented or leased personal property;
(ss) ORS 164.162, Mail theft or receipt of stolen mail;
(tt) ORS 164.215, Burglary II;
(uu) ORS 164.235, Possession of burglar's tools;
(vv) ORS 164.255, Criminal trespass I;
(ww) ORS 164.265, Criminal trespass while in possession of firearm;
(xx) ORS 164.272, Unlawful entry into motor vehicle;
(yy) ORS 164.315, Arson II;
(zz) ORS 164.335, Reckless burning;
(aaa) ORS 164.354, Criminal Mischief II;
(bbb) ORS 164.365, Criminal Mischief I;
(ccc) ORS 164.369, Interfering with police animal;
(ddd) ORS 164.377, Computer crime;
(eee) ORS 165.007, Forgery II;
(fff) ORS 165.013, Forgery I;
(ggg) ORS 165.017, Criminal possession of a forged instrument II;
(hhh) ORS 165.022, Criminal possession of a forged instrument I;
(iii) ORS 165.032, Criminal possession of a forgery device;
(jjj) ORS 165.037, Criminal simulation;
(kkk) ORS 165.042, Fraudulently obtaining a signature;
(lll) ORS 165.055, Fraudulent use of a credit card;
(mmm) ORS 165.065, Negotiating a bad check;
(nnn) ORS 165.070, Possessing fraudulent communications device;

(ooo) ORS 165.074, Unlawful factoring of credit card transaction;
(ppp) ORS 165.080, Falsifying business records;
(qqq) ORS 165.085, Sports bribery;
(rrr) ORS 165.090, Sports bribe receiving;
(sss) ORS 165.095, Misapplication of entrusted property;
(ttt) ORS 165.100, Issuing a false financial statement;
(uuu) ORS 165.102, Obtaining execution of documents by deception;
(vvv) ORS 165.540, Obtaining contents of communication;
(www) ORS 165.543, Interception of communications;
(xxx) ORS 165.570, Improper use of 9-1-1 emergency reporting system;
(yyy) ORS 165.572, Interference with making a report;
(zzz) ORS 165.577, Cellular counterfeiting III;
(aaaa) ORS 165.579, Cellular counterfeiting II;
(bbbb) ORS 165.692, Making false claim for health care payment;
(cccc) ORS 165.800, Identity theft;
(dddd) ORS 166.025, Disorderly conduct;
(eeee) ORS 166.065, Harassment;
(ffff) ORS 166.076, Abuse of a memorial to the dead;
(gggg) ORS 166.115, Interfering with public transportation;
(hhhh) ORS 166.180, Negligently wounding another;
(iiii) ORS 166.190, Pointing firearm at another;
(jjjj) ORS 166.240, Carrying of concealed weapon;
(kkkk) ORS 166.250, Unlawful possession of firearms;
(llll) ORS 166.370, Possession of firearm or dangerous weapon in public building or court facility; exceptions; discharging firearm at school;
(mmmm) ORS 166.382, Possession of destructive device prohibited;
(nnnn) ORS 166.384, Unlawful manufacture of destructive device;
(oooo) ORS 166.470, Limitations and conditions for sales of firearms;
(pppp) ORS 166.480, Sale or gift of explosives to children;
(qqqq) ORS 166.649, Throwing an object off an overpass II;
(rrrr) ORS 166.651, Throwing an object off an overpass I;
(ssss) ORS 166.660, Unlawful paramilitary activity;
(tttt) ORS 167.007, Prostitution;
(uuuu) ORS 167.090, Publicly displaying nudity or sex for advertising purposes;
(vvvv) ORS 167.212, Tampering with drug records;
(wwww) ORS 167.222, Frequenting a place where controlled substances are used;
(xxxx) ORS 167.325, Animal neglect II;
(yyyy) ORS 167.330, Animal neglect I;
(zzzz) ORS 167.355, Involvement in animal fighting;
(aaaaa) ORS 167.365, Dogfighting;
(bbbbb) ORS 167.370, Participation in dogfighting;
(ccccc) ORS 167.820, Concealing the birth of an infant;
(ddddd) ORS 411.630, Unlawfully obtaining public assistance;
(eeeee) ORS 411.675, Submitting wrongful claim or payment (e.g., public assistance);
(fffff) ORS 411.840, Unlawfully obtaining or disposing of food stamp benefits;
(ggggg) ORS 417.990, Penalty for placement of children in violation of compact;
(hhhhh) ORS 418.130, Unauthorized use and custody of records of temporary assistance for needy families program;
(iiiii) ORS 418.140, Sharing assistance prohibited;
(jjjjj) ORS 418.250, Supervision of child-caring agencies;
(kkkkk) ORS 418.327, Licensing of certain schools and organizations offering residential programs;
(lllll) ORS 433.010, Spreading disease (willfully) prohibited;
(mmmmm) ORS 471.410, Providing liquor to person under 21 or to intoxicated person; allowing consumption by minor on property;
(nnnnn) ORS 475.950, Failure to report precursor substance;
(ooooo) ORS 475.955, Failure to report missing precursor substances;
(ppppp) ORS 475.960, Illegally selling drug equipment;
(qqqqq) ORS 475.965, Providing false information on precursor substances report;
(rrrrr) ORS 475.981, Falsifying drug test results;
(sssss) ORS 475.991, Unlawful delivery of imitation controlled substance;
(ttttt) ORS 475.993, Prohibited acts for registrants (with the State Board of Pharmacy; regarding misdemeanor crimes);
(uuuuu) ORS 475.994, Prohibited acts involving records and fraud;
(vvvvv) ORS 475.996, Commercial drug offense;
(wwwww) ORS 657A.280, Failure to certify child care facility
(xxxxx) ORS 803.230, Forging, altering or unlawfully producing or using title or registration
(yyyyy) ORS 807.620, Giving false information to police officer
(zzzzz) ORS 811.140, Reckless driving
(aaaaaa) ORS 811.540, Fleeing or attempting to elude police officer;
(bbbbbb) ORS 811.700, Failure to perform duties of driver when property is damaged;
(cccccc) ORS 811.705, Failure to perform duties of driver to injured persons;
(dddddd) ORS 819.300, Possession of a stolen vehicle;
(eeeeee) ORS 830.475, Failure to perform the duties of an operator (boat);
(ffffff) Any unclassified misdemeanor defined in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule;
(gggggg) Any other misdemeanor in Oregon's or any other jurisdiction's statutes not listed elsewhere in this rule that is serious and indicates behavior that poses a threat to safety or security, as determined by the authorized designee;
(hhhhhh) Any crime of attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155;
(iiiiii) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (2)) as determined by the authorized designee;
(jjjjjj) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee;
(kkkkkk) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (2)) as determined by the authorized designee;
(3) Five-Year Review. The crimes listed in this section are crimes which require that a fitness determination be completed if the date of conviction is within five years of the date the OSAC Records Request form was signed.
(a) ORS 162.085, Unsworn falsification;
(b) ORS 162.235, Obstructing governmental or judicial administration;
(c) ORS 162.315, Resisting arrest;
(d) ORS 164.245, Criminal trespass II;
(e) ORS 164.345, Criminal mischief III;
(f) ORS 165.555, Unlawful telephone solicitation of contributions for charitable purposes;
(g) ORS 166.075, Abuse of venerated objects;
(h) ORS 166.090, Telephonic harassment;
(i) ORS 166.095, Misconduct with emergency telephone calls;
(j) ORS 167.340, Animal abandonment;
(k) ORS 418.630, Operating uncertified foster home;
(l) ORS 811.182, Criminal driving while suspended or revoked;
(m) ORS 813.010, Driving under the influence of intoxicants (DUII);
(n) ORS 830.325, Operating boat while under influence of intoxicating liquor or controlled substance;
(o) Any conviction for attempt, solicitation or conspiracy to commit a crime listed in this section pursuant to ORS 161.405 or 161.435, including any conviction based on criminal liability for conduct of another pursuant to ORS 161.155;
(p) Any crime in any other jurisdiction which is the substantial equivalent of any of the Oregon crimes listed in this section (section (3)) as determined by the authorized designee;
(q) Any crime which is no longer codified in Oregon, but which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee;
(r) A new crime, adopted by the Legislature following the most recent amendment of these rules, which is the substantial equivalent of any of the crimes listed in this section (section (3)) as determined by the authorized designee.
(4) Evaluation Based on Oregon Laws. Evaluations of crimes shall be based on Oregon laws and laws in other jurisdictions in effect at the time of the fitness determination, regardless of the jurisdiction in which the conviction occurred.
(5) Expunged Juvenile Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of a juvenile record that has been expunged pursuant to ORS 419A.260 through 419A.262.

(6) Expunged Adult Record. Under no circumstances shall a subject individual be denied under these rules because of the existence or contents of an adult record that has been expunged or set aside pursuant to ORS 137.225.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0310
Hiring on a Preliminary Basis

A subject individual may participate in training, orientation, and work activities prior to a final fitness determination only under the following conditions and will be considered to be hired on a preliminary basis:

(1) OSAC Criminal Records Request Form Completed. An OSAC Criminal Records Request form must have been completed by the subject individual and reviewed by the authorized designee.

(2) Preliminary Fitness Determination Required. A preliminary fitness determination must have been completed pursuant to OAR 575-007-0320.

(3) Active Supervision. A subject individual who is hired on a preliminary basis must be actively supervised at all times by someone who is approved pursuant to these rules.

(a) Duties. The person providing active supervision at all times must meet all of the following conditions:

(A) Know where the person hired on a preliminary basis is and what the person is doing; and

(B) Periodically observe the actions of the person hired on a preliminary basis.

(b) Exemption from Active Supervision. A subject individual who was approved without restrictions within the previous 24 months through a documented criminal records check pursuant to these rules by the Commission or by another Oregon public employer or prior Commission criminal records check rules may be hired on a preliminary basis without active supervision, provided the subject individual provides proof of having worked for a sustained period under the previous fitness determination. The Commission must maintain the documentation. The 24-month time frame is based on the length of time between the date of previous approval and the date of starting the new position. This exemption is not allowed:

(A) If the subject individual discloses criminal history that occurred within the previous 24 months;

(B) If the subject individual is currently involved in an appeal under these rules; or

(C) If, as determined by the authorized designee or the Commission, the job duties in the new position are so substantially different from the previous position that the previous fitness determination is inadequate for the current position.

(4) Status Prior to Final Fitness Determination. Nothing in this rule is intended to require that a subject individual who is eligible for hire on a preliminary basis be allowed to work, volunteer, or be trained prior to a final fitness determination.

(5) Termination of Hire on a Preliminary Basis.

(a) Those subject individuals hired on a preliminary basis may be terminated by the Commission immediately for the following reasons:

(A) There is any indication of falsification of application or other false statement by the applicant/employee;

(B) The criminal records check reveals a conviction for any potentially disqualifying crime not disclosed by the subject individual;

(C) The LEDS check identifies the subject individual as a "multi-state offender" and the subject individual did not disclose an out-of-state conviction or arrest;

(D) The subject individual failed to disclose a conviction or an arrest that did not result in a conviction;

(E) The Commission determines that hiring on a preliminary basis was not appropriate, based on the application, criminal history, position duties, or laws or rules applicable to the position.

(b) Termination of the hire on a preliminary basis is not subject to appeal under these rules.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0330
Contesting a Fitness Determination

(1) Work Pending Appeal Prohibited. If a subject individual is denied, then that person may not hold the position or be employed.

(2) History Disputed.

(a) Correcting Disputed History. If a subject individual wishes to challenge the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agencies reporting information to the Commission, the subject individual may appeal to the entity providing the information. Such challenges are not subject to the Commission's appeal process described in this rule.

(b) Request for Re-Evaluation Following Correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon State Police, the Federal Bureau of Investigation or other agency reporting information to the Commission, the Commission will conduct a new criminal records check and re-evaluate the criminal history upon submission of a new criminal records request form.

(3) Challenging the Fitness Determination. If a subject individual wishes to dispute an adverse final fitness determination, the subject individual may appeal the determination by requesting a contested case hearing. The subject individual must be notified of the opportunity for appeal on a form available from the Commission.

(a) Appeal. In order to request a contested case hearing the subject individual or the subject individual's legal representative must complete and sign the hearing request form. The form is available from the contact person for the Commission.

(b) Records. If a fingerprint-based criminal records check was conducted on the subject individual, then the hearing request form will also be deemed a request for the subject individual's own state and national criminal offender records.

(c) Deadline for Appeal. The completed and signed form must be received by the contact person no later than 10 days after the notice of the fitness determination is mailed for subject individuals who are employees, applicants for employment, volunteers, or applicants for volunteer positions with the Commission (subject individuals under OAR 575-007-0220(1) and 575-007-0220(2).

(d) Extension of Deadline. The Commission may extend the time to appeal if the Commission determines the delay was caused by factors beyond the reasonable control of the subject individual.

(e) Hearing on timeliness. The Commission may refer an untimely request to the Office of Administrative Hearings for a hearing on the issue of timeliness.

(f) Other Options. A subject individual may appeal a fitness determination through applicable personnel rules, policies, and collective bargaining provisions. The individual's decision to do so is an election of remedies as to the rights of the individual with respect to the fitness determination and is a waiver of the contested case process.

(4) Informal Administrative Review (Mandatory). When a subject individual is denied and the subject individual, or the subject individual's legal representative, requests a contested case hearing, the Commission conducts an informal administrative review before referring the appeal to the Office of Administrative Hearings.

(a) Participation by Subject Individual. The subject individual and, if applicable, the subject individual's legal representative, must participate in the informal administrative review.

(A) Participation may include, but is not limited to:

(i) Providing fingerprint cards, if not previously provided, for the purpose of a national check pursuant to OAR 575-007-0270 or to confirm identity.

(ii) Providing additional information or additional documents.

(iii) Participating in a telephone or in-person conference.

(B) Failure to participate in the informal administrative review by the subject individual or the subject individual's representative may result in termination of hearing rights. The Commission will review a request to reinstate hearing rights if received in writing by the Commission within 14 days.

(b) Criminal records check.

(A) If the denial was based on disclosed criminal history, the Commission will conduct a criminal records check during the informal administrative review.

(B) The Commission may conduct additional criminal records checks during the informal administrative review to update or verify the subject individual's criminal history.

(c) Weighing Test Always Applied. The Commission will use the weighing test as described in these rules during the informal administrative review.

(d) Content of Administrative Review. The Commission representative, the authorized designee, the subject individual and the subject individual's legal representative may discuss any of the matters listed in OAR 137-003-0575(4). The administrative review may also be used to:

(A) Inform the subject individual of the rules that serve as the basis for the denial;

(B) Ensure the subject individual understands the reason for the denial;

(C) Give the subject individual an opportunity to review the information that is the basis for the denial, except as prohibited by state or federal law;

(D) Give the Commission and subject individual an opportunity to research or provide additional information to consider as listed in OAR 575-007-0300;

(E) Give the Commission and the subject individual the opportunity to correct any misunderstanding of the facts; or

(F) Determine if the subject individual wishes to have any witness subpoenas issued should a formal hearing be necessary.

(e) Decision Following Administrative Review. Upon completion of the informal review, the subject individual or the subject individual's legal representative is advised by the Commission in writing of the finding within 14 days. The notice of finding will be mailed or hand-delivered. If mailed, the notice shall be mailed by regular mail to the address on the application or to an updated address provided in writing by the applicant.

(f) Hearing Following Administrative Review. If the informal administrative review reverses the denial, no hearing will be held and the appeal will not be forwarded to the Office of Administrative Hearings. If the informal administrative review upholds the denial, the appeal will be referred to the Office of Administrative Hearings and a hearing is held unless the subject individual or the subject individual's legal representative withdraws the request for a contested case hearing or the Commission reverses the denial before the hearing is held.

(5) Contested Case Hearing.

(a) Format. The hearing is conducted in accordance with Attorney General's Uniform and Model Rules of Procedure, "Hearing Panel Rules," OAR 137-003-0501 and the rules that follow.

(b) Commission Representation. Employees of the Commission may in accordance with ORS 183.452 be authorized by the Commission's Executive Director to represent the Commission in the contested case hearing. Authorization from the Office of Attorney General is also required. The Commission retains the right to be represented by the Attorney General.

(c) Exhibits. The administrative law judge must be provided a complete copy of the criminal records check information as follows:

(A) In the case of federal criminal history records and criminal history records from jurisdictions outside Oregon, the subject individual must obtain copies of the FBI criminal history report, or a copy of the state criminal history report from each state in which there was criminal or arrest history recorded. If a fingerprint-based criminal record check was conducted on the subject individual and if requested by the subject individual, the Commission will provide them with copies of the individual's own state and national criminal offender records. The subject individual or the subject individual's legal representative must provide copies of such documentation to the administrative law judge at least seven days prior to the scheduled hearing. The Commission may also provide out-of-state information received from other official sources.

(B) In the case of Oregon criminal history, the Commission may provide a copy of the LEDS printout, OJIN records or other court records to the administrative law judge, unless to do so would result in ex parte communication.

(d) Role of Administrative Law Judge. The Office of Administrative Hearings and the administrative law judge perform the following duties in the hearing process:

(A) Provide the subject individual or the subject individual's legal representative with all of the information required under ORS 183.413(2) in writing before the hearing;

(B) Conduct the hearing;

(C) Issue a dismissal by order when neither the subject individual nor the subject individual's representative appears at the hearing; and

(D) Issue a proposed order.

(e) Public Attendance. Neither the informal administrative review nor the contested case hearing is open to the public.

(6) Withdrawal. The subject individual or the subject individual's legal representative may withdraw a hearing request orally or in writing at any time. The withdrawal is effective the date it is received by the Commission or the Office of Administrative Hearings. A dismissal order will be issued by the Commission or the Office of Administrative Hearings. The subject individual may cancel the withdrawal in writing up to 14 days after the date the order is served.

(7) Proposed and Final Order.

(a) Informal Disposition. When an appeal is resolved before being referred to the Office of Administrative Hearings due to an administrative review or withdrawal, the Commission will serve a final order confirming the resolution.

(b) Failure to Appear. A hearing request is dismissed by order when neither the subject individual nor the subject individual's legal representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing and is served by the Office of Administrative Hearings. The Commission will cancel the dismissal order on request of the subject individual or the subject individual's legal representative on a showing that the subject individual and the subject individual's legal representative were unable to attend the hearing and unable to request a postponement for reasons beyond their control.

(c) Proposed Order. After a hearing, the administrative laws judge issues a proposed order. If no written exceptions are received by the Commission within 14 days after the service of the proposed order, the proposed order becomes the final order.

(d) Exceptions. If timely written exceptions to the proposed order are received by the Commission, the Commission Director or the Director's designee will consider the exceptions and serve a final order, or request a revised proposed order from the administrative law judge.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0340
Record Keeping, Confidentiality

(1) LEDS Reports.

(a) Confidentiality. All LEDS reports are confidential and must be maintained by the authorized designee in accordance with applicable Oregon State Police requirements in ORS chapter 181 and the rules adopted pursuant thereto. (NOTE: See OAR chapter 257, division 15).

(A) Authorized Designee Access. LEDS reports are confidential and may only be shared with another authorized designee if there is a need to know consistent with these rules.

(B) Subject Individual Access.

(i) The subject individual must be allowed to inspect the LEDS report if the subject individual requests to see it. The LEDS report, and photocopies of the LEDS report, must not be given to the subject individual, with the following exception:

(ii) If a fingerprint-based criminal records check was conducted on the subject individual, then the subject individual shall not only be permitted to inspect the individual's own state and national criminal offender records, but if requested by the subject individual, be provided with a copy of those same records.

(b) Retention. LEDS reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives.

(2) National (FBI) Information.

(a) Confidentiality and Dissemination.

(A) National criminal information provided by the FBI is confidential and may not be disseminated by the Commission, with the following exception:

(B) If a fingerprint-based criminal records check was conducted on the subject individual, then the subject individual shall not only be permitted to inspect the individual's own state and national criminal offender records, but if requested by the subject individual, be provided with a copy of those same records.

(b) Retention. FBI reports must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

(3) Fingerprint Cards:

(a) The Federal Bureau of Investigation (FBI) shall return or destroy the fingerprint cards used to conduct the criminal records check and may not keep any record of the fingerprints. If the FBI policy authorizing return or destruction of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to the FBI but shall continue to process the information through other available resources.

(b) If the FBI returns the fingerprint cards to the Department of State Police, the Commission shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(c) If only a state criminal records check is conducted, the Department of State Police shall destroy the fingerprint cards after the criminal records check is completed and the results of the criminal records check are provided to the Commission and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(4) OSAC Criminal Records Request Forms and Other Documentation.

(a) Confidentiality. All completed OSAC Criminal Records Request forms must be kept confidential and disseminated only on a need-to-know basis.

(b) Retention. OSAC Criminal Records Request forms and other records documenting the criminal records check and used in the fitness determination must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and implemented by Department of Administrative Services, Human Resources Division.

(5) OSAC History Database. Commission maintains a database regarding criminal records checks.

(a) Data. The authorized designee will maintain a system of information regarding criminal records checks for volunteers and contractor who have been active within the past three years.

(b) Confidentiality. Records maintained under section (4) of this rule are confidential and are only disseminated by the Commission as allowed by these rules and in accordance with the rules of the Oregon State Police (OSP).

(c) Retention. Information maintained in the database must be retained and destroyed in accordance with records retention schedules published by Oregon State Archives and in accordance with federal law.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-007-0380
Fees

Fees may not exceed the actual cost of acquiring and furnishing criminal offender information.

Stat. Auth.: ORS 348; Ch. 730 2005 OL, HB. 2157 2005 OL
Stats. Implemented: Ch. 730 2005 OL
Hist.: OSAC 4-2006, f. & cert. ef. 11-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-030-0005
Definitions

(1) "Resident of Oregon". Residency is established by virtue of the student (in the case of independent students) or the student's parent (in the case of dependent students) having been in continuous residency in this state for the 12 months preceding enrollment. Residency is immediate in the case of a dependent student whose parents have moved to this state for a reason other than the student's enrollment. The residency period may be reduced to the preceding six months in the case of an independent student who moved to this state for a purpose other than education:

(a) A dependent resident student whose Oregon domiciled parent(s) move out-of-state shall retain resident classification as long as the student is continuously enrolled at an Oregon high school or Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(b) An independent resident student shall retain resident classification as long as the student is continuously enrolled at an Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(c) A dependent student whose parent(s) are serving on active duty in the U. S. Armed Forces outside the State of Oregon shall have residency status determined by the parents' declared "home of record". An independent student who is serving on active duty in the U. S. Armed Forces outside the State of Oregon shall have residency status determined by the student's declared "home of record";

(d) A student from a state other than Oregon, or from the Federated States of Micronesia, who is receiving or is eligible to receive financial assistance through the government of that state or the Federated States, shall not be considered a resident of Oregon;

(e) Eligibility for certain scholarships administered by the Commission does not necessarily qualify a student as an Oregon resident for the purposes of state-funded student financial aid programs administered by the Commission.

(f) Residence Classification of Members of Oregon Tribes

(A) Students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a federally recognized Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon shall be deemed eligible for programs administered by the Higher Education Coordinating Commission that are limited to Oregon residents, regardless of their state of residence.

(B) For purposes of this rule, the federally recognized tribes of Oregon are the following:

(i) Burns Paiute Tribe;
(ii) Confederated Tribes of Coos, Lower Umpqua and Siuslaw;
(iii) Confederated Tribes of Grand Ronde Community of Oregon;
(iv) Confederated Tribes of Siletz Indians of Oregon;
(v) Confederated Tribes of the Umatilla Indian Reservation;
(vi) Confederated Tribes of the Warm Springs Indian Reservation;
(vii) Coquille Indian Tribe;
(viii) Cow Creek Band of Umpqua Indians;
(ix) Klamath Tribes.

(C) For purposes of this rule, the federally recognized Native American tribes which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon are:

(i) CALIFORNIA:
(I) Benton Paiute Tribe;
(II) Big Bend Rancheria;
(III) Big Lagoon Rancheria;
(IV) Blue Lake Rancheria;
(V) Bridgeport Indian Colony;
(VI) Cedarville Rancheria;
(VII) Fort Bidwell Indian Tribe;
(VII) Hoopa Valley Tribe;
(IX) Karuk Tribe of California;
(X) Likely Rancheria;
(XI) Lookout Rancheria;
(XII) Lytton Rancheria;
(XIII) Melochundum Band of Tolowa Indians;
(XIV) Montgomery Creek Rancheria;
(XV) Pit River Tribe;
(XVI) Quartz Valley Indian Community;
(XVII) Redding Rancheria;
(XVIII) Roaring Creek Rancheria;
(XIX) Smith River Rancheria;
(XX) Susanville Rancheria;
(XXI) Tolowa-Tututni Tribe;
(XXII) Winnemucca Colony;
(XXIII) XL Ranch;
(XXIV) Yurok Tribe.
(ii) IDAHO:
(I) Nez Perce Tribe of Idaho;
(II) Shoshoni-Bannock Tribes.
(iii) NEVADA:
(I) Duck Valley Shoshone-Paiute Tribes;
(II) Fallon Paiute-Shoshone Tribe;
(III) Fort McDermitt Paiute-Shoshone Tribe;
(IV) Lovelock Paiute Tribe;
(V) Pyramid Lake Paiute Tribe;
(VI) Reno-Sparks Indian Colony;
(VII) Summit Lake Paiute Tribe;
(VIII) Walker River Paiute Tribe;
(IX) Winnemucca Indian Colony;
(X) Yerington Paiute Tribe.
(iv) OKLAHOMA: Modoc Tribe of Oklahoma.
(v) WASHINGTON:
(I) Chehalis Community Council;
(II) Colville Confederated Tribes;
(III) Quinault Indian Nation;
(IV) Shoalwater Bay Tribe;
(V) Yakama Indian Nation.

(D) A student seeking to be deemed eligible under the provisions of this rule shall submit, following procedures prescribed by the Higher Education Coordinating Commission, a photocopy of a tribal enrollment card or other acceptable documentation from a tribe which documents tribal membership.

(2) "Undergraduate Student" is a regularly enrolled student who:

(a) Has not obtained a baccalaureate or higher degree from any accredited institution; or

(b) Has not been classified as a "graduate student" by the institution disbursing funds.

(3) "Dependent/Independent Student". The definition of independent/dependent student shall be the definition used for the student aid programs under Title IV of the Higher Education Act of 1965 as amended.

(4) "Financial Need". The difference between the family contribution, derived from a system of need analysis annually approved by the Commission, and the cost of education, as specified by program rules.

(5)(a) "Cost of Education". Generally, the sum of tuition for 15 credit-hours per academic term; standard fees charged to all students; room and board (where applicable); and estimates of books, supplies, modest personal expenses, transportation, and other allowable costs identified by the U.S. Department of Education.

(b) The standard cost of education is based upon full-time enrollment for an independent student or for a dependent student not living at home.

(6) "Full-Time Enrollment". Registration and payment of required fees as a full-time student, at an eligible institution or combination of eligible institutions, based on a minimum of 12 credit-hours per academic term. Students attending more than one eligible institution must meet the definition of concurrently enrolled as defined in OAR 575-030-0005(8) to be considered full-time.

(7) "Half-Time Enrollment". Registration and payment of required fees as a half-time student, at an eligible institution or combination of eligible institutions, based on 6 to 11 credit-hours per academic term.

(8) "Concurrently Enrolled". A student who attends more than one eligible institution under a written consortium agreement or concurrent enrollment program. The student's "home" institution determines the student's eligibility for federal and state financial aid, disburses funds to the student, and is responsible for reporting enrollment and disbursement information to the Commission.

(9) "Oregon-based". Having an educational institution that is both located and headquartered in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.230 - 348.260
Hist: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1979, f. & ef. 1-17-79; SSC 2-1980, f. 1-31-80, ef. 4-1-80; SSC 4-1980, f. & ef. 10-22-80; SSC 1-1981, f. & ef. 9-3-81; SSC 2-1986, f. & ef. 2-25-86; SSC 5-1987, f. & ef. 10-23-87; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 5-2002, f. & cert. ef. 3-12-02; OSAC 1-2004, f. & cert. ef. 2-12-04; OSAC 3-2005, f. 9-27-05, cert. ef. 10-1-05; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0005
Residency

To be eligible for an Opportunity Grant a student must:

(1) Be a U.S. Citizen or eligible non-citizen as defined by federal regulations under Title IV, Part B of the Higher Education Act of 1965 as amended.

(2) Be a resident of the State of Oregon as defined in OAR 575-030-0005(1).

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 12, f. & ef. 12-15-76; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0010
Financial Need

(1) A student must have financial need as determined by the Executive Director of the Office of Student Access and Completion (OSAC Director) as set forth in OAR 575-030-0005(4).

(2) A student shall meet eligibility criteria for a Federal Pell Grant prior to being deemed eligible for an Oregon Opportunity Grant.

(3) Effective starting with the 2008-09 academic year, eligibility for a Federal Pell Grant shall no longer be required for a student to be deemed eligible for an Oregon Opportunity Grant.

(4) Effective starting with the 2008-09 academic year, a student's financial need for purposes of determining eligibility for an Oregon Opportunity Grant shall be based upon provisions of the Shared Responsibility Model as set forth in OAR 575-031-0022 and 0023.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 1-2005(Temp), f. & cert. ef. 4-4-05 thru 10-1-05; OSAC 2-2005, f. 9-27-05, cert. ef. 10-1-05; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0020
Enrollment

(1) Except for subsections (2) of this rule, a student must be enrolled or accepted for enrollment as at least a half-time undergraduate student at an eligible institution. In addition, except for (2) below, when funds are not available to award grants to all qualified students, the Commission may give priority to applicants who are or plan to be full-time students at the eligible postsecondary institution where the grant is to be used.

(2) Students whose statutory rights provide for a legitimate need to attend school for less than half-time undergraduate status may be eligible to receive an Oregon Opportunity Grant. These students will not be denied priority status.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 1-2010, f. & cert. ef. 10-6-10; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0022
Definitions for the Shared Responsibility Model

(1) Cost of Education. For purposes of calculating Oregon Opportunity Grant awards under the Shared Responsibility Model, the standard cost of education is based on the definition of cost of education in OAR 575-030-0005.

(a) The standard cost of education for each institutional segment is based on the average of the standard costs for all participating institutions within an institutional segment.

(b) For purposes of calculating Oregon Opportunity Grant awards under the Shared Responsibility Model, the standard cost of education for all public and private independent 4-year institutions is the average of the standard costs for public 4-year institutions. The standard cost of education for all public 2-year institutions is the average of the standard costs for all institutions in that segment.

(2) "Student share". The student share is a fixed amount based upon a reasonable amount of paid work and, in some cases, a modest amount of borrowing, depending upon the type of institution the student attends. The Executive Director of the Office of Student Access and Completion (OSAC Director) adjusts the student share annually according to changes in the Oregon minimum wage and what the OSAC Director determines to be a manageable debt burden for a student. The student's share can consist of any combination of financial resources from the student's work, loans, scholarships, savings, or assets.

(a) For a student attending a public 2-year Oregon-based postsecondary institution, the student share is based on income from work. The OSAC Director will annually determine the income from work amount, based on a minimum number of hours per week at minimum wage.

(b) For a student attending a public or not-for-profit 4-year Oregon-based postsecondary institution, the student share is based on income from work plus a modest loan amount. The OSAC Director will annually determine the work component, based on a minimum number of hours per week at minimum wage, and the loan amount.

(c) For a student enrolled between 6 and 11 credit-hours, the component of the student share represented by income from work may be higher than for students enrolled full time. The OSAC Director will determine this amount annually.

(d) "Manageable debt burden". The OSAC Director will annually determine a manageable debt burden based on average entry-level salaries for public service occupations in Oregon.

(3) " Family Share". The family share is based on the financial resources of the student's family, as reported in the Free Application for Federal Student Aid (FAFSA). If a student or student's parents, if applicable, are in an officially registered Oregon domestic partnership, the financial resources of the student's family shall be calculated by the OSAC Director, based on information reported in the FAFSA and the Oregon Opportunity Grant Domestic Partnership Reporting Form.

(a) For a dependent student, the family share is equal to the portion of the federally calculated expected family contribution that is based upon the financial resources (income from work and other sources, savings, and/or assets) of the student's parents, providing program funding levels are sufficient to serve all eligible students. If the student's parents are in an officially registered Oregon domestic partnership, information provided on the Oregon Opportunity Grant Domestic Partnership Reporting Form may also be used to determine the expected family contribution.

(b) For a married independent student (with or without dependents), the family share is equal to the student's federally calculated expected family contribution. If the student is part of an officially registered Oregon domestic partnership, information provided on the Oregon Opportunity Grant Domestic Partnership Reporting Form may also be used to determine the expected family contribution. When determining dependency status, the OSAC Director shall view students in officially registered domestic partnerships as independent.

(c) For a single independent student (with or without dependents) whose federal expected family contribution is less than the standard student share for a student attending a public 2-year postsecondary institution, the family share is $0.

(d) For a single independent student (with or without dependents) whose federal expected family contribution is greater than the standard student share for a student attending a public 2-year postsecondary institution, the family share is equal to the federal expected family contribution minus

the student share for a student attending a public 2-year postsecondary institution.

(e) Notwithstanding paragraphs (a) through (d) of this section, for the 2008-09 academic year, the Family Share for all students, both dependent and independent, is equal to the student's expected family contribution.

(f) Effective for academic years 2009-10 and beyond, the Family Share for single independent students is equal to the student's expected family contribution.

(4) "Federal Share". The federal share is based on how much the student or the student's family is expected to receive from the federal government in the form of Federal Pell Grants plus assumed federal higher education tax credits, as determined by the OSAC Director. The federal share excludes Academic Competitiveness Grants, National SMART Grants, Federal SEOG awards, and other federal funds such as Robert C. Byrd Honors Scholarships.

(5) "State Share". The state share is equal to the standard cost of education minus the sum of the student share, the family share, and the federal share. The state share is the maximum amount that a student may receive as an Opportunity Grant. If the amount of the state share is less than the minimum award amount, as determined by the OSAC Director, the student will receive no award. If total state funding is not sufficient to cover full awards for all eligible students, the state share may be reduced proportionally utilizing a method determined by the OSAC Director.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 2-2008, f. & cert. ef. 8-21-08; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0023
Implementation of Shared Responsibility Model

Effective starting with the 2008-09 academic year, the Shared Responsibility Model shall be the method for determining a student's eligibility for the Opportunity Grant and the student's annual award amounts. Under this methodology, a qualified student's cost of education is shared with the student, the student's family, the federal government, and the state. The amount of a student's grant is equal the state's share of the student's cost of education, as determined by the OSAC Director.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0025
Opportunity Grant Amount

(1)(a) For students attending a public 2- or 4-year Oregon-based postsecondary institution, award amounts for the 2007-08 academic year are based upon a fixed percentage of the average tuition and standard fees plus the weighted average of nontuition costs across all institutional segments.

(b) For students attending a private nonprofit 4-year Oregon-based postsecondary institution, award amounts for the 2007-08 academic year are based upon a fixed percentage of the average tuition and standard fees at each institution plus the weighted average of nontuition costs across all institutional segments.

(c) An Opportunity Grant may vary in amount from $100 to an amount that shall not exceed 50 percent of the student's financial need, as determined by the OSAC Director. This provision expires upon full implementation of the Shared Responsibility Model.

(d) Effective starting with the 2008-09 academic year, an Opportunity Grant is based upon the state share, as calculated under provisions of the Shared Responsibility Model.

(2) Within the funds available, an Opportunity Grant for a student who is taking between 6 and 11 credit hours in a term or semester shall be 50 percent of the award made to a full-time student enrolled at the same institution. This section is effective starting with the 2006-07 academic year and expires at the end of the 2007-08 academic year.

(3) For concurrently enrolled students, the amount of the Opportunity Grant will be based on the school disbursing funds, unless otherwise approved by the OSAC Director.

(4) In the event that the OSAC Director determines that the total amount available to award as the state share to all qualified students is not sufficient to cover the total state share amount scheduled to be awarded to all students, the OSAC Director will implement one or more of the following strategies to limit awards. Examples of such strategies may include, but are not limited to, the following:

(a) The OSAC Director may limit awards to only students who are enrolled full time;

(b) The OSAC Director may implement reductions of all awards using progressive prorata reductions based on a percentage of the student's expected family contribution;

(c) The OSAC Director may prescribe a specific date by which a student must apply to the Commission to qualify for a grant and may prescribe an additional date by which the award must be disbursed by school officials to the student.

(d) The OSAC Director may make per capita reductions to future student grants if appropriations are determined to be inadequate to the needs of all eligible students whose applications are received by the announced application deadline for a specific academic year. When future disbursements of student grants are reduced, the OSAC Director will provide notification he or she deems adequate to college and university financial aid offices and affected students.

(e) The OSAC Director may base a recipient's maximum authorized award each term on the recipient's fall-term enrollment status if funds are not available to award grants to all qualified students whose applications are received by the announced application deadline for a specific academic year.

(5) Grandfathered awards for academic years 2008-09, 2009-10, and 2010-2011. Notwithstanding paragraph (1)(d) above, a qualified student who attended an eligible postsecondary institution at least half time during the 2007-08 academic year and remains continuously enrolled at least half time at the same institution is eligible for grandfathered awards for the 2008-09, 2009-10, and 2010-2011 academic years. A qualified student who attended more than one eligible postsecondary institutions as at least a half-time student during the 2007-08 academic year and remains continuously enrolled at least half time at one or more of the same institutions is also be eligible for grandfathered awards for the 2008-09, 2009-10, and 2010-2011 academic years. For grandfathering-eligible students, awards are calculated using both the method in place during the 2007-08 academic year and the method for the Shared Responsibility Model, and students shall receive annual awards based on whichever of the two methods for calculating awards grants the student the greater amount of student assistance. Grandfathering of awards expires after the end of the 2010-11 academic year. Continuous enrollment is defined as completion of an academic year within any 12-month period.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 12, f. & ef. 12-15-76; SSC 18, f. & ef. 10-19-77; SSC 1-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 2-1979, f. 7-24-79, ef. 8-1-79; SSC 2-1985, f. & ef. 4-17-85; SSC 5-1987, f. & ef. 10-23-87; SSC 1-1993(Temp), f. & cert. ef. 9-20-93; SSC 3-1994, f. & cert. ef. 1-25-94; SSC 2-1995, f. & cert. ef. 12-6-95; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 4-2005, f. 9-27-05, cert. ef. 10-1-05; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2009(Temp), f. & cert. ef. 11-24-09 thru 5-17-10; Administrative correction 6-25-10; OSAC 1-2010, f. & cert. ef. 10-6-10; OSAC 1-2015, f. & cert. ef. 12-18-15

575-031-0045
Disbursements

(1) Institutions shall disburse grants to students identified by the Commission from funds provided by the Commission on an academic term basis.

(2) Institutions shall not disburse grants to students who cease to meet conditions of award identified by the Commission.

(3) If, as a result of an institutional error, grants are disbursed to ineligible students, to students in ineligible programs, or to students for an inappropriate number of terms, the institution shall reimburse the State of Oregon the full amount of monies erroneously disbursed.

(4) Institutions shall disburse grants to eligible students within a time schedule established annually by the Commission.

(5) Institutions shall submit regular reports to the Commission regarding disbursements made to eligible students on a schedule determined by the Commission.

(6) Institutions shall refund unused grant funds to the Commission within a time schedule established annually by the Commission.

(7) Generally, a disbursement may not be made to a student who is no longer eligible. An otherwise eligible student becomes ineligible for an Opportunity Grant on the date that the student is no longer enrolled at the institution for the award year. With OSAC Director approval, institutions may make late disbursements of retroactive awards for prior academic terms up to 60 days after the close of the year-end account reconciliation process or up to 60 days after the end of the student's period of enrollment, whichever is earlier.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348
Hist.: SSC 4-1980, f. & ef. 10-22-80; SSC 1-1981, f. & ef. 9-3-81; SSC 5-1986, f. & ef. 6-12-86; OSAC 6-2002, f. & cert. ef. 3-12-02; OSAC 5-2007, f. & cert. ef. 11-7-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0005
Residency

For a student to be eligible for a Barbers and Hairdressers (B & H) Grant, the student must:

(1) Be a U.S. Citizen, or be in the United States for other than a temporary purpose and intend to become a permanent resident.

(2) Be a resident of the State of Oregon as defined in OAR 575-030-0005(1).

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0010
Financial Need

A student must have financial need as determined by the Commission as set forth in OAR 575-030-0005(6).

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0015
Institutional Eligibility

Eligible institutions are any schools of Barbering, Hair Design, Cosmetology and Manicure, that are located in and licensed by the State of Oregon and have signed an agreement with the Commission to participate.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0020
Enrollment

A student must be enrolled or accepted for enrollment as a student at an eligible institution.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0025
Grant Amount

(1) A B & H Grant may vary in amount from $100 to $1,500 per academic year or nine month period.

(2) Grants will not exceed 50 percent of the computed need.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0030
Conditions of Award

(1) The maximum period of a B & H Grant shall not exceed 15 months.

(2) The Commission may deny any disbursement to a student failing to make satisfactory academic progress as defined by the institution.

(3) No B & H Grant shall be made to any student enrolled in a course of study required for and leading to a degree in theology, divinity, or religious education.

(4) The amount of a student's B & H Grant may be related to the amount the student is eligible to receive under the Pell Grant Program.

(5) The B & H Grant recipient shall sign a statement of educational purpose in conformity with the requirements of Title IV student aid programs.

(6) The recipient may not be in default on any federal Title IV loan, nor owe any refunds on federal Title IV funds previously disbursed.

(7) Students receiving public assistance from other than the federal Supplemental Nutrition Assistance Program through the Adult and Family Services Division of the State of Oregon Department of Human Resources will not be eligible for a B & H Grant.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0040
Award Priority

When considering application for award, the Commission shall give first priority to the funding of grants to full-time students.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0045
Disbursements

(1) Institutions shall disburse grants to students identified by the Commission from funds provided by the Commission every three months.

(2) If, as a result of an institutional error, grants are disbursed to ineligible students, to students in ineligible programs, or to students for an inappropriate number of months, the institution shall reimburse the State of Oregon the full amount of monies erroneously disbursed.

(3) Institutions shall disburse grants to eligible students within a time schedule established by the Commission.

(4) Institutions shall refund undisbursed grant funds to the Commission within a time schedule established by the Commission.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0046
Student Information

Awarded students will be provided with written notification of the following:

(1) The amount of B & H Grant which the student is eligible to receive at that institution.

(2) Any change in the amount of the grant which the student is eligible to receive at that institution.

(3) The transferability of the B & H Grant to other eligible institutions in Oregon.

(4) The Conditions of Award (OAR 575-035-0030).

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0050
Record Keeping

(1) Each institution shall maintain sufficient records to document its activities relating to state grant programs.

(2) Each institution shall make its academic and financial records available to the Commission at reasonable times for the purpose of assuring that the institution is complying with the rules relating to the administration of the state grant programs.

(3) Institutions shall retain the academic and financial records relevant to a disbursement of state grant funds for not less than five years following the end of the fiscal year in which that disbursement occurs.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0051
Fund Management

(1) Funds from the Department of Commerce for the establishment of the B & H Grant program will be transferred to the Oregon Student Assistance Fund to be invested by the State Treasurer.

(2) Only the investment earnings from the fund shall be used for B & H Grants.

(3) Grants will be awarded each quarter, funds permitting, beginning on October 1, 1986.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-035-0055
Appeals

An institution shall have the right to appeal to the Commission in the instance of a disagreement with a policy or procedure of the Commission or its staff. In such a case, the decision of the Commission is final unless a court of competent jurisdiction orders to the contrary.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.290 & 348.505
Hist: SSC 2-1986, f. & ef. 2-25-86; OSAC 1-2015, f. & cert. ef. 12-18-15

575-037-0005
Definitions

For purposes of this program, a Public Safety Officer includes the following public safety categories as defined in ORS 237 .610:

(1) Firefighters;

(2) State Fire Marshal and the chief deputy fire marshal and deputy state fire marshals;

(3) Police chiefs and police officers;

(4) Sheriffs and deputy sheriffs;

(5) County adult parole and probation officers;

(6) Corrections officers;

(7) Investigators of the Criminal Justice Division of the Department of Justice.

Stat. Auth.: ORS 183.325 - 183.355, 348.270 & 348.280
Stats. Implemented: SB 836, 1997
Hist.: SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2015, f. & cert. ef. 12-18-15

575-037-0010
Residency

For a student to be eligible for an award under the Scholarship Program for Children of Deceased or Disabled Public Safety Officers, he or she must:

(1) Be a citizen of the United States, or be in the United States for other than a temporary purpose and intend to become a permanent resident; and

(2) Be a resident of the State of Oregon as defined in OAR 575-030-0005(1).

Stat. Auth.: ORS 183.325 - 183.355, 348.270 & 348.280
Stats. Implemented: SB 836, 1997
Hist.: SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2015, f. & cert. ef. 12-18-15

575-037-0020
Financial Need

For a student to be eligible for an award under the Scholarship Program for Children of Deceased or Disabled Public Safety Officers, he or she must be determined by the Executive Director of the Office of Student Access and Completion (OSAC Director) to have financial need, as set forth in OAR 575-030-0005(6).

Stat. Auth.: ORS 183.325 - 183.355, 348.270 & 348.280
Stats. Implemented: SB 836, 1997
Hist.: SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2015, f. & cert. ef. 12-18-15

575-037-0030
Eligible Postsecondary Institutions

For an otherwise eligible student to receive an award under the Scholarship Program for Children of Deceased or Disabled Public Safety Officers, he or she must:

(1) Be enrolled in an institution of the Oregon University System; or

(2) Be enrolled in an Oregon community college; or

(3) Be enrolled in an independent non-profit postsecondary institution located in the State of Oregon.

Stat. Auth.: ORS 183.325 - 183.355, 348.270 & 348.280
Stats. Implemented: SB 836, 1997
Hist.: SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2015, f. & cert. ef. 12-18-15

575-037-0040
Maximum Awards for Students Attending Independent Institutions

Eligible students attending Oregon independent institutions of postsecondary education may not receive awards in excess of the amount of tuition and fees levied on resident undergraduate students by the University of Oregon. The source of the relevant tuition and fee information shall be the official Oregon University System Fee Schedule published annually by the Office of the Chancellor.

Stat. Auth.: ORS 183.325 - 183.355, 348.270 & 348.280
Stats. Implemented: SB 836, 1997
Hist.: SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2015, f. & cert. ef. 12-18-15

575-038-0000
Purpose

The purpose of this program is to carry out provisions of House Bill 5030, Section 6, enacted by the Legislative Assembly during the regular 1995 session. That measure calls for supplemental grants to be made to students receiving Oregon Opportunity Grants and who are enrolled in private, nonprofit colleges in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: HB 5030(6), 1995
Hist.: SSC 1-1995, f. & cert. ef. 8-24-95; OSAC 1-2015, f. & cert. ef. 12-18-15

575-038-0010
Student Eligibility

Students eligible for State Grant Supplemental Awards are those who have been designated by the Commission to receive Opportunity Grants for attendance at private, nonprofit colleges in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: HB 5030(6), 1995
Hist.: SSC 1-1995, f. & cert. ef. 8-24-95; OSAC 1-2015, f. & cert. ef. 12-18-15

575-038-0020
Program Elements Governed by Need Grant Rules

The following common elements of the Opportunity Grant Program and the State Grant Supplemental Award Program are governed by existing administrative rules for the Opportunity Grant Program:

(1) Definitions, see Oregon Administrative Rules (OAR) 575-030-0005.

(2) Residency, see OAR 575-031-0005.

(3) Financial need, see OAR 575-031-0010.

(4) Eligible program, see OAR 575-031-0016.

(5) Enrollment, see OAR 575-031-0020.

(6) Conditions of award, see OAR 575-031-0030.

(7) Renewal, see OAR 575-031-0075.

(8) Award priority, see OAR 575-031-0040.

(9) Disbursement, see OAR 575-031-0045.

(10) Record keeping, see OAR 575-031-0050.

(11) Appeals, see OAR 575-031-0055.

Stat. Auth.: ORS 348
Stats. Implemented: HB 5030(6), 1995
Hist.: SSC 1-1995, f. & cert. ef. 8-24-95; OSAC 1-2015, f. & cert. ef. 12-18-15

575-038-0030
Grant Amount

State Grant Supplemental Award amounts will be set annually by the Higher Education Coordinating Commission in consultation with institutions participating in the State Grant Supplemental Award Program.

Stat. Auth.: ORS 348
Stats. Implemented: HB 5030(6), 1995
Hist.: SSC 1-1995, f. & cert. ef. 8-24-95; OSAC 1-2015, f. & cert. ef. 12-18-15

575-038-0040
Student Information

The institution shall provide each designated awardee at that institution with written notification of the following:

(1) The amount and type of state grants which the student is eligible to receive at that institution.

(2) Any change in the amount or type of state grants which the student is eligible to receive at that institution.

(3) The transferability of state grants to other eligible institutions in Oregon.

(4) The necessity of the student to apply to the Commission annually to be considered for renewal of the award.

(5) The limitation on the duration of the award to 12 quarters or 8 semesters.

(6) The conditions which govern eligibility for that award:

(a) That the recipient must be eligible for an Oregon Opportunity Grant;

(b) That the recipient must be an undergraduate student, as defined by the Commission;

(c) That the recipient must be a full-time student, as defined by the institution, unless funds are available to make awards to less-than-full-time students;

(d) That the recipient must make satisfactory academic progress, as defined by the institution;

(e) That an awardee may not receive state grants if enrolled in a course of study leading to a degree in theology, divinity, or religious education;

(f) That the recipient may not be in default on any federal Title IV loan nor owe any refunds on federal Title IV funds previously disbursed;

(g) That the recipient shall sign a statement of Selective Service Registration Compliance;

(h) That information submitted in application for state awards is subject to verification by the institution; failure to provide information requested will result in cancellation of the award.

Stat.Auth.: ORS 348
Stats.Implemented: HB 5030(6), 1995
Hist.: SSC 1-1995, f. & cert. ef. 8-24-95; OSAC 1-2015, f. & cert. ef. 12-18-15

575-045-0005
Limitation, Suspension and Termination

Any Limitation, Suspension, or Termination actions taken by the Higher Education Coordinating Commission will be in compliance with the Higher Education Act of 1965, as amended, the federal regulations issued thereunder, and the Unified Student Loan Policy as set forth in the Common Manual.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: ORS 348.530
Hist.: OSAC 1-2000, f. & cert. ef. 5-24-00; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0005
Definitions

For the purposes of the Medical and Dental Student Loan Program, the following definitions shall be used:

(1) "Academic Year". A period of time, beginning September 1, in which a full-time student would normally be expected to complete three quarters of instruction.

(2) "Commission". The Higher Education Coordinating Commission.

(3) "Dependent/Independent Student". The definition of independent/dependent student shall be the definition used for the student aid programs under Title IV of the Higher Education Act of 1965 as amended.

(4) "Division". The Division of State Lands.

(5) "Full-Time Student". A student who is carrying a full-time academic workload as determined by the institution.

(6) "Guarantor or Guarantee Agency". The Higher Education Coordinating Commission.

(7) "Institution". The Oregon Health Sciences University and Oregon State University.

(8) "Interim Note". The basic contract between the student-borrower and the lender whereby the lender makes funds available to qualifying individuals to pay educational costs. It reflects the amount borrowed, rate and maturity, the terms and conditions under which the loan is made, a Disclosure Statement and endorsement by the Commission.

(9) "Lender". The Division of State Lands.

(10) "Resident of Oregon". Residency is established by virtue of the student (in the case of independent students) or the student's parents (in the case of dependent students) having been in continuous residency in this state for the 12 months preceding enrollment. Residency is immediate in the case of a dependent whose parents have moved to this state for a reason other than the student's enrollment. The residency period may be reduced to the preceding six months in the case of an independent student who moved to this state for a purpose other than education:

(a) A dependent resident student whose Oregon domiciled parent(s) move out-of-state shall retain resident classification as long as such students are continuously enrolled at an Oregon high school or postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(b) An independent resident student shall retain resident classification as long as the student is continuously enrolled at an Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(c) A dependent student whose parent(s) are serving on active duty in the United States Armed Forces outside the state of Oregon shall have residency status determined by the parents' declared "home of record". An independent student who is serving on active duty in the United States Armed Forces outside the State of Oregon shall have residency status determined by the student's declared "home of record";

(d) A student from a state other than Oregon or the Trust Territories who is receiving, or is eligible to receive financial assistance through the government of the state or the Trust Territories, shall not be considered a resident of Oregon;

(e) An independent student who otherwise qualifies as an Oregon resident, but pays out-of state tuition and fees shall not be considered a resident of Oregon.

(11) "Schedule of Payments". The schedule which includes the number of payments, the amount of each payment and the date(s) due.

(12) "Deferred Interest".

(a) For medical, dental, and veterinary student borrowers, the interest which accrues during the period commencing on the date of the disbursement check and ending on the date the borrower ceases to be enrolled full-time;

(b) For undergraduate nursing student borrowers, the interest which accrues from September 1 each year following the date of graduation or termination as a full-time student to the date repayment commences.

(13) "Accruing Interest".

(a) For medical, dental, and veterinary student borrowers, the interest which accrues commencing on the date the borrower ceases to be enrolled full-time at the Institution and continuing until the loan is paid in full;

(b) For nursing student borrowers, the interest which accrues from the date repayment of the loan begins until the loan is paid in full.

(14) "Annual Interest". For undergraduate nursing student borrowers, the interest which accrues from the date of the disbursement check to the end of the school year, August 31 of each year.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1979, f. & ef. 1-17-79; SSC 2-1979, f. 7-24-79, ef. 8-1-79; SSC 2-1980, f. 1-31-80, ef. 4-1-80; SSC 4-1980, f. & ef. 10-22-80; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; SSC 4-1990, f. & cert. ef. 6-22-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0010
Administrative Responsibility

(1) The Commission shall be responsible for the implementation of all policies and procedures for the administration of the Medical-Dental Student Loan Program under the provision of ORS 348.040 through 348.095.

(2) The Commission may establish rules for the administration of the program in those instances in which the state law allows or mandates discretion in interpretation and implementation.

(3) The Commission shall have authority to approve loan applications submitted by the institution.

(4) The Division shall be responsible for the loan of funds from the Common School Fund to eligible students under this program and for the subsequent collection of such loans.

(5) The Division shall prepare the Schedule of Payments.

(6) The institution shall be responsible for the initial processing of applications for this program, the assessment of eligibility and need for the loan, periodical reports to the Commission and Division with regard to borrowers status and recommendations to the Commission on submitted applications.

(7) The institution shall prepare the interim notes in compliance with the requirements of the Division.

(8) Prior to the borrower leaving the institution, the institution shall conduct an exit interview, at which time the institution shall explain the repayment provisions of the loan and shall obtain the borrower's signature on the Schedule of Payments.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0015
Eligibility

To be eligible for a loan under this program, a student must:

(1) Be a full-time professional medical or dental student or undergraduate nursing student at the Oregon Health Sciences University or a full-time student in a veterinary program offered by Oregon State University.

(2) Be a resident of Oregon as defined by OAR 575-050-0005(9).

(3) Have financial need computed by the needs analysis system adopted by the Commission.

(4) Complete, execute, and deliver the required application which shall include a signed statement by the student consenting to the release of personally identifiable information to the Division and the Commission.

(5) Submit the loan application prior to the final day of registration for the semester(s) or term(s) for which the loan is to be used, except as may be dictated by individual circumstances and approved by the Division and Commission.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0020
Loan Limits

(1) The maximum loan for any academic year for medical, dental and veterinary students shall be $4,000.

(2) The maximum loan for any academic year for undergraduate nursing students shall be $1,000.

(3) The principal amount of all loans for any individual shall not exceed $16,000.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0025
Disbursements

(1) The loan amount for an academic year shall be divided into equal disbursements to correspond with the number of terms for which the loan is granted, except as may be dictated by individual circumstances and approved by the Commission and the Division.

(2) All disbursements will be by state check drawn by the Division payable to the student to be dispersed by the Institution not more than ten days prior to the commencement of the term for which drawn.

Stat. Auth.: ORS 348

Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0030
Repayment

(1) Repayment of the principal of the loans, accruing interest and deferred interest shall commence not later than 12 months after the borrower graduates or otherwise terminates his/her education program. The "education program" may include post-graduate study approved by the Commission. If a borrower enrolls in an approved post-graduate study program after a portion of the above 12-month period has elapsed, then repayment of the principal and deferred interest shall commence following the termination of that program and after any remaining balance of the original 12-month period has elapsed, except that repayment of principal and deferred interest must commence in all cases within 60 months following the borrower's graduation from the institution.

(2) These payments shall be made in equal successive monthly installments of not less than $50 and shall end not more than 120 months after the beginning of the principal repayment period.

(3) The length of repayment for students who borrow under this program following the commencement of repayment shall be negotiated by the student and the Division at the time the subsequent loan is made.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 2-1979, f. 7-24-79, ef. 8-1-79; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0035
Default

(1) A loan shall be judged to be in default upon the occurrence of any one or more of the following conditions:

(a) Failure of the borrower to acknowledge the Schedule of Payments within 60 calendar days following graduation or termination;

(b) Failure of the borrower to fully remit two consecutive quarterly installments of accruing interest or failure to fully remit a monthly installment of accruing interest which is due for more than 120 days;

(c) Failure of the borrower to fully remit any other installment which is due for more than 120 days; or

(d) Borrower is adjudicated a bankrupt.

(2) The holder of a note may exercise the right of offset against any maker or co-maker of defaulted loans under the conditions set forth by the laws of the State of Oregon. The maker or co-maker shall pay any charges for assistance in exercising the right of offset incurred by the holder of the note(s).

(3) From funds available, therefore, the Commission shall reimburse the Division for any loss resulting from default of a loan. The Commission shall then take the action necessary for the recovery of those funds.

(4) A five percent collection charge shall be assessed against all loans that are judged to be in default. This charge will be assessed by the Commission for the actual servicing and collection of defaulted loans and is based on the amount paid to the previous holder of the note(s). The maker or co-maker shall pay all charges incurred should the note(s) be referred to an outside collection agency.

(5) The application of offsets to a defaulted loan(s) shall not be credited to future payments nor be a substitute for regular monthly installments.

(6) The prepayment of a portion of a defaulted loan(s) shall not be credited to future payments nor be a substitute for regular monthly installments.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; SSC 3-1985, f. & ef. 4-17-85; SSC 1-1987, f. 2-23-87, ef. 2-25-87; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0040
Interest for Medical, Dental, and Veterinary Student Borrowers

(1) Borrowers shall be assessed at least six percent interest per annum on the unpaid balance from the date of the note.

(2) In-school interest payments by the borrower shall be deferred until the borrower ceases to be enrolled full-time:

(a) During the interest deferment period, the Commission shall pay the Division the applicable interest on an annual basis;

(b) The borrower shall reimburse the Commission for these deferred interest payments as provided in OAR 575-050-0030.

(3) The borrower shall commence direct payment of accruing interest to the Division at the time he/she ceases to be enrolled full-time. These payments of interest will be made in quarterly or monthly installments, as specified in the Interim Note and Addendum, until repayment of principal begins, at which time they will be incorporated into the monthly installments of principal and deferred interest.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 1-1981, f. & ef. 9-3-81; SSC 4-1983, f. & ef. 11-29-83; SSC 1-1987, f. 2-23-87, ef. 2-25-87; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0042
Interest for Undergraduate Nursing Student Borrowers

(1) Borrowers shall pay such rate of interest as is negotiated between the Division of State Lands and the Higher Education Coordinating Commission, but in no event shall such rate of interest be less than seven percent.

(2) Annual interest shall be paid by the nursing student borrower within 30 days from the date interest is due and payable.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0045
Special Payments

The Commission shall pay annually to the Division a maximum of three percent per annum on the unpaid balance of all medical, dental, and veterinary student borrower loans.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 2-1978(Temp), f. & ef. 1-4-78; SSC 3-1978, f. & ef. 2-16-78; SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-050-0050
Record Keeping

(1) The institution shall maintain sufficient records to document its activities in the program.

(2) The institution shall retain records relevant to the program for not less than five years following the borrower's graduation or termination.

(3) The institution shall make its records available to the Commission at reasonable times for the purpose of assuring that the institution is complying with the rules relating to the administration of the program.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.040 - 348.095
Hist: SSC 4-1983, f. & ef. 11-29-83; OSAC 1-2015, f. & cert. ef. 12-18-15

575-060-0005
Definitions

For the purposes of Privately Funded Award Programs which the Commission administers, the following definitions shall be used unless specified otherwise by a donor:

(1) "Academic Year." A period of time, normally beginning in August or September, in which a student would normally be expected to complete at least three-quarters of full-time instruction or the equivalent.

(2) "Commission." The Higher Education Coordinating Commission.

(3) "Cost of Education." The sum of tuition and fees, room and board, books and supplies, transportation personal expenses, and other allowable costs identified by the U.S. Department of Education.

(4) "Dependent/Independent Student." The definitions of dependent/independent student shall be the definition used for the student aid programs under Title IV of the Higher Education Act of 1965 as amended.

(5) "Generally Accredited Institution." An institution accredited by the Northwest Association of Secondary and Higher Schools.

(6) "Resident of Oregon." Residency is established by virtue of the student (in the case of independent students) or the student's parents (in the case of dependent students) having been in continuous residency in this state for the 12 months preceding enrollment. Residency is immediate in the case of a dependent whose parents have moved to this state for a reason other than the student's enrollment. The residency period may be reduced to the preceding six months in the case of an independent student who moved to this state for a purpose other than education:

(a) A dependent resident student whose Oregon domiciled parent(s) move out-of-state shall retain resident classification as long as such student is continuously enrolled at an Oregon high school or postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(b) An independent resident student shall retain resident classification as long as the student is continuously enrolled at an Oregon postsecondary institution. Continuous enrollment is defined as completion of an academic year within any 12-month period;

(c) A dependent student whose parent(s) are serving on active duty in the United States Armed Forces outside the State of Oregon shall have residency status determined by the parents' declared "home of record." An independent student who is serving on active duty in the United States Armed Forces outside the State of Oregon shall have residency status determined by the student's declared "home of record";

(d) A student from a state other than Oregon, or from the Trust Territories, who is receiving or is eligible to receive financial assistance through the government of that state or the Trust Territories, shall not be considered a resident of Oregon.

(e) Residence Classification of Members of Oregon Tribes:

(A) Students who are enrolled members of federally recognized tribes of Oregon or who are enrolled members of a federally recognized Native American tribe which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon shall be deemed eligible for programs administered by the Higher Education Coordinating Commission that are limited to Oregon residents, regardless of their state of residence.

(B) For purposes of this rule, the federally recognized tribes of Oregon are the following:

(i) Burns Paiute Tribe;

(ii) Confederated Tribes of Coos, Lower Umpqua and Siuslaw;

(iii) Confederated Tribes of Grand Ronde Community of Oregon;

(iv) Confederated Tribes of Siletz Indians of Oregon;

(v) Confederated Tribes of the Umatilla Indian Reservation;

(vi) Confederated Tribes of the Warm Springs Indian Reservation;

(vii) Coquille Indian Tribe;

(viii) Cow Creek Band of Umpqua Indians;

(ix) Klamath Tribes.

(C) For purposes of this rule, the federally recognized Native American tribes which had traditional and customary tribal boundaries that included parts of the state of Oregon or which had ceded or reserved lands within the state of Oregon are:

(i) CALIFORNIA:

(I) Benton Paiute Tribe;

(II) Big Bend Rancheria;

(III) Big Lagoon Rancheria;

(IV) Blue Lake Rancheria;

(V) Bridgeport Indian Colony;

(VI) Cedarville Rancheria;

(VII) Fort Bidwell Indian Tribe;

(VII) Hoopa Valley Tribe;

(IX) Karuk Tribe of California;

(X) Likely Rancheria;

(XI) Lookout Rancheria;

(XII) Lytton Rancheria;

(XIII) Melochundum Band of Tolowa Indians;

(XIV) Montgomery Creek Rancheria;

(XV) Pit River Tribe;

(XVI) Quartz Valley Indian Community;

(XVII) Redding Rancheria;

(XVIII) Roaring Creek Rancheria;

(XIX) Smith River Rancheria;

(XX) Susanville Rancheria;

(XXI) Tolowa-Tututni Tribe;

(XXII) Winnemucca Colony;

(XXIII) XL Ranch;

(XXIV) Yurok Tribe.

(ii) IDAHO:

(I) Nez Perce Tribe of Idaho;

(II) Shoshoni-Bannock Tribes.

(iii) NEVADA:

(I) Duck Valley Shoshone-Paiute Tribes;

(II) Fallon Paiute-Shoshone Tribe;

(III) Fort McDermitt Paiute-Shoshone Tribe;

(IV) Lovelock Paiute Tribe;

(V) Pyramid Lake Paiute Tribe;

(VI) Reno-Sparks Indian Colony;

(VII) Summit Lake Paiute Tribe;

(VIII) Walker River Paiute Tribe;

(IX) Winnemucca Indian Colony;

(X) Yerington Paiute Tribe.

(iv) OKLAHOMA: Modoc Tribe of Oklahoma.

(v) WASHINGTON:

(I) Chehalis Community Council;

(II) Colville Confederated Tribes;

(III) Quinault Indian Nation;

(IV) Shoalwater Bay Tribe;

(V) Yakama Indian Nation.

(D) A student seeking to be deemed eligible under the provisions of this rule shall submit, following procedures prescribed by the Commission, a photocopy of a tribal enrollment card or other acceptable documentation from a tribe which documents tribal membership.

(7) "Community Foundation" means an organization that is:

(a) A community trust or foundation within the meaning of Section 170 of the Internal Revenue Code of 1986 and Section 1.170 A-9(e)(10) of the treasury regulations thereunder;

(b) Exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code of 1986; and

(c) Not a private foundation within the meaning of Section 509 of the Internal Revenue Code of 1986.

Stat. Auth.: ORS 183.325 & 348, OL 1993
Stats. Implemented: ORS 348
Hist.: SSC 4-1985, f. & ef. 4-17-85; SSC 4-1994, f. & cert. ef. 1-25-94; SSC 1-1998, f. & cert. ef. 3-18-98; OSAC 1-2006, f. & cert. ef. 2-8-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-060-0020
Accountability and Record Keeping

(1) For a program where the Commission is the disbursing agent, the Commission shall establish a separate account within the Oregon Student Assistance Fund (ORS 348.570). All monies in the account shall be placed with the State Treasurer, who will hold and invest these monies as provided in ORS 348.580. Any interest that may accrue to such an account while on deposit with the State Treasurer will be used only for awards and administrative expenses of the account.

(2) Subject to the terms of the governing instruments and applicable law, the Commission may enter into agreements with one or more community foundations in Oregon to assume the management of the privately funded student aid programs of the Commission. The Commission may transfer to the community foundation any or all gifts or scholarship grants received by the Commission from any private donor.

(3) For any scholarship fund whose assets are transferred to the Commission, the prior trustee shall be responsible for any forms, notices, or taxes which should have been filed or paid for the taxable years during which the prior trustee administered the fund.

(4) The Commission shall maintain sufficient records to document its activities relating to each private award program. The Commission shall provide an annual report to each donor or donor's designate. This report shall include a statement of earnings, disbursements made, and fund balances.

Stat. Auth.: ORS 183.325 & 348, OL 1993
Stats. Implemented: ORS 348.520 - 348.530
Hist.: SSC 4-1985, f. & ef. 4-17-85; SSC 1-1991, f. & cert. ef. 12-23-91; SSC 4-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-063-0010
Employer Program Certification Procedures

(1) The application for program certification by an employer establishing an employer-sponsored scholarship program shall be filed by the employer with the Commission at least three months prior to the close of the first tax year for which a tax credit will be claimed.

(2) The application shall be filed on a form provided by the Commission and shall contain information required by the Commission including the following:

(a) The total number of employees employed by the employer for the calendar year and the total number of employees who will be eligible or whose dependents will be eligible to participate.

(b) The date on which scholarship program will first be available.

(c) The annual limit, if any, on the amount of funds to be used for scholarships; and

(d) The criteria to be used by the employer in determining the eligibility of an employee or an employee's dependent for a scholarship under the program.

(3) The Commission shall certify an application that meets all conditions of the scholarship program.

(4) The Commission shall certify or reject an application within 60 days of receipt of the application and shall notify the employer of the Commission's determination.

(5) For employers whose proposed scholarship program has been certified, the Commission shall send a letter of program certification to the employer.

(6) An employer whose application is rejected by the Commission shall have the opportunity to amend the application within 30 days of date of notification.

(7) A program certification issued under 575-063-0010 shall remain valid until the employer changes the terms of eligibility for a scholarship under the program, changes the minimum or maximum amount of a scholarship, or ceases to be an employer.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: HB 2521, 2001 Leg. Assembly
Hist.: OSAC 7-2002, f. & cert.ef. 3-12-02; OSAC 4-2008, f. & cert. ef. 10-15-08; OSAC 1-2015, f. & cert. ef. 12-18-15

575-065-0001
Definitions

(1) "Former Foster Child". An individual who, for a total of 12 or more months while between the ages of 16 and 21, was a ward of the court pursuant to ORS 419B.100(1)(b) to (e) and in the legal custody of the State Dept. of Human Services Child Protective Services Office for out-of-home placement.

(2) "Concurrently enrolled". A student who attends more than one eligible institution under a written consortium agreement or concurrent enrollment program.

(3) "Full time enrollment". Registration and payment of required fees as a full-time student at an eligible institution or combination of institutions, as defined by the institution disbursing funds.

(4) "Oregon-based". Having a campus in the State or Oregon that is authorized by statute or the Higher Education Coordinating Commission's Office of Degree Authorization to offer a complete degree program in Oregon.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: HB 2431, 2001 Leg. Assembly
Hist.: OSAC 8-2002, f. & cert. ef. 3-12-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-065-0045
Eligible Postsecondary Institutions

For an otherwise eligible student to receive an award under the Former Foster Children Scholarship Program, he or she must:

(1) Be enrolled in an institution of the public universities listed in ORS 352.002; or

(2) Be enrolled in the Oregon Health & Sciences University; or

(3) Be enrolled in an Oregon community college; or

(4) Be enrolled in an Oregon-based independent postsecondary institution that participates in federal Title IV student financial aid programs.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: HB 2431, 2001 Leg. Assembly
Hist.: OSAC 8-2002, f. & cert. ef. 3-12-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-065-0055
Award Amounts

(1) Scholarships awarded to eligible applicants shall equal the amount of tuition and fees levied by the eligible institution for full-time students.

(2) Eligible students attending eligible Oregon independent institutions of postsecondary education may not receive awards in excess of the amount of tuition and fees levied on resident undergraduate students by the University of Oregon. The source of the relevant tuition and fee information shall be the official Fee Schedule published annually by the governing boards of trustees of the University of Oregon, Oregon State Universtiy, and Portland State University and the Office of the Chancellor for regional and technical public universities.

(3) Receipt of this award does not impact a student's eligibility for the Oregon Opportunity Grant.

(4) For concurrently enrolled students, the amount of the award will be based on the school disbursing the funds.

Stat. Auth.: ORS 183 & 348
Stats. Implemented: HB 2431, 2001 Leg. Assembly
Hist.: OSAC 8-2002, f. & cert. ef. 3-12-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0005
Definitions

For purposes of the Oregon Teacher Corps Loan Program rules, the following definitions shall be used:

(1) "Enrolled or Accepted for Enrollment in an Approved Teacher Education Program" means enrolled at a postsecondary institution in Oregon in a program approved by the Oregon Teacher Standards and Practices Commission which leads to basic certification for elementary or secondary school teaching, or in a curriculum defined by the Education Department (Division) (School) of that institution as a prerequisite for such a program.

(2) "Inability to Locate Suitable Employment " means that the borrower can document, on an annual basis, that he/she has applied for teaching positions, without success, in at least three public school districts in Oregon.

(3) "Equivalent Full-Time Teaching" means working under a full-time contract with teaching duties and other duties for which administrative certification is not required.

(4) "Resident of Oregon" — See definitions under OAR Chapter 575, Division 30.

(5) "Graduate Student" means a student enrolled in a program leading to the Master of Arts in Teaching (MAT) or Master of Science in Teaching (MST) degree.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; SSC 2-1988, f. & cert. ef. 6-9-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0010
Administrative Responsibility

(1) The Higher Education Coordinating Commission, hereafter called, "the Commission", shall be responsible for the administration of the Oregon Teacher Corps Program.

(2) The Commission shall be responsible for making such rules as are required for the administration of the Oregon Teacher Corps Program.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0020
Eligible Institutions

Eligible institutions are postsecondary institutions in Oregon which offer teacher education programs approved by the Oregon Teacher Standards and Practices Commission.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0030
Eligible Students

To be eligible for a loan under the Oregon Teacher Corps Program, a student must:

(1) Be a resident of Oregon, as defined by the Commission.

(2) Be enrolled or accepted for enrollment as at least a half-time student in an approved teacher education program at an eligible institution.

(3) Have graduated in the top 20 percent of his/her high school class, or must have demonstrated equivalent academic attainment in postsecondary education, as defined and documented by the institution most recently attended.

(4) Demonstrate superior potential for teaching through such means as written works, letters of recommendation, accounts of relevant teaching experience, or other appropriate information.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0040
Selection of Recipients

(1) Recipients shall be selected by the Commission.

(2) Priority in the selection process shall be given to eligible students (under the criteria in OAR 575-070-0030) who also meet at least one of the following criteria:

(a) He/she is a member of a racial minority as defined in ORS 279.059;

(b) He/she is a prospective teacher in a "scarce endorsement area", as defined by the Oregon Teacher Standards and Practices Commission;

(c) He/she expresses willingness to teach in remote and difficult to serve school districts in Oregon, as defined by the Commission.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; SSC 2-1988, f. & cert. ef. 6-9-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0045
Renewal of Awards

Awards made under this program are renewable in subsequent academic years provided that:

(1) The awardee continues to be enrolled as at least a half-time student in an approved teacher education program at an eligible institution;

(2) The awardee is making satisfactory academic progress, as defined by the institution; and

(3) The awardee arranges for the Commission to receive a transcript of the academic work completed in the prior year of award.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0050
Terms of Oregon Teacher Corps Loans

(1) Loans under this program shall be evidenced by a written obligation but no additional security shall be required.

(2) The Commission may require co-signers.

(3) Loans under this program shall accrue interest from the date of the loan at no less than 7% interest per annum on the unpaid balance.

(4) Interest rates shall be set by the Commission annually at a rate equal to the current "initial loan" interest rate for loans made under the Federal Family Loan Program.

(5) Loans shall not exceed the following limits:

(a) $2,000 in a single academic year for an undergraduate student;

(b) $4,000 in a single academic year for a graduate student;

(c) $8,000 for all loans to an individual student.

(6) Repayment of principal and interest shall begin on the first day of the eleventh month following completion of the approved teacher education program, or following cessation of documentable enrollment in that program.

(7) The duration of the repayment period shall be a maximum of 120 months from the time repayment commences.

(8) Minimum monthly payments shall be $50 per month.

(9) Early repayment of these loans may be made without penalty.

(10) The Commission may extend the beginning of the repayment period under circumstances set forth in OAR 575-070-0070 of these rules.

(11) If a borrower in repayment satisfies the criteria for loan cancellation set forth in OAR 575-070-0080(1), then all payments made by that borrower will be returned.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0060
Conditions of Award

To receive disbursements of a loan made under the Oregon Teacher Corps program a student must:

(1) Be enrolled in an approved teacher education program;

(2) Be making satisfactory academic progress, as defined by the institution attended;

(3) Not be in default on any federal Title IV loan or owing a refund on federal Title IV funds previously disbursed.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0070
Authorized Deferment of Repayment

(1) A borrower under contract to teach at least half-time in a public elementary or secondary school in Oregon may defer the beginning of the repayment period for up to three years, subject to annual verification of employment status.

(2) A borrower who can document his/her inability to locate suitable employment may defer the beginning of the repayment period for up to three years, subject to annual verification efforts to locate employment.

(3) No borrower may receive more than three years of authorized deferment of repayment.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0080
Complete Cancellation of Loans

(1) One hundred percent of principal and interest will be cancelled for borrowers who, within a period of five years following completion of either the authorized teacher education program or a period of authorized deferment, complete:

(a) Three years of equivalent full-time teaching in public elementary or secondary schools in Oregon; or

(b) Three years of teaching under a full-time contract (working at least three-fourths time in classroom teaching and no more than one-fourth time not in classroom teaching duties during regular school hours) in public elementary or secondary school in Oregon, as approved by the Commission upon written request of the borrower.

(2) One hundred percent of remaining principal and interest will be cancelled upon the death or total and permanent disability of the borrower.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; SSC 2-1988, f. & cert. ef. 6-9-88; SSC 1-1989, f. & cert. ef. 7-31-89; ; OSAC 1-2015, f. & cert. ef. 12-18-15

575-070-0090
Default

(1) A loan shall be judged to be in default when an installment is due and not paid within 120 days.

(2) The holder of a note may exercise the right of offset against any maker or co-maker of defaulted loans under the conditions set forth by the laws of the State of Oregon. The maker or co-maker shall pay any charges for assistance in exercising the right of offset incurred by the holder of the note.

(3) The maker or co-maker shall pay all charges incurred should the note(s) be referred to an outside collection agency.

(4) The application of offsets to a defaulted loan shall not be credited to future payments nor be a substitute for regular monthly installments.

(5) The prepayment of a portion of a defaulted loan shall not be credited to future payments nor be a substitute for regular monthly installments.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 329.757 - 329.780
Hist: SSC 4-1987(Temp), f. 10-12-87, ef. 10-15-87; SSC 1-1988, f. & cert. ef. 1-6-88; OSAC 1-2015, f. & cert. ef. 12-18-15

575-071-0000
Definitions

For the purposes of the Rural Health Services Program the following definitions shall be used:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "Dentist" means any person licensed to practice dentistry under ORS Chapter 679.

(3) "Nurse Practitioner" means any person licensed under ORS 678.375.

(4) "Physician Assistant" means any person licensed under ORS 677.495 and 677.505 to 677.525.

(5) "Physician" means any person licensed under ORS Chapter 677.

(6) "Pharmacist" means an individual licensed under ORS Chapter 689.

(7) "Qualifying Loan" means any loan made to a medical student, pharmacy student, physician assistant student, dental student or nursing student under:

(a) The Common School Fund Loan Program administered under ORS 348.040 to 348.090;

(b) Programs under Title IV, Parts B, D, and E, of the Higher Education Act of 1965, as amended; and

(c) The Health Profession's Student Loan Program, Nursing Student Loan Program, Health Education Assistance Loan Program and Primary Care Loan Program administered by the U.S. Department of Health and Human Services.

(8) "Qualifying practice site" means:

(a) A rural hospital as defined in ORS 442.470;

(b) A federally certified Rural Health Clinic;

(c) A pharmacy that is located in a medically underserved rural community in Oregon as determined by the Office of Rural Health or a federally designated health professional shortage area and that is not part of a group of six or more pharmacies under common ownership; or

(d) Another practice site in a medically underserved rural community in Oregon as determined by the Office of Rural Health.

(9) "Practice Full-Time" means on-site clinical service, excluding on-call time, in a relevant health care discipline for no less than 32 working hours per week during no less than 48 weeks in a year.

Stat. Auth.: ORS 442.555 & SB 404
Stats. Implemented: ORS 442.550 - 442.570
Hist.: SSC 2-1992, f. & cert. ef. 2-28-92; SSC 5-1994, f. & cert. ef. 1-25-94; OSAC 1-2002, f. & cert. ef. 2-4-02; OSAC 3-2006, f. & cert. ef. 3-1-06; OSAC 1-2007, f. & cert. ef. 10-3-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-071-0040
Terms of Agreement

Prospective physicians, pharmacists, dentists, physician assistants, and nurse practitioners who wish to participate in the Rural Health Services Program shall agree that:

(1) For each year of medical, pharmacy, dental, physician assistant, or graduate school, the applicant shall designate an amount from the student loans borrowed by him or her, not to exceed $25,000 as a qualifying loan subject to repayment through this program.

(2) In the time period immediately following the completion of all residency requirements or the time period immediately following the execution of a Rural Health Services Agreement, whichever comes later, a physician or dentist applying to participate in the Rural Health Services Program agrees to practice full-time in a 'qualifying practice site' for at least three full years.

(3) For not less than three years, nor more than five years, that a physician or dentist participating in the Rural Health Services Program serves in a 'qualifying practice site', the Commission shall annually pay to the participant an amount that is a percentage of the total of all qualifying loans through the programs described in ORS 442.550.

(4) In the time period immediately following the completion of all pharmacy residency requirements or the five years following the execution of a Rural Health Services agreement with the Commission, whichever comes later, a pharmacist agrees to practice for at least three full years in a 'qualifying practice site'.

(5) For not less than three nor more than five years that a pharmacist serves in a 'qualifying practice site', the commission shall annually pay an amount that is a percentage of the total of all qualifying loans made to the pharmacist through the programs described in ORS 442.550.

(6) In the time period immediately following the completion of physician assistant or graduate school or the time period immediately following the execution of a Rural Health Services Agreement, whichever comes later, a physician assistant or nurse practitioner applying to participate in the Rural Health Services Program agrees to practice full-time in a 'qualifying practice site' for at least two full years.

(7) For not less than two nor more than four years that a physician assistant or nurse practitioner practices in a 'qualifying practice site', the Commission shall annually pay to the participant an amount that is a percentage of the total of all qualifying loans through the programs described in ORS 442.550.

(8) If the participant does not complete the full service obligation set forth in section (2), (4) or (6) of this rule, the Commission shall collect 100 percent of any payments made by the Commission to the participant under this program. In addition, a penalty equal to 50 percent of the qualifying loans and interest paid by the Commission shall be assessed by the Commission, to be credited to and deposited in the Rural Health Services Fund established under ORS 442.570.

Stat. Auth.: ORS 442.560, SB 81, Sec. 53 & SB 404
Stats. Implemented: ORS 442.470 & 442.550 - 442.570
Hist.: SSC 2-1992, f. & cert. ef. 2-28-92; SSC 5-1994, f. & cert. ef. 1-25-94; OSAC 3-2006, f. & cert. ef. 3-1-06; OSAC 1-2007, f. & cert. ef. 10-3-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0000
Definitions

For the purposes of the Oregon Nursing Loan Program the following definitions shall be used:

(1) "Commission" means the HIgher Education Coordinating Commission.

(2) "Oregon Resident" means resident of the State of Oregon as defined in OAR chapter 575, division 31.

(3) "Oregon Institution" means an accredited institution of postsecondary education located and headquartered within the State of Oregon.

(4) "Satisfactory Performance" means satisfactory academic progress as determined by the institution attended.

(5) "Full-time Practice" means professional employment as a nurse for no less than 32 working hours per week and no less than 48 weeks in a year (12 consecutive months).

(6) "Part-time Practice" means professional employment as a nurse between 16 and 31 working hours per week and no less than 48 weeks in a year (12 consecutive months) or no less than 32 working hours per week during 24 to 47 weeks in a year (12 consecutive months).

Stat. Auth.: ORS 348
Stats. Implemented: SB 331, 2001 OLA
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 4-2001(Temp), f. & cert. ef. 10-12-01 thru 3-27-02; OSAC 4-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0010
Administration

The Commission shall administer the Oregon Nursing Loan Program, and shall make such rules as are required for the administration of the program.

Stat. Auth.: ORS 348.115 & 348.117
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0040
Priority in Awarding

Among applicants who meet the basic eligibility criteria of this program priority in the selection process shall be given to:

(1) Students employed in the health care field at the time of application;

(2) Students who agree to seek employment as nurses in areas within Oregon where there is a critical shortage of nurses, as determined annually by the Oregon State Board of Nursing in consultation with the Office of Rural Health.

Stat. Auth.: ORS 348.115 & 348.117
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0050
Maximum Awards

Annual awards made under this program shall not exceed 50 percent of the sum of tuition, fees, and room and board expenses for any participating student.

Stat. Auth.: ORS 348.115 & 348.117
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0060
Renewal of Awards

Subject to available funding, awards made under this program are renewable in subsequent academic years provided that:

(1) The awardee makes timely application in the manner specified annually by the Commission;

(2) The awardee continues to be enrolled in an eligible program at an eligible institution;

(3) The awardee demonstrates satisfactory performance in his or her program of study;

(4) The awardee continues to demonstrate financial need.

Stat. Auth.: ORS 348.115 & 348.117
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0080
Default

(1) A loan shall be judged to be in default when an installment is due and not paid within 120 days.

(2) The holder of a note may exercise the right of offset against any maker of defaulted loans under the conditions set for by the laws of the State of Oregon.

(3) The maker shall pay any charges for assistance in exercising the right of offset incurred by the holder of the note.

(4) The maker shall pay all charges incurred should the note(s) be referred to an outside collection agency and any other collection charges, including attorney's fees allowed by state law.

(5) The application of offsets to a defaulted loan shall not be credited to future payments nor be a substitute for regular monthly installments.

(6) The prepayment of a portion of a defaulted loan shall not be credited to future payment nor be a substitute for regular monthly installments.

Stat. Auth.: ORS 183.325 & 348, OL 1993
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; SSC 6-1994, f. & cert. ef. 1-25-94; ; OSAC 1-2015, f. & cert. ef. 12-18-15

575-072-0090
Conditions of Award

To receive disbursements of a loan made under the Oregon Nursing Loan Program a student must:

(1) Be enrolled in an eligible program of study at an eligible institution;

(2) Be making satisfactory academic progress as defined by the institution attended;

(3) Not be in default on any federal Title IV loan or owing a refund on federal Title IV funds previously disbursed.

Stat. Auth.: ORS 348.115 & 348.117
Stats. Implemented: ORS 348.105 - 348.117
Hist.: SSC 3-1992, f. & cert. ef. 2-28-92; OSAC 1-2015, f. & cert. ef. 12-18-15

575-073-0000
Definitions

For the purposes of the Nursing Services Program the following definitions shall be used:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "Nurse" means any person licensed under ORS 678.010 to 678.410 as a Registered Nurse.

(3) "Qualifying Loan" means any loan made under:

(a) Programs under Title IV, Parts B, D, and E, of the Higher Education Act of 1965, as amended; and

(b) The Nursing Student Loan Program and Health Education Assistance Loan Program administered by the U.S. Department of Health and Human Services.

(4) "Nursing critical shortage area" means a locality or practice specialty identified as such by the Oregon State Board of Nursing, in consultation with the Office Rural Health.

(5) "Practice Full-Time" means professional employment as a nurse for no less than 32 working hours per week for no less than 48 weeks in a year (12 consecutive months).

(6) "Practice Part-time" means professional employment as a nurse between 16 and 31 working hours per week for no less than 48 weeks in a year (12 consecutive months) or no less than 32 working hours per week for 24 weeks to 47 weeks in a year (12 consecutive months).

Stat. Auth.: ORS 348
Stats. Implemented: SB 331, 2001 OLA
Hist.: OSAC 2-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-074-0000
Definitions

For the purposes of the Oregon Troops to Teachers Program the following definitions shall be used:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "Oregon Resident" means resident of the State of Oregon as defined in OAR 575-031-0005.

(3) "Armed Forces of the United States" means:

(a) The Army, Navy, Air Force, Marine Corps and Coast Guard of the United States;

(b) Reserve components of the Army, Navy, Air Force, Marine Corps and Coast Guard of the United States;

(c) The Oregon National Guard and a National Guard of any other state or territory.

(4) "Veteran" means a person who served with the Armed Forces of the United States and was discharged or released with other than a dishonorable discharge.

(5) "Public postsecondary institution" means:

(a) A state institution under the direction of the State Board of Higher Education; and

(b) A community college operated under ORS Chapter 341.

(6) "Satisfactory Performance" means satisfactory academic progress as determined by the institution attended.

(7) "Resident In-state Tuition" means tuition cost of an Oregon public postsecondary institution.

(8) "Troops to Teachers Agreement" is the agreement signed by a student requiring completion of the years and conditions of service pursuant to Ch. 831 (2005 Laws). The agreement will indicate the student's educational status and area of intended service.

(9) "Financial need" means the difference between the family contribution, derived from a system of need analysis annually approved by the Commission, and the cost of education.

(10) "Student" means an individual who is a resident of Oregon and enrolled at an eligible public postsecondary institution.

Stat. Auth.: ORS 348, HB 3504, 5163-A & Ch. 831, 2005 OL
Stats. Implemented: ORS 348.180, 348.205, 348.250 & 348.260
Hist.: OSAC 2-2006, f. & cert. ef. 3-1-06; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0001
Definitions

As used in Division 75:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "County VISTO Agency" means the organization in each Oregon county recommended by the County Commission and approved by the Commission to:

(a) Act as the administrative and information center within the county for the VISTO program;

(b) Certify eligible social service agencies within the county under Commission rules and guidelines; and

(c) Allot VISTO voucher authorization to approved social service agencies in the county.

(3) "Eligible Institution" means any educational institution located in Oregon certified as an eligible institution for the student aid programs under Title IV, Part B, of the Higher Education Act of 1965, as amended.

(4) "VISTO Volunteer" means any resident of Oregon who:

(a) Is not less than 16 but not more than 19 years of age;

(b) Completes community service work in human integration activities for an approved social service agency;

(c) Is, only for the purposes of the VISTO program, an uncompensated volunteer student employee of the Commission;

(d) Is enrolled in or plans to enroll in an eligible institution.

(5) "Eligible Social Service Agency" means a nonprofit or governmental social service organization which provides volunteer opportunities in human integration activities and is approved for participation in the VISTO program under Commission rules and guidelines.

(6) "Human Integration Activities" includes activities of social service agencies which can be described as providing direct assistance, usefulness or care to another person, including, but not limited to, the following:

(a) Literacy education;

(b) Family or parenting counseling;

(c) Victim advocacy and assistance;

(d) Emergency hotline services;

(e) Tutoring and assistance in Head Start programs; and

(f) Other similar services.

(7) "VISTO" means Volunteers in Service to Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0005
Residency

A VISTO volunteer must be a U.S. Citizen (or be in the United States for other than a temporary purpose and intend to become a permanent resident) and maintain a residence in the State of Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0007
VISTO Volunteer Eligibility and Limits

(1) A VISTO volunteer shall be awarded VISTO vouchers for human integration activities, except those which are sectarian in nature.

(2) No manager or supervisor of an approved social service agency may award VISTO vouchers to his or her spouse, child, grandchild, brother or sister.

(3) No VISTO volunteer may be an officer or highly compensated employee of an approved social service agency for which volunteer services are performed, or of the Commission.

(4) The maximum dollar amount of vouchers which can be earned by a VISTO volunteer during any calendar year shall be the average tuition and fees charged for undergraduate attendance at institutions under the control of the State Board of Higher Education, as determined by the Commission, or $5,250, whichever is lesser.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0008
VISTO Volunteer Employee Status

(1) A VISTO volunteer is an uncompensated volunteer student employee of the Commission only for the limited purpose of providing a plan of educational assistance under Internal Revenue Code Section 127. A VISTO volunteer is not a state or public employee for any other purpose.

(2) A VISTO volunteer's work is subject to the direction and control of the approved social service agency providing the volunteer with opportunities to engage in human integration activities.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0010
VISTO Vouchers

A VISTO voucher shall:

(1) Be provided to a volunteer by the Commission upon notification by the approved social service agency of receipt of volunteer services;

(2) Be issued with a redemption value of $25, or multiple thereof, with an issue date;

(3) Be non-transferable; and

(4) Expire five years after the date of issue.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0030
Conditions of Voucher Use

A VISTO voucher may:

(1) Be used for any academic period of a fiscal or academic year.

(2) Be used only for payment of undergraduate tuition and fees and are limited in use to a maximum of $5,250 in any academic year.

(3) Not be used to pay tuition and fees for a course of study leading to a degree in theology, divinity or religious education.

(4) Be used only by the VISTO volunteer who received it in recognition of his or her voluntary service.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0040
Social Service Agency Certification

An eligible social service agency may be approved for participation in the VISTO program by the Commission upon recommendation of the County VISTO Agency, under Commission rules and guidelines, by submission of a Commission-approved application which shall include at a minimum the following:

(1) A means to verify the agency's nonprofit or governmental status;

(2) A description of the human integration activities for which the vouchers will be awarded; and

(3) An estimate of the total annual number of hours of human integration activities which could be provided by VISTO volunteers.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0043
Voucher Allocation to Counties

(1) In the initial allocation of State General or Lottery Funds to counties:

(a) The Commission shall review information on the geographical distribution of 16 to 19-year-old Oregon residents from the Oregon Center for Population Research and Census each biennium; and

(b) Allocate available state-generated VISTO funds to Oregon counties on a pro-rata basis related to each county's share of residents in this age group; however

(c) No county allocation shall be less than $1,500 in a biennium.

(2) County allocations of state-generated funds may be reduced or increased by the Commission depending upon the utilization of the initial allocation by individual counties.

(3) Non-state-generated funds will be allotted to the county or counties for which they were donated to the Commission for VISTO use. Such funds that are not designated to be used in specific counties may be assigned for use by the Commission.

Stat. Auth.: ORS 348.405 - 348.425
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; SSC 2-1991, f. & cert. ef. 12-23-91; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0044
Voucher Allocation to Agencies

(1) The County VISTO Agency shall review the applications from approved social service agencies and determine the number of vouchers that will be allotted to each agency. This allocation shall be reviewed and may be adjusted on a quarterly basis.

(2) An approved social service agency which receives a VISTO voucher allotment shall report to the County VISTO Agency, on a quarterly basis, the extent to which the VISTO vouchers were issued during the previous quarter.

(3) A County VISTO Agency may:

(a) Reduce an approved social service agency's authorization for any or all of its vouchers for which no service has been rendered; or

(b) Award additional voucher authorization to an approved social service agency.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0045
Voucher Disbursement to Students

An approved social service agency may authorize the Commission to award a VISTO voucher to a VISTO volunteer for each eight hours of qualifying service to the agency.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0046
County VISTO Agency Reporting

A County VISTO Agency shall annually submit to the Commission a report including, but not limited to, the following information:

(1) A list of approved social service agencies in that county participating in the VISTO program;

(2) The number of VISTO volunteers active in that county;

(3) The types of services performed by VISTO volunteers; and

(4) A narrative as to the effectiveness of the VISTO program.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0047
Voucher Redemption

(1) The total dollar amount of vouchers which may be redeemed at an eligible institution by a VISTO volunteer shall not exceed the total tuition and fees assessed by the school for the educational period (quarter, semester or other period) for which the VISTO volunteer is registering.

(2) A VISTO volunteer may present vouchers for redemption at any eligible institution up to 30 days prior to enrollment in undergraduate work.

(3) An eligible institution shall submit vouchers to the Commission for redemption.

(4) The Commission shall, within 30 days of submission, validate the vouchers and disburse funds for each VISTO volunteer to the institution.

(5) The eligible institution shall apply the voucher proceeds to amounts owed to the institution for tuition and fees.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0049
Administrative Costs

The Commission may use no more than five percent of the funds made available for the VISTO program for administrative expenses.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0050
Record Keeping

Each approved social service agency shall:

(1) Maintain records sufficient to document its activities relating to the VISTO program.

(2) Make its financial and work performance records available to the Commission at reasonable times for the purpose of assuring that the social service agency is complying with the rules and guidelines relating to the administration of the VISTO program.

(3) Retain the financial and work performance records relevant to the disbursement of VISTO vouchers for not less than five years following the end of the fiscal year in which that disbursement occurs.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-075-0055
Appeals

A County VISTO Agency or approved social service agency may appeal to the Commission any disagreement it has with a policy or procedure of the Commission or its staff. In such a case, the decision of the Commission is final unless a court of competent jurisdiction orders to the contrary.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.405 - 348.425
Hist.: SSC 2-1990, f. & cert. ef. 5-1-90; OSAC 1-2015, f. & cert. ef. 12-18-15

575-076-0010
Definitions

(1) Applicant site. A site serving students in Oregon secondary schools that has completed all necessary material for consideration to become an ASPIRE site.

(2) ASPIRE Agreement. A document that outlines the responsibilities of both the ASPIRE Program and the ASPIRE site that is signed by designated representatives of OSAC and the site.

(3) ASPIRE Coordinator. A site designated staff person who oversees the ASPIRE Program.

(4) ASPIRE site. A site serving students in Oregon secondary schools that has been accepted into the ASPIRE program and is currently operating in the program.

(5) ASPIRE student. An Oregon secondary school student.

(6) Commission. The Higher Education Coordinating Commission .

(7) Partnership Grants. General Funds or Other Funds that are awarded to an ASPIRE site for the purpose of funding an ASPIRE Coordinator. The site may be required to require a matching grant amount to fully fund the ASPIRE Coordinator.

(8) Volunteer advisor. A volunteer who works with individual ASPIRE students at an ASPIRE site.

(9) Waiting list. A list maintained by OSAC of applicant schools that have met the standards for acceptance into the ASPIRE program but which cannot yet be accommodated in the program owing to availability of funds, staffing or other factors limiting participation.

Stat. Auth.: ORS 348, 2007 HB 2729
Stats. Implemented:
Hist.: OSAC 2-2007, f. & cert. ef. 10-3-07; OSAC 1-2015, f. & cert. ef. 12-18-15

575-080-0100
Definitions

For the purposes of the Nursing Faculty Loan Repayment Program Services Program the following definitions shall be used:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "Nurse Educator" means any person licensed under ORS 678.010 to 678.410 as a Registered Nurse and who has earned a master's or doctoral degree from an accredited nursing education program.

(3) "Qualifying Loan" means any loan made under:

(a) Programs under Title IV, Parts B, D, and E, of the Higher Education Act of 1965, as amended; and

(b) The Nursing Student Loan Program and Health Education Assistance Loan Program administered by the U.S. Department of Health and Human Services.

(4) "Teach Full-Time" means to teach for one academic year as defined by the hiring nursing school in Oregon.

Stat. Auth.: ORS 348
Stats. Implemented: SB 701, 2001 OLA
Hist.: OSAC 2-2010, f. & cert. ef. 11-16-10; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0000
Purpose

Through this model program, selected students at Western Oregon State College and Linfield College who engage in approved community service activities may earn course credit and vouchers which may defray a portion of their tuition and fees.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0020
Administration

(1) Role of the Commission:

(a) Development of appropriate administrative rules and procedures;

(b) Allocation of funds to institutions;

(c) Approval of organizations where participants will be placed and of services which participants will perform;

(d) Reimbursement of participating institutions for vouchers redeemed by participants at that institution.

(2) Role of Participating Institutions:

(a) Allocation of vouchers among various academic departments within the institution;

(b) Selection of participants;

(c) Placement of participants in authorized service opportunities;

(d) Redemption of vouchers presented by participants;

(e) Awarding of academic credit for services performed;

(f) Record keeping and reporting.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0030
Allocation and Reallocation

(1) Each participating institution shall receive an initial annual allocation of program funds determined through the following formula: "annual funds available" multiplied by the quotient of "total full-time equivalent students (FTE) for the most recent fall term of enrollment for a participating institution" divided by "total combined full-time equivalent students enrolled for the same period at all participating institutions".

(2) If, after consultation with a participating institution, it appears that allocated program funds will not be expended, the Commission may reallocate all or a portion of that institution's allocation to the other participating institution.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0040
Authorization of Community Service Organizations and Services

Participating institutions must make written requests to the Commission for authorization to place student participants in specific governmental and community service organizations. Such requests shall include:

(1) Full name and address of the organization;

(2) For non-governmental service organizations, information about the status of the organization under Section 501(c)(3) of the Internal Revenue Code.

(3) A description of the services which the student participant will perform.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0050
Participant Eligibility

(1) A participant must be a resident of the State of Oregon as defined by the institution.

(2) A participant must be enrolled or accepted for enrollment as un undergraduate at an institution participating in the Higher Education Community Service Voucher Program.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0060
Community Service Participant Employee Status

(1) A Higher Education Community Service Program student participant is an uncompensated volunteer student employee of the Commission only for the purpose of providing a plan of educational assistance under Section 127 of the Internal Revenue Code. A student participant is not a state or public employee for any other purpose.

(2) A Higher Education Community Service Program student participant's work is subject to the direction and control of a faculty supervisor and a job supervisor at the social service agency providing the community service opportunity.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994, f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-085-0070
Conditions of Voucher Use

(1) Vouchers provided to participants through this program may be redeemed in partial payment of undergraduate tuition and fee charges at the postsecondary institution in which the participant was enrolled at the time the participant performed the relevant community service.

(2) A participant must perform an average of 20 hours per week of approved community service for one complete term of enrollment in order to receive vouchers under this program.

(3) No cash refunds are available to participants from vouchers issued under this program.

(4) Vouchers issued under the program may not be used to pay tuition and fees for a course of study leading to a degree in theology, divinity, or religious education.

(5) Vouchers issued under this program expire five years after the date of issue.

(6) Vouchers issued under this program are not transferrable from the participant to any other individual.

Stat. Auth.: SB 81, Sec. 40 - 44, & 128(9), 1993
Stats. Implemented: ORS 348.427 - 348.433
Hist.: SSC 7-1994-f. & cert. ef. 1-25-94; OSAC 1-2015, f. & cert. ef. 12-18-15

575-090-0020
Individual Education Account

An IEA shall:

(1) Only be used by the eligible participant or by an immediate family member specifically authorized by the participant;

(2) Be non-transferable to other, non-qualifying individuals;

(3) Expire five years from the date on notification by the Higher Education Coordinating Commission.

Stats. Auth.: ORS 348 & HB 2459, 1993
Stats. Implemented: ORS 348 & HB 2459, 1993
Hist.: SSC 14-1994, f. & cert. ef. 11-21-95; OSAC 3-2001(Temp), f. & cert. ef. 10-12-01 thru 3-27-02; OSAC 3-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-090-0030
Conditions of IEA Use

An Individual Education Account may be used for payment of tuition, fees, books, and supplies related to the education course or training.

Stats. Auth.: ORS 348 & HB 2459, 1993
Stats. Implemented: ORS 348 & HB 2459, 1993
Hist.: SSC 14-1994, f. & cert. ef. 11-21-95; OSAC 3-2001(Temp), f. & cert. ef. 10-12-01 thru 3-27-02; OSAC 3-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-090-0040
Conditions of Award

To receive disbursements from an IEA, a student must be enrolled in an education or training program designed to further career opportunities for the participant and/or the participant's immediate family member as approved by the Commission.

Stat. Auth.: ORS 348
Stats. Implemented: HB 3050, 1995
Hist.: SSC 14-1994, f. & cert. ef. 11-21-95; SSC 2-1995, f. & cert. ef. 12-6-95; OSAC 3-2001(Temp), f. & cert. ef. 10-12-01 thru 3-27-02; OSAC 3-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-090-0050
IEA Redemption

(1) The school or program shall submit payment authorization vouchers to the Commission for redemption.

(2) OSAC shall make the requested payment from the Recipient's IEA to the appropriate redeemer upon submission of the payment authorization voucher to the Commission.

(3) Payment is not made directly to the IEA Recipient under any circumstance.

Stat. Auth.: ORS 348
Stats. Implemented: HB 3050, 1995
Hist.: SSC 14-1994, f. & cert. ef. 11-21-95; SSC 2-1995, f. & cert. ef. 12-6-95; OSAC 3-2001(Temp), f. & cert. ef. 10-12-01 thru 3-27-02; OSAC 3-2002, f. & cert. ef. 2-6-02; OSAC 1-2015, f. & cert. ef. 12-18-15

575-095-0005
Definitions

For the purposes of the Oregon Student Child Care Grant Program the following definitions shall be used:

(1) "Commission" means the Higher Education Coordinating Commission.

(2) "Oregon Resident" means resident of the State of Oregon as defined in OAR 575-030-0005.

(3) To be eligible, a student must be a citizen or eligible noncitizen of the United States. "Eligible noncitizens" are those defined by federal regulations under Title IV, Part B of the Higher Education Act of 1965, as amended.

(4) "Student" means an individual who is a resident of Oregon and enrolled at an eligible postsecondary institution.

(5) "Child" is defined as a legal dependent of the student age 12 and under, and does not include unborn. An otherwise eligible child who is a qualifying individual under the Americans with Disabilities Act will be exempt from the age limit.

(6) "Postsecondary institution" means any Oregon-based postsecondary institution eligible for federal Title IV financial aid programs.

(7) "Satisfactory Performance" means satisfactory academic progress as determined by the institution attended.

(8) "Resident In-state Tuition" means tuition cost of an Oregon postsecondary institution.

(9) "Financial need" means the difference between the family contribution, derived from a system of need analysis annually approved by the Commission, and the cost of education.

(10) "Full-time Enrollment" means registration and payment of required fees as a full-time student, at an eligible institution or combination of eligible institutions, as defined by the institution disbursing funds. A concurrently enrolled is a student who attends more than one eligible institution under a written consortium agreement or concurrent enrollment program. The student's "home" institution determines the student's eligibility for federal and state financial aid, disburses funds to the student, and is responsible for reporting enrollment and disbursement information to the Commission.

(11) "Half-time Enrollment" means registration and payment of required fees as a half-time student, at an eligible institution or combination of eligible institutions, based on 6 to 11 credit-hours per academic term.

(12) "Child care provider" means a child care provider who receives payment for care of the child and who is listed with the Oregon Department of Human Services, or, registered or certified with the Oregon Child Care Division.

Stat. Auth.: ORS 348
Stats. Implemented: ORS 348.520-348.530
Hist.: OSAC 3-2007(Temp), f. & cert. ef. 10-12-07 thru 12-31-07; OSAC 1-2008, f. & cert. ef. 1-9-08; OSAC 1-2015, f. & cert. ef. 12-18-15

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Land Conservation and Development Department
Chapter 660

Rule Caption: Alternative, streamlined process for evaluation and amendment of urban growth boundaries (UGBs)
Adm. Order No.: LCDD 6-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Adopted: 660-024-0065, 660-024-0067, 660-038-0000, 660-038-0010, 660-038-0020, 660-038-0030, 660-038-0040, 660-038-0050, 660-038-0060, 660-038-0070, 660-038-0080, 660-038-0090, 660-038-0100, 660-038-0110, 660-038-0120, 660-038-0130, 660-038-0140, 660-038-0150, 660-038-0160, 660-038-0170, 660-038-0180, 660-038-0190, 660-038-0200
Rules Amended: 660-015-0000, 660-024-0000, 660-024-0050, 660-024-0060, 660-024-0070
Subject: The proposed new rules and rule amendments, and conforming amendments to statewide planning Goal 14, will establish an optional alternative, streamlined process for local governments outside of Metro to evaluate and amend urban growth boundaries (UGBs) and will implement related legislation enacted by the 2013 Oregon Legislature (HB 2254, codified as ORS 197A) which requires LCDC to adopt administrative rules establishing the new alternative UGB process by January 1, 2016. In addition, the new and amended rules will provide interpretive guidance to provisions at ORS 197A.320 that apply to both the existing UGB process described in OAR chapter 660, division 24 and the proposed new alternative process.
Rules Coordinator: Casaria Taylor—(503) 373-0050, ext. 322

660-015-0000
Statewide Planning Goals and Guidelines #1 through #14

(1) #1 — Citizen Involvement;
(2) #2 — Land Use Planning;
(3) #3 — Agricultural Lands;
(4) #4 — Forest Lands;
(5) #5 — Natural Resources, Scenic and Historic Areas, and Open Spaces;
(6) #6 — Air, Water, and Land Resources Quality;
(7) #7 — Areas Subject to Natural Disasters and Hazards;
(8) #8 — Recreational Needs;
(9) #9 — Economy of the State;
(10) #10 — Housing;
(11) #11 — Public Facilities and Services;
(12) #12 — Transportation;
(13) #13 — Energy Conservation; and
(14) #14 — Urbanization.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 183, 197 & 215
Stats. Implemented: ORS 197.010, 197.013, 197.015, 197.030, 197.040, 197.045, 197.225, 197.230, 197.235, 197.240, 197.245 & 197.435 –197.467
Hist.: LCD 1, f. 12-31-74, ef. 1-25-75; Renumbered from 660-010-0060; LCDC 6-1980, f. & ef. 9-15-80; LCDC 10-1983, f. & ef. 12-30-83; LCDC 5-1984, f. & ef. 10-19-84; LCDC 2-1988, f. & cert. ef. 3-31-88; LCDC 1-1990, f. & cert. ef. 2-5-90; LCDC 5-1992, f. 8-21-92, cert. ef. 8-7-93; LCDC 2-1994, f. & cert. ef. 3-1-94; LCDC 4-1994, f. & cert. ef. 3-18-94; LCDC 8-1994, f. & cert. ef. 12-5-94; LCDC 2-1996, f. 8-30-96, cert. ef. 9-1-96; LCDD 4-1998, f. & cert. ef. 7-28-98; LCDD 8-2000, f. 10-3-00, cert. ef. 10-4-00; LCDD 6-2001, f. 11-2-01, cert. ef. 6-1-02; LCDD 1-2005, f. 2-11-05, cert. ef. 2-14-05; LCDD 4-2005, f. &

cert. ef. 6-28-05; LCDD 8-2005, f. & cert. ef. 12-13-05; LCDD 1-2006, f. & cert. ef. 2-10-06; LCDD 3-2008, f. & cert. ef. 4-18-08; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0000
Purpose and Applicability

(1) The rules in this division clarify procedures and requirements of Goal 14 regarding a local government adoption or amendment of an urban growth boundary (UGB). The rules in this division do not apply to the simplified UGB process under OAR chapter 660, division 38.

(2) The rules in this division interpret Goal 14 as amended by the Land Conservation and Development Commission (LCDC or commission) on or after April 28, 2005, and are not applicable to plan amendments or land use decisions governed by previous versions of Goal 14 still in effect.

(3) The rules in this division adopted on October 5, 2006, are effective April 5, 2007. The rules in this division amended on March 20, 2008, are effective April 18, 2008. The rules in this division adopted March 13, 2009, and amendments to rules in this division adopted on that date, are effective April 16, 2009, except as follows:

(a) A local government may choose to not apply this division to a plan amendment concerning the evaluation or amendment of a UGB, regardless of the date of that amendment, if the local government initiated the evaluation or amendment of the UGB prior to April 5, 2007;

(b) For purposes of this rule, "initiated" means that the local government either:

(A) Issued the public notice specified in OAR 660-018-0020 for the proposed plan amendment concerning the evaluation or amendment of the UGB; or

(B) Received LCDC approval of a periodic review work program that includes a work task to evaluate the UGB land supply or amend the UGB;

(c) A local government choice whether to apply this division must include the entire division and may not differ with respect to individual rules in the division.

(4) The rules in this division adopted on December 4, 2015, are effective January 1, 2016, except that a local government may choose to not apply the amendments to rules in this division adopted December 4, 2015 to a plan amendment concerning the amendment of a UGB, regardless of the date of that amendment, if the local government initiated the amendment of the UGB prior to January 1, 2016.

Stat. Auth.: ORS 197.040, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 - 197.314, 197.610 - 197.650, 197.764
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0050
Land Inventory and Response to Deficiency

(1) When evaluating or amending a UGB, a local government must inventory land inside the UGB to determine whether there is adequate development capacity to accommodate 20-year needs determined in OAR 660-024-0040. For residential land, the buildable land inventory must include vacant and redevelopable land, and be conducted in accordance with OAR 660-007-0045 or 660-008-0010, whichever is applicable, and ORS 197.296 for local governments subject to that statute. For employment land, the inventory must include suitable vacant and developed land designated for industrial or other employment use, and must be conducted in accordance with OAR 660-009-0015.

(2) As safe harbors, a local government, except a city with a population over 25,000 or a metropolitan service district described in ORS 197.015(13), may use the following assumptions to inventory the capacity of buildable lands to accommodate housing needs:

(a) The infill potential of developed residential lots or parcels of one-half acre or more may be determined by subtracting one-quarter acre (10,890 square feet) for the existing dwelling and assuming that the remainder is buildable land;

(b) Existing lots of less than one-half acre that are currently occupied by a residence may be assumed to be fully developed.

(3) As safe harbors when inventorying land to accommodate industrial and other employment needs, a local government may assume that a lot or parcel is vacant if it is:

(a) Equal to or larger than one-half acre, if the lot or parcel does not contain a permanent building; or

(b) Equal to or larger than five acres, if less than one-half acre of the lot or parcel is occupied by a permanent building.

(4) If the inventory demonstrates that the development capacity of land inside the UGB is inadequate to accommodate the estimated 20-year needs determined under OAR 660-024-0040, the local government must amend the plan to satisfy the need deficiency, either by increasing the development capacity of land already inside the city or by expanding the UGB, or both, and in accordance with ORS 197.296 where applicable. Prior to expanding the UGB, a local government must demonstrate that the estimated needs cannot reasonably be accommodated on land already inside the UGB. If the local government determines there is a need to expand the UGB, changes to the UGB must be determined by evaluating alternative boundary locations consistent with Goal 14 and applicable rules at OAR 660-024-0060 or 660-024-0065 and 660-024-0067.

(5) In evaluating an amendment of a UGB submitted under ORS 197.626, the director or the commission may determine that a difference between the estimated 20-year needs determined under OAR 660-024-0040 and the amount of land and development capacity added to the UGB by the submitted amendment is unlikely to significantly affect land supply or resource land protection, and as a result, may determine that the proposed amendment complies with section (4) of this rule.

(6) When land is added to the UGB, the local government must assign appropriate urban plan designations to the added land, consistent with the need determination and the requirements of section (7) of this rule, if applicable. The local government must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. The requirements of ORS 197.296 regarding planning and zoning also apply when local governments specified in that statute add land to the UGB.

(7) Lands included within a UGB pursuant to OAR 660-024-0065(3) to provide for a particular industrial use, or a particular public facility, must be planned and zoned for the intended use and must remain planned and zoned for that use unless the city removes the land from the UGB.

(8) As a safe harbor regarding requirements concerning "efficiency," a local government that chooses to use the density and mix safe harbors in OAR 660-024-0040(8) is deemed to have met the Goal 14 efficiency requirements under:

(a) Sections (1) and (4) of this rule regarding evaluation of the development capacity of residential land inside the UGB to accommodate the estimated 20-year needs; and

(b) Goal 14 regarding a demonstration that residential needs cannot be reasonably accommodated on residential land already inside the UGB, but not with respect to:

(A) A demonstration that residential needs cannot be reasonably accommodated by rezoning non-residential land, and

(B) Compliance with Goal 14 Boundary Location factors.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0060
Metro Boundary Location Alternatives Analysis

(1) When considering a Metro UGB amendment, Metro must determine which land to add by evaluating alternative urban growth boundary locations. For Metro, this determination must be consistent with the priority of land specified in ORS 197.298 and the boundary location factors of Goal 14, as follows:

(a) Beginning with the highest priority of land available, Metro must determine which land in that priority is suitable to accommodate the need deficiency determined under OAR 660-024-0050.

(b) If the amount of suitable land in the first priority category exceeds the amount necessary to satisfy the need deficiency, Metro must apply the location factors of Goal 14 to choose which land in that priority to include in the Metro UGB.

(c) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, Metro must determine which land in the next priority is suitable to accommodate the remaining need, and proceed using the same method specified in subsections (a) and (b) of this section until the land need is accommodated.

(d) Notwithstanding subsection (a) to (c) of this section, Metro may consider land of lower priority as specified in ORS 197.298(3).

(e) For purposes of this section, the determination of suitable land to accommodate land needs must include consideration of any suitability characteristics specified under section (5) of this rule, as well as other provisions of law applicable in determining whether land is buildable or suitable.

(2) Notwithstanding OAR 660-024-0050(4) and subsection (1)(c) of this rule, except during a legislative review of the Metro UGB, Metro may approve an application under ORS 197.610 to 197.625 for a Metro UGB

amendment proposing to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

(3) The boundary location factors of Goal 14 are not independent criteria. When the factors are applied to compare alternative boundary locations and to determine the Metro UGB location, Metro must show that all the factors were considered and balanced.

(4) In determining alternative land for evaluation under ORS 197.298, "land adjacent to the UGB" is not limited to those lots or parcels that abut the UGB, but also includes land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency.

(5) If Metro has specified characteristics such as parcel size, topography, or proximity that are necessary for land to be suitable for an identified need, Metro may limit its consideration to land that has the specified characteristics when it conducts the boundary location alternatives analysis and applies ORS 197.298.

(6) The adopted findings for a Metro UGB adoption or amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis. If the analysis involves more than one parcel or area within a particular priority category in ORS 197.298 for which circumstances are the same, these parcels or areas may be considered and evaluated as a single group.

(7) For purposes of Goal 14 Boundary Location Factor 2, "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities.

(8) The Goal 14 boundary location determination requires evaluation and comparison of the relative costs, advantages and disadvantages of alternative Metro UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. This evaluation and comparison must be conducted in coordination with service providers, including the Oregon Department of Transportation (ODOT) with regard to impacts on the state transportation system. "Coordination" includes timely notice to service providers and the consideration of evaluation methodologies recommended by service providers. The evaluation and comparison must include:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the Metro UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the Metro UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0065
Establishment of Study Area to Evaluate Land for Inclusion in the UGB

(1) When considering a UGB amendment to accommodate a need deficit identified in OAR 660-024-0050(4), a city outside of Metro must determine which land to add to the UGB by evaluating alternative locations within a "study area" established pursuant to this rule. To establish the study area, the city must first identify a "preliminary study area" which shall not include land within a different UGB or the corporate limits of a city within a different UGB. The preliminary study area shall include:

(a) All lands in the city's acknowledged urban reserve, if any;

(b) All lands that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one-half mile;

(B) For cities with a UGB population equal to or greater than 10,000: one mile;

(c) All exception areas contiguous to an exception area that includes land within the distance specified in subsection (b) and that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one mile;

(B) For cities with a UGB population equal to or greater than 10,000: one and one-half miles;

(d) At the discretion of the city, the preliminary study area may include land that is beyond the distance specified in subsections (b) and (c).

(2) A city that initiated the evaluation or amendment of its UGB prior to January 1, 2016, may choose to identify a preliminary study area applying the standard in this section rather than section (1). For such cities, the preliminary study area shall consist of:

(a) All land adjacent to the acknowledged UGB, including all land in the vicinity of the UGB that has a reasonable potential to satisfy the identified need deficiency, and

(b) All land in the city's acknowledged urban reserve established under OAR chapter 660, division 21, if applicable.

(3) When the primary purpose for expansion of the UGB is to accommodate a particular industrial use that requires specific site characteristics, or to accommodate a public facility that requires specific site characteristics, and the site characteristics may be found in only a small number of locations, the preliminary study area may be limited to those locations within the distance described in section (1) or (2), whichever is appropriate, that have or could be improved to provide the required site characteristics. For purposes of this section:

(a) The definition of "site characteristics" in OAR 660-009-0005(11) applies for purposes of identifying a particular industrial use.

(b) A "public facility" may include a facility necessary for public sewer, water, storm water, transportation, parks, schools, or fire protection. Site characteristics may include but are not limited to size, topography and proximity.

(4) The city may exclude land from the preliminary study area if it determines that:

(a) Based on the standards in section (7) of this rule, it is impracticable to provide necessary public facilities or services to the land;

(b) The land is subject to significant development hazards, due to a risk of:

(A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph;

(B) Flooding, including inundation during storm surges: the land is within the Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate Map (FIRM);

(C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS 455.446;

(c) The land consists of a significant scenic, natural, cultural or recreational resource described in this subsection:

(A) Land that is designated in an acknowledged comprehensive plan prior to initiation of the UGB amendment, or that is mapped on a published state or federal inventory at a scale sufficient to determine its location for purposes of this rule, as:

(i) Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered;

(ii) Core habitat for Greater Sage Grouse; or

(iii) Big game migration corridors or winter range, except where located on lands designated as urban reserves or exception areas;

(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for the scenic program;

(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;

(D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan;

(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;

(F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

(G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2;

(d) The land is owned by the federal government and managed primarily for rural uses.

(5) After excluding land from the preliminary study area under section (4), the city must adjust the area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed for the defi-

ciency determined under OAR 660-024-0050(4) or, if applicable, twice the particular land need described in section (3). Such adjustment shall be made by expanding the distance specified under the applicable section (1) or (2) and applying section (4) to the expanded area.

(6) For purposes of evaluating the priority of land under OAR 660-024-0067, the "study area" shall consist of all land that remains in the preliminary study area described in section (1), (2) or (3) of this rule after adjustments to the area based on sections (4) and (5), provided that when a purpose of the UGB expansion is to accommodate a public park need, the city must also consider whether land excluded under subsection (4)(a) through (c) of this rule can reasonably accommodate the park use.

(7) For purposes of subsection (4)(a), the city may consider it impracticable to provide necessary public facilities or services to the following lands:

(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater, provided that contiguous areas 20 acres or more that are less than 25 percent slope may not be excluded under this subsection. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(b) Land that is isolated from existing service networks by physical, topographic, or other impediments to service provision such that it is impracticable to provide necessary facilities or services to the land within the planning period. The city's determination shall be based on an evaluation of:

(A) The likely amount of development that could occur on the land within the planning period;

(B) The likely cost of facilities and services; and,

(C) Any substantial evidence collected by or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.

(c) As used in this section, "impediments to service provision" may include but are not limited to:

(A) Major rivers or other water bodies that would require new bridge crossings to serve planned urban development;

(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and vertical relief of greater than 80 feet;

(C) Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings to serve planned urban development;

(D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan inventory and subject to protection measures under the plan or implementing regulations, or on a published state or federal inventory, that would prohibit or substantially impede the placement or construction of necessary public facilities and services.

(8) Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity for such land as provided in OAR 660-024-0067(1)(d).

(9) Notwithstanding OAR 660-024-0050(4) and section (1) of this rule, except during periodic review or other legislative review of the UGB, the city may approve an application under ORS 197.610 to 197.625 for a UGB amendment to add an amount of land less than necessary to satisfy the land need deficiency determined under OAR 660-024-0050(4), provided the amendment complies with all other applicable requirements.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0067
Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

(1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR 660-024-0065, as follows

(a) Beginning with the highest priority category of land described in section (2), the city must apply section (5) to determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR 660-024-0050 and select for inclusion in the UGB as much of the land as necessary to satisfy the need.

(b) If the amount of suitable land in the first priority category is not sufficient to satisfy all the identified need deficiency, the city must apply section (5) to determine which land in the next priority is suitable and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need. The city must proceed in this manner until all the land need is satisfied, except as provided in OAR 660-024-0065(9).

(c) If the amount of suitable land in a particular priority category in section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by applying the criteria in section (7) of this rule.

(d) In evaluating the sufficiency of land to satisfy a need under this section, the city may use the factors identified in sections (5) and (6) of this rule to reduce the forecast development capacity of the land to meet the need.

(e) Land that is determined to not be suitable under section (5) of this rule to satisfy the need deficiency determined under OAR 660-024-0050 is not required to be selected for inclusion in the UGB unless its inclusion is necessary to serve other higher priority lands.

(2) Priority of Land for inclusion in a UGB:

(a) First Priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:

(A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;

(B) Land that is subject to an acknowledged exception under ORS 197.732; and

(C) Land that is nonresource land.

(b) Second Priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

(c) Third Priority is forest or farm land that is not predominantly high-value farm land: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan and that is not predominantly high-value farmland as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.

(d) Fourth Priority is agricultural land that is predominantly high-value farmland: land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting which lands to include to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first.

(3) Notwithstanding section (2)(c) or (d) of this rule, land that would otherwise be excluded from a UGB may be included if:

(a) The land contains a small amount of third or fourth priority land that is not important to the commercial agricultural enterprise in the area and the land must be included in the UGB to connect a nearby and significantly larger area of land of higher priority for inclusion within the UGB; or

(b) The land contains a small amount of third or fourth priority land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the UGB.

(4) For purposes of categorizing and evaluating land pursuant tosubsections (2)(c) and (d) and section (3) of this rule,

(a) Areas of land not larger than 100 acres may be grouped together and studied as a single unit of land;

(b) Areas of land larger than 100 acres that are similarly situated and have similar soils may be grouped together provided soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule, which requires that higher capability resource lands shall be the last priority for inclusion in a UGB;

(c) Notwithstanding subsection (4)(a), if a city initiated the evaluation or amendment of its UGB prior to January 1, 2016, and if the analysis involves more than one lot or parcel or area within a particular priority category for which circumstances are reasonably similar, these lots, parcels and areas may be considered and evaluated as a single group;

(d) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, "predominantly" means more than 50 percent.

(5) With respect to section (1), a city must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-024-0050(4) unless it demonstrates that the land cannot satisfy the specified need based on one or more of the conditions described in subsections (a) through (g) of this section: Existing parcelization, lot sizes or development patterns of rural residential land make that land unsuitable for an identified employment need; as follows:

(A) Parcelization: the land consists primarily of parcels 2-acres or less in size, or

(B) Existing development patterns: the land cannot be reasonably redeveloped or infilled within the planning period due to the location of existing structures and infrastructure."

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-024-0065(4) but the city declined to exclude it pending more detailed analysis.

(c) The land is, or will be upon inclusion in the UGB, subject to natural resources protections under Statewide Planning Goal 5 such that that no development capacity should be forecast on that land to meet the land need deficiency.

(d) With respect to needed industrial uses only, the land is over 10 percent slope, or is an existing lot or parcel that is smaller than 5 acres in size, or both. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals.

(e) With respect to a particular industrial use or particular public facility use described in OAR 660-024-0065(3), the land does not have, and cannot be improved to provide, one or more of the required specific site characteristics.

(f) The land is subject to a conservation easement described in ORS 271.715 that prohibits urban development.

(g) The land is committed to a use described in this subsection and the use is unlikely to be discontinued during the planning period:

(A) Public park, church, school, or cemetery, or

(B) Land within the boundary of an airport designated for airport uses, but not including land designated or zoned for residential, commercial or industrial uses in an acknowledged comprehensive plan.

(6) For vacant or partially vacant lands added to the UGB to provide for residential uses:

(a) Existing lots or parcels one acre or less may be assumed to have a development capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less than two acres shall be assumed to have an aggregate development capacity of two dwelling units per acre.

(b) In any subsequent review of a UGB pursuant to this division, the city may use a development assumption for land described in subsection (a) of this section for a period of up to 14 years from the date the lands were added to the UGB.

(7) Pursuant to subsection (1)(c), if the amount of suitable land in a particular priority category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by first applying the boundary location factors of Goal 14 and then applying applicable criteria in the acknowledged comprehensive plan and land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The city may not apply local comprehensive plan criteria that contradict the requirements of the boundary location factors of Goal 14. The boundary location factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must show that it considered and balanced all the factors. The criteria in this section may not be used to select lands designated for agriculture or forest use that have higher land capability or cubic foot site class, as applicable, ahead of lands that have lower capability or cubic foot site class.

(8) The city must apply the boundary location factors of Goal 14 in coordination with service providers and state agencies, including the Oregon Department of Transportation (ODOT) with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon Department of Fish and Wildlife (ODFW) and the Department of State Lands (DSL) with respect to Factor 3 regarding environmental consequences. "Coordination" includes timely notice to agencies and service providers and consideration of any recommended evaluation methodologies.

(9) In applying Goal 14 Boundary Location Factor 2 to evaluate alternative locations under section (7), the city must compare relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. For purposes of this section, the term "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities. The evaluation and comparison under Boundary Location Factor 2 must consider:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

(10) The adopted findings for UGB amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14
Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-024-0070
UGB Adjustments

(1) A local government may adjust the UGB at any time to better achieve the purposes of Goal 14 and this division. Such adjustment may occur by adding or removing land from the UGB, or by exchanging land inside the UGB for land outside the UGB. The requirements of section (2) of this rule apply when removing land from the UGB. The requirements of Goal 14 and this division[and ORS 197.298] apply when land is added to the UGB, including land added in exchange for land removed. The requirements of ORS 197.296 may also apply when land is added to a UGB, as specified in that statute. If a local government exchanges land inside the UGB for land outside the UGB, the applicable local government must adopt appropriate rural zoning designations for the land removed from the UGB prior to or at the time of adoption of the UGB amendment and must apply applicable location and priority provisions of OAR 660-024-0060 through 660-020-0067.

(2) A local government may remove land from a UGB following the procedures and requirements of ORS 197.764. Alternatively, a local government may remove land from the UGB following the procedures and requirements of 197.610 to 197.650, provided it determines:

(a) The removal of land would not violate applicable statewide planning goals and rules;

(b) The UGB would provide a 20-year supply of land for estimated needs after the land is removed, or would provide roughly the same supply of buildable land as prior to the removal, taking into consideration land added to the UGB at the same time;

(c) Public facilities agreements adopted under ORS 195.020 do not intend to provide for urban services on the subject land unless the public facilities provider agrees to removal of the land from the UGB and concurrent modification of the agreement;

(d) Removal of the land does not preclude the efficient provision of urban services to any other buildable land that remains inside the UGB; and

(e) The land removed from the UGB is planned and zoned for rural use consistent with all applicable laws.

(3) Notwithstanding sections (1) and (2) of this rule, a local government considering an exchange of land may rely on the land needs analysis that provided a basis for its current acknowledged plan, rather than adopting a new need analysis, provided:

(a) The amount of buildable land added to the UGB to meet:

(A) A specific type of residential need is substantially equivalent to the amount of buildable residential land removed, or

(B) The amount of employment land added to the UGB to meet an employment need is substantially equivalent to the amount of employment land removed, and

(b) The local government must apply comprehensive plan designations and, if applicable, urban zoning to the land added to the UGB, such that the land added is designated:

(A) For the same residential uses and at the same housing density as the land removed from the UGB, or

(B) For the same employment uses as allowed on the land removed from the UGB, or

(C) If the land exchange is intended to provide for a particular industrial use that requires specific site characteristics, only land zoned for commercial or industrial use may be removed, and the land added must be zoned for the particular industrial use and meet other applicable requirements of ORS 197A.320(6).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235, Statewide Planning Goal 14

Stats. Implemented: ORS 195.036, 197.015, 197.295 – 197.314, 197.610 – 197.650, 197.764, 197A.300 - 197A.325
Hist.: LCDD 8-2006, f. 10-19-06, cert. ef. 4-5-07; LCDD 2-2009, f. 4-8-09, cert. ef. 4-16-09; LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0000
Purpose

(1) The purpose of this division is to implement ORS 197A.300 to 197A.325 by providing simplified methods to evaluate and amend an urban growth boundary (UGB) for a city outside Metro.

(Note: ORS 197A.320 regarding the establishment of study areas and the priority of lands for UGB amendment applies both to the "simplified" UGB methods under this division and to the "traditional" UGB method described in OAR chapter 660, division 24. Rules in this division at OAR 660-038-0160 and 660-038-0170 interpret that statute with respect to the simplified methods. Rules at OAR 660-024-0065 and 660-024-0067 interpret ORS 197A.320 for purposes of the traditional UGB method).

(2) The method for UGB evaluation and amendment described in OAR chapter 660, division 24 (the traditional UGB method) is not modified by this division. Cities may choose to apply the methods described in this division instead of division 24 in order to evaluate or amend a UGB, as described in OAR 660-038-0020.

(3) The methods described in this division are intended to achieve the following objectives provided in ORS 197A.302:

(a) Become, as a result of reduced costs, complexity and time, the methods that are used by most cities with growing populations to manage their urban growth boundaries;

(b) Encourage, to the extent practicable given market conditions, the development of urban areas in which individuals desire to live and work and that are increasingly efficient in terms of land uses and in terms of public facilities and services;

(c) Encourage the conservation of important farm and forest lands, particularly lands that are needed to sustain agricultural and forest products industries;

(d) Encourage cities to increase the development capacity within their urban growth boundaries;

(e) Encourage the provision of an adequate supply of serviceable land that is planned for needed urban residential and industrial development; and

(f) Assist residents in understanding the major local government decisions that are likely to determine the form of a city's growth.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0010
Definitions

The definitions in ORS 197.015, the statewide planning goals, and the following definitions apply to this division:

(1) "Buildable lands" means land in urban or urbanizable areas that are suitable for urban uses, as provided in ORS 197A.300(1). Note: This definition applies to this division only; a different definition of "buildable lands" is provided in laws and rules concerning needed housing (ORS 197.295; OAR 660-007-0005 and 660-008-0005 and OAR 660-024-0010).

(2) "Commercial" and "commercial use" mean office, retail, institutional and public employment land uses described by the North American Industry Classification System (NAICS) Categories 44, 45, 51, 52, 53, 54, 55, 56, 61, 62, 71, 72, 81, 92, and 99. These are land uses that generally do not require significant space for indoor or outdoor production or logistics.

(3) "Industrial" and "industrial use" mean employment activities including, but not limited to, manufacturing, assembly, fabrication, processing, storage, logistics, warehousing, importation, distribution and transshipment, and research and development, that generate income from the production, handling or distribution of goods or services, including goods or services in the traded sector, as defined in ORS 285A.010. "Industrial use" means NAICS Categories 11, 21, 22, 23, 31, 32, 33, 42, 48, and 49. These are land uses that generally require significant space for indoor or outdoor production or logistics.

(4) "Initiate" means that the local government issues a public notice specified in OAR 660-018-0020, including a notice to the Department of Land Conservation and Development, for a proposed plan amendment that concerns evaluating or amending a UGB.

(5) "Nonresource land" has the meaning specified in OAR 660-004-0005(3).

(6) "Range" means a range of numbers specified in rules in this division (see ORS 197A.325(2)(a)). A city may choose to use the number at either end of a stated range or any number between. Ranges allow a city to make choices regarding its future growth.

(7) "Serviceable" means, with respect to land supply in a UGB, and as described in OAR 660-038-0200, that:

(a) Adequate sewer, water and transportation capacity for planned urban development is available or can be either provided or made subject to committed financing; or

(b) Committed financing can be in place to provide adequate sewer, water and transportation capacity for planned urban development.

(8) "UGB" means "urban growth boundary."

(9) "Urbanizable land" means land inside a UGB that, due to the presence unavailability of urban facilities and services, or for other reasons, either retains the zone designations assigned prior to inclusion in the UGB or is subject to interim zone designations intended to maintain the land's potential for planned urban development until appropriate public facilities and services are available or planned.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0020
Applicability

(1) This division takes effect January 1, 2016. Rules in this division provide optional simplified methods for a city outside Metro to evaluate or amend its UGB. These methods are available to cities in addition to and not in lieu of the methods provided in OAR chapter 660, division 24. If a city uses this division to evaluate or amend a UGB, the requirements of division 24 do not apply to the UGB evaluation or amendment.

(2) A city that evaluates or amends its UGB using this division must demonstrate that:

(a) It has sufficient buildable lands and other development capacity, including land and capacity for needed housing and employment opportunities, within its UGB to meet the growth in population and employment that is forecast to occur over a 14-year period,

(b) It based its determination of the amount of buildable lands needed for housing, employment and other urban uses on the population and employment growth forecast to occur over a 14-year period, consistent with rules in this division, and

(c) Lands included within the UGB include sufficient serviceable land for at least a seven-year period and can all be serviceable over a 14-year period as provided in OAR 660-038-0200.

(3) A city using this division is not required to adopt findings to support the use of a number or a number within a range that is expressed by a rule in this division.

(4) A city that uses this division to add land to the UGB may not use a method in this division again to add land to the UGB until:

(a) The population of the city has grown by at least 50 percent of the amount of growth forecast to occur in conjunction with the previous use of the method by the city; or

(b) At least one-half of the lands identified as buildable lands for employment needs or for residential needs during the previous use of the method by the city have been developed.

(5) A city that adopts a UGB amendment using this division must evaluate whether the city needs to include additional land for residential or employment uses within the UGB before the population of the city has grown by 100 percent of the population growth forecast to occur in conjunction with the city's previous use of this division.

(6) A city that adopts a UGB amendment using this division may subsequently add land to the UGB using division 24 instead of the method described in this division. However, a city's determination of land need resulting from the previous use of this method shall not be considered by itself sufficient to support a housing or employment need determination under OAR chapter 660, division 24.

(7) A city may not use this division in order to evaluate or amend a UGB for purposes of OAR 660-024-0045 concerning Regional Large Lot Industrial Land.

(8) A city that elects to use this division shall notify the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615 and OAR chapter 660, division 18, regarding a proposed change to an acknowledged comprehensive plan or a land use regulation. The city may revoke its election under this section at any time until the city makes a final decision to amend the UGB.

(9) A city that initiated an amendment of its UGB under OAR chapter 660, division 24, but has not submitted that amendment to the Department of Land Conservation and Development, may withdraw the proposed amendment and use a method described in this division by filing notice of the election with the Department of Land Conservation and Development in the manner required by ORS 197.610, 197.615, and OAR

chapter 660, division 18 for notice of a post-acknowledgment plan amendment.

(10) Notwithstanding ORS 197.626, when a city evaluates or amends the UGB pursuant to this division, the Land Use Board of Appeals rather than the commission has jurisdiction for review of the final decision of the city.

(11) A city that amends a UGB under this division is not required to also satisfy the requirements of ORS 197.296 applicable to a UGB amendment for cities subject to that statute.

(12) A city that amends a UGB under this division is not required to also satisfy the requirements of Goals 9 and 10 with respect to the determinations of land need and land supply, the housing needs projection requirements of OAR chapter 660, division 8, or the economic opportunities analysis requirements of OAR chapter 660, division 9.

(13) All statewide planning goals and related administrative rules are applicable when establishing or amending a UGB, except as follows:

(a) The exceptions process in Goal 2 and OAR chapter 660, division 4, is not applicable to a UGB amendment unless a local government chooses to take an exception to a particular goal requirement, for example, as provided in OAR 660-004-0010(1), provided however that a local government may not take an exception to the UGB requirements of Goal 14;

(b) Goals 3 and 4 are not applicable;

(c) Goal 5 and related rules under OAR chapter 660, division 23, apply only to lands added to the UGB, except as required under OAR 660-023-0070 and 660-023-0250;

(d) The transportation planning rule requirements under OAR 660-012-0060 need not be applied at the time of a UGB amendment if the land added to the UGB is zoned as urbanizable land, either by retaining the zoning that was assigned prior to inclusion in the UGB or by assigning interim zoning that does not allow development that would generate more vehicle trips than development allowed by the zoning assigned prior to inclusion in the UGB;

(e) Goal 15 is not applicable to land added to the UGB unless the land is within the Willamette River Greenway Boundary;

(f) Goals 16 through 18 are not applicable to land added to the UGB unless the land is subject to acknowledged comprehensive plan or land use regulations that implement these goals;

(g) Goal 19 is not applicable to a UGB amendment.

(14) A city considering a UGB evaluation or amendment must apply its acknowledged citizen involvement program to ensure adequate notice and participation opportunities for the public and must assist the public in understanding the major local government decisions that are likely to determine the form of the city's growth.

(15) A city that is scheduled to commence periodic review as required by OAR 660-025-0030 is not required to commence periodic review if the city has amended its UGB pursuant to this division, or if the city has evaluated its UGB need and land supply using this division and determined that the UGB contains sufficient buildable land for a 14-year period, including a supply that is serviceable for a seven-year period and a supply that can be serviceable for a 14-year period as provided in OAR 660-038-0200.

(16) When a city is required to undertake an analysis or make a determination concerning lots or parcels under the rules in the division, the city may conduct such analyses using tax lot data shown on the most recent tax assessment rolls in the county in which the land is located.

(17) Beginning on or before January 1, 2023, the commission shall:

(a) Evaluate, every five years, the impact of this division on the population per square mile, livability in the area, the provision and cost of urban facilities and services, the rate of conversion of agriculture and forest lands and other considerations;

(b) Consider changes to the statewide land use planning goals or rules to address adverse outcomes; and

(c) Make recommendations to the Legislative Assembly, as necessary, for statutory changes.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0030
Residential Land Need

OAR 660-038-0030 through 660-038-0080 provides steps that a city must take to determine residential land need over the 14-year planning period.

(1) A city that applies the UGB method in this division:

(a) Must forecast the amount of buildable lands that it will need for housing based on the population forecast for the 14-year period commencing on the date it initiates and consistent with OAR 660-038-0040 through OAR 660-038-0090, and

(b) Must provide within its UGB sufficient buildable lands and other development capacity, for needed housing to accommodate the growth in population forecast to occur over a 14-year period.

(2) The city must use the most recent final forecast issued by the Portland State University Population Research Center under ORS 195.033 in effect at the time the city initiates a UGB review to forecast the UGB population growth for a 14-year period.

(3) The city must subtract from the forecast population growth the number of persons projected to live in group quarters in the UGB during the planning period. The city shall determine this number by calculating the percentage of the city's population living in group quarters at the last decennial United States Census and subtracting the same percentage from projected population growth. For the purpose of this rule, "group quarters," as defined by the United States Census, are places where people live or stay, in a group living arrangement, which is owned or managed by an entity or organization providing housing or services for the residents.

(4) To determine the gross number of dwelling units needed for the 14-year period, the city must divide the projected growth reduced as determined in section (3) by the persons per household within the city determined at the most recent decennial United States Census.

(5) The city must adjust the gross number of needed dwelling units to account for the vacancy rate projected to occur during the planning period, as follows: Multiply the result calculated in section (4) by the vacancy rate and add the resulting product to the gross number of dwelling units needed. The vacancy rate used shall be five percent plus the portion of the vacancy rate that is comprised of seasonal, recreational, or occasional vacancies within the city, determined at the last decennial United States Census. However, the total vacancy rate used may not exceed 15 percent.

(6) The city must account for projected redevelopment expected to occur in residentially zoned areas, and for mixed use residential development expected to occur in commercially zoned areas, as follows: multiply the result calculated in section (5) by the applicable percentage in subsections (a) through (c) of this section.

(a) For cities with a current UGB population less than 10,000, the percentage shall be within a range from one percent to 10 percent of the result calculated in section (5).

(b) For cities with a current UGB population equal to or greater than 10,000 and less than 25,000, the percentage shall be within a range from five percent to 15 percent of the result calculated in section (5).

(c) For cities with a current UGB population equal to or greater than 25,000, the percentage shall be within a range from five percent to 25 percent of the result calculated in section (5).

(7) The city must account for accessory dwelling units expected to occur during the planning period by multiplying the result calculated in section (5) by the applicable percentage in subsection (a) or (b) of this section:

(a) For cities with UGB population less than 10,000, the percentage shall be within a range from zero percent to two percent of the result calculated in section (5).

(b) For cities with UGB population equal to or greater than 10,000, the percentage shall be within a range from one percent to three percent of the result calculated in section (5).

(8) The city must subtract the numbers determined in sections (6) and (7) from the result calculated in section (5). The resulting number is the identified need for new dwelling units for 14 years.

(9) The city shall accommodate the dwelling unit need identified in section (8):

(a) On vacant and partially vacant residentially zoned lands within the UGB, and

(b) If the amount of land described in subsection (a) is insufficient to accommodate all of the identified need, the remaining need must be accommodated on lands to be added to the UGB for residential development consistent with OAR 660-038-0180.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0040
Determine the Mix of Dwelling Units Needed

(1) A city must determine the current mix of housing types within the city based on the percentages of low density, medium density, and high density residential dwellings using:

(a) For cities with UGB population less than 2,500, the percentages determined in the most recent five-year American Community Survey conducted by the United States Census;

(b) For cities with UGB population greater than or equal to 2,500, using either the percentages determined in:

(A) The most recent American Community Survey conducted by the United States Census, or

(B) An average of the two most recent American Community Surveys conducted by the United States Census.

(2) For the purposes of this rule and for OAR 660-038-0050:

(a) For cities with a UGB population less than 2,500, single-family detached dwellings shall be considered low density residential, and all other dwellings shall be considered medium density residential.

(b) For cities with a UGB population greater than or equal to 2,500, single-family detached dwellings shall be considered low density residential; single-family attached dwellings, mobile homes, and multiplexes with two to four units shall be considered medium density residential; and multi-family dwellings with five or more units shall be considered high density residential.

(3) A city must project the mix of housing types needed for new development over the 14-year period using the ranges of numbers in Table 1. The percentage of low density residential development is calculated by subtracting the percentage of medium density and high density residential development selected by the city from the table.

(4) To determine the number of low density, medium density and high density dwelling units needed over the 14-year period, the city must multiply the percentages of needed housing for different housing categories determined in section (3) by the total housing need determined in OAR 660-038-0030.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0050
Determine Amount of Land Needed for Each Housing Type

A city must:

(1) Determine the land needed for each category of residential development over the 14-year period by dividing the number of needed units determined in OAR 660-038-0040 by the projected number of net dwelling units per acre using the ranges in Table 2.

(2) Calculate the overall net density (total dwelling units divided by total land need) for all residential land need in terms of dwellings units per acre and compare the result with the current density of the developed lands shown in the buildable lands inventory within the city's UGB completed under OAR 660-038-0060(5).

(3) If necessary, adjust the density assumptions used in the residential land need analysis so that the overall net density for all residential land need is at least equal to the density determined in section (2).

(4) Add an amount equal to 25 percent of the total residential land needed to account for public land need for infrastructure and facilities such as schools and parks and to account for private institutional land need.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0060
Buildable Lands Inventory (BLI) for Residential Land within the UGB

A city must determine the supply and development capacity of lands within its UGB by conducting a buildable lands inventory (BLI) as provided in this rule.

(1) For purposes of the BLI, the city shall classify the existing residential comprehensive plan and zoning designations within its UGB based on allowed density. The classification shall be based on either:

(a) The allowed density and housing types on the comprehensive plan map; or

(b) If the comprehensive plan map does not differentiate residential districts by density or type of housing, the applicable city or county zoning map, as follows:

(A) For cities with a UGB population less than 2,500, districts shall be classified as follows:

(i) Districts with a maximum density less than or equal to eight dwelling units per acre: low density residential. A city may classify a district as low density residential despite a maximum density of greater than eight dwelling units per acre if the majority of existing residences within the district are single-family detached and if the city has a medium density residential district as determined by subparagraph (ii);

(ii) Districts with a maximum density greater than eight dwelling units per acre: medium density residential.

(B) For cities with UGB populations greater than or equal to 2,500, districts shall be classified as follows:

(i) Districts with a maximum density less than or equal to eight dwelling units per acre: low density residential. A city may classify a district as low density residential despite a maximum density of greater than eight dwelling units per acre if the majority of existing residences within the district are single-family detached and the city has a medium density residential district as determined by subparagraph (ii);

(ii) Districts with a maximum density greater than eight dwelling units per acre and less than or equal to 16 dwelling units per acre: medium density residential, unless the district has been classified as low density residential pursuant to subparagraph (i). A city may classify a district as medium density residential despite a maximum density of greater than 16 dwelling units per acre if the majority of development within the district is developed at densities of between eight and 16 dwelling units per net acre and the city has a high density residential district as determined by subparagraph (iii);

(iii) Districts with a maximum density greater than 16 dwelling units per acre: high density residential, unless the district has been classified as medium density residential pursuant to subparagraph (ii);

(iv) A city may not classify as low density a district that allows higher residential densities than a district the city has classified as medium density. A city may not classify as medium density a district that allows higher residential densities than a district the city has classified as high density.

(2) The city must identify all vacant lots and parcels with a residential comprehensive plan designation. A city shall assume that a lot or parcel is vacant if it is at least 3,000 square feet with a real market improvement value of less than $10,000.

(3) The city must identify all partially vacant lots and parcels with a residential comprehensive plan designation, as follows:

(a) For lots and parcels at least one-half acre in size that contain a single-family residence, the city must subtract one-quarter acre for the residence, and count the remainder of the lot or parcel as vacant land, and

(b) For lots and parcels at least one-half acre in size that contain more than one single-family residence, multiple-family residences, non-residential uses, or ancillary uses such as parking areas and recreational facilities, the city must identify vacant areas using an orthophoto or other map of comparable geometric accuracy. For the purposes of this identification, all publicly owned park land shall be considered developed. If the vacant area is at least one-quarter acre, the city shall consider that portion of the lot or parcel to be vacant land.

(4) The city must determine the amount and mapped location of low density, medium density, and high density vacant and partially vacant land in residential plan or zone districts within the city's UGB.

(5) The city must, within the city limits,

(a) Identify all lots and parcels within a residential district that are developed;

(b) Identify all portions of partially vacant lots and parcels within a residential district that are developed with residential uses;

(c) Calculate the total area of land identified in (a) and (b);

(d) Calculate the total number of existing dwelling units located on the land identified in (a) and (b); and

(e) Calculate the net density of residential development on the land identified in (a) and (b).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0070
Adjust Residential Lands Inventory to Account for Constrained Lands

A city must adjust the inventory of residential lands prepared under OAR 660-038-0060 to account for constrained lands using this rule.

(1) The city must identify the following physical constraints on land inventoried as vacant or partially vacant under OAR 660-038-0060:

(a) Floodways and water bodies. For the purpose of this subsection, "water bodies" includes;

(A) Rivers; and

(B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size.

(b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map;

(c) Lands within the tsunami inundation zone established pursuant to ORS 455.446;

(d) Contiguous lands of at least one acre with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(e) Lands subject to development restrictions as a result of acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 5, 6, or 7, and

(f) Lands subject to development prohibitions, natural resource protections, or both in acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 15, 16, 17, or 18.

(2) For lands identified in section (1), the city may reduce the estimated residential development capacity by the following factors in terms of acreage:

(a) For lands within floodways and water bodies: a 100 percent reduction.

(b) For other lands within Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map: a 100 percent reduction.

(c) For lands within the tsunami inundation zone: no reduction unless the acknowledged comprehensive plan or land use regulations applicable to such areas prohibits or reduces residential development, in which case the reduction shall be based upon the maximum density allowed by the acknowledged comprehensive plan or land use regulation.

(d) For lands with slopes that are greater than 25 percent: a 100 percent reduction. However, if the lot or parcel includes land with slopes less than 25 percent, the reduction applies only to the land with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(e) For lands subject to development restrictions in an acknowledged comprehensive plan or land use regulations developed pursuant to Statewide Planning Goals 5, 6, or 7: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(f) For lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implements Statewide Planning Goals 15, 16, 17 or 18: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(3) The residential BLI amount for each type of needed housing for a city is the amount of buildable land for that needed housing type determined in OAR 660-038-0060 reduced by the constraints as determined in this rule.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0080
Compare Residential Land Need to Land Supply

(1) To determine whether to expand the UGB, a city must compare the amount of land needed for each category of residential development, as determined in OAR 660-038-0050, with the amount of buildable land available for each category of residential development, as determined in OAR 660-038-0070(3).

(2) If the amount of buildable residential land is greater than the amount of land needed for all categories of residential development, then no UGB expansion for residential land need is allowed.

(3) If the amount of buildable residential land is less than the amount of land needed for residential development, the city must expand the UGB to provide the amount of land needed, provided that if the amount of buildable residential land is less than the amount of land needed for one category of residential development, but is greater than the amount of land needed for another category, then the city must determine whether the residential land need can be reasonably accommodated by redesignating surplus land in the other residential category, except as provided in section (5) of this rule.

(4) A city must also determine whether surplus employment land as determined in OAR 660-038-0150, or publicly-owned land not designated for employment or residential use that has been declared surplus by the public entity, can reasonably accommodate all or part of a residential land deficit except as provided in OAR 660-038-0150(4).

(5) A city:

(a) Is not required to consider whether a high or medium density land surplus can reasonably accommodate a low density land deficit;

(b) May not redesignate surplus high or medium density land that is located within 500 feet of an arterial roadway or its functional equivalent identified in the city's acknowledged Transportation System Plan.

(6) If a city determines that the UGB must be expanded to meet residential land needs, the city must apply:

(a) OAR 660-038-0160 and 660-038-0170 to evaluate which lands to include in the UGB in order to meet the need deficit, and

(b) OAR 660-038-0190 to plan and zone lands that are added and, if necessary, to adjust planning and zoning of residential lands currently in the UGB.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0090
Employment Land Need

OAR 660-038-0090 to 660-038-0150 provides steps that a city must follow to determine employment land need over the 14-year planning period.

(1) A city that applies the UGB method in this division:

(a) Must forecast the amount of buildable lands that will be needed for projected employment in the UGB over a 14-year period using rules in OAR 660-038-0100 through 660-038-0150, and

(b) Must provide within its UGB sufficient buildable lands and other development capacity to accommodate the growth in employment that is forecast to occur over a 14-year period and plan those lands as required by OAR 660-038-0180.

(2) The city must forecast employment growth within the UGB for a 14-year period from the year in which the UGB analysis was initiated. As provided in ORS 197A.310(4) and 197A.312(4), the city may forecast employment growth based on either:

(a) The population growth forecast for the city's UGB in the most recent final forecast issued by the Portland State University Population Research Center under ORS 195.033 applying the requirements of OAR 660-038-0100, or

(b) The most recent long term employment growth forecast issued by the Oregon Employment Department (OED) for the applicable region, applying the requirements of OAR 660 038 0110.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0100
Forecast Employment Growth Based on Population Growth

To forecast 14-year employment growth based on the PSU long term forecast of population growth, a city must:

(1) Determine the forecast population of the city's UGB for the 14-year period from the year in which the UGB analysis was initiated based on the most recent forecast issued by the Portland State University Population Research Center.

(2) Determine the current population of the UGB using the most recent population estimate issued by the Portland State University Population Research Center.

(3) Determine the rate of population growth for the city over the 14-year period based on sections (1) and (2).

(4) Using Table 3, determine the current number of "commercial" and "industrial" jobs in the UGB, based on the definitions in OAR 660-038-0010.

(5) To forecast the number of new commercial and new industrial jobs anticipated to occur in the UGB for the 14-year planning period, the city must:

(a) Multiply the number of commercial jobs currently in the UGB determined in section (4) by the rate of population growth rate determined in section (3), and

(b) Multiply the number of industrial jobs currently in the UGB determined in section (4) by the rate of population growth determined in section (3).

(6) To account for jobs that are likely to occur on land that is zoned for uses other than commercial or industrial (and which therefore will not require buildable "employment land"), the city must reduce the forecast of new jobs determined in section (5) by 20 percent.

(7) The result is the number of new commercial and industrial jobs forecast for the 14-year planning period to be accommodated on employment lands in the UGB. The city must use this result or the result in OAR

660-038-0110 as a basis for determining land needs under OAR 660-038-0140.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0110
Forecast Employment Growth Based on Oregon Employment Department Forecast

As an alternative to the method provided in OAR 660-038-0100, to forecast 14-year employment growth based on the most recent long-term job forecast issued by the Oregon Employment Department (OED), a city must:

(1) Determine the number of "commercial" and "industrial" jobs currently in the UGB as provided in Table 3.

(2) Using Table 4, determine the long-term growth rates forecast by OED for commercial jobs and for industrial jobs in the OED region that includes the city. For purposes of this rule, "OED region" means Workforce Innovation and Opportunity Act (WIOA) Areas for which OED forecasts long-term job growth.

(3) To forecast the number of new commercial and new industrial jobs anticipated to occur in the UGB for the 14-year planning period, the city must:

(a) Multiply the number of commercial jobs currently in the UGB determined in section (1) by the forecast rate of growth determined in section (2), and

(b) Multiply the number of industrial jobs currently in the UGB determined in section (1) by the forecast rate of growth determined in section (2).

(4) To account for jobs that are likely to occur on land that is zoned for uses other than commercial or industrial (and which therefore will not require buildable "employment land"), the city must reduce the forecast of new commercial and industrial jobs determined in subsections (3)(a) and (3)(b) by 20 percent.

(5) The result is the number of new commercial and industrial jobs forecast for the 14-year planning period to be accommodated on employment lands in the UGB. The city must use this result or the result in OAR 660-038-0100 as a basis for determining employment land needs under OAR 660-038-0140.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0120
Inventory of Buildable Employment Land within the UGB

A city must determine the supply and development capacity of employment lands within its UGB at the time of initiation by conducting a buildable lands inventory (BLI) for employment land as provided in this rule and OAR 660-038-00130.

(1) For purposes of the employment BLI, the city shall classify the existing employment zoning districts and plan map districts within its UGB as either "commercial" or "industrial" based on the applicable definitions in OAR 660-038-0010. Districts that allow both commercial and industrial uses as per the definition must be classified as one or the other, based on the intent of the plan and with consideration of whether the predominant NAICS categories allowed by the district are characteristic of a commercial or industrial use.

(2) The city must identify all lots and parcels in the UGB with either a commercial or industrial designation on the comprehensive plan map or zoning district, determine which lots or parcels are vacant, partially vacant, or developed and calculate the total area of such land, as follows:

(a) A city may assume that a lot or parcel is vacant if the real market improvement value is less than $5,000 or if the real market improvement value is less than or equal to 5 percent of the real market land value.

(b) A city may assume that a lot or parcel is partially vacant if either:

(A) The real market improvement value of the lot or parcel is greater than five percent and less than 40 percent of the real market land value, in which case, the city must assume that 50 percent of the lot or parcel is developed and 50 percent is vacant, or

(B) Based on an orthomap, the lot or parcel is greater than one acre in size and at least one-half acre is not improved.

(c) A city may assume that a lot or parcel is developed if the real market improvement value is greater than or equal to 40 percent of the real market land value.

(3) The city must use the results of section (2) to determine the current density of employment land within the UGB under OAR 660-038-0140(4) and (5).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0130
Adjust Employment Buildable Land Inventory to Account for Constrained Lands

A city must adjust the employment buildable lands inventory determined under OAR 660-038-0120 to account for constrained lands using this rule.

(1) The city must identify the following physical constraints on employment land inventoried under OAR 660-038-0120:

(a) Floodways and water bodies. For the purpose of this subsection, "water bodies" includes:

(A) Rivers; and

(B) Lakes, ponds, sloughs, and coastal waters at least one-half acre in size;

(b) Other lands within the Special Flood Hazard Area as identified on the applicable Flood Insurance Rate Map;

(c) Lands within the tsunami inundation zone established pursuant to ORS 455.446;

(d) Contiguous lands planned and zoned for commercial use of at least one acre with slopes that are greater than 25 percent. For purposes of this rule, slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(e) Contiguous lands planned and zoned for industrial use of at least one acre with slopes that are greater than 10 percent. For purposes of this rule, slope shall be measured as the increase in elevation divided by the horizontal distance at maximum 10-foot contour intervals;

(f) Lands subject to development restrictions as a result of acknowledged comprehensive plan or land use regulations to implement Statewide Planning Goals 5, 6, or 7, and

(f) Lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goals 15, 16, 17, or 18.

(2) For lands identified in section (1), the city may reduce the estimated development capacity by the following factors in terms of acreage:

(a) For lands within floodways and water bodies: a 100 percent reduction.

(b) For other lands within the Special Flood Hazard Area (SFHA) as identified on the applicable Flood Insurance Rate Map (FIRM), either (at the city's option):

(A) A 50 percent reduction, or

(B) A reduction to the levels required by the acknowledged comprehensive plan or land use regulations.

(c) For lands within the tsunami inundation zone: no reduction unless the acknowledged comprehensive plan or land use regulations applicable to such areas prohibits or reduces allowed development, in which case the reduction shall be based upon the maximum density allowed by the acknowledged comprehensive plan or land use regulations.

(d) For lands designated for commercial use, contiguous lands of at least one acre with slope greater than 25 percent: a 100 percent reduction, provided that if such land includes slopes less than 25 percent, the reduction applies only to those areas with slopes greater than 25 percent. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(e) For lands designated for industrial use, contiguous lands of at least one acre with slope greater than 10 percent: a 100 percent reduction, provided that a lot or parcel with slopes greater than 10 percent that has at least five contiguous acres with slopes less than 10 percent, this authorized reduction does not apply to those areas.

(f) For lands subject to restrictions in density or location of development in an acknowledged comprehensive plan or land use regulations developed pursuant to Statewide Planning Goals 5, 6, or 7: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(g) For lands subject to development prohibitions, natural resource protections, or both, in an acknowledged comprehensive plan or land use regulations that implements Statewide Planning Goals 15, 16, 17, or 18: a reduction to the maximum level of development authorized by the acknowledged comprehensive plan or land use regulations.

(3) The amount of buildable land in the UGB designated for commercial and industrial uses is that amount determined in OAR 660-038-0120 reduced by the constraints determined under section (2) of this rule.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0140
Translate Job Forecast to Employment Land Need

(1) Determine the current density (jobs per acre) of developed commercial land, as follows:

(a) Based on the determination from OAR 660-038-0120, for all lots and parcels zoned for commercial uses, identify the area (acreage) of "developed" lots and parcels, and the developed portion (acreage) of "partially vacant" lots and parcels. The sum of these equals the total area of "developed commercial land" for purposes of this rule.

(b) Determine current number of commercial jobs in the UGB from Table 3.

(c) Subtract 20 percent from (b) to account for current commercial jobs that occur on land not zoned commercial or industrial.

(d) Divide the number of jobs determined in subsection (c) by the amount of developed commercial land determined in subsection (a). The result is the current density of commercial uses (jobs per acre) on commercial land in the UGB.

(2) Determine the current density (jobs per acre) for developed industrial land in the UGB, as follows:

(a) Based on the determination in OAR 660-038-0120, for all lots and parcels zoned for industrial uses, identify the area (acreage) of "developed" lots and parcels, and the developed portion (acreage) of "partially vacant" lots and parcels. The sum of these equals the total area of "developed industrial land" for purposes of this rule.

(b) Determine current number of industrial jobs in the UGB from Table 3.

(c) Subtract 20 percent from the determination in subsection (b) to account for current industrial jobs that occur on land not zoned commercial or industrial.

(d) Divide the number of jobs determined in subsection (c) by the amount of developed industrial land determined in subsection (a). The result is the current density of industrial uses (jobs per acre) on industrial land in the UGB.

(3) To account for redevelopment and the anticipated long term increase in efficiency of employment land, the city must:

(a) Multiply the result of section (1) for commercial uses, and section (2) for industrial uses, by the applicable factors in paragraphs (A) or (B) of this subsection:

(A) For cities with a UGB population less than 10,000, the factor shall be a range from one to three percent for commercial, and one-half of a percent for industrial.

(B) For cities with a UGB population equal to or greater than 10,000 the factor shall be a range of three to five percent for commercial and one percent for industrial.

(b) Add the result from subsection (a) to the result in section (1) for commercial uses, and to the result in section (2) for industrial uses. This is the anticipated density of commercial and industrial land (jobs per acre) in the UGB.

(4) Divide the number of commercial and industrial jobs forecast in OAR 660-038-0100 and 660-038-0110 by the applicable results in section (3) to determine the net new land need for commercial and industrial uses over the planning period.

(5) The city must increase the results of section (4) by 15 percent to convert net land need to gross land need in consideration of land need for streets, roads and other public facilities due to employment land growth over the planning period.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0150
Determine if UGB Expansion is Necessary to Accommodate Employment Needs

(1) To determine whether to expand the UGB, a city using the method in this division must compare the amount of land needed for new commercial and industrial development determined under OAR 660-038-0140 with the amount of vacant or partially vacant buildable employment land designated for commercial and industrial development as determined in the employment BLI as per OAR 660-038-0130.

(2) If the amount of buildable commercial land in the UGB is greater than the amount of land needed for new commercial development, and the amount of buildable industrial land is greater than the amount of land needed for new industrial development, then no UGB expansion for employment land need is allowed.

(3) If the amount of buildable employment land in the UGB is less than the amount of land needed for either commercial or industrial development, then the UGB may be expanded to provide the amount of land needed, provided that:

(a) If the amount of buildable industrial land is less than the amount of land needed for industrial development, but is greater than the amount of land needed for commercial development, then the city must determine whether the industrial land need can be reasonably accommodated by redesignating the surplus of buildable commercial land within the UGB, except as provided in section (4) of this rule.

(b) If the amount of buildable commercial land is less than the amount of land needed for commercial development, but is greater than the amount of land needed for new industrial development, then the city must determine if the commercial land need can be reasonably accommodated by redesignating the surplus of industrial land within the UGB, except as provided in section (4) of this rule.

(c) A city must also determine whether surplus residential land as determined in OAR 660-038-0080, or publicly-owned land not designated for employment or residential use that has been declared surplus by the public entity, can reasonably accommodate all or part of an employment land deficit, except as provided in OAR 660-038-0080(5).

(4) The following existing commercial or industrial lands may not be re-designated for another use under this division, including in response to section (3):

(a) Land within industrial sanctuaries identified on the acknowledged comprehensive plan, including lands added to UGB as Regional Large Lot Industrial Land under to OAR 660-024-0045.

(b) Land owned by a port district or other public entity for the purpose of economic development.

(c) Land within:

(A) An urban renewal district;

(B) An enterprise zone, rural enterprise zone, or urban enterprise zone, as defined in ORS 285C.050; or

(C) A strategic investment zone, as defined in ORS 285C.623.

(d) Sites served by state or regional infrastructure investments, such as the Strategic Reserve Fund (ORS chapter 285B), Connect Oregon, Immediate Opportunity Fund, or grant or loan programs administered by the Infrastructure Finance Authority.

(e) Sites that include working port access or Class A rail access (e.g., access to existing sidings or loops).

(f) Sites that have been certified as a shovel ready site by the Oregon Business Development Department (OBDD), or has received designation as a Regionally Significant Industrial Area by the Economic Recovery Review Council.

(g) Land that was previously designated as industrial under rules under this division and may not be redesignated as provided in OAR 660-038-0180(6).

(h) Land that is designated for a particular land need under OAR 660-024-0065(10).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0160
Establishment of Study Area to Evaluate Land for Inclusion in the UGB

Cities shall comply with this rule and OAR 660-038-0170 when determining which lands to include within the UGB in response to a deficit of land to meet long-term needs determined under OAR 660-038-0080, OAR 660-038-0150, or both.

(1) The city shall determine which land to add to the UGB by evaluating alternative locations within a "study area" established pursuant to this rule. To establish the study area, the city must first identify a "preliminary study area" which shall not include land within a different UGB or the corporate limits of a city within a different UGB. The preliminary study area shall include:

(a) All lands in the city's acknowledged urban reserve, if any;

(b) All lands that are within the following distance from the acknowledged UGB, except as provided in subsection (d):

(A) For cities with a UGB population less than 10,000: one-half mile;

(B) For cities with a UGB population equal to or greater than 10,000: one mile;

(c) All exception areas contiguous to an exception area that includes land within the distance specified in subsection (b) and that are within the following distance from the acknowledged UGB:

(A) For cities with a UGB population less than 10,000: one mile;

(B) For cities with a UGB population equal to or greater than 10,000: one and one-half miles;

(d) At the discretion of the city, the preliminary study area may include land that is beyond the distance specified in subsections (b) and (c).

(2) The city may exclude land from the preliminary study area if it determines that any of the conditions in this section apply to the land:

(a) Based on the standards in section (5) of this rule, it is impracticable to provide necessary public facilities or services to the land;

(b) The land is subject to significant development hazards, due to a risk of:

(A) Landslides: The land consists of a landslide deposit or scarp flank that is described and mapped on the Statewide Landslide Information Database for Oregon (SLIDO) Release 3.2 Geodatabase published by the Oregon Department of Geology and Mineral Industries (DOGAMI) December 2014, provided that the deposit or scarp flank in the data source is mapped at a scale of 1:40,000 or finer. If the owner of a lot or parcel provides the city with a site-specific analysis by a certified engineering geologist demonstrating that development of the property would not be subject to significant landslide risk, the city may not exclude the lot or parcel under this paragraph;

(B) Flooding, including inundation during storm surges: the land is within the Special Flood Hazard Area (SFHA) identified on the applicable Flood Insurance Rate Map (FIRM);

(C) Tsunamis: the land is within a tsunami inundation zone established pursuant to ORS 455.446.

(c) The land consists of a significant scenic, natural, cultural or recreational resource described in this subsection:

(A) Land that is designated in an acknowledged comprehensive plan prior to initiation of the UGB amendment, or that is mapped on a published state or federal inventory at a scale sufficient to determine its location for purposes of this rule, as:

(i) Critical or essential habitat for a species listed by a state or federal agency as threatened or endangered;

(ii) Core habitat for Greater Sage Grouse; or

(iii) Migration corridors or big game winter range, except where located on lands designated as urban reserves or exception areas;

(B) Federal Wild and Scenic Rivers and State Scenic Waterways, including Related Adjacent Lands described by ORS 390.805, as mapped by the applicable state or federal agency responsible for that scenic program;

(C) Designated Natural Areas on the Oregon State Register of Natural Heritage Resources;

(D) Wellhead protection areas described under OAR 660-023-0140 and delineated on a local comprehensive plan;

(E) Aquatic areas subject to Statewide Planning Goal 16 that are in a Natural or Conservation management unit designated in an acknowledged comprehensive plan;

(F) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 17, Coastal Shoreland, Use Requirement 1;

(G) Lands subject to acknowledged comprehensive plan or land use regulations that implement Statewide Planning Goal 18, Implementation Requirement 2.

(d) The land is owned by the federal government and managed primarily for rural uses.

(3) After excluding land from the preliminary study area under section (2), the city must adjust the study area, if necessary, so that it includes an amount of land that is at least twice the amount of land needed to satisfy the combined need deficiency determined under OAR 660-038-0080 and OAR 660-038-0150. Such adjustment shall be made by expanding the applicable distance specified under section (1) and applying section (2) to the expanded area.

(4) For purposes of evaluating the priority of land under OAR 660-038-0170, the "study area" shall consist of all land that remains in the preliminary study area described in section (1) of this rule after adjustments to the area based on sections (2) and (3).

(5) For purposes of subsection (2)(a), the city may consider it impracticable to provide necessary public facilities or services to the following lands:

(a) Contiguous areas of at least five acres where 75 percent or more of the land has a slope of 25 percent or greater; provided that contiguous areas 20 acres or more that are less than 25 percent slope may not be excluded under this subsection. Slope shall be measured as the increase in elevation divided by the horizontal distance at maximum ten-foot contour intervals;

(b) Lands requiring the construction of a new freeway interchange, overpass, underpass, or similar improvement to accommodate planned urban development providing such improvement is not currently identified in the Statewide Transportation Improvement Program (STIP) for construction within the planning period;

(c) Land that is isolated from existing service networks by physical, topographic, or other impediments to service provision such that it is impracticable to provide necessary facilities or services to the land within the planning period. The city's determination shall be based on an evaluation of:

(A) The likely amount of development that could occur on the land within the planning period;

(B) The likely cost of facilities and services; and,

(C) Any substantial evidence collected by or presented to the city regarding how similarly situated land in the region has, or has not, developed over time.

(d) As used in this section, "impediments to service provision" may include but are not limited to:

(A) Major rivers or other water bodies that would require new bridge crossings to serve planned urban development;

(B) Topographic features such as canyons or ridges with slopes exceeding 40 percent and vertical relief of greater than 80 feet;

(C) Freeways, rail lines, or other restricted access corridors that would require new grade separated crossings to serve planned urban development;

(D) Significant scenic, natural, cultural or recreational resources on an acknowledged plan inventory and subject protection measures under the plan or implementing regulations, or on a published state or federal inventory, that would prohibit or substantially impede the placement or construction of necessary public facilities and services.

(6) Land may not be excluded from the preliminary study area based on a finding of impracticability that is primarily a result of existing development patterns. However, a city may forecast development capacity for such land as provided in OAR 660-038-0170(1)(d).

(7) A city that has a population of 10,000 or more that evaluates or amends its UGB using a method described in this division, must notify districts and counties that have territory within the study area in the manner required by ORS 197A.315 and meet other applicable requirements in that statute.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
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660-038-0170
Evaluation of Land in the Study Area for Inclusion in the UGB; Priorities

(1) A city considering a UGB amendment must decide which land to add to the UGB by evaluating all land in the study area determined under OAR 660-038-0160, as follows:

(a) Beginning with the highest priority category of land described in section (2), the city must apply section (5) to determine which land in that priority category is suitable to satisfy the need deficiency determined under OAR 660-038-0080 and OAR 660-038-0150 and select for inclusion in the UGB as much of the land as necessary to satisfy the need.

(b) If the amount of suitable land in the first priority category is not adequate to satisfy the identified need deficiency, the city must apply section (5) to determine which land in the next priority is suitable and select for inclusion in the UGB as much of the suitable land in that priority as necessary to satisfy the need. The city must proceed in this manner until all the land need is satisfied.

(c) If the amount of suitable land in a particular priority category in section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by applying the criteria in section (7) of this rule.

(d) In evaluating the sufficiency of land to satisfy a need under this section, the city may consider factors that reduce the capacity of the land to

meet the need, including factors identified in sections (5) and (6) of this rule.

(e) Land that is determined to not be suitable under section (5) of this rule to satisfy the need deficiency determined under OAR 660-038-0080 or OAR 660-038-0150 is not required to be selected for inclusion in the UGB unless its inclusion is necessary to serve other higher priority lands.

(2) Priority of Land for inclusion in a UGB:

(a) First priority is urban reserve, exception land, and nonresource land. Lands in the study area that meet the description in paragraphs (A) through (C) of this subsection are of equal (first) priority:

(A) Land designated as an urban reserve under OAR chapter 660, division 21, in an acknowledged comprehensive plan;

(B) Land that is subject to an acknowledged exception under ORS 197.732; and

(C) Land that is nonresource land.

(b) Second priority is marginal land: land within the study area that is designated as marginal land under ORS 197.247 (1991 Edition) in the acknowledged comprehensive plan.

(c) Third priority is forest or farm land that is not predominantly high-value farmland: land within the study area that is designated for forest or agriculture uses in the acknowledged comprehensive plan that is not predominantly high-value farmland, as defined in ORS 195.300, or that does not consist predominantly of prime or unique soils, as determined by the United States Department of Agriculture Natural Resources Conservation Service (USDA NRCS). In selecting as much of the suitable land as necessary to satisfy the need, the city must use the agricultural land capability classification system or the cubic foot site class system, as appropriate for the acknowledged comprehensive plan designation, to select lower capability or cubic foot site class lands first.

(d) Fourth priority is farmland that is predominantly high-value farmland: land within the study area that is designated as agricultural land in an acknowledged comprehensive plan and is predominantly high-value farmland as defined in ORS 195.300. A city may not select land that is predominantly made up of prime or unique farm soils, as defined by the USDA NRCS, unless there is an insufficient amount of other land to satisfy its land need. In selecting as much of the suitable land as necessary to satisfy the need, the city must use the agricultural land capability classification system to select lower capability lands first.

(3) Notwithstanding subsections (2)(c) or (d) of this rule, land that would otherwise be excluded from a UGB may be included if:

(a) The land contains a small amount of third or fourth priority land that is not important to the commercial agricultural enterprise in the area and the land must be included in the UGB to connect a nearby and significantly larger area of land of higher priority for inclusion within the UGB; or

(b) The land contains a small amount of third or fourth priority land that is not predominantly high-value farmland or predominantly made up of prime or unique farm soils and the land is completely surrounded by land of higher priority for inclusion into the UGB.

(4) For purposes of categorizing and evaluating land pursuant to subsections (2)(c) and (d) and section (3) of this rule:

(a) Areas of land not larger than 100 acres may be grouped together and studied as a single unit of land;

(b) Areas of land larger than 100 acres that are similarly situated and have similar soils may be grouped together provided soils of lower agricultural or forest capability may not be grouped with soils of higher capability in a manner inconsistent with the intent of section (2) of this rule, which requires that higher capability resource lands shall be the last priority for inclusion in a UGB;

(c) When determining whether the land is predominantly high-value farmland, or predominantly prime or unique, "predominantly" means more than 50 percent.

(5) With respect to section (1), a city must assume that vacant or partially vacant land in a particular priority category is "suitable" to satisfy a need deficiency identified in OAR 660-038-0080 or OAR 660-038-0150, whichever is applicable, unless it demonstrates that the land cannot satisfy the need based on one or more of the conditions described in subsections (a) through (f) of this section:

(a) Existing parcelization, lot sizes or development patterns of rural residential land make that land unsuitable for an identified employment need, as follows:

(A) Parcelization: the land consists primarily of parcels 2-acres or less in size, or

(B) Existing development patterns: the land cannot be reasonably redeveloped or infilled within the planning period due to the location of existing structures and infrastructure.

(b) The land would qualify for exclusion from the preliminary study area under the factors in OAR 660-038-0160(2) but the city declined to exclude it pending more detailed analysis.

(c) The land is, or will be upon inclusion in the UGB, subject to natural resources protection under Statewide Planning Goals 5 such that that no development capacity should be forecast on that land to meet the land need deficiency.

(d) With respect to needed industrial uses only, the land is over 10 percent slope, as measured in the manner described in OAR 660-038-0160(5); is an existing lot or parcel that is smaller than 5 acres in size; or both.

(e) The land is subject to a conservation easement described in ORS 271.715 that prohibits urban development.

(f) The land is committed to a use described in this subsection and the use is unlikely to be discontinued during the planning period:

(A) Public park, church, school, or cemetery, or

(B) Land within the boundary of an airport designated for airport uses, but not including land designated or zoned for residential, commercial or industrial uses in an acknowledged comprehensive plan or land use regulations.

(6) For vacant or partially vacant lands added to the UGB to provide for residential uses:

(a) Existing lots or parcels one acre or less may be assumed to have a development capacity of one dwelling unit per lot or parcel. Existing lots or parcels greater than one acre but less than two acres shall be assumed to have an aggregate development capacity of two dwelling units per acre.

(b) In any subsequent review of a UGB pursuant to this division, the city may use a development assumption for land described in subsection (a) of this section for a period of up to 14 years from the date the lands were added to the UGB.

(7) Pursuant to subsection (1)(c), if the amount of suitable land in a particular priority category under section (2) exceeds the amount necessary to satisfy the need deficiency, the city must choose which land in that priority to include in the UGB by first applying the boundary location factors of Goal 14 and then applying applicable criteria in the comprehensive plan and land use regulations acknowledged prior to initiation of the UGB evaluation or amendment. The city may not apply local comprehensive plan criteria that contradict the requirements of the boundary location factors of Goal 14. The boundary location factors are not independent criteria; when the factors are applied to compare alternative boundary locations and to determine the UGB location the city must demonstrate that it considered and balanced all the factors. The criteria in this section may not be used to select lands designated for agriculture or forest use that have higher land capability or cubic foot site class, as applicable, ahead of lands that have lower capability or cubic foot site class.

(8) The city must apply the boundary location factors in coordination with service providers and state agencies, including the Oregon Department of Transportation (ODOT) with respect to Factor 2 regarding impacts on the state transportation system, and the Oregon Department of Fish and Wildlife (ODFW) and the Department of State Lands (DSL) with respect to Factor 3 regarding environmental consequences. "Coordination" includes timely notice to agencies and service providers and consideration of any recommended evaluation methodologies.

(9) In applying Goal 14 Boundary Location Factor 2, to evaluate alternative locations under section (7), the city must compare relative costs, advantages and disadvantages of alternative UGB expansion areas with respect to the provision of public facilities and services needed to urbanize alternative boundary locations. For purposes of this section, the term "public facilities and services" means water, sanitary sewer, storm water management, and transportation facilities. The evaluation and comparison under Boundary Location Factor 2 must consider:

(a) The impacts to existing water, sanitary sewer, storm water and transportation facilities that serve nearby areas already inside the UGB;

(b) The capacity of existing public facilities and services to serve areas already inside the UGB as well as areas proposed for addition to the UGB; and

(c) The need for new transportation facilities, such as highways and other roadways, interchanges, arterials and collectors, additional travel lanes, other major improvements on existing roadways and, for urban areas of 25,000 or more, the provision of public transit service.

(10) The adopted findings for UGB amendment must describe or map all of the alternative areas evaluated in the boundary location alternatives analysis.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235

Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
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660-038-0180
Planning Requirements for Land added to a UGB

(1) A city must plan and zone lands included within the UGB:

(a) For categories of land uses in amounts that are roughly proportional to the land need determined for each category of use; and

(b) For an intensity of use that is generally consistent with the estimates that were used to determine the amount of land needed.

(2) All land added to a UGB under this division must be planned and zoned such that the lands will not significantly affect a state highway, a state highway interchange, or a freight route designated in the Oregon Highway Plan, based on the requirements of OAR 660-012-0060(1) and on written concurrence provided by the Oregon Department of Transportation. However, a city may add land that does not meet this requirement provided the land is planned and zoned either:

(a) For industrial uses only, or

(b) Compact urban development consisting of a mixed-use, pedestrian friendly center or neighborhood as described in OAR 660-012-0060(8).

(3) For lands added to the UGB to provide for residential uses, the city must also satisfy applicable requirements of OAR 660-038-0190.

(4) If factual information is submitted demonstrating that a Goal 5 resource site, or the impact areas of such a site, is included in the area proposed to be added to the UGB, the city shall apply the applicable requirements of OAR chapter 660, division 23, concurrent with adoption of a UGB amendment. For purposes of this section, "impact area" is a geographic area within which conflicting uses could adversely affect a significant Goal 5 resource, as described in OAR 660-023-0040(3).

(5) Concurrently with adoption of a UGB amendment pursuant to this division, a city must assign appropriate urban plan designations to land added to the UGB consistent with the need determination. The city must also apply appropriate zoning to the added land consistent with the plan designation or may maintain the land as urbanizable land until the land is rezoned for the planned urban uses, either by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development.

(6) When lands added to the UGB pursuant to rules in this division are planned and zoned for industrial or residential uses, the lands must remain planned and zoned for the use for 20 years beyond the date of adoption of the UGB amendment by the city.

(7) The UGB and amendments to the UGB must be shown on the applicable city and county plan and zone maps at a scale sufficient to determine which particular lots and parcels are included in the UGB. Where a UGB does not follow lot or parcel lines, the map must provide sufficient information to determine the precise UGB location.

(8) Amendment of a UGB shall be a cooperative process among cities and counties. A UGB and amendments to the UGB shall be adopted by all cities within the boundary and by the county or counties within which the boundary is located. Cities and counties shall follow the requirements of OAR 660-018-0021 regarding coordinated notice of a UGB amendment.

(9) "Roughly proportional" means, with respect to planning of land added to a UGB in response to a need determination, the amount of land provided for a particular category of need is within five percent of the amount needed or within 10 acres, whichever is less.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0190
Additional Planning for Residential Lands Added to the UGB

Cities that use the method in this division to provide land for needed housing must plan for residential lands added to the UGB as provided in this rule, in addition to the requirements in OAR 660-038-0180.

(1) The comprehensive plan and implementing zoning shall allow the housing types and densities determined to be needed in OAR 660-038-0040 and 660-038-0050 under clear and objective standards and shall meet other applicable needed housing requirements specified in ORS 197.307 and OAR chapter 660, division 8.

(2) The city and appropriate counties must assign appropriate urban plan designations to the added residential land consistent with the need determination, and either:

(a) Apply appropriate zoning to the added land consistent with the plan designation, or

(b) Adopt measures to maintain the land as urbanizable land until the land is rezoned for the planned urban uses by retaining the zoning that was assigned prior to inclusion in the boundary or by applying other interim zoning that maintains the land's potential for planned urban development. Measures for rezoning urbanizable land for needed housing shall be clear and objective and consistent with other requirements of ORS 197.307.

(3) Cities with UGB population of 10,000 or greater must either:

(a) Consider the housing measures listed in the Table 5 and adopt at least one high impact measure or three low impact measures, or

(b) Satisfy the alternate performance standard in section (4).

(4) A city has satisfied the alternate performance standard section (3)(b) if the city:

(a) Has a development code that contains the provisions specified in items 1 through 5 and 29 through 31 of Table 5; and

(b) Demonstrates with substantial evidence in the record that, during the preceding planning period or preceding seven years, whichever is less, development in the city equaled or exceeded the maximum percentage set forth in the ranges for redevelopment in residentially zoned and developed areas and mixed use residential development in commercially zoned areas in OAR 660-038-0030(6)(a) through (c).

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

660-038-0200
Serviceability

(1) Pursuant to ORS 197A.310(3) or 197A.312(3), a city that amends its UGB using this division shall demonstrate that lands included within the UGB:

(a) Provide sufficient serviceable land for at least a seven-year period, and

(b) Can all be serviceable over a 14-year period.

(2) For purposes of subsection (1)(a) of this rule, a city shall demonstrate adequate sewer, water and transportation capacity to serve at least seven years of planned urban development based on system capacity and system improvements that are identified and described in an acknowledged public facilities plan, an acknowledged Transportation System Plan, a capital improvement plan, or the findings adopted by a city in support of a decision to amend its UGB. This shall consist of sewer, water and transportation capacity that is available or can be provided based on subsection (a) or (b) of this section, or both:

(a) Capacity is available: existing sewer, water and transportation system capacity sufficient to serve some or all of the anticipated seven-year demand is available. To demonstrate available sewer and water capacity, a city may rely upon the system capacity documentation contained in the acknowledged Public Facilities Plan adopted pursuant to OAR chapter 660, division 11, and documentation from city or other service provider records of current system condition and demand. To demonstrate available transportation system capacity, a city may rely upon the system capacity documentation contained in an acknowledged Transportation System Plan (TSP) adopted pursuant to OAR chapter 660, division 12;

(b) Capacity can be provided within seven years: sewer, water and transportation system capacity sufficient to serve the anticipated seven-year demand can be provided by identified system improvements that:

(A) Are fully funded and scheduled for construction within a seven-year period;

(B) Can be made subject to committed financing, which means a city or other service provider has one or more dedicated funding mechanisms in place that will generate sufficient revenue to fund the construction of such improvements within a seven-year period; or

(C) Can have committed financing in place, which means a city or other service provider does not have dedicated funding mechanisms in place but has identified funding sources and methods that will be implemented by the city or other service provider, and that will generate sufficient revenues to fund the construction of such improvements within a seven-year period.

(3) For purposes of subsection (1)(b) of this rule, to demonstrate that adequate sewer, water and transportation capacity can be in place for that portion of the 14-year period for which capacity has not been demonstrated in accordance with section (2) of this rule, a city shall:

(a) Identify the type and amount of the needed capacity;

(b) Identify the system improvements required to provide the needed capacity; and,

(c) Identify the funding method(s) that is or can be in place to provide committed financing in an amount sufficient to provide the needed capacity within the 14-year period. This identification shall include:

(A) The type of proposed funding method(s);

(B) The statutory or other legal authority for establishing the proposed funding method(s);

(C) The timing of the establishment of the proposed funding method(s); and,

(D) The projected revenues to be generated by the proposed funding method(s).

(4) For purposes of this rule, "sewer, water and transportation capacity for planned urban development" includes:

(a) Sewer capacity, which consists of wastewater treatment facility capacity and collection system capacity, including interceptors, lift or pump stations, force mains, and main sewer lines;

(b) Water capacity, including:

(A) Available water rights;

(B) Water treatment capacity;

(C) Water storage capacity, including system reserves needed for fire suppression; and,

(D) Distribution system capacity, including pumping facilities, primary and secondary feeders, and distributor mains; and

(c) Transportation capacity, including:

(A) Networks of pedestrian, bicycle, transit, and street facilities; and

(B) Performance of the planned transportation system measured against adopted transportation performance standards set forth in the applicable acknowledged TSP.

(5) For purposes of this rule, "committed financing" means financing methods for which a city or other service provider has identified and documented the following: the authority to establish and implement the method, the amount of funding to be generated, the purpose to which the funding will be dedicated, and the repayment method and schedule for any bonded or credit indebtedness is identified and documented. Committed financing includes, but is not limited to, funding that is:

(a) Included in the adopted budget of the service provider;

(b) Designated for projects included in the Statewide Transportation Improvement Program;

(c) Provided by the Department of Interior through the Bureau of Indian Affairs Tribal Transportation Plan (TTP) program pursuant to 25 CFR Part 170;

(d) Provided through a development agreement entered into pursuant to ORS 94.504 to 94.528;

(e) Provided by system development charges established pursuant to ORS 223.997 to 223.314 or by other authorized development fees, conditions of approval or exactions;

(f) Provided by utility fees;

(g) Provided through Local Improvement District or Reimbursement District assessments; or

(h) Provided by revenue bonds, financing agreements, voter approved general obligation bonds or other authorized debt instruments.

(6) For lands that are added to a UGB pursuant to a method described in this this division but not made "serviceable" within 20 years after the date of their inclusion:

(a) The lands must be removed from within the UGB the next time the city evaluates the UGB; or

(b) If there have been significant increases in the cost of making the lands serviceable, the planned development capacity of the lands must be reduced by an amount based on such costs the next time the city evaluates the need for land in the UGB.

Stat. Auth.: ORS 197.040, 197A.305, 197A.320 & 197.235
Stats. Implemented: ORS 197A.300, 197A.302, 197A.305, 197A.310, 197A.312, 197A.315, 197A.320 & 197A.325
Hist.: LCDD 6-2015, f. 12-29-15, cert. ef. 1-1-16

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Landscape Contractors Board
Chapter 808

Rule Caption: Clarifies new laws effective January 1, 2016 enacted by the 2015 legislature (SB580)
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Filed with Sec. of State: 12-22-2015
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Subject: Clarifies new laws effective January 1, 2016 enacted by the 2015 legislature (SB580)
Rules Coordinator: Kim Gladwill-Rowley—(503) 967-6291, ext. 223

808-002-0020
Minimum Standards for Written Contracts and Billings

(1) Contracts. Pursuant to ORS 671.625(2) a contract for landscaping work for which the business charges $2,000 or more for a landscape job must be in writing. For the purpose of this rule, "landscape job," has the same meaning it does under OAR 808-002-0495.

(2) Written landscaping contracts and subcontracts with a homeowner or an agent of the homeowner shall include, but not be limited to, the following:

(a) Landscape contracting business name, license number, business address and telephone number;

(b) Consumer's name and address;

(c) Address or location of work to be performed if different from the consumer's address;

(d) General description of the work to be performed and materials to be installed;

(e) Estimated time for completion or estimated completion date;

(f) Price and payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included;

(h) Signatures of the authorized business representative and consumer;

(i) Statement that the business is licensed by the State Landscape Contractors Board and the current address and phone number of the board.

(j) Effective January 1, 2012: If subcontractors will be used for the performance of landscaping work, the contract must include a statement notifying the consumer that there will be subcontractors used to perform landscaping work.

(3) Written landscaping contracts or subcontracts with another contractor licensed with the Landscape Contractors Board or the Construction Contractors Board shall include, but not be limited to, the following:

(a) Landscape contracting business name;

(b) Other contractor's name;

(c) Address or location of work to be performed;

(d) General description of the work to be performed;

(e) Estimated completion date or statement regarding schedule of work;

(f) Price and, if payments are to be made, a payment schedule;

(g) Description of guarantee; if no guarantee such a statement shall be included; and

(h) Signatures of the authorized business representative for both the other contractor and the landscape contracting business.

(4) Changes or amendments to landscaping contracts and subcontracts shall identify the scope of the change or amendment, be agreed to by both parties, and be in writing.

(5) All billings by a licensed landscape contracting business shall include the following:

(a) Name, address and telephone number of the licensed landscape contracting business;

(b) Name and address of the consumer;

(c) Total contract price and amount paid to date;

(d) The amount now due and the work performed for the amount due.

Stat. Auth.: ORS 183, 671.670 & 670.310
Stats. Implemented: ORS 671.625
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-020-0010 & 808-020-0020; LCB 1-1991, f. & cert. ef. 7-22-91; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 8-2010(Temp), f. 10-25-10, cert. ef. 10-26-10 thru 4-24-11; LCB 1-2011(Temp), f. 1-27-11, cert. ef. 1-28-11 thru 7-27-11; LCB 6-2011, f. & cert. ef. 6-17-11; LCB 11-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 9-2012, f. & cert. ef. 12-4-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0200
Casual, Minor, or Inconsequential

"Casual, Minor, or Inconsequential" work, as used in ORS 671.540(1)(c)(C), includes:

(1) The replacement of shrubs, vines, trees and nursery stock with varieties that are similar in habit and culture;

(2) The replacement of existing lawns;

(3) The replacement of artificial turf;

(4) The planting of annuals, perennials and bulbs in existing beds and outdoor pots and containers that are part of a structure or require power equipment to be placed when empty or filled. This does not include the commercial production of nursery stock;

(5) The replacement of non-concrete landscape edging;

(6) In an irrigation system, the replacement of three or fewer malfunctioning sprinkler heads with heads of the same or of a similar type and hydraulic equivalency;

(7) "Casual, minor or inconsequential" work does not include:

(a) The construction of new planting areas;

(b) The construction or repair of arbors, decks, driveways, fences, retaining walls, walkways, patios, concrete landscape edging, or ornamental water features, drainage systems or irrigation systems; or

(c) The maintenance of irrigation systems with the use of compressed air.

(d) The placement of outdoor pots and containers where the use of powered equipment is required when the pots or containers are empty or filled.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520 & 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 8-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0300
Defective Materials

"Defective Materials" are materials which are below the standard quality normally used unless specified in the written or verbal contract.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.610
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0320
Defective Work

"Defective Work" means work which does not substantially meet the provisions presented in the written or verbal contract.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.610 & 670.600
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0338
Drainage Systems

(1) "Drainage Systems," as used in ORS 671.520(1)(c), mean assemblies of piping and fittings that are used to drain lawns, trees, shrubs, and nursery stock and other landscape work. "Drainage Systems" do not include systems used solely to drain roofs, foundations, footers, buildings, basements, or crawl spaces unless done in conjunction with landscape work. Drainage systems do not include systems used to drain agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(2) Installation. For the purposes of ORS 671.520(1)(c), to install drainage systems includes, but is not limited to:

(a) Trenching;

(b) Installing drainage pipe or pipe fittings;

(c) Installing drainage filtering materials including filter fabric, gravel, or other natural or synthetic materials; or

(d) Backfilling.

(e) To install drainage systems does not include installing drainage systems for buildings, basements, foundations, footings, roofs, or crawl spaces, unless done in conjunction with planting lawns, trees, shrubs, nursery stock, artificial turf or other landscape work.

(3) Maintenance. As used in ORS 671.520(1)(c), "maintain" drainage systems includes, but is not limited to:

(a) Cleaning out the catch basin; or

(b) Cleaning out the drain tiles.

(4) Repair. As used in ORS 671.520(1)(c), "repair" drainage systems includes, but is not limited to:

(a) Patching; or

(b) Replacement of piping, fittings and filtering materials.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.610(1)(o)
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0455
Install

(1) For the purpose of ORS 671.520 and 2015 Laws Chapter 672 "install" means:

(a) The planting of lawns, trees, shrubs, vines and nursery stock outdoors including the preparation of the property. For the purpose of this rule, planting includes, but is not limited to, the excavation of the planting pit or hole, physically moving the plant into the pit or hole, backfilling the pit or hole, compacting the backfill and staking the plant if necessary.

(b) Adding mulching material when a tree, shrub, vine, and/or nursery stock are planted.

(c) The laying of artificial turf as defined in OAR 808-002-0500(2) including the preparation of the site.

(d) The construction of

(A) Ornamental water features,

(B) Landscape drainage,

(C) Irrigation systems,

(D) Fences,

(E) Decks,

(F) Arbors,

(G) Patios,

(H) Landscape edging,

(I) Driveways,

(J) Walkways; and

(K) Retaining walls.

(2) Except as provided in subsection (1) installing does not include:

(a) The placement of mulching materials which includes, but is not limited to bark dust, chips, husks, shells or compost; and

(b) The planting of nursery stock for commercial sale or reforestation.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.520(1)
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 6-2015, f. 7-29-15, cert. ef. 8-1-15; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0480
Irrigation Systems

"Irrigation systems" as used in ORS 671.520(1)(e):

(1) Includes, but are not limited to, assemblies of station or master valves, piping, sprinklers, nozzles, emitters, filters, or controllers and the positioning and piping of pumps; that are installed for the purpose of watering lawns, trees, shrubs or nursery stock.

(2) If an irrigation system is connected to a water supply that is used for multiple purposes, the irrigation system begins immediately downstream of a backflow device (if required) or any shut-off valve installed at the point of connection in the water supply line separating the irrigation system from the other functions of the water supply.

(3) Irrigation systems do not include systems used to irrigate agricultural products including nursery stock grown for sale or for pastures used for the grazing or raising of animals unless done in conjunction with a landscape job.

(4) For the purpose of this rule, a shut-off valve is any valve installed solely for the purpose of isolating all functions of an irrigation system from the supply source and a station or master valve is a valve installed for the

purpose of distributing a controlled amount of water to the other components of the irrigation system.

(5) Installation. For the purposes of ORS 671.520(1)(e), to install irrigation systems includes, but is not limited to:

(a) Trenching;

(b) Installing irrigation pipe or pipe fittings, valves, control wires, sprinkler heads, emitters, nozzles, controllers or other elements of an irrigation system;

(c) Altering an existing irrigation systems; or

(d) Backfilling.

(6) Maintenance. Maintenance of irrigation systems includes, but is not limited to:

(a) The use of compressed air. "Use of compressed air," as used in ORS 671.520(1)(d), means the use of an air compressor or air storage tank to introduce air into an irrigation system to remove water within the system for winter;

(b) Replacing debris screens in nozzles and drip irrigation;

(c) Any project that includes cutting, raising and changing irrigation head grade more than four (4) inches; or

(d) Replacement of irrigation heads.

(7) Repair.

(a) As used in ORS 671.520(1)(c), to "repair" irrigation systems includes, but is not limited to:

(A) Replacing any irrigation water line;

(B) Disassembling and replacing the internal parts of backflow assembly when performed pursuant to ORS 447.060(3).

(b) The Repair of irrigation systems does not include replacing three or fewer sprinkler heads with the same or similar type and hydraulic equivalency sprinkler heads, adjusting sprinkler head nozzles; or programming irrigation controls.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 3-2009, f. & cert. ef. 6-1-09; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0490
Landscape Edging

"Landscape edging," as used in ORS 671.520(1)(f), means concrete, metal, plastic, wood or other material that is used to separate different planting elements of a landscape from each other.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.520
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0500
Landscaping Work

"Landscaping Work," as used in ORS 671.540, 671.570, 671.660(5), and 671.690, and 2015 Laws Chapter 672, means:

(1) The planning or installing of lawns, shrubs, vines, trees, and nursery stock outdoors including the preparation of property on which the vegetation is to be installed. For the purposes of this rule, "preparation of property" includes, but is not limited to the installation of root penetration prevention materials, the placement of containers and pots that require the use of power equipment to move, the adding and incorporating of soil amendments, importation of topsoil and other planting media, removal of soil, and final grading to the specified aesthetic and drainage needs of a site on which landscaping work is to be performed;

(2) The preparation, installation, and repair of artificial turf installed outdoors, except sports fields. For purposes of this rule:

(a) Sports field means one or more areas of a property that total more than 30,000 square feet of artificial turf and are designated to be used primarily for sport or other athletic activities

(b) "Preparation," for the purpose of this rule, includes, but is not limited to the installation of root penetration prevention materials, base material such as crushed rock, gravel, or decomposed granite, grading to smooth out the base material, compacting the base, laying, cutting, stretching, seaming, and fastening the turf, the addition of a filler, and brushing.

(2) The installation, maintenance or repair of ornamental water feature or landscape drainage systems;

(3) The installation or repair of irrigation systems for lawns, shrubs, vines, trees and nursery stock;

(4) The maintenance of irrigation systems with the use of compressed air;

(5) The preparation of plans and drawings for a landscape irrigation system. "Plans and drawings for a landscape irrigation system" include, but are not limited to plans and drawings that identify the positioning, number, type and model of pumps, piping, valves, sprinklers, nozzles, emitters, filters, controllers and other components for the system. The landscape construction professional may only prepare these plans and drawings if that professional holds a license that authorizes the installation of irrigation systems.

(6) The planning, installation, maintenance, or repair of fences, decks, arbors, patios, landscape edging, driveways, walkway and retaining walls, which can be constructed of, but not limit to, the following materials: sand, gravel, rocks, bricks, concrete, asphalt, wood, wire, plastic, composite decking, fabrics and synthetic turf.

(7) Landscaping work does not include structural work, waterproofing or work with waterproof membranes, flashing, or other work involving the building envelope that is outside the scope of license of a landscape contracting business.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520, 671.530, 671.540 & 671.660
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 3-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 3-2006, f. & cert. ef. 8-2-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 9-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 6-2012, f. & cert. ef. 8-2-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0730
Ornamental Water Features

(1) "Ornamental Water Features," as used in ORS 671.520(1)(c) & (5), means outdoor fountains, ponds, waterfalls, man-made streams and other decorative water-related constructions including shallow, decorative pools (singularly or in combination with others), or streambeds constructed of material such as liners, gravel, rocks, boulders, or concrete. Ornamental water features may include piping, pumps, or a filtration system.

(2) Ornamental water features do not include prefabricated systems which are self contained and do not require construction on the site.

(3) Installation. For the purpose of ORS 671.520(1)(c) "install" ornamental water features includes, but is not limited to:

(a) Excavating;

(b) Liner installation;

(c) Gravel, rock and boulder placement;

(d) Piping;

(e) Pump installation;

(f) Automatic fill installation;

(g) Mortaring;

(h) Concreting; or

(i) Filter installation.

(j) To install ornamental water features does not include the installation of pre-fabricated systems that are self-contained and do not require construction on the site.

(4) Repair. As used in ORS 671.520(1)(c), "repair" ornamental water features includes, but is not limited to:

(a) Liner patching;

(b) Rock and boulder replacement;

(c) Mortaring; or

(d) Pump replacement.

(e) Repair of ornamental water features does not include draining, cleaning or refilling ornamental water features.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: Sec. 14, Ch. 409, OL 2001
Hist.: LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0780
Plan and Install

"Plan or Install" as used in ORS 671.520(2)(a) and (f) means:

(1) "Plan," for the purposes of this rule, means the ability to lay out verbally, or in sketch or scale drawing form, a landscape project for implementation, including preparation, construction, and planting.

(2) "Install," for the purposes of this rule, has the same meaning as it does under OAR 808-002-0455.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.520 & 671.540
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LC 2-1984, f. & ef. 10-2-84; LC 1-1985, f. & ef. 7-1-85; LC 1-1986, f. & ef. 1-3-86; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0010; LCB 1-1991, f. & cert. ef. 7-22-91; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 3-1992(Temp), f. & cert. ef. 7-16-92; LCB 1-1993, f. & cert. ef. 1-19-93; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 3-1999, f. & cert. ef. 11-17-99, Renumbered from 808-002-0010; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2009, f. 1-30-09, cert. ef. 2-1-09; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-002-0920
Work Period

"Work Period" as used in OAR 808-004-0320 and 808-004-0600 means the time period from the date a landscape contracting business accepts a payment, offers a written or verbal proposal which is later accepted as a contract or enters into a contract or begins construction, whichever occurs first, until the date the work is completed as defined in OAR 808-002-0280 or the landscape contracting business ceases work.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.710
Hist.: LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0015
Application for Landscape Contracting Business and Landscape Construction Professional License

(1) Application for a landscape contracting business license shall be on forms provided by the agency. Information provided on the form must include, but not be limited to:

(a) Name of business entity, all additional assumed business names under which the landscaping work is conducted and Corporation Division registry numbers (if applicable). The business entity name and all assumed business names listed must be the same as what appears on record with the Corporation Division, if applicable;

(b) Mailing and physical address of the business entity;

(c) Name of all owners and percent of ownership of each owner;

(d) Name and license number of all licensed landscape construction professionals employed by the business as required under ORS 671.565 along with a signed and notarized verification of employment form provided by the agency. A business may meet the requirements of ORS 671.565, not withstanding the conditions of 657.044, if the licensed landscape construction professional is a sole proprietor, a member of an LLC, a general partner in a partnership, or a stockholder of a Sub Chapter S-Corp and is actively involved in the landscape contracting business' operations and is receiving remuneration, whether by salary or other payment, for services provided;

(e) Name and address of owner or managing employee;

(f) Independent contractor certification statement;

(g) A signed statement by the owner of the business, on which the landscape contracting business estimates the total maximum job charges for a single landscape job during the term of the license for the purpose of determining the correct bonding amount for that specific term of the license;

(h) Social security number of the owner of a sole proprietorship or partners in a general partnership (where the partners are human beings);

(i) Complete questions to Licensing and Litigation History and Criminal Background sections;

(j) State Tax Identification number, if applicable;

(k) Federal Employer ID Number (EIN), if applicable;

(l) Workers Compensation Information, if nonexempt; and

(m) Signature of owner, partner, joint venturer, corporate officer, member or trustee, signifying that the information provided in the application is true and correct.

(2) Application for a landscape contracting business license must be accompanied by:

(a) A non-refundable application fee;

(b) A required license fee;

(c) A properly executed surety bond, irrevocable letter of credit or deposit as required under ORS 671.690;

(d) A Certificate of Liability Insurance as required under ORS 671.565 for an amount not less than $100,000 if the application is received prior to January 1, 2106 and not less than $500,000 if the application is received after January 1, 2016 listing the Landscape Contractors Board as the certificate holder;

(e) A Certificate of Completion of Owner/Managing Employee course from an approved course provider and proof of passing the Laws, Rules & Business Practice examination if the managing owner or managing employee does not hold an active landscape construction professional license;

(f) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(g) Copies of the original and amended articles of incorporation for corporations, organizational filings for limited liability companies, and partnership agreements for partnerships;

(h) A completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional who is supervising work for the landscape contracting business as required in OAR 808-003-0018; and

(i) Certificate of Insurance verifying workers' compensation insurance coverage for all employees, if the applicant qualifies as nonexempt.

(3) Application for a landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) A non-refundable application fee;

(b) Verification of experience and/or transcripts or copies of completion certificates from courses of study;

(c) If applicable, name of employing licensed landscape contracting business or businesses;

(d) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual landscape construction professional license;

(e) Complete questions to Licensing and Litigation History and Criminal Background sections;

(f) Social security number of the applicant;

(g) Mailing and physical address of the applicant; and

(h) Signature of applicant.

(4) Application for a probationary landscape construction professional license shall be on forms provided by the agency and shall be accompanied by:

(a) A non-refundable application fee,

(b) If applicable the name of the employing licensed landscape contracting business or businesses.

(c) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.563, "applicant" means the person applying for the individual probationary landscape construction professional license;

(d) Complete questions to Licensing and Litigation History and Criminal Background sections;

(e) Social security number of the applicant;

(f) Mailing and physical address of the applicant; and

(g) Signature of applicant.

(5) If an applicant as defined in subsections (1), (3) and (4) of this rule has any unpaid damages as stated in subsections (1), (3) and (4) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to issue the license.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.560, 671.563 & 671.565
Hist.: LC 3, f. & ef. 2-7-77; LC 3-1980, f. & ef. 2-5-80; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0015; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 3-1999, f. & cert. ef. 11-17-99; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2005, f. & cert. ef. 10-5-05; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 10-2011, f. 7-26-11, cert. ef. 8-1-11; LCB 13-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0018
Supervisory Responsibilities; Employment

(1) The licensed landscape construction professional who holds part or the complete phase basis of the landscape contracting business license must perform the following supervisory services:

(a) Review and initial the landscape plan and/or written contract for each job;

(b) Attend all on-site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(c) Directly supervise all non-licensed employees employed by the landscape contracting business as defined in OAR 808-002-0328. For the purpose of verification of direct supervision of an unlicensed employee as required by ORS 671.540(1)(q) or (r), the communication requirement of direct supervision will be considered met if the licensed landscape construction professional communicates with the Landscape Contractors Board investigator who requested the unlicensed employee to contact the supervising landscape construction professional before midnight of the same day of the request.

(2) A landscape contracting business must:

(a) Require a licensed landscape construction professional to directly supervise the unlicensed employees of the landscape contracting business who are performing work that corresponds to the landscape construction professional's phase of license; and

(b) Have the landscape construction professional who is responsible for supervision as required in subsection (a) of this section on the payroll each hour receiving at least minimum wage or meeting the salary test for salaried exempt employees during the time the landscape contracting business is engaged in landscaping work that corresponds to this landscape construction professional's phase of license except when the landscape construction professional is not considered a subject worker under ORS 656.027.

(c) Submit a Verification form when a new landscape construction professional becomes part or the complete basis of the landscape contracting business license.

(3) Upon application for a landscape contracting business license, and at any other time the board requests, a landscape contracting business must submit a completed, signed and notarized Verification form (provided by the board) for every licensed landscape construction professional for whom the landscape contracting business has not previously submitted this Verification form and who is supervising landscaping work for the landscape contracting business;.

(4) The Verification form verifies that the licensed landscape construction professional:

(a) Is a paid employee of the landscape contracting business and is on the payroll each hour receiving at least minimum wage or meets the salary test for salaried, exempt employees or is an owner of the business as defined in OAR 808-002-0734 during the time the business is performing landscape work related to the landscape construction professional's phase of license;

(b) Will directly supervise work based on the landscape construction professional's phase of license;

(c) Will attend on site meetings and appear at any hearings that are a consequence of any claims filed against the landscape contracting business that relate to the landscape construction professional's phase of license; and

(d) Understands the requirement to notify the board within ten calendar days after termination of employment from the landscape contracting business as required by OAR 808-003-0125(4).

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.565

Hist.: LCB 2-1998, f. & cert. ef. 4-30-98; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 2-2006, f. 8-2-06, cert. ef. 10-2-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 9-2008, f. 9-29-08, cert. ef. 10-1-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 2-2010, f. & cert. ef. 6-1-10; LCB 4-2011, f. & cert. ef. 5-25-11; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0040

Scope of License and Subcontracting

(1) Scope of License. A licensed landscape contracting business may only advertise for or perform those phases of landscaping work for which its owners or employees hold a valid landscape construction professional license.

(2) The landscaping work a licensed landscape contracting business advertises for or performs shall be limited to the following:

(a) For an all phase license holder, all areas of landscaping work, plus the installation of backflow prevention assemblies unless, in lieu of Backflow Prevention, the landscape construction professional contractor has signed an agreement with the Board prior to April 30, 1996 stating that the landscape construction professional will not perform Backflow Prevention work;

(b) For an irrigation, no backflow, limited license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems and the maintenance of irrigation systems with the use of compressed air;

(c) For a sod and seed limited license holder, grass seed planting or sod laying;

(d) For a tree limited license holder, install new or transplant trees;

(e) For a planting limited license holder, plan or install lawns, shrubs, vines, trees or nursery stock and perform grading and drainage services for the installation of lawns, shrubs, vines, trees or nursery stock. This also includes the preparation of the property on which the vegetation is to be installed as defined in OAR 808-002-0500. A planting limited licensing holder cannot perform low voltage work.

(f) For a standard limited license holder, all areas of landscaping work except irrigation functions and the installation of backflow assemblies;

(g) For an irrigation plus backflow license holder, irrigation functions, including, but not limited to, the preparation of plans and drawings for landscape irrigation systems, the maintenance of irrigation systems with the use of compressed air and the installation of backflow assemblies.

(h) For a probationary All Phase Plus Backflow license holder, all areas of landscaping work, provided all landscaping work on any given landscape job as defined in OAR 808-002-0495 must not exceed a total contract amount of $15,000,

(3) Landscaping Work Exceeding Licensee's Scope. A landscape contracting business may bid on a job or enter into a contract that includes one or more phases of landscaping work for which it is not licensed if that landscape contracting business:

(a) Upgrades the landscape contracting business license phase by employing a landscape construction professional licensed for that phase of landscaping work and notifies the board of this change in license prior to performing this landscaping work; or

(b) Subcontracts the landscaping work that is outside the phase of the license to another licensed landscape contracting business licensed for that phase of landscaping work.

(4) Landscaping Job Exceeding Licensee's Scope or Including Construction Contracting. A landscape contracting business may bid on a job or enter into a contract that, as part of the landscaping project, includes:

(a) Landscaping work for which the landscape contracting business is not licensed, and which is also within the scope of a construction contractors license under ORS Chapter 701, if the landscape business subcontracts with a construction contractor licensed under ORS Chapter 701 to perform that work within the scope of the construction contractor's license; or

(b) Construction contracting work that is not included within the lawful scope of work of a landscape contracting business, including work of residential specialty contractors and commercial specialty contractors, and for which the landscape contracting business does not fall under a statutory exemption from appropriate licensure. This construction contracting work may be subcontracted only if the landscape contracting business subcontracts with a construction contractor licensed under ORS chapter 701 to perform work within the scope of the construction contractor's license, and if the construction contractor and its employees are properly licensed by the Department of Consumer and Business Services, Building Codes Division when required by law.

(5) Subcontracting.

(a) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with another licensed landscape contracting business to perform landscaping work, pursuant to subsection (3) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed landscape contracting business or licensed landscape contracting professional.

(b) A landscape contracting business may subcontract, verbally or in writing as is appropriate for the value of the subcontract, with a construction contractor licensed under ORS chapter 701 to perform construction contracting work pursuant to subsection (4) of this rule. A landscape contracting business may not subcontract with the owner of the property, for the owner to provide services on or for the property, even if the owner of the property is a licensed construction contractor.

(6) Subsection 3 through 5 of this rule do not allow a landscape contracting business to advertise or represent that the business is licensed to provide construction contractor services or specialty trade services regulated by the Department of Consumer and Business Services, Building Codes Division.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 447.060 & 671.560

Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0021; LCB 2-1990, f. 7-27-90, cert. ef. 8-1-90; LCB 2-1992, f. 7-14-92, cert. ef. 7-15-92; LCB 2-1993, f. & cert. ef. 2-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94;

LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 7-2003(Temp), f. 11-28-03, cert. ef. 12-1-03 thru 5-29-04; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCCB 3-2007, f. & cert. ef. 8-1-07; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 3-2008, f. & cert. ef. 4-11-08; LCB 10-2008, f. & cert. ef. 11-6-08; LCB 13-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 2-2014, f. 2-20-14, cert. ef. 3-1-14; LCB 3-2014(Temp), f. 2-21-14, cert. ef. 3-1-14 thru 8-28-14; Administrative correction, 9-17-14; LCB 9-2014(Temp), f. & cert. ef. 9-25-14 thru 3-24-15; LCB 1-2015, f. 1-21-15, cert. ef. 2-1-15; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0060
Examinations; Translation of Exam

(1) The exam will consist of the following sections:

(a) Laws, Rules and Business Practice which includes Contract Law, General Business, and Agency Involvement;

(b) Plants and Turf;

(c) Design, Grading and Drainage;

(d) Hardscaping;

(e) Irrigation Systems, which includes, but is not limited to pipes and fittings, electrical, head and nozzles, Hydraulics, installation/practical application, plan questions, winterizing, repair/troubleshooting, valves, plant culture, drip irrigation, design, and pumps; and

(f) Backflow, which includes, but is not limited to the installation of irrigation and ornamental water feature backflow assemblies, cross connections, piping, valves, and related plumbing code provisions.

(2) All applicants must successfully pass the Laws, Rules and Business Practice section.

(3) To obtain an All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Low Voltage; Design; & Personal Safety, Irrigation and Backflow Prevention sections.

(4) To obtain a Standard license, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, and Hardscaping sections.

(5) To obtain an Irrigation license, the applicant must successfully pass the Laws, Rules and Business Practice, Irrigation and Backflow Prevention sections.

(6) To obtain a Planting license the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, and Design, Grading and Drainage sections.

(7) To obtain a Probationary All Phase plus Backflow License, the applicant must successfully pass the Laws, Rules and Business Practice, Plants and Turf, Design, Grading and Drainage, Hardscaping, Irrigation and Backflow Prevention sections within 12 months after the first sitting of any section of the examination.

(8) Translation of Exam.

(a) Pursuant to 2015 Laws Chapter 672 all exams will be given in the English language, unless otherwise requested.

(b) A candidate must notify the exam provider if they wish to take any section of the exam in Spanish.

Stat. Auth.: ORS 183.325 - 183.500, 670.310 & 671.670
Stats. Implemented: ORS 671.570
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0025; LCB 4-1993, f. & cert. ef. 11-1-93; LSCB 2-1994, f. 11-8-94, cert. ef. 11-15-94; LCB 1-1998, f. & cert. ef. 2-6-98; LCB 3-1998(Temp), f. & cert. ef. 11-16-98 thru 5-15-99; LCB 1-1999, f. & cert. ef. 2-11-99; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 9-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 2-2013, f. 5-31-13, cert. ef. 6-1-13; LCB 2-2014, f. 2-20-14, cert. ef. 3-1-14; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0095
Liability Insurance

(1) An applicant for the landscape contracting business license or renewal shall;

(a) Submit a "Certificate of Insurance" (certificate) from an insurance company authorized to do business in Oregon, as required by ORS 671.565 and subsection (2) of this section and

(b) Continue to meet those insurance requirements for as long as the applicant is licensed.

(2) The certificate of insurance must include:

(a) The name of the insurance company,

(b) Policy number,

(c) Effective dates of coverage;

(d) Coverage in at least the amount required in ORS 671.565 and Section 2 of this rule;

(e) The agent's name, and

(f) The Oregon Landscape Contractors Board is the certificate holder.

(2) The certificate must be for an amount not less than $100,000 if the application is received prior to January 1, 2016 and not less than $500,000 if the application is received after January 1, 2016 and include public liability, personal injury and property damage insurance covering landscaping work.

(3) The name of the entity as it appears on the certificate must be the same as the name on the landscape contracting business license application or license of record with the agency and the same entity name filed at the Oregon Corporation Division (if applicable).

(a) If the entity is a sole proprietorship, the certificate must include the name of the sole proprietor;

(b) If the entity is a partnership, or joint venture, the certificate must include the names of all partners (except limited partners);

(c) If the entity is a limited liability partnership, the certificate must be issued in the name of all partners and the name of the limited liability partnership;

(d) If the entity is a limited partnership, the certificate must be issued in the name of all general partners and the name of the limited partnership and any other business names(s) used. Limited partners do not need to be listed on the certificate;

(e) If the entity is a corporation or trust, the certificate must be issued showing the corporate or trust name; or

(f) If the entity is a limited liability company, the certificate must be issued in the name of the limited liability company.

(4) A landscape contracting business must continuously have in effect public liability, personal injury and property damage insurance during the licensing period to maintain an active license.

(5) A new certificate must be on file with the agency prior to the expiration date on the previous certificate. If the policy as required in subsection 2 of this section expires and a new certificate is not received on or before 5 pm on the day of policy expiration, the agency may suspend the landscape contracting business license

(6) Upon cancellation of the insurance required under ORS 671.565 the agency may immediately suspend the landscape contracting business license as provided for in 671.610(2)(b).

(7) If a landscape contracting business is licensed as a sole proprietorship, partnership, limited liability partnership, limited partnership, joint venture, corporation, limited liability company, business trust or any other entity and seeks to change the licensed entity to one of the other entity types and a new license is required, the application must be accompanied by a new certificate.

Stat. Auth.: ORS 183.325 - 183.410, 670.310 & 671.670
Stats. Implemented: ORS 671.565
Hist.: LCB 2-1991(Temp), f. 9-27-91, cert. ef. 9-29-91; LCB 1-1992, f. 1-27-92, cert. ef. 2-1-92; LSCB 2-1997, f. & cert. ef. 11-3-97; LCB 1-2003, f. 1-31-03, cert. ef. 2-1-03; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 5-2009(Temp), f. 6-3-09 cert. ef. 6-3-09 thru 11-30-09; LCB 8-2009, f. & cert. ef. 10-28-09; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0125
Notification of Change of Address, Employment, Partners or Owners or Ownership Interest

(1) Within thirty (30) calendar days following a change of address, the landscape construction professional shall submit written or online notification to the agency as provided in ORS 671.603.

(2) Within thirty (30) calendar days following a change of address, the landscape contracting business shall submit written or online notification to the agency as provided in ORS 671.603.

(3) A landscape contracting business shall notify the agency in writing within ten (10) days after the date a landscape contracting business' phase of license changes due to:

(a) The license phase of an owner or employee who is the licensed landscape construction professional and phase basis of the business changes; or

(b) The landscape construction professional who holds part or wholly the phase basis of the landscape contracting business license ceases to own or be employed by the landscape contracting business.

(4) A landscape construction professional shall notify the agency in writing within ten (10) days of the date of termination of employment or ownership from an actively licensed landscape contracting business.

(5) A landscape contracting business subject to ORS 671.595 must:

(a) Within ten (10) calendar days of the date a managing owner or managing employee ceases to act in the roles as defined in OAR 808-002-0625 or 808-002-0734(2) notify the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the managing owner or managing employee ceasing to act in this role.

(b) Within thirty (30) calendar days of a change of managing owner or managing employee, designate a new managing owner or managing employee and must have notified the agency in writing and provide:

(A) The effective date of the change; and

(B) The name of the new managing owner or managing employee performing this role.

(6) Within ten (10) calendar days following a change in partners or owners or a change in percentage of an ownership interest, the landscape contracting business shall submit written notification of the change to the agency as required by ORS 671.605.

Stat. Auth.: ORS 183 & 671
Stats. Implemented: ORS 671.595, 671.600, 671.603 & 671.605
Hist.: LC 1-1984, f. & ef. 7-17-84; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; Renumbered from 808-010-0034; LCB 1-2001, f. 12-4-01, cert. ef. 1-1-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 2-2008, f. & cert. ef. 6-2-08; LCB 12-2009, f. 12-23-09, cert. ef. 1-1-10; LCB 7-2010, f. & cert. ef. 10-25-10; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0126
Permits and Other Requirements for Work Performed by a Landscape Contracting Business

(1) Prior to the performance of work a landscape contracting business must obtain a permit, if required. This includes but is not limited to the installation of:

(a) A backflow assembly for irrigation systems or water features;

(b) A retaining wall, driveway, deck, fence, walkway, arbor, landscape edging or patio;

(c) Low voltage wiring for irrigation systems or landscape lighting;

(d) Plantings on structures; and

(e) Drainage systems for landscaping work.

(2) Prior to the performance of landscaping work on a structure the landscape contracting business must confirm that the structure has been properly engineered and municipal approval has been obtained in writing or by issuance of a municipal permit for construction.

(3)(a) Tapping into the potable water supply and installation of irrigation or ornamental water feature backflow assemblies shall be done by a licensed landscape construction professional who holds a backflow license and who is either an employee or owner of a landscape contracting business. The landscape construction professional or landscape contracting business shall obtain all required permits prior to the installation of the backflow assembly and the landscape construction professional shall install the backflow assembly in conformance with the applicable code requirements.

(b) If a landscape construction professional or landscape contracting business fails to obtain permits to tap into the potable water system for the installation of backflow assemblies for irrigation or ornamental water feature or fails to comply with applicable code requirements, the Board, in addition to any other remedy, may suspend, condition or revoke the landscape construction professional and/or landscape contracting business license.

(4) The preparation of plans and drawings for a landscape irrigation system may only be prepared by a landscape construction professional if that professional:

(a) Holds a license that authorizes the installation of irrigation systems as stated in OAR 808-003-0040 of this rule; and

(b) Meets the employment requirements of ORS 671.570(1)(d); or

(c) Meets any of the alternative experience qualifications listed under OAR 808-003-0025.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.310 & 671.595
Hist.: LCB 12-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0230
Renewal of Landscapeing Contracting business and Landscape Construction Professional License

(1) Application for renewal of a landscape contracting business license shall comply with ORS 671.660 and be:

(a) Accompanied by:

(A) Required renewal fee;

(B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734; and

(c) A certificate of insurance as required in OAR 808-003-0095 if the licensee's insurance coverage amount is less than $500,000.

(b) On forms provided by the agency and the licensee shall update the following items:

(A) Mailing address;

(B) Assumed business name;

(C) Entity type;

(D) Employer status as required by ORS 671.525 and OAR 808-003-0090;

(E) Listing of owners/officers and percentage of ownership of each owner;

(F) List of landscape construction professional(s), with accompanying license numbers employed by the business;

(G) Bond amount as required by ORS 671.690 and OAR 808-003-0613;

(H) Insurance expiration date as required by OAR 808-003-0095; and

(I) Name of the owner/managing employee, if applicable as required by ORS 671.595

(2) Application for renewal of a landscape construction professional license shall comply with ORS 671.660 and be:

(a) Accompanied by:

(A) Required renewal fee; and

(B) Documentation of any unpaid court judgment, arbitration award or administrative agency final order entered or issued in any state that requires the applicant to pay damages arising out of the performance of, or a contract for, landscaping work issued on or after January 1, 2008, along with the status of any appeal or exceptions. For purposes of this rule and ORS 671.560 and 671.563, "applicant" has the same meaning as owner as defined in OAR 808-002-0734.

(b) On forms provided by the agency and the licensee shall update the following items:

(A) Mailing address; and

(B) Name of landscape contracting business(es) individual is employed by, if applicable;

(C) Listing of continuing education courses completed, if applicable; and

(D) Signature of applicant.

(3) If an applicant as defined in subsections (1) and (2) of this rule has any unpaid damages as stated in subsections (1) and (2) of this rule and there are no appeals or exceptions filed, the applicant must show current payments are being made. If payments are not being made, the Landscape Contractors Board may refuse to renew the license.

(4) If an applicant satisfies all requirements for license renewal before the expiration date:

(a) The license is renewed;

(b) The effective date of the license is the expiration date; and

(c) The license is valid until the last day of the anniversary month of the initial issues of the license.

(5) If an applicant satisfies all requirements for license renewal within two years after the expiration date:

(a) The license will be renewed;

(b) The effective date of the license is the date the agency updates the record; and

(c) The license is valid until the last day of the anniversary month of initial issuance of the license

(6) If an applicant satisfies all requirements for renewal more than two years after the expiration date, the license cannot be renewed or reissued. The applicant must apply for a new license under OAR 808-003-0015.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.568 & 671.574
Hist.: LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 6-2010, f. 8-12-10, cert. ef. 8-13-10; LCB 4-2012, f. 5-30-12, cert. ef. 6-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0610
Bonds, Generally

(1) A properly executed Landscape Contractors Board bond must:

(a) Be in the form required by the agency as the Landscape Contractors Board Surety Bond.

(b) Be signed by an authorized agent of the surety or by one having power of attorney; must bear a bond number; and must be filed within the time stated on the bond. Additionally, the agency may require the licensee and surety to use the most recent revision of the surety bond form.

(2) Bond documents received at the agency office from a surety company or agent via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The surety must provide the original bond document to the agency upon request.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.690
Hist.: LCB 7-2009, f. & cert. ef. 10-28-09; LCB 11-2009(Temp), f. & cert. ef. 12-1-09 thru 5-30-10; LCB 4-2010, f. & cert. ef. 6-2-10; LCB 7-2015(Temp), f. 10-16-15, cert. ef. 10-17-15 thru 12-31-15; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0611
Letters of Credit or Deposits, Generally

(1) A properly executed Landscape Contracting Business Assignment of Savings or Deposit must:

(a) Be in the form required by the agency as the Landscape Contracting Business Assignment of Savings Account or Deposit.

(b) Be signed by an owner or officer of the landscape contracting business;

(c) Be signed by an authorized agent of the bank or financial institution or by one having power of attorney and must bear an account number. Additionally, the agency may require the licensee and bank or financial institution to use the most recent revision of the Assignment of Savings Account or Deposit form; and

(2) Letters of credit or cash assignment documents received at the agency office from a bank or financial institution via electronic facsimile or as a PDF file transmitted by e-mail or electronically may be accepted as original documents. The bank or financial institution must provide the original documents to the agency upon request.

(3) Letters of credit or cash assignment documents must be renewed every year upon renewal of the landscape contracting business license.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.690
Hist.: LCB 7-2009, f. & cert. ef. 10-28-09; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-003-0613
Bond, Letter of Credit or Cash Deposit Amounts

(1) Except as provided in subsection (2) below, a surety bond, letter of credit or cash deposit required under ORS 671.690 must be in one of the following amounts:

(a) $3,000 for an applicant, unless the applicant is described in subsections (b), (c), (d) or (e) of this rule.

(b) $10,000 for an applicant, who not in conjunction with the performance of landscaping work, constructs fences, decks, arbors, patios, landscape edging, driveways, walkways or retaining walls, unless the applicant is made subject to paragraph (c) of this subsection by work on other jobs performed by the applicant.

(c) $10,000 for an applicant who charges more than $10,000, but less than $25,000, for a landscape job.

(d) $15,000 for an applicant who charges $25,000, but less than $50,000 for a landscape job.

(e) $20,000 for an applicant who charges $50,000 or more for a landscape job.

(e) $15,000 for a Probationary All Phase Plus Backflow license phase.

(2) A landscape contracting business may obtain or maintain a bond, letter of credit or cash deposit in an amount that exceeds the amount required under section (1) of this rule if the bond, letter of credit or cash deposit obtained or maintained is in an amount that is equal to an amount required under section (1) of this rule.

(3) A landscape contracting business is subject to a higher bond, letter of credit or cash deposit before the landscape contracting business submits a bid or contract to a customer, whichever occurs first.

(4) A landscape contracting business must increase or file an additional bond, letter of credit or cash deposit when the cost of the landscape project makes the licensee subject to a higher bond, letter of credit or cash deposit.

Stat. Auth.: ORS 670.310 & 671.670
Stats. Implemented: ORS 671.690
Hist.: LCB 7-2009, f. & cert. ef. 10-28-09; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-004-0180
Claimants' Responsibility to Pursue Claim

Processing claims filed with the Construction Contractors Board (CCB) and the Landscape Contractors Board (LCB)

(1) Throughout the processing of a claim, a claimant has the responsibility to pursue the claim and to respond in a timely manner to requests from the agency for information or documentation.

(2) The agency may close a claim under OAR 808-004-0260 if:

(a) The claimant fails to respond to a written request from the agency, or to provide requested information or documentation within a time limit specified in that request; or

(b) The claimant fails to respond in writing to a written request from the agency, after being instructed to do so by the agency.

(3) A written request from the agency under section (2) of this rule must comply with the requirements of OAR 808-004-0260.

(4) If a claim is filed with the CCB and the LCB, the claimant must:

(a) Notify the LCB of the complaint filed with the CCB within 14 days of filing that claim with the CCB; and

(b) Provide a copy to the LCB of the complaint filed with the CCB.

(5) A determination by either agency is not binding on the other agency.

(6) The total amount required to be paid by the respondent to the claimant may not exceed the damages sustained.

Stat. Auth.: ORS 183, 670.310 & 671.670
Stats. Implemented: ORS 183.415, 183.460 & 671.703
Hist.: LC 3, f. & ef. 2-7-77; LC 1-1981, f. & ef. 10-8-81; LC 1-1984, f. & ef. 7-17-84; Renumbered from 808-010-0045; LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 3-1991(Temp), f. & cert. ef. 12-3-91; LCB 1-1992, f.; LSCB 2-1995, f. 8-8-95, cert. ef. 8-15-95; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0030; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-004-0211
Address of Claimant and Respondent

(1) Initial notice of a contested case or arbitration directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent registered or certified or post office receipt secured.

(2) All other communication directed to the last known address of record of a party to a claim shall be considered delivered when deposited in the United States mail and sent by regular mail.

(3) A party must notify the agency in writing within 30 days of any change in the party's address withdrawal or change of the party's attorney or change of address of the party's attorney during the processing of the claim and until 90 days after the date the agency notifies the parties that the claim is closed.

Stat. Auth: ORS 670.310 & 671.670
Stats. Implemented ORS 671.603
Hist.: LCB 6-2004(Temp), f. & cert. ef. 12-15-04 thru 6-10-05; LCB 1-2005, f. & cert. ef. 2-15-05; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-004-0320
Jurisdictional Requirements

(1) A claim must be of a type described under ORS 671.690(2) & (3), OAR 808-002-0220 and ORS 671.695.

(2) In addition to the types of claims described in ORS 671.690 a claim may also be accepted for breach of contract, negligent or improper work, failure to pay for materials, equipment, or labor for the following activities performed or contracted to be performed:

(a) Backflow assembly testing services provided by employees of the landscape contracting business who are certified under ORS 448.279; and

(b) The installation, repair or maintenance by the landscape contracting business of backflow assemblies for irrigation systems and ornamental water features as described in ORS 447.060;

(c) The installation by the landscape contracting business of landscape irrigation control wiring and outdoor landscape lighting as described in ORS 479.940; and

(d) The removal or pruning of a tree, removal of limbs or stumps and tree or limb guying if the removal, pruning, or guying were performed after January 1, 2016.

(3) The agency will only process a claim that is filed within the following time limitations:

(a) State tax and contribution claims must be filed within one year of the due date of the tax or contribution.

(b) Labor, material and equipment claims must be filed within one year of the order or delivery date of the labor, material or equipment.

(c) Negligent or improper work claims must be filed within one year following the date the work was completed.

(d) Breach of contract claims must be filed within one year of the contract date or the last date of work on the project, whichever is later.

(4)(a) A claim will be processed and damages may be awarded only against a licensed landscape contracting business. A respondent is "licensed" for purposes of this section as follows:

(b) For a State tax and contribution claim, if the tax and contribution liability arose while the business was licensed.

(c) For a material or equipment claim, if one or more invoices involve material delivered or equipment rented while the landscaping business was actively licensed.

(d) For any other claim, if the landscape contracting business was actively licensed during all or part of the work period, unless the claim is for breach of contract only, in which case a landscape contracting business is "licensed" if it was actively licensed at the time the contract was entered.

(5) A claim will be accepted only when one or more of the following relationships exist:

(a) A direct contractual relationship based on a written or verbal contract entered into by the claimant and the landscape contracting business, their employees, or their agents;

(b) Performance of landscaping work by the landscape contracting business on property owned, rented, or managed by the claimant;

(c) Payment made by a claimant, the claimant's employee, or the claimant's agent to the landscape contracting business; or

(d) An employment relationship or assigned relationship arising from a Bureau of Labor and Industries employee claim.

(6) A claim by a person furnishing material, or renting or supplying equipment to a landscape contracting business may not include a claim for non-payment for tools sold to a landscape contracting business, for equipment sold to the landscape contracting business that is not incorporated into the job site, for interest or service charges on an account or for materials purchased as stock items.

(7) Claims will be accepted only for work performed within the boundaries of the State of Oregon or for materials or equipment supplied or rented for installation or use on property located within the boundaries of the State of Oregon.

(8)(a) Except as provided in subsection (b) of this section, the agency may refuse to process a claim or any portion of a claim that includes an allegation of a breach of contract, negligent or improper work or any other act or omission within the scope of ORS 671.510 to 671.710 that is the same as an allegation contained in a claim previously filed by the same claimant against the same landscape contracting business.

(b) The agency may process a claim that would otherwise be dismissed under subsection (a) of this section if the previously filed claim was:

(A) Withdrawn prior to the on-site meeting.

(B) Closed or dismissed with an explicit provision allowing the subsequent filing of a claim containing the same allegations as the closed or dismissed claim.

(c) Nothing in this section extends the time limitation for filing a claim under ORS 671.710.

Stat. Auth.: ORS 183, 670.310 & 671.670

Stats. Implemented: ORS 671.690, 671.695, 671.703 & 2011 OL Ch. 104

Hist.: LCB 1-1988, f. 1-26-88, cert. ef. 2-1-88; LCB 1-2000, f. & cert. ef. 2-1-00; Renumbered from 808-004-0020; LCB 4-2002, f. & cert. ef. 12-4-02; LCB 1-2004, f. 1-27-04, cert. ef. 2-1-04; LCB 6-2005, f. 12-30-05, cert. ef. 1-1-06; LCB 4-2007, f. 12-19-07, cert. ef. 1-1-08; LCB 17-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-040-0020

Continuing Education Biennial and Reporting Requirement

(1) Biennial CEH requirement. To maintain licensing, a landscape construction professional:

(a) Licensed for six (6) years or less must complete sixteen (16) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4)) and OAR 808-040-0070.

(b) Licensed for more than six years must complete eight (8) hours of continuing education hours (CEH) every two years unless such requirement is waived by the Board under ORS 671.676(4)) and OAR 808-040-0070.

(2) The required hours must be completed during the two-year period immediately preceding the renewal date of the landscape construction professional license.

(3) The required hours must conform to OAR 808-040-0040.

(4) Reporting Requirement at Renewal. As a requirement of renewal of an active landscape construction professional license, licensees are required to certify that the licensee has fulfilled the CEH requirement.

(5) Licensees with even numbered licenses must report the CEH requirement by the license expiration date in even numbered years.

(46 Licensees with odd numbered licenses must report the CEH requirement by the license expiration date in odd numbered years.

(7) New Licensees. CEH requirements for new licensees are as follows:

(a) New licensees who receive an even numbered license in an odd numbered year must report 8 CEH the first reporting cycle.

(b) New licensees who receive an even numbered license in an even numbered year must report 16 CEH the first reporting cycle.

(c) New licensees who receive an odd numbered license in an even numbered year must report 8 CEH the first reporting cycle.

(d) New licensees who receive an odd numbered license in an odd numbered year must report 16 CEH the first reporting cycle.

(e) CEH obtained by new licensees during the two-year period immediately preceding the renewal date of the landscape construction professional license will be eligible to the meet the initial CEH requirement.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: 2007 OL Ch. 550

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2009(Temp), f. & cert. ef. 5-13-09 thru 11-9-09; LCB 10-2009, f. & cert. ef. 10-28-09; LCB 1-2010, f. & cert. ef. 1-27-10; LCB 18-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 2-2012, f. 3-30-12, cert. ef. 4-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

808-040-0080

CEH Requirement for Reinstatement to Active Status

(1) Except as provided for in subsection (2) of this section any licensee that reinstates an inactive or expired landscape construction professional license to active status must:

(a) Comply with OAR 808-003-0255;

(b) Submit documentation as per the audit requirements of OAR 808-040-0060 for the required hours obtained within the two years immediately preceding the renewal date of the landscape construction professional license; and

(c) Meet the CEH requirement for each subsequent renewal period.

(2) Any licensee that reinstates an expired landscape construction professional license to active status more than 14 days after the expiration of the license and the license was subject to audit prior to its expiration, the licensee must submit documentation as per the audit requirement of OAR 808-040-0060.

Stat. Auth.: ORS 670.310 & 671.670

Stats. Implemented: ORS 671.676

Hist.: LCB 8-2007, f. 12-24-07, cert. ef. 1-1-08; LCB 2-2009(Temp), f. & cert. ef. 5-13-09 thru 11-9-09; LCB 10-2009, f. & cert. ef. 10-28-09; LCB 18-2011, f. 12-29-11, cert. ef. 1-1-12; LCB 2-2012, f. 3-30-12, cert. ef. 4-1-12; LCB 9-2015, f. 12-22-15, cert. ef. 1-1-16

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Mortuary and Cemetery Board
Chapter 830

Rule Caption: Relating to qualifications to practice a profession related to the final disposition of human remains

Adm. Order No.: MCB 1-2015

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Rules Amended: 830-011-0000, 830-011-0020, 830-011-0040, 830-020-0000, 830-020-0030, 830-020-0040, 830-030-0004, 830-030-0090

Subject: Changes qualifications to practice as funeral service practitioner or embalmer, and related to reciprocity and apprenticeship

Rules Coordinator: Chad Dresselhaus—(971) 673-1503

830-011-0000

Definitions

(1) "Alkaline hydrolysis" is a final disposition process involving dissolution of human remains by placing the remains in a dissolution chamber containing water and chemical solution including potassium hydroxide or sodium hydroxide, or a combination of both, and introducing heat to break down the remains until bone fragments that may be pulverized and liquid remain.

(2) "Alternative Disposition" Alternative disposition is a board-authorized method of final disposition of human remains other than burial, entombment, burial at sea, cremation or removal from the state, and includes dissolution.

(3) "Alternative Disposition Facility" An alternative disposition facility is a facility containing equipment designed for the final disposition of human remains through alternative methods authorized by the board including, but not limited to, dissolution.

(4) "Alternative Disposition Facility Authority" An Alternative Disposition Facility Authority is any person, partnership or corporation with a Certificate of Authority to operate a dissolution chamber or other alternative disposition equipment as authorized by the Board by rule.

(5) "Apprentice" has the same meaning as "Trainee" as used in ORS692 and either term may be used interchangeably by Board Licensees, Applicants or Registrants in practice.

(6) "At Need" As used in this chapter, means arrangements entered into after a death has occurred, "at the time of need."

(7) "Authorizing Agent" An authorizing agent is a person legally entitled to order the arrangements and disposition of human remains and cremated remains.

(8) "Burial Vault" A burial vault is a container designed to protect the contents from the intrusion of outside elements, and support the weight of the surrounding earth and maintenance equipment.

(9) "Certificate of Authority" A Certificate of Authority is a certificate issued to an entity responsible for the operation of a cemetery, crematory, or alternative disposition facility.

(10) "Cremated Remains" and "Alternative Disposition Remains" Cremated remains or alternative disposition remains are the remaining bone fragments after the act of cremation or alternative disposition is completed.

(11) "Cremated Remains Container" and "Alternative Disposition Remains Container" A cremated remains or alternative disposition remains container is a container in which processed cremated remains can be placed and closed to prevent leakage.

(12) "Cremation" Cremation is the technical heating process that reduces human remains to ash and bone fragments.

(13) "Cremation Chamber" A cremation chamber is the enclosed space in which the cremation process takes place.

(14) "Cremation Container" A cremation container is the container, if any, in which the human remains are placed for a cremation. The container must meet all the requirements of the crematorium.

(15) "Crematory Authority" The Crematory Authority is the legal entity or the authorized representative of the legal entity who conducts the cremation.

(16) "Crematory or Crematorium" A crematory or crematorium is any person, partnership, or corporation with a Certificate of Authority to operate a cremation chamber.

(17) "Death Care Consultant" A death care consultant is an individual who, for payment, provides consultations related to funeral or final disposition arrangements to the person or persons who are acting as a funeral service practitioner under ORS Chapter 432. For purposes of this definition, the consultations include any conference, information, guidance or advice either at the time of death or when the death is soon to occur.

(18) "Death Care Industry" Death care industry means funeral service and final disposition practitioners and facilities.

(19) "Disinfectant Solution" A disinfectant solution is a chemical agent capable of destroying pathogens or their products when applied with sufficient time and concentration.

(20) "Disposition" Disposition is final disposition by burial, entombment, burial at sea, cremation, removal from the state, dissolution or other alternative disposition as authorized by board rule.

(21) "Dissolution" Dissolution includes, but is not limited to, alkaline hydrolysis.

(22) "Dissolution Chamber" A dissolution chamber is a purpose-built vessel that is closed and sealed on all sides when human remains are placed inside and the dissolution process takes place.

(23) "Dissolution Container" A dissolution container is the container, if any, in which human remains are placed for the purpose of placement in the dissolution chamber.

(24) "Embalmed" Human remains are considered embalmed when sufficient disinfectant solution or preservative fluid has been injected into the circulatory system or applied externally, or both, to help eliminate the danger of spreading disease or infection.

(25) "Final Processing" Final Processing is the processing of bone fragments to an unidentifiable dimension following the cremation or dissolution process.

(26) "Grave Liner" A grave liner is a burial container either in sectional or box form, built and designed to be installed in a grave to support the weight of the earth and maintenance equipment.

(27) "Holder of a Certificate of Registration" A "Holder of a Certificate of Registration" means the same as "Certified Provider" as defined in ORS 97.923(2).

(28) "Holding Room" A holding room is a suitable room constructed in accordance with OAR 830-040-0020(2), (4) and (5) which licensed funeral establishments use for the care, storage, or holding of human remains prior to effecting disposition. This room must be of sufficient size to accommodate at least one table for a casketed remains and an attendant. The room may be used by the funeral establishment to care for or repair remains in those facilities that do not offer on premises embalmings. This room would be other than a chapel, viewing or visitation room, office supply room, closet or a room normally open to the public.

(29) "Human Remains" Human remains means a dead human body.

(30) "Identification Viewing" Identification viewing means viewing human remains for the purpose of identifying the remains, regardless of whether the remains have been washed or otherwise prepared.

(31) "Identifying Metal Disc" An identifying metal disc is a metal disc, approximately one inch in diameter with a number assigned by the State Registrar's Office, each with a different number, for the purpose of accompanying human remains through the disposition process and to serve as a means of permanent identification of those remains.

(32) "Intern Apprentice" or "Intern" or "Intern Trainee" An intern apprentice is any student enrolled in an accredited funeral service education program who is serving his/her three-month internship under the supervision of a combination-licensed funeral service practitioner/embalmer at a participating funeral establishment.

(33) "Licensed Facility" A licensed facility is any licensed business governed by ORS Chapter 692.

(34) "Licensee" Licensee means any individual or facility licensed under ORS Chapter 692 and any preneed salesperson registered under ORS 97.931.

(35) "Minimum Preparation of Human Remains" Minimum preparation of human remains means the human remains are completely washed as defined in this section.

(36) "Offensive Treatment of Human Remains" As used in this rule and in ORS Chapter 692, offensive treatment of human remains is treatment offensive to the generally accepted standards of the community.

(37) "Prearrangement" As used in this chapter, prearrangement has the same meaning as used in ORS 97.923.

(38) "Preneed Funds" Preneed funds are specified amounts paid for funeral, cemetery or cremation goods and/or services that are sold in advance of need but not delivered.

(39) "Preneed Salesperson" As used in these rules, "preneed salesperson" means an individual registered under ORS 97.931 and employed by a certified provider authorized by the Department of Consumer & Business Services to engage in the sale of prearrangement or preconstruction sales contracts on behalf of the certified provider.

(40) "Preparation Room" As used in these rules, preparation room means the same as embalming facility as used in ORS Chapter 692.

(41) "Principal" Principal means a person who has controlling authority over the licensed facility, including but not limited to:

(a) Managers or other persons who have decision-making authority and whose primary duties include control over the operation of the licensed facility;

(b) Officers or directors who have some degree of responsibility for the operation of the licensed facility;

(c) General Partners, limited and joint ventures;

(d) Sole proprietors;

(e) Stockholders holding a majority of outstanding shares of stock; and

(f) Members of a Limited Liability Company.

(42) "Processed Cremated or Alternative Disposition Remains" As used in this chapter, processed cremated or alternative disposition remains are the result of pulverization, where the residual from the cremation or alternative disposition, such as dissolution, process is reduced to unidentifiable dimensions.

(43) "Public Viewing" Public viewing means the human remains have, at minimum, been washed, as defined in this section, and the remains are placed in a viewing room, church, chapel or other suitable place for viewing of the remains.

(44) "Receptacle" As used in this chapter, a receptacle means a container for human remains including but not limited to a casket, alternative container, or cloth or plastic container.

(45) "Refrigeration Unit" As used in this chapter, a refrigeration unit is one used in licensed facilities to store dead human remains that meets commercial standards.

(46) "Registration" Registration may refer to the registration of a cemetery that does not fall under the category of "Operating Cemetery" as defined in ORS 692.010(7) or it may refer to the "registration" of preneed salespersons. Registration of non-operating cemeteries and preneed salespersons is required for compliance with Oregon Laws.

(47) "Sanitary Condition" Sanitary includes, but is not limited to, being clean from dirt, foreign particles, bloodstains, offensive odors or insects.

(48) "Sealed Casket" A sealed casket is one that is designed by a manufacturer to be sealed prior to final disposition.

(49) "Solicitation" Solicitation is defined as actively endeavoring to obtain business or clientele through means such as telephone or personal contact.

(50) "Visitation" Visitation means a specific time and place to gather where the human remains are present, except for graveside service.

(51) "Washed" Human remains are considered washed and brought to a sanitary condition when the entire surface of the human remains has been bathed with a disinfectant solution and the mouth, nose, and other body orifices have been washed and, when necessary, packed with cotton saturated with a disinfectant solution.

Stat. Auth.: ORS 97.931, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 97.931, 692.320 & 2015 HB 2471
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1988, f. & cert. ef. 2-10-88; MCB 1-1989, f. & cert. ef. 2-6-89; Renumbered from 830-030-0010(1)(a) - (k) & 830-030-0020; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-011-0020
Trainee (Apprenticeship) — Generally

(1) Apprenticeship for embalmer, funeral service practitioner, or intern apprentice must be served under persons who are and have been licensed and working in Oregon for at least one year.

(a) A funeral service practitioner may supervise up to three apprentices at a time and an embalmer may supervise up to three apprentices at a time.

(b) Notwithstanding (a), a combination embalmer/funeral service practitioner may supervise no more than three persons with any combination of trainee (apprentice) licenses.

(c) Notwithstanding (a), a funeral service practitioner, an embalmer or a combination embalmer/funeral service practitioner may serve as preceptor for intern apprentices from an accredited funeral service education provider in addition to any trainee (apprentice) embalmers or funeral service practitioners; if that individual's license meets the requirements for the internship program as identified by the educational institution; however, no licensee may have more than a total of three trainees (apprentices) or interns at any one time.

(d) The licensee who supervises an apprentice must be working and located in the same licensed facility or facilities as the trainee (apprentice) he or she is supervising.

(2) To qualify for a license as an embalmer, an apprentice embalmer must assist in the embalming of at least 35 human remains during the apprenticeship period under the direct supervision of a licensed embalmer and must meet the time and competency requirements published by the Board at the time of initial application.

(a) An apprentice embalmer must maintain a log book of embalmings under supervision, with accurate and current entries, and the apprentice and his or her supervisor must furnish this record to the Board upon request. The apprentice may use a supplemental page to log any arrangements or other competencies performed at an alternate facility as directed by their supervisor. Such page MUST be brought back and included in the log at the end of that specific assignment. The log book must be retained for a period of one year after full licensure as an embalmer, or, if not licensed as an embalmer, for six years after the last log entry and must include the following:

(A) Name of the deceased;

(B) Date of death;

(C) Date and place of embalming;

(D) Name of licensed facility making the embalming arrangements;

(E) Supervisor's written confirmation for each embalming performed by their apprentice; and

(F) Number of hours worked per week.

(3) To qualify for a license as a funeral service practitioner, an apprentice funeral service practitioner must assist in the planning of at least 25 funerals or dispositions per year through some form of direct contact with the family or representative of the deceased and must meet the time and competency requirements published by the Board at the time of initial application.

(a) An apprentice funeral service practitioner must keep a log book on the premises of the licensed facility where he or she is supervised, showing all arrangements made or participated in by the apprentice. The apprentice may use a supplemental page to log any arrangements or other competencies performed at an alternate facility as directed by their supervisor. Such page MUST be brought back and included in the log at the end of that specific assignment. The apprentice, under supervision, must make accurate and current entries. The apprentice and his or her supervisor must furnish the log book to the Board upon request.

(b) The log book must be retained for a period of one year after licensure as a funeral service practitioner, or, if not licensed, for six years from the last log entry, and must include the following:

(A) Name of deceased and person authorizing final disposition arrangements;

(B) Date of death;

(C) Date and place arrangements were made;

(D) Description of apprentice's direct participation with family;

(E) Number of days and hours worked per week;

(F) Specific competency demonstrated;

(G) Supervisor's written confirmation for each arrangement made by their apprentice; and

(H) Name of the licensed facility responsible for the final disposition arrangements.

(4) Intern apprentices must serve their apprenticeships in accordance with the internship guidelines established by an accredited funeral service education program and as recognized and approved by the Board. A copy of the guidelines is available from the Board upon request.

(5) Applicants for an apprenticeship certificate must make application in accordance with ORS Chapter 692. The application must be made on the most current form provided by the Board and be accompanied by the fee prescribed by OAR 830-020-0040, a certified copy of the applicant's birth certificate, and satisfactory proof of high school graduation or equivalency. If an applicant for an apprentice certificate does not have a high school diploma, he or she must present satisfactory evidence that he or she possesses the equivalent of a high school education received in a private, public, or trade school, or he or she must successfully pass the high school equivalency test (General Education Development Test) given by the local high school, or some similar equivalency test conducted by a similar agency. Prior to becoming licensed as a funeral service practitioner, apprentices must provide a certified copy of a transcript from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree. Prior to becoming licensed as an embalmer, apprentices must provide proof of completion of an accredited course of funeral service education.

(6) The effective date of the apprenticeship will be the date the completed application, fee, and the required certificates are received and validated in the office of the Board and the application is approved by the Board. A letter will be sent notifying the apprentice of the status of his or her apprenticeship or application.

(7) The certificate of apprenticeship must be issued to the applicant as a trainee (apprentice) to a specified licensee in good standing. If the apprentice intends to change the licensee to whom apprenticed, he or she must immediately file a request for approval of the transfer with the Board and pay the required fee. A certificate must be reissued upon payment of an administrative charge. When an apprentice ceases to work under a specific licensee, the apprenticeship certificate becomes null and void. It is the responsibility of the supervising licensee to notify the Board's office of any termination in employment or supervision of the apprentice.

(8) Trainee (Apprentice) funeral service practitioner and embalmer certificates will not be granted to any person for a period longer than 48 aggregate months. When an apprentice has completed his or her apprenticeship, he or she will no longer be licensed as an apprentice, but must qualify either as a licensed embalmer or licensed funeral service practitioner.

(9) Notwithstanding (8), the Board may consider a request for extension of the apprenticeship period for reasonable and extenuating circumstances beyond the control of the trainee (apprentice).

(10) Trainee (Apprentice) supervisors are responsible for all assigned activities and any arrangements made by the trainee (apprentice) at any location.

(11) In lieu of meeting apprenticeship requirements, an applicant for Oregon funeral service practitioner or embalmer licensure is deemed to have satisfied the respective apprenticeship requirement upon submitting satisfactory proof to the Board that the person has practiced, respectively, as a funeral service practitioner or embalmer licensed in good standing in this state or another state identified by the Board to have requirements substantially similar to Oregon: For a minimum of one year.

(12) Embalmer applicants who meet the requirements set forth in section (10) of this rule may be required to demonstrate competency by way of a practical examination at a time and place designated by the Board.

(13) Funeral service practitioner applicants who meet the requirements set forth in section (10) of this rule must successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions.

(14) An applicant or licensee whose application for license has been denied or revoked or who voluntarily surrendered the license may not reapply for a minimum period of three years unless otherwise specified in a

Board order denying, revoking or accepting a voluntarily surrender of the application or license.

Stat. Auth.: ORS 692.160, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 692.045, 692.070, 692.105, 692.130, 692.190 & 2015 HB 2471
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0050; MCB 2-1988, f. & cert. ef. 9-9-88; MCB 1-1989, f. & cert. ef. 2-6-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-011-0040
Completion of Funeral Service Practitioner and Embalmer Apprenticeship and Examination

(1) Once an apprenticeship has been completed and verified by the Board, the individual may sit for the applicable exam. An FSP trainee (apprentice) may choose to take the exam before completion and certification of their apprenticeship, but may not apply for license as a funeral service practitioner until both the exam is successfully passed and their apprenticeship completed and verified by the Board.

(2) An embalmer trainee (apprentice) may either take the Oregon embalmer examination or he may submit to the Board proof of passing the National Board Examination written by the Conference of Funeral Service Examining Boards of the United States, Inc. in lieu of the Oregon embalmer examination. In either case an average score of at least 75 percent as described in OAR 830-020-0000(2)(b) will be required for passing. An embalmer trainee (apprentice) may either take the Oregon embalmer examination or he may submit to the Board proof of passing the National Board Examination written by the Conference of Funeral Service Examining Boards of the United States, Inc. in lieu of the Oregon embalmer examination. In either case an average score of at least 75 percent as described in OAR 830-020-0000(2)(b) will be required for passing.

Stat. Auth.: ORS 183.341, 183.545, 692.160, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 692.105, 692.045, 692.190 & 2015 HB 2471
Hist.: FDB 1-1978, f. & ef. 6-30-78; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0060; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-020-0000
Applications and Examinations for Funeral Service Practitioner and Embalmer Licenses

(1) All applications for funeral service practitioner and embalmer licenses by examination, accompanied by the examination fee prescribed by ORS Chapter 692, must be received in the office of the Board at least 14 days before the examination is held, or be postmarked before midnight of that date.

(2) The funeral service practitioner and embalmer examinations shall be scheduled no less than twice each year:

(a) Applicants for a funeral service practitioner license shall be required to successfully complete a written examination and receive a score of not less than 75 percent, based on the total number of questions;

(b) Applicants for an embalmer's license shall be required to successfully complete a written examination that will include two sections, funeral service arts and funeral service sciences, and must receive an average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections; and

(c) If the Board deems it necessary, the applicant for an embalmer's license may also be required to pass an examination testing his or her qualifications as to the practical application of his knowledge.

(3) Upon successful completion of the funeral service practitioner's examination, an appropriate license for the current year will be issued to the examinee after fulfilling the apprenticeship and upon payment of the annual license fee prescribed by ORS Chapter 692. An applicant for an embalmer's license may be examined by the Board after first providing evidence of graduation from a funeral service program accredited by the American Board of Funeral Service Education, but shall not receive an embalmer's license until he or she has fulfilled his or her apprenticeship and paid the required fee as prescribed in ORS Chapter 692.

(4) If an applicant for a funeral service practitioner or embalmer license fails to satisfactorily complete the examination, he or she may retake the examination the next time it is given upon payment of the full examination fee. Such fee must be received in the office of the Board at least 14 days before the examination is given.

(5) The examination fee shall not be returned to an examinee once he or she takes the examination.

(6) Test results will be mailed to examinees within 30 days after completion of the examination. Exams are not reviewable by examinee, pursuant to the Public Records Act, ORS Chapter 192.

Stat. Auth.: ORS 692.160, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 692.045, 692.070, 692.130, 692.140, 692.320 & 2015 HB 2471
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0100; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-020-0030
Reciprocal Licensure

(1) An applicant for reciprocal licensure must apply to the Board on the most current form provided by the Board. The application must be accompanied by the following:

(a) The reciprocal fee as prescribed by OAR 830-020-0040;

(b) A certified copy of the applicant's birth certificate;

(c) A certified copy of transcripts from a school accredited by an Association of Schools and Colleges demonstrating completion of an Associate's degree or higher degree (for funeral service practitioner licensure) or proof of passing an accredited course of funeral service education (for embalmer licensure);

(d) A certification from the state(s) the applicant is or was licensed in that includes: length of apprenticeship, if any, examination score, date licensed, status of license at the present time, and whether the applicant's license has ever been suspended or revoked or other disciplinary action taken;

(e) Proof that the applicant is or was licensed and has practiced, respectively, as a funeral service practitioner or an embalmer in another state with substantially similar requirements as identified by the Board for at least one full year before the respective application date; and

(2) An applicant for reciprocal funeral service practitioner license must pass the Board's funeral service practitioner examination as a means of providing satisfactory proof to the Board that the applicant has the requisite qualifications for licensing as a funeral service practitioner in this state. The examination must include questions related to:

(a) Oregon and federal laws, rules and regulations relating to the care, preparation, disposition and transportation of human remains; and survivor death benefits.

(b) Reciprocal applicants for funeral service practitioner license must receive a score of not less than 75 percent, based on the total number of questions, in order to pass the examination. Reciprocal applicants are eligible to take the examination at the regularly scheduled examination dates if their examination application is received at least 14 days prior to the examination date.

(3) Applicants for reciprocal embalmer licensure must show evidence satisfactory to the Board that the applicant has successfully passed the National Board Examination as administered by the Conference of Funeral Service Examining Boards or an equivalent examination written by the Conference of Funeral Service Examining Boards. The examination must include two sections, funeral service arts and funeral service sciences, and the applicant must receive a cumulative average score of at least 75 percent on the sections with not less than 70 percent on either of these two sections. The applicant may be required to also take an exam on applicable Oregon laws.

(4) A license must not be issued to a reciprocal applicant before a complete background check has been performed and Board approval has been received.

Stat. Auth.: ORS 692.160, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 692.140 & 2015 HB 2471
Hist.: MCB 1-1986, f. & ef. 10-21-86; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2009, f. & cert. ef. 7-1-09; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-020-0040
License, Certificate and Registration Fees

(1) Initial application fees:

(a) Funeral establishment, immediate disposition company, crematory, alternative disposition facility or a cemetery that performs more than ten interments annually — $150 (includes first principal) plus $50 for each additional principal;

(b) Cemetery that performs ten or fewer interments annually — an initial fee of $100 and a fee not to exceed $50 for registration of all principals regardless of the total number of principals

(c) Change of principal — $50 per licensed facility;

(d) Trainee (Apprentice) funeral service practitioner or trainee (apprentice) embalmer — $50;

(e) Reciprocal funeral service practitioner or reciprocal embalmer — $160;

(f) Intern Trainee (Apprentice) — $25;

(g) Preneed Salesperson — $150;

(h) Certificate of Removal Registration — $30;

(i) Funeral Service Practitioner — $80 per year;

(j) Embalmer — $80 per year;

(k) Death Care Consultant — $80 per year.

(2) Renewal application fees:

(a) Funeral establishment or immediate disposition company — $350 per year, payable biennially;

(b) Crematory or Alternative Disposition Facility — $100 per year plus $2 per disposition performed during the two calendar years preceding the year in which the current license expires, payable biennially;

(c) Cemetery — $4 per interment performed during the two calendar years preceding the year in which the current license expires up to a maximum of 150 interments or $600 per year, payable biennially; (Cemeteries with ten or fewer interments annually are not required to pay a renewal fee in accordance with ORS 692.275.)

(d) Funeral service practitioner — $80 per year, payable biennially;

(e) Embalmer — $80 per year, payable biennially;

(f) Combination funeral service practitioner/embalmer — $160 per year, payable biennially;

(g) Trainee (Apprentice) funeral service practitioner — $25 per year, payable annually;

(h) Trainee (Apprentice) embalmer — $25 per year, payable annually;

(i) Preneed salesperson — $25 per year, payable biennially;

(j) Death care consultant — $80 per year, payable biennially.

(3) Exam fees:

(a) Funeral service practitioner exam — $100;

(b) Embalmer exam (written or practical) — $130 to $400 (depending on the cost to the Board).

(c) Death care consultant exam — $100.

(4) License, certificate and registration reissue fees:

(a) Transfer of apprenticeship, replacement license, name change or manager change — $25;

(b) Licensed facility location change — $250.

(5) Reinstatement of lapsed license, certificate or registration — $50 each.

(6) Funeral service practitioners, embalmers, and preneed salespersons must renew their licenses on even numbered years. Facilities must renew on odd numbered years.

(7) Fees paid under this section are not refundable or transferable.

(8) Notwithstanding the above, a registrant for the funeral service practitioner examination may notify the Board in writing that he or she is withdrawing the application for the examination and request a refund of the examination fee at any time before the date of the examination. Examination fee refunds will be refunded to the person that paid the examination fee to the board; fees paid by cred-it card will be refunded to the credit card holder, fees paid by money order or cashier's check will be refunded to the applicant.

Stat. Auth.: ORS 692.160, 692.320, 97.931 & 2015 HB 2471

Stats. Implemented: ORS 692.160, 97.931 & 2015 HB 2471

Hist.: SMB 1-1984, f. & ef. 10-22-84; MCB 1-1985(Temp), f. & ef. 7-3-85; MCB 2-1985(Temp), f. & ef. 11-5-85; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0110; MCB 2-1989(Temp), f. 10-2-89, cert. ef. 11-1-89; MCB 3-1989, f. 12-4-89, cert. ef. 12-1-89; MCB 1-1992, f. & cert. ef. 2-11-92; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 3-1993, f. 10-28-93, cert. ef. 11-1-93; MCB 1-1994, f. 6-28-94, cert. ef. 8-1-94; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2001(Temp), f. 12-12-01, cert. ef. 1-1-02 thru 6-29-02; MCB 1-2002, f. 5-30-02, cert. ef. 6-30-02; MCB 1-2004, f. 9-30-04, cert. ef. 11-1-04; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2013, f. 3-25-13, cert. ef. 3-29-13; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-030-0004
Scope of Practice

The purpose of this rule is to establish an acceptable scope of practice for licensed funeral service practitioners, embalmers, and preneed salespersons.

(1) Only a funeral service practitioner or funeral service practitioner trainee (apprentice) shall:

(a) Work directly with at need persons to arrange for the disposition of human remains; and

(b) Coordinate and direct the various tasks associated with performing funeral services for at need persons including but not limited to: taking all vital information on the deceased for the purpose of filing the death certificate; arranging for transportation of the remains; coordinating the services for final disposition; supervising or otherwise controlling the care, preparation, processing and handling of human remains.

(2) Only a registered preneed salesperson or other funeral service licensee shall engage in prearrangement or preconstruction sales.

(3) A preneed funeral service salesperson shall not engage in at need funeral arrangements or sales.

(4) Only a licensed embalmer or embalmer trainee (apprentice) may provide the necessary handling and preparation of human remains, e.g. washing, disinfecting, setting features, embalming, repair and supervising dressing.

Stat. Auth.: ORS 692.320 & 2015 HB 2471

Stats. Implemented: ORS 692.025 & 2015 HB 2471

Hist.: MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

830-030-0090
Standards of Practice

Every licensee or agent of a licensed facility of the Oregon Mortuary and Cemetery Board (Board) must abide by the accepted standards of the Death Care Industry and the minimum standards, including but not limited to the following standards of practice set forth by the Board. Violations of the following may be cause for Board action.

(1) Every licensee or agent of a licensed facility must:

(a) Comply with Oregon Revised Statutes relating to death care in ORS Chapters 97, 432 and 692; and comply with the Oregon Public Health Laws;

(b) Implement and follow through with contractual arrangements with the person with the legal right to control final disposition;

(c) Assign persons to perform functions for which they are licensed and which are within their scope of practice/scope of duties;

(d) Supervise trainees (apprentices) and unlicensed persons to whom tasks regulated by this Board are assigned;

(e) Report conduct violating paragraphs (1)(a) by any death care industry licensee to the Board or the appropriate law enforcement agency;

(f) Respect the dignity and rights of clients, regardless of social or economic status, age, race, religion, gender, gender identity, sexual orientation, national origin, nature of health problems or disability; and

(g) Respect the dignity of dead human remains by appropriate handling, including but not limited to, transporting, refrigerating, embalming, dressing or performing final disposition.

(2) Principals are responsible for the actions of employees related to the operation of a licensed facility;

(3) A licensed embalmer or embalmer trainee (apprentice) must supervise and be responsible for the required sanitizing of the preparation room or holding room including, but not limited to, embalming tables, work surfaces, sinks, floors, instruments, and disposal of contaminated waste. A preparation room or holding room must be sanitized after the use of the room.

(4) Unacceptable conduct by a licensee or agent of a licensed facility includes:

(a) Abusing a corpse, as defined in ORS 166.085 and 166.087;

(b) Abusing a client. The definition of abuse includes, but is not limited to, causing physical or emotional discomfort or intimidating, threatening or harassing a client;

(c) Failing to report actual or suspected incidents of client or corpse abuse through the proper channels in the work place and to the Board or appropriate law enforcement agencies;

(d) Using the death care industry practitioner/client relationship to exploit the client by gaining property or items of value from the client for personal gain beyond the compensation for services;

(e) Aiding, abetting, or assisting any individual to violate or circumvent any law, rule or regulation intended to guide the conduct of the death care industry;

(f) Failing to perform death care services for the living or the deceased without discrimination on the basis of social or economic status, age, race, religion, gender, gender identity, sexual orientation, national origin, nature of health problems or disability;

(g) Inaccurate or incomplete record keeping as required by the Board;

(h) Providing false information on facility records including, but not limited to, filling in another person's omissions without consent, signing another person's name or on their behalf without authority, recording services or merchandise not provided or that a party did not agree to, or falsifying data;

(i) Altering a facility record including but not limited to changing the words, letters, or numbers from the original document except in the case of a contract modified in accord with the terms of the contract;

(j) Destroying any document related to a death care service that must be preserved by law; or

(k) Directing another person to modify, alter or destroy any document related to death care without legal authority to do so.

(5) No licensee may:

(a) Practice without an appropriate Oregon license/certificate or registration;

(b) Allow another person to use one's license, certificate or registration;

(c) Use another's license, certificate or registration;

(d) Make false or misleading statements or use fraud or misrepresentation in communications with the Board.

(e) Disclose the contents of the licensure examination or solicit, accept or compile information regarding the contents of the examination, before, during or after its administration.

(f) Fail to provide the Board with requested documents or information within the Board's jurisdiction;

(g) Fail to cooperate or answer truthfully or completely inquiries regarding matters within the Board's jurisdiction; or

(h) Have an impairment as defined in ORS 676.303.

Stat. Auth.: ORS 692.160, 692.320 & 2015 HB 2471
Stats. Implemented: ORS 692.320 & 2015 HB 2471
Hist.: FDB 13, f. 9-9-74, ef. 3-1-75; SMB 1-1984, f. & ef. 10-22-84; MCB 1-1986, f. & ef. 10-21-86; Renumbered from 830-010-0170; MCB 1-1993, f. 4-14-93, cert. ef. 4-16-93; MCB 1-1997, f. 6-18-97, cert. ef. 7-1-97; MCB 1-1998, f. & cert. ef. 6-22-98; MCB 1-2010(Temp), f. & cert. ef. 4-1-10 thru 9-27-10; MCB 2-2010, f. 9-23-10, cert. ef. 9-24-10; MCB 1-2011, f. 7-29-11, cert. ef. 8-1-11; MCB 1-2012, f. 3-27-12, cert. ef. 4-1-12; MCB 1-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Relating to Temporary Operating Permit for a Cemetery that does not hold a valid license
Adm. Order No.: MCB 2-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 830-011-0065
Subject: Permits State Mortuary and Cemetery Board to issue temporary permit to carry out existing prearrangement sales contracts to which cemetery is party and to effect rights of plot owners
Rules Coordinator: Chad Dresselhaus—(971) 673-1503

830-011-0065
Temporary Burial Permit

(1) The Oregon Mortuary and Cemetery Board (Board) may grant a temporary burial permit authorizing interment in a cemetery that does not hold a current, valid license or registration for the sole purpose of facilitating an at-need burial of non-cremated remains in accordance with 2015 HB 3242, and only when the normal procedures for licensing or registration of a cemetery authority cannot be completed before burial must take place.

(2) The burial permit request must be made on the most current application form provided by the Board and must include copies of all pre-qualifying pre-arrangement documents as well as evidence of the verification of plot location to be considered. A permit will not be granted when pre-arrangements or plot location cannot be produced or verified or when such documents are disputed.

(a) Applicants must be directly associated with the cemetery authority, with a licensed party to the pre-arrangements, or with another qualifying person in accordance with 2015 HB 3242, and

(b) Must be working on behalf of person(s) requesting burial.

(c) The application must also include the specific details of the planned burial and evidence that it will be performed by persons qualified to do so, and

(d) All paperwork will be kept with the permit that was issued for the burial and filed at the OMCB with the copy of the permit until a permanent place can be decided upon. If the cemetery authority is not a party to the interment, the Board will maintain the records and provide to the appropriate party identified by the Board on the permit.

(3) Permit holder shall only be responsible for any issues related to the permitted interment and not for any pre-existing conditions, contract terms or document errors made by the Cemetery Authority, nor for the condition of and continuing maintenance of the plot after closing.

(4) Sections (1) and (2) shall be repealed on January 1, 2018.

Stat. Auth.: 2015 HB 3242
Stats. Implemented: 2015 HB 3242
Hist.: MCB 2-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Relating to Indigent Disposition Program
Adm. Order No.: MCB 3-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 830-040-0095
Rules Ren. & Amend: 333-012-0500 to 830-040-0090
Subject: To implement statutory transfer of program to OMCB
Rules Coordinator: Chad Dresselhaus—(971) 673-1503

830-040-0090
Reimbursement for Cost of Services Performed and Supplies Provided for Disposition of Unclaimed Indigent Bodies

(1) A licensed funeral establishment, hereafter referred to as claimant, shall submit to the Oregon Mortuary & Cemetery Board (OMCB) an itemized statement of expenses for services performed and supplies provided for disposition of unclaimed indigent bodies. For the purpose of this section, "funeral establishment" also includes immediate disposition companies and persons acting as funeral service practitioners as defined in ORS432.

(2) Each itemized statement shall be accompanied by the claimant's certification that services for which reimbursement is claimed were in accordance with stipulations in ORS 97.170.

(3) The OMCB shall make the Form FS 23-154 or similar document containing all pertinent information available at its office and on its website.

(4) The OMCB shall disburse funds to eligible claimants upon receipt and verification of a claim.

(a) In accordance with ORS 413.825, the maximum reimbursement will equal the invoice amount or the currently published annual reimbursement rate, whichever is less; and

(b) The claimant must be current on all invoiced filing fees.

(c) If the fund amount at the close of the accounting period is insufficient to pay the eligible claims for the month, the OMCB pay the claims using the collected funds referenced in ORS 413.825(1).

(d) If the fund amount at the close of the accounting period exceeds the total amount of claimants' itemized statements or the maximum per claim, the remaining funds will carry forward to the next accounting period and be made available to pay future claims up to the allowable maximum reimbursement or to repay the funds borrowed from the OMCB.

(5) Fraudulent submission of Form 23-154 or similar document will result in penalties set forth in ORS 692.180.

(6) An eligible reimbursement claim must include all expenses related to the case, and must include documentation of any reimbursement, in all or part, by any entity or person already made at time of filing. If a claimant receives payment from any other entity or person after a claim is filed, the claimant must:

(a) Amend the claim, if not yet paid;

(b) If already paid, the claimant must submit a reimbursement form and accompanying payment to the fund within 90 days of receiving any amount from any other entity or person.

(7) In accordance with ORS 413.825(2), the OMCB shall set the annual reimbursement rate at the beginning of each biennium with an annual adjustment based on historical data and mortality projections. The reimbursement rate must be published by the OMCB on or before June 30, which becomes effective July 1 of each year.

Stat. Auth.: 2015 HB 3243
Stats. Implemented: 2015 HB 3243
HD 14-1993(Temp), f. 10-14-93, cert. ef. 10-15-93; HD 2-1994, f. & cert. ef. 1-12-94; PH 7-2009(Temp), f. & cert. ef. 7-20-09 thru 1-15-10; Administrative correction 1-25-10; PH 1-2010, f. & cert. ef. 1-14-10; Renumbered from 333-012-0500 by MCB 3-2015, f. 12-31-15, cert. ef. 1-1-16

830-040-0095
Lists Maintained by the Oregon Mortuary & Cemetery Board

(1) Pursuant to ORS 97.190, the Board will maintain a list of person or persons authorized to grant consent for an exception to the moratorium on post mortem examination of bodies under ORS 97.170, as well as instructions for requesting the exception.

(2) Pursuit to ORS 97.170(2) and (3)(G)(b), the Board will maintain a list of institutions that may accept or process bodies for education or research purposes. The Board will also provide information on how to con-

tact these institutions. The Board may alternately name a person or persons to whom maintaining this list is delegated.

Stat. Auth.: 2015 HB 3243
Stats. Implemented: 2015 HB 3243
Hist.: MCB 3-2015, f. 12-31-15, cert. ef. 1-1-16

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Oregon Board of Naturopathic Medicine
Chapter 850

Rule Caption: Amend 850-060-0226 to include recommended changes by the Formulary Council
Adm. Order No.: OBNM 6-2015
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 12-30-15
Notice Publication Date: 11-1-2015
Rules Amended: 850-060-0226
Subject: (8) Remove "Selective Serotonin Agonists";
(19) Change "Hormone and Synthetic Substitutes" to "Endocrine Metabolic Agents"; Add "Corticosteroids" and "Prostagladin"
(21) Remove "except for Mifepristone" and add "not to be used as an abortifacient".
(25) Add "and Nutrients";
(26) Delete limiting language after Biologic Response Modifiers; Add "Hyaluronic Acid" and "Oxygen"; and make some spelling corrections.
Rules Coordinator: Anne Walsh—(971) 673-0193

850-060-0226
Formulary Compendium Classifications

The Formulary Council has approved the following pharmacologic-therapeutic classifications in addition to drugs previously approved by the Formulary Council and listed in 850-060-0225. This listing does not supersede the education and training requirement established in 850-060-0212 for administration of IV agents. The Formulary Council may consider new agents, substances and pharmacologic-therapeutic classifications for addition to this list.

(1) Antihistamine Drugs;
(a) First Generation Antihistamine Drugs;
(A) Ethanolamine Derivatives;
(B) Ethylenediamine Derivatives;
(C) Phenothiazine Derivatives;
(D) Piperazine Derivatives;
(E) Propylamine Derivatives;
(F) Miscellaneous Derivatives;
(b) Second Generation Antihistamines.
(2) Anti-Infective Agents;
(a) Antihelmintics;
(b) Antibacterials;
(A) Aminoglycosides;
(B) Cephalosporins;
(i) First Generation Cephalosporins;
(ii) Second Generation Cephalosporins;
(iii) Third Generation Cephalosporins;
(iv) Fourth Generation Cephalosporins.
(C) Miscellaneous ß-Lactams;
(i) Carbacephems;
(ii) Carbapenems;
(iii) Cephamycins;
(iv) Monobactams.
(D) Chloramphenicol;
(E) Macrolides.
(i) Erythromycins;
(ii) Ketolides;
(iii) Other Macrolides.
(F) Penicillins;
(i) Natural Penicillins;
(ii) Aminopenicillins;
(iii) Penicillinase-resistant Penicillins;
(iv) Extended-spectrum Penicillins.
(G) Quinolones;
(H) Sulfonamides;
(I) Tetracyclines: Glycylcyclines;
(J) Antibacterials, Miscellaneous.
(i) Aminocyclitols;
(ii) Bacitracins;
(iii) Cyclic Lipopeptides;
(iv) Glycopeptides;
(v) Lincomycins;
(vi) Oxazolidinones;
(vii) Polymyxins;
(viii) Rifamycins;
(ix) Streptogramins;
(c) Antifungals;
(A) Allylamines;
(B) Azoles;
(C) Echinocandins;
(D) Polyenes;
(E) Pyrimidines;
(F) Antifungals, Miscellaneous.
(d) Antimycobacterials;
(A) Antituberculosis Agents;
(B) Antimycobacterials, Miscellaneous.
(e) Antivirals;
(A) Adamantanes;
(B) Antiretrovirals;
(i) HIV Fusion Inhibitors;
(ii) HIV Protease Inhibitors;
(iii) Integrase Inhibitors;
(iv) Nonnucleoside Reverse Transcriptase Inhibitors;
(v) Nucleoside and Nucleotide Reverse Transcriptase Inhibitors
(C) Interferons;
(D) Monoclonal Antibodies;
(E) Neuraminidase Inhibitors;
(F) Nucleosides and Nucleotides;
(G) Antivirals, Miscellaneous;
(f) Antiprotozoals;
(A) Amebicides;
(B) Antimalarials;
(C) Antiprotozoals, Miscellaneous.
(3) Antineoplastic Agents (oral and topical only) limited to the following:
(a) 5FU;
(b) Anastrozole;
(c) Letrozole;
(d) Mechlorethamine;
(e) Megestrol;
(f) Mercaptopurine;
(g) Methotrexate;
(h) Tamoxifen;
(i) Tretinoin.
(4) Autonomic Drugs;
(a) Parasympathomimetic (Cholinergic) Agents;
(b) Anticholinergic Agents: Antimuscarinics/Antispasmodics;
(c) Sympathomimetic (Adrenergic) Agents;
(A) a-Adrenergic Agonists;
(B) ß- Adrenergic Agonists;
(i) Non-selective ß- Adrenergic Agonists;
(ii) Selective ß1- Adrenergic Agonists;
(iii) Selective ß2- Adrenergic Agonists;
(C) a-And ß-Adrenergic Agonists;
(d) Sympatholytic (Adrenergic Blocking) Agents;
(e) Skeletal Muscle Relaxants;
(A) Centrally Acting Skeletal Muscle Relaxants;
(B) Direct-acting Skeletal Muscle Relaxants;
(C) GABA-derivative Skeletal Muscle Relaxants;
(D) Neuromuscular Blocking Agents;
(E) Skeletal Muscle Relaxants, Miscellaneous.
(f) Autonomic Drugs, Miscellaneous.
(5) Blood Derivatives.
(6) Blood Formation, Coagulation, and Thrombosis;
(a) Antianemia Drugs: Iron Preparations;
(b) Antithrombotic Agents;
(A) Anticoagulants;
(i) Coumarin Derivatives;
(ii) Direct Thrombin Inhibitors;
(iii) Heparins;
(iv) Anticoagulants, Miscellaneous.
(B) Platelet-reducing Agents;
(C) Platelet-aggregation Inhibitors;
(D) Thrombolytic Agents;

(c) Hematopoietic Agents;
(d) Hemorrheologic Agents;
(e) Antihemorrhagic Agents;
(A) Antiheparin Agents;
(B) Hemostatics.
(7) Cardiovascular Drugs;
(a) Cardiac Drugs;
(A) Antiarrhythmic Agents;
(i) Class Ia Antiarrhythmics;
(ii) Class Ib Antiarrhythmics;
(iii) Class Ic Antiarrhythmics;
(iv) Class III Antiarrhythmics;
(v) Class IV Antiarrhythmics.
(B) Cardiotonic Agents;
(C) Cardiac Drugs, Miscellaneous.
(b) Antilipemic Agents;
(A) Bile Acid Sequestrants;
(B) Cholesterol Absorption Inhibitors;
(C) Fibric Acid Derivatives;
(D) HMG-CoA Reductase Inhibitors;
(E) Antilipemic Agents, Miscellaneous.
(c) Hypotensive Agents;
(A) Calcium-Channel Blocking Agents;
(B) Central a-Agonists;
(C) Direct Vasodilators;
(D) Peripheral Adrenergic Inhibitors.
(d) Vasodilating Agents;
(A) Nitrates and Nitrites;
(B) Phosphodiesterase Inhibitors;
(C) Vasodilating Agents, Miscellaneous.
(e) Sclerosing Agents;
(f) a-Adrenergic Blocking Agents;
(g) ß-Adrenergic Blocking Agents;
(h) Calcium-Channel Blocking Agents;
(A) Dihydropyridines;
(B) Calcium-Channel Blocking Agents, Miscellaneous;
(i) Renin-Angiotensin-Aldosterone System Inhibitors;
(A) Angiotensin-Converting Enzyme Inhibitors;
(B) Angiotensin II Receptor Antagonists;
(C) Mineralocorticoid (Aldosterone) Receptor Antagonists;
(D) Renin Inhibitors.
(8) Central Nervous System Agents;
(a) Analgesics and Antipyretics;
(A) Nonsteroidal Anti-inflammatory Agents;
(i) Cyclooxygenase-2 (COX-2) Inhibitors;
(ii) Salicylates;
(iii) Other Nonsteroidal Anti-inflammatory Agents;
(B) Opiate Agonists;
(C) Opiate Partial Agonists;
(D) Analgesics and Antipyretics, Miscellaneous.
(b) Opiate Antagonists;
(c) Anticonvulsants;
(A) Benzodiazepines;
(B) Hydantoins;
(C) Succinimides;
(D) Anticonvulsants, Miscellaneous.
(d) Psychotherapeutic Agents;
(A) Antidepressants;
(i) Monoamine Oxidase Inhibitors;
(ii) Selective Serotonin- and Norepinephrine-reuptake Inhibitors;
(iii) Selective Serotonin- Reuptake Inhibitors;
(iv) Serotonin Modulators;
(v) Tricyclics and Other Norepinephrine-reuptake Inhibitors.
(vi) Antidepressants, Miscellaneous.
(B) Antipsychotics.
(e) Anorexigenic Agents and Respiratory and Cerebral Stimulants.
(A) Amphetamines.
(B) Anorexigenic Agents and Respiratory and Cerebral Stimulants, Miscellaneous.
(f) Anxiolytics, Sedatives, and Hypnotics, does not include Barbiturates;
(A) Benzodiazepines;
(B)(i) Anxiolytics, Sedatives, and Hypnotics; Miscellaneous;
(ii) Nitrous oxide;
(g) Antimanic Agents;
(h) Antimigraine Agents: Selective Serotonin Agonists;
(i) Antiparkinsonian Agents;
(A) Adamantanes;
(B) Anticholinergic Agents;
(C) Catechol-O-Methyltransferase (COMT) Inhibitors;
(D) Dopamine Precursors;
(E) Dopamine Receptor Agonists;
(i) Ergot-derivative Dopamine Receptor Agonists;
(ii) Non-ergot-derivative Dopamine Receptor Agonists;
(F) Monoamine Oxidase B Inhibitors;
(j) Central Nervous System Agents, Miscellaneous.
(9) Contraceptives (foams, devices).
(10) Diagnostic Agents.
(11) Disinfectants (for Agents used on objects other than skin).
(12) Electrolytic, Caloric, and Water Balance;
(a) Acidifying Agents;
(b) Alkalinizing Agents;
(c) Ammonia Detoxicants;
(d) Replacements Preparations;
(e) Ion-Removing Agents;
(A) Calcium-removing Agents;
(B) Potassium-removing Agents;
(C) Phosphate-removing Agents;
(D) Other Ion-removing Agents;
(f) Caloric Agents;
(g) Diuretics;
(A) Loop Diuretics;
(B) Osmotic Diuretics;
(C) Potassium-sparing Diuretics;
(D) Thiazide Diuretics;
(E) Thiazide-like Diuretics;
(F) Diuretics, Miscellaneous;
(h) Irrigation Solutions;
(i) Uricosuric Agents.
(13) Enzymes.
(14) Respiratory Tract Agents;
(a) Antihistamines;
(b) Antitussives;
(c) Anti-inflammatory Agents;
(A) Leukotriene Modifiers;
(B) Mast-cell Stabilizers;
(d) Expectorants;
(e) Pulmonary Surfactants;
(f) Respiratory Agents, Miscellaneous.
(15) Eye, Ear, Nose, and Throat (EENT) Preparations;
(a) Antiallergic Agents;
(b) Anti-infectives;
(A) Antibacterials;
(B) Antifungals;
(C) Antivirals;
(D) Anti-infectives, Miscellaneous.
(c) Anti-inflammatory Agents;
(A) Corticosteroids;
(B) Nonsteroidal Anti-inflammatory Agents;
(C) Anti-inflammatory Agents, Miscellaneous.
(d) Local Anesthetics;
(e) Mydriatics;
(f) Mouthwashes and Gargles;
(g) Vasoconstrictors;
(h) Antiglaucoma Agents;
(A) a-Adrenergic Agonists;
(B) ß-Adrenergic Agents;
(C) Carbonic Anhydrase Inhibitors;
(D) Miotics;
(E) Prostaglandin Analogs;
(i) EENT Drugs, Miscellaneous.
(16) Gastrointestinal Drugs;
(a) Antacids and Adsorbents;
(b) Antidiarrhea Agents;
(c) Antiflatulents;
(d) Cathartics and Laxatives;
(e) Cholelitholytic Agents;
(f) Emetics;
(g) Antiemetics;
(A) Antihistamines;

(B) 5-HT3 Receptor Antagonists;
(C) Antiemetics, Miscellaneous.
(h) Antiulcer Agents and Acid Suppressants;
(A) Histamine H2-Antogonists;
(B) Prostaglandins;
(C) Protectants;
(D) Proton-pump Inhibitors;
(i) Prokinetic Agents;
(j) Anti-inflammatory Agents;
(k) GI Drugs, Miscellaneous.
(17) Gold Compounds.
(18) Heavy Metal Antagonists.
NOTE: IV administration requires education and training compliance with 850-060-0212.
(19) Endocrine Metabolic Agents;
(a) Adrenals;
(b) Androgens;
(c) Contraceptives;
(d) Corticosteroids;
(e) Estrogens and Antiestrogens;
(A) Estrogens;
(B) Estrogen Agonists-Antiagonists.
(f) Gonadotropins;
(g) Antidiabetic Agents;
(A) a-Glucosidase Inhibitors;
(B) Amylinomimetics;
(C) Biguanides;
(D) Dipeptidyl Peptidase (DDP-4) Inhibitors;
(E) Incretin Mimetics;
(F) Insulins;
(G) Meglitinides;
(H) Sulfonylureas;
(I) Thiazolidinediones;
(J) Miscellaneous.
(h) Antihypoglycemic Agents: Glycogenolytic Agents;
(i) Parathyroid;
(j) Pituitary;
(k) Somatotropin Agonists and Antagonists;
(A) Somatotropin Agonists;
(B) Somatotropin Antagonists;
(l) Progestins;
(m) Prostagladin;
(n) Thyroid and Antithyroid Agents;
(A) Thyroid Agents;
(B) Antithyroid Agents.
(20) Local Anesthetics.
(21) Oxytocics, not to be used as an abortifacient.
(22) Serums, Toxoids, and Vaccines;
(a) Serums;
(b) Toxoids;
(c) Vaccines.
(23) Skin and Mucous Membrane Agents;
(a) Anti-infectives;
(A) Antibacterials;
(B) Antivirals;
(C) Antifungals;
(i) Allylamines;
(ii) Azoles;
(iii) Benzylamines;
(iv) Hydroxypyridones;
(v) Polyenes;
(vi) Thiocarbamates;
(vii) Antifungals, Miscellaneous.
(D) Scabicides and Pediculicides;
(E) Local Anti-infectives, Miscellaneous.
(b) Anti-inflammatory Agents;
(c) Antipruritics and Local Anesthetics;
(d) Astringents;
(e) Cell Stimulants and Proliferants;
(f) Detergents;
(g) Emollients, Demulcents, and Protectants;
(h) Keratolytic Agents;
(i) Keratoplastic Agents;
(j) Depigmenting and Pigmenting Agents;
(A) Depigmenting Agents;
(B) Pigmenting Agents;
(k) Sunscreen Agents;
(l) Skin and Mucous Membrane Agents, Miscellaneous.
(24) Smooth Muscle Relaxants;
(a) Gastrointestinal Smooth Muscle Relaxants;
(b) Genitourinary Smooth Muscle Relaxants;
(c) Respiratory Smooth Muscle Relaxants.
(25) Vitamins, Minerals and Nutrients.
(26) Miscellaneous Therapeutic Agents;
(a) Alcohol Deterrents limited to the following:
(A) Acamprosate;
(B) Disulfiram;
(C) Naltrexone.
(b) 5-a Reductase Inhibitors;
(c) Antidotes;
(d) Antigout Agents;
(e) Biologic Response Modifiers;
(f) Bone Resorption Inhibitors;
(g) Cariostatic Agents;
(h) Complement Inhibitors;
(i) Disease-Modifying Antirheumatic Agents;
(j) Gonadotropin-releasing Hormone Antagonists;
(k) Hyaluronic Acid;
(l) Immunosuppressive Agents;
(m) Oxygen;
(n) Other Miscellaneous Therapeutic Agents limited to the following:
(A) Alfuzosin Hydrochloride;
(B) Drotrecogin Alfa (Activated);
(C) Lanreoytide Acetate;
(D) Rilonacept;
(E) Sapropterin Dihydrochloride;
(F) Tamsulosin Hydrochloride.
Stat. Auth.: ORS 685.125
Stats. Implemented: ORS 685.145
Hist.: BNE 1-2002, f. & cert. ef. 2-19-02; BNE 4-2002, f. & cert. ef. 8-8-02; BNE 3-2003, f. & cert. ef. 6-9-03; BNE 5-2003, f. & cert. ef. 12-5-03; BNE 5-2004, f. & cert. ef. 6-10-04; Renumbered from 850-010-0226, BNE 8-2005, f. & cert. ef. 10-27-05; BNE 9-2005, f. & cert. ef 12-12-05; BNE 4-2006, f. & cert. ef. 12-11-06; BNE 3-2007, f. & cert. ef. 6-12-07; BNE 1-2008, f. & cert. ef. 2-19-08; BNE 2-2008, f. & cert. ef. 3-21-08; BNE 6-2008, f. & cert. ef. 6-11-08; BNE 7-2008, f. & cert. ef. 12-8-08; BNE 2-2009, f. & cert. ef. 6-17-09; BNE 7-2009, f. 12-14-09, cert. ef. 1-1-10; OBNM 5-2010, f. & cert. ef. 6-30-10; OBNM 7-2010, f. & cert. ef. 12-13-10; OBNM 2-2011, f. & cert. ef. 4-12-11; OBNM 4-2011, f. & cert. ef. 6-15-11; OBNM 3-2012, f. & cert. ef. 6-15-12; OBNM 1-2014, f. & cert. ef. 4-9-14; OBNM 3-2014, f. & cert. ef. 7-10-14; OBNM 5-2015, f. & cert. ef. 8-28-15; OBNM 6-2015, f. & cert. ef. 12-30-15

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Rule Caption: Increase Board member compensation in OAR 850-005-0190
Adm. Order No.: OBNM 7-2015
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 12-30-15
Notice Publication Date: 11-1-2015
Rules Amended: 850-005-0190
Subject: Increase compensation to Board members from $100 to $200 for a full day of service, and from $30 to $60 for less than three of hours of service per day
Rules Coordinator: Anne Walsh—(971) 673-0193

850-005-0190
Board Member Compensation

(1) Board members of the Oregon Board of Naturopathic Medicine, who are authorized by law to receive compensation for time spent in the performance of their official duties, will receive a payment of $200 for each day or portion thereof during which the member is actually engaged in the performance of official duties. If the hours engaged in the official duty is less than 3 hours, payment will be $60 for the day. This compensation amount will be in addition to any eligible reimbursement of travel expenses.

(2) Board members and employees of the Board are authorized to receive actual and necessary travel or other expenses actually incurred in the performance of their official duties as determined by the Board. Mileage reimbursement will be provided at the rate established by the Internal Revenue Service for privately owned vehicles.

(3) No Board member will be required to accept compensation or reimbursement of travel expenses while performing their official duties as a Board member.

Stat. Auth.: ORS 292 & 182
Stats. Implemented: ORS 182.466(3) & 2009 OL Ch. 535 (HB 2058)
Hist.: OBNM 2-2010, f. & cert. ef. 5-3-10; OBNM 7-2015, f. & cert. ef. 12-30-15

Oregon Business Development Department
Chapter 123

Rule Caption: These rules relate to the Certification Office of Business Inclusion and Diversity (COBID).
Adm. Order No.: OBDD 1-2016
Filed with Sec. of State: 1-5-2016
Certified to be Effective: 1-5-16
Notice Publication Date: 11-1-2015
Rules Adopted: 123-200-1210, 123-200-1220, 123-200-1230, 123-200-1240, 123-200-2210
Rules Amended: 123-200-1000, 123-200-1100, 123-200-1300, 123-200-1400, 123-200-1500, 123-200-1600, 123-200-1700, 123-200-1800, 123-200-1900, 123-200-2000, 123-200-2200
Rules Repealed: 123-200-1200
Rules Ren. & Amend: 123-200-2100 to 123-200-2300
Subject: During the 2015 Legislative Session, three bills passed affecting the Office of Minority, Woman, and Emerging Small Business (OMWESB). Because of this legislation, the Oregon Administrative Rules related to certification also changes. The statutes and rules will rename OMWESB to the Certification Office for Business Inclusion and Diversity (COBID), add a Service Disabled Veteran certification, define roles and responsibilities between COBID and public contracting agencies, and incorporate various other amendments, adoptions, and renumbering to clarify the rules.
Rules Coordinator: Mindee Sublette—(503) 986-0036

123-200-1000
Purpose

(1) The purpose of OAR 123-200-1000 to 123-200-2200 is to adopt a standard application form and procedure designed to provide complete documentation for certification of businesses as minority, woman, or service-disabled veteran owned business or an Emerging Small Business and to adopt a procedure for handling complaints, investigations, and issuing sanctions.

(2) The Certification Office for Business Inclusion and Diversity (COBID) is the sole certification agency for the State of Oregon and all political subdivisions. To the extent there is any reference to the Office of Minority, Women, and Emerging Small Business from the implementation of these rules forward, all references defer to the agency's new name, COBID.

(3) The COBID shall certify Minority Business Enterprises (MBE), Woman Business Enterprises (WBE), and businesses owned by service-disabled veterans (SDV) under the State of Oregon certification program based on ORS 200.055. The COBID shall also certify Emerging Small Businesses (ESB) under the State of Oregon certification program based on ORS 200.170. Any public contracting agency shall consider an enterprise certified by the COBID as eligible to participate in the certification programs pursuant to these rules in the State of Oregon as defined in ORS 279.011(5).

(4) Certified firms are eligible to participate on state funded projects to meet commitment requirements. Any certified firm is eligible to participate in private or non-state funded projects.

(5) These rules also cover publication of a directory, ineligibility complaints, and representation of the COBID in contested case hearings.

(6) In making a determination as to whether a firm qualifies for certification, in addition to the rules contained herein, the COBID defers to the Code of Federal Regulations 49 CFR part 26.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055, ORS 200.170, ORS 279.011
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0005, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1100
Definitions

As used in these rules, the following terms shall have the following definitions, unless the context requires otherwise:

(1) "Agency" means the Oregon Business Development Department.

(2) "COBID" means the Certification Office for Business Inclusion and Diversity in the Oregon Business Development Department.

(3) "Commercially Useful Function" or "CUF" means function the firm performs when it is responsible for execution of the work of the contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The firm must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. 49 CFR § 26.55(c)(1) (e-CFR 2015 Edition)

(4) "Contribution" means a real and substantial contribution of money, tangible personal assets, and expertise to acquire ownership interest in the firm. A contribution is not a promise to contribute, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee.

(5) "Control" or "controlled" means that operational and managerial control of all aspects of the business is true, real, and exercised by one or more socially disadvantaged individual(s) as further defined in 49 CFR § 26.71 (2013 Edition).

(6) "Disadvantaged Business Enterprise" or "DBE" means a business that meets the eligibility standards for participation in United States Department of Transportation (USDOT) federally-funded projects set out in 49 CFR parts 23 and 26 (2013 Edition).

(7) "Emerging Small Business" or "ESB" means an independent business or firm that meets the requirements as defined under OAR 123-200-1600.

(8) "Independence" or "Independent" means the business is not dependent upon any non-disadvantaged, non-minority or non-woman owned firm.

(9) "Management Control" or "Management" means that the applicant has responsibility for the critical areas of business operations and has the demonstrated ability to make independent and unilateral business decisions needed to guide the future of the business.

(10)"Minority" means a person who is a citizen or lawful permanent resident of the United States and who is one of the persons described in (a) through (f) below.

(a) Black American includes persons having origins in any of the Black racial groups of Africa;

(b) Hispanic American includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(c) Native American includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(d) Asian-Pacific American includes persons whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(e) Subcontinent Asian Americans includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;

(f) Any additional groups whose members are designated as socially disadvantaged by the Small Business Administration and/or as designated under 49 CFR Part 26 (2013 Edition).

(g) Other minority group membership as established by the applicant. Membership is based on evidence provided by the applicant to support the applicant's claim he or she is a member of a minority group and the particular minority community recognizes the individual to be a member of the community. It is in COBID's discretion to determine if the applicant's claim is valid. If the minority community does not exist in Oregon, the burden of proof shifts to the applicant to prove he or she is a socially and economically disadvantaged individual.

(11) "Minority Business Enterprise" or "MBE" means a business owned and operated by a minority who meets the eligibility standards set out in OAR 123-200-1210 through 123-200- 1240. For the purposes of the certification programs, the rules recognize women as a separate group and not as a "minority" group.

(12) "Ownership" or "Owned" has the meaning set out in 49 CFR § 26.69 (e-CFR 2015 Edition).

(13) "Public agency" or "agency" means every government officer, board, commission, department, institution, branch or agency of the government, whose costs are paid wholly or in part from funds held in the federal, state, county, or city treasury.

(14) "Principal place of business" means the place where the firm directs, controls, and coordinates its primary, high-level business activities; the address the firm uses to file Federal income taxes. If the firm uses a P.O. Box, the COBID may request additional documentation to verify location.

(15) "Service Disabled Veteran" or "SDV" means a veteran who possesses either a disability rating letter issued by the United States Department of Veterans Affairs, establishing a service-connected rating

between 0 and 100 percent, or a disability determination from the United States Department of Defense. 38 CFR § 74.1 (e-CFR 2015 Edition)

(16) "Small Business" means a small business as defined pursuant to 13 CFR part 121 (e-CFR 2015 Edition). A small business shall not include any concern or group of concerns controlled by the same socially disadvantaged individual or individuals that have average annual gross receipts over the previous three fiscal years (including its affiliates) that exceed the cap as established yearly by the Small Business Administration (SBA).

(a) Firms seeking certification must also meet the business and NAICS size standards set yearly by the SBA.

(b) The COBID will utilize federal tax information, submitted by the applicant along with new applications, No Change Statements, and certification review applications, to determine annual gross receipts for the business.

(17) "Socially Disadvantaged Individuals" means individuals who are minorities, women, service disabled veterans or any other individuals found to be disadvantaged by the SBA pursuant to Section 8(a)(5) of the Small Business Act and has the meaning set out in 49 CFR § 26.67 (e-CFR 2015 Edition).

(18) "Timely notice" as used in ORS 200.035, shall mean at the time the state agency publicly releases the contract and bid request solicitations.

(19) "Woman Business Enterprise" or "WBE" means a business owned and operated by a woman who meets the eligibility standards set out in OAR 123-200-1210 through 123-200-1240.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 200.005
Stats. Implemented: ORS 200.005
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0010, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1210
Determination of Socially and Economically Disadvantaged

(1) It is a rebuttable presumption that minorities, women, and service-disabled veterans are socially and economically disadvantaged.

(2) The COBID may also determine on a case-by-case basis other individuals who are socially and economically disadvantaged. These individuals claiming disadvantaged status are required to submit a socially and economically Disadvantaged Questionnaire administered by COBID.

(3) Socially disadvantaged individuals are people subject to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to individual qualities.

(a) The social disadvantage must stem from the individual's color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control.

(b) The applicant must demonstrate:

(A) He or she personally suffered the disadvantage because of treatment in the United States; and

(B) The disadvantage was chronic, long-standing, and substantial, and was not fleeting or insignificant.

(4) Social disadvantage does not include factors common to small business.

Stat. Auth.: ORS 200.005 & 200.055
Stats. Implemented: ORS 200.005 & 200.055
Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1220
Determination of Ownership

(1) In determining whether the socially disadvantaged individual(s) in a firm owns the firm, the COBID must consider all the facts in record viewed as a whole.

(2) One or more socially disadvantaged individuals must own at least 51% of the business. COBID will apply the standards a criteria for ownership as set out in 49 CFR § 26.69 (e-CFR 2015 Edition).

(a) In the case of a corporation, such individual(s) must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(b) In the case of a partnership, the socially disadvantaged individual(s) must own 51 percent of each class of partnership interest. The ownership must also reflect in the firm's partnership agreement.

(3) In the case of a limited liability company, the socially disadvantaged individual(s) must own at least 51 percent of each class of member interest.

(4) If a firm is owned equally (i.e., 50/50) by a combination of socially or economically disadvantaged individuals, the COBID will determine whether a firm is certified as a MBE, WBE, or SDV based on which individual possesses overall management and control of the firm. Evidence in support of management and control may include one or more of the following:

(a) Professional licensing as generally required by the industry (e.g., engineer, architect, plumber, electrician, landscape architect, etc.)

(b) Control of day-to-day operations of the firm

(c) Position held in the firm

(d) Ability to hire and fire staff

(5) The business must be controlled by one or more socially disadvantaged individual(s). COBID will apply the standards and criteria set out in 49 CFR § 26.71 (e-CFR 2015 Edition).

(6) One or more of the socially disadvantaged individual(s) must have made a substantial contribution of capital to the business, which is commensurate with his or her ownership interest.

(a) The COBID may consider differences in compensation between the potentially certified owner(s) and other participants in the firm to determine whether to certify a firm. Such consideration shall encompass the duties of the persons involved, normal industry practices, the firm's policy, and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm.

(b) A contribution is not a promise to contribute capital, an unsecured note payable to the firm or to an owner who is not a socially disadvantaged individual or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(7) The socially disadvantaged individual's ownership in the firm must be real, substantial, and continuing, going beyond pro forma ownership and reflected as such in all business documents. The socially disadvantaged owner(s) must enjoy the customary incidents of ownership, and share the risks and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, or arrangements.

(8) The socially and economically disadvantaged individuals must directly hold all securities that constitute ownership of a firm.

(a) Except as provided in this paragraph, the COBID does not consider securities or assets held in trust, or by any guardian for a minor, as owned or held by the socially disadvantaged persons in determining the ownership of a firm.

(b) The COBID does recognize securities or assets held in trust by a socially disadvantaged individual for purposes of determining ownership of the firm, if:

(A) The beneficial owner of securities or assets held in trust and the trustee are both socially disadvantaged individuals; or

(B) The beneficial owner of a trust is a socially disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. The applicant may count assets held in a revocable living trust only in the situation where he or she is the sole grantor, beneficiary, and trustee.

(9) If the applicant is relying on his or her expertise for certification, he or she must have a significant financial investment in the firm.

(10) The COBID will consider the following requirements as they apply to situations in which the applicant relies on his or her expertise as a contribution to acquire ownership. The owner's expertise must be:

(a) In a specialized field;

(b) Of outstanding quality;

(c) In areas critical to the firm's operations;

(d) Indispensable to the firm's potential success;

(e) Specific to the type of work the firm performs; and

(f) The records of the firm must reflect the applicant's expertise. These records must clearly show the contribution of expertise and its value to the firm. The applicant may quantify his or her expertise in years of experience, education, and accomplishments related to the types of services the firm offers.

(11) When an applicant receives majority stock ownership or control of a firm from a non-qualifying applicant within two years prior to submitting an application and the non-qualifying applicant remains involved in the firm as a stockholder, officer, director, or key employee the COBID will presume that the applicant does not control the firm. The applicant may rebut this presumption by showing that he or she has independent management experience necessary to control the operation of the firm and indeed is participating in the management of the firm.

(12) Assets held by a socially disadvantaged individual(s) as result of a final property settlement; court order in a divorce or, legal separation from a non-socially disadvantaged individual; through inheritance; or following the death of the former owner, are assets of the socially disadvantaged individual. The terms and conditions of legal documentation governing that

transaction (i.e. divorce settlement, legal will, etc.) support the transfer of ownership to them.

(13) The COBID will not consider as evidence of ownership interest or assets in a firm obtained by a socially disadvantaged individual through gift or transfer from a non-socially disadvantaged individual unless there is evidence to support the transfer of interest and assets occurred for reasons other than obtaining certification.

(14) To overcome this presumption and permit the COBID to count interests or assets, the socially disadvantaged individual must demonstrate by clear and convincing evidence that:

(a) The gift or transfer to the socially disadvantaged individual was made for reasons other than obtaining certification as a MBE, WBE, and/or SDV; and

(b) The socially disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-socially disadvantaged individual who provided the gift or transfer.

(15) The COBID will closely scrutinize such transfers when the socially disadvantage individual and non-socially disadvantaged individual are:

(a) Directly affiliated and involved in the same firm for which the socially disadvantaged individual is seeking certification;

(b) Involved in the same or a similar line of business; or

(c) Engaged in an ongoing business relationship related to the types of services in which the socially disadvantaged individual is seeking certification.

(16) In situations in which marital assets form a basis for ownership of a firm, the COBID considers the following:

(a) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the COBID must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources. In doing so, the other spouse must irrevocably renounce and transfer all rights in the ownership interest of the applicant in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The COBID does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially disadvantaged owner of the applicant firm.

(b) The COBID will require a fully executed Non-participation Statement renouncing the non-qualifying spouse or domestic partner's rights in the jointly owned or community asset used to acquire an ownership interest in the firm.

(17) The COBID must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

(a) A socially disadvantaged individual acquired his or her ownership interest as the result of a gift or transfer without adequate consideration, other than the types set forth in paragraph (12) of this section;

(b) There is a provision for the co-signature of a spouse who is not a socially disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(c) An applicant receives ownership of the firm in question or its assets for adequate consideration from a spouse who is not a socially disadvantaged individual to a spouse who is such an individual.

Stat. Auth.: ORS 200.005 & 200.055
Stats. Implemented: ORS 200.005 & 200.055
Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1230
Determination of Independence

(1) The business must be a "for profit" independent, properly licensed and registered with the Secretary of State in the State of Oregon.

(2) In determining whether a certified firm is an independent business, the COBID must scrutinize relationships with non-certified firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(3) The COBID may consider whether present or recent employer/employee relationships between the owner(s) of the certified firm and non-certified firms, or persons associated with non-certified firms, compromise the independence of the certified firm.

(a) The COBID may examine the certified firm's relationship with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the certified firm.

(b) While reviewing factors related to the independence of a certified firm, the COBID must consider the consistency of relationships between the firm and non-certified firms with normal industry practice.

(4) The COBID will consider whether owner(s) of the business owns or leases equipment and resources necessary to perform the services provided. If the business leases equipment, leasing must follow normal industry practice and the lease must not involve a relationship with a prime contractor or non-disadvantaged individual that compromises the control and independence of the firm.

(5) The COBID may certify a business operating under a franchise or license agreement if it meets the standards in this subpart and the franchiser or licenser does not have an affiliation with the franchisee or licensee. The franchisor or license issuer must not have the ability to control employees, location, or prevent the certified owners from making any business decision for the firm without the cooperation or vote of any non-certified individual.

Stat. Auth.: ORS 200.005 & 200.055
Stats. Implemented: ORS 200.005 & 200.055
Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1240
Determination of Management Control

(1) All legal documents and financial statements must clearly document that the socially disadvantaged individual has management control of the firm.

(2) A certified owner must hold the highest officer position in the company (e.g. chief executive officer or president).

(a) In a corporation, the certified owner(s) must control the Board of Directors.

(b) In a partnership, one or more certified owner(s) must serve as general partners, with control over all partnership decisions.

(c) In order for a certified individual(s) to control a partnership, any non-certified partners must not have the power, without the specific written concurrence of the certified partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(d) Certified owners and/or firms must not be subject to any formal or informal restrictions, which limit the customary discretion of the certified owner(s). There can be no restrictions (i.e. through corporate charter provisions, by-laws, contracts, or any other formal or informal devices) preventing the certified owners from making any business decision for the firm without the cooperation or vote of any non-certified individual. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR § 26.69(j)(2) (2013 Edition).

(3) The socially disadvantaged individual(s) must possess sufficient knowledge, managerial and technical competence, and experience, and have an overall understanding directly related to the type of business in which the firm seeks certification. The socially disadvantaged individual(s) must also be able to maintain day-to-day control over all operational aspects of the business.

(a) The COBID will evaluate the training and experience of the applicant based on a variety of factors. The list is not exclusive and COBID may take additional training and experience into consideration when making a determination regarding the owner's qualifications. Factors include:

(A) A college degree in the field of expertise;

(B) Essential license in Oregon in the field in which the firm operates (e.g. electrician, plumber, engineer, or landscape architect, etc.) that is current and up-to-date;

(C) Experience and/or training in the primary field of expertise;

(D) Experience in project management in the primary field of expertise;

(E) Individual's presence and activity on work site and ability to determine if work is proceeding in accordance with plans and to supervise field operations, resolve problems, and answer technical questions for subordinates;

(F) Individual's demonstration of knowledge in area of expertise during the certification interview process; and

(G) Additional training and experience related specifically to construction firms.

(i) Has ability to read and interpret blueprints and specifications.

(ii) Has independently done take offs and can prepare estimates and bids.

(iii) Can operate necessary equipment (e.g. excavator, backhoe, dump truck, etc.)

(b) Quality of work performed does not determine an applicant's eligibility for certification.

(c) In order to determine that the socially disadvantaged individual(s) has the technical expertise and competence to maintain operational control, the socially disadvantaged individual(s) may be required to submit proof of expertise to include:

(i) A copy of his or her essential license(s).

(ii) His or her resume.

(4) The socially disadvantaged applicant(s) must have responsibility for the critical areas of business operations and demonstrate the ability to make independent and unilateral business decisions needed to guide the future of the business.

(5) The certified owner(s) must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations.

(6) The socially disadvantaged applicant(s) is not required to have hands-on, direct control or expertise in every aspect of the business' affairs so long as the owner is able to intelligently use discretion, critically evaluate, and determine appropriate course of action based on information presented by employees.

(7) In order to substantiate management and control of a firm, a certified owner(s) cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the applicant from devoting sufficient time and attention to the affairs of the firm to control its activities.

(8) If an individual is required to hold a specific license (e.g. engineer, electrician, or plumber, etc.) or other credential in order to legally provide the goods or services in areas of work in which the firm seeks certification, the certified owner(s) who control a firm of that type must possess the required license or credential.

(a) If a trade or industry requires a specific license or credential (e.g., landscape architecture, plumber's license, etc.) in order to provide services in Oregon, general licensing provided by the Construction Contractor's Board (CCB) does not meet this prerequisite without the necessary trade or industry license.

(b) If the CCB requires a firm appoint a Responsible Managing Individual (RMI), this individual can be an owner or a manager of the firm and must be able to manage or supervise its construction activities.

(9) A socially disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity.

(10) When a socially disadvantaged individual obtains ownership or control of a firm and the previous owner or individual in control is not a socially disadvantaged individual but remains active in some role at the firm, the socially disadvantaged individual must demonstrate to the COBID, by clear and convincing evidence, that:

(a) The transfer of ownership or control to the applicant was made for reasons other than obtaining certification; and

(b) The applicant actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-certified individual who formerly owned and/or controlled the firm.

(11) In considering a MBE, WBE, or SDV certification where a non-disadvantaged individual was formerly controlling the firm, the COBID may consider the difference between the compensation of the non-disadvantaged individual and the socially disadvantaged applicant as a factor in determining control.

(12) If the COBID is unable to determine that the socially disadvantaged owner(s) control the firm, as distinct from the family as a whole, then the socially disadvantaged owner(s) have failed to carry their burden of proof concerning control even though they may participate significantly in the firm's activities.

(13) Individuals who are not socially disadvantaged may be involved in a MBE, WBE, and/or SDV firm as owners, managers, employers, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm or be disproportionately responsible for the operation of the firm.

(14) The certified owner(s) of the firm may delegate various areas of management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially disadvantaged individuals. Such delegation of authority must be revocable and the certified owner(s) must retain the power to hire and fire any person to whom they delegate such authority. The managerial role of the certified owner(s) in the firm's overall affairs must be such that the COBID can reasonably conclude that the certified owner(s) actually exercises control over the firm's operations, management, and policy.

(15) The certified individual(s) controlling a firm may use an employee leasing company. The use of such a company does not preclude the certified individual(s) from controlling the firm if he or she continues to maintain an employer-employee relationship with the leased employees.

(16) When a firm contracts out the actual management of the business to individuals other than the owner or delegates the management to employees, those persons who have the power to hire and fire these managers exercise management control.

(17) In determining whether a certified owner(s) controls a firm, the COBID may consider whether the firm owns equipment necessary to perform its work.

(a) The business must own or lease sufficient machinery, equipment, and employees to operate. In making this determination, the COBID shall compare the operations of the certified firm to a non-certified firm in the same or similar business. If leasing, it must be a normal industry practice and the lease must not involve a relationship with a prime contractor or non-disadvantaged individual that compromises the control or independence of the firm as referenced under OAR 123-200-1100(2).

(18) The COBID may grant certification to a firm only for specific types of work in which the certified owner(s) has the ability to control the firm. To gain certification in an additional type of work, the firm needs to demonstrate to the COBID that only its certified owner(s) controls the firm with respect to that type of work.

(a) The North American Industry Classification System (NAICS) codes assigned to the firm must describe the types of work an applicant can control and manage and must directly relate to the services provided.

(b) The applicant bears the burden of providing the necessary, detailed company information to COBID for it to make an appropriate NAICS code designation and is primarily responsible to ensure the codes remain current to reflect services provided.

(c) In order for certified individuals to control a partnership, any non-certified partners must not have the power, without the specific written concurrence of the certified partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

Stat. Auth.: ORS 200.005 & 200.055
Stats. Implemented: ORS 200.005 & 200.055
Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1300
Certification: Application and Procedure

(1) Businesses seeking certification as a DBE, MBE, WBE, SDV, or ESB must complete the Certification Application provided by the COBID.

(2) Applicants seeking certification as a DBE through COBID must meet the eligibility criteria set out in 49 CFR parts 23 and 26 and any written directives, administrative guidelines, and written decisions of the US Department of Transportation.

(3) The COBID will make certification determinations based on the eligibility standards included in these rules and apply written directives of the administrative guidelines, Oregon Revised Statutes, 49 CFR part 26, and written appeal decisions regarding state certification so long as they are in accord with these rules.

(4) The completed application, together with all required supporting documentation, shall be submitted through the e-application process, by mail or in person to the Certification Office for Business Inclusion and Diversity, 775 Summer St. NE, Suite 200, Salem OR 97301. The COBID will not process incomplete applications.

(5) The COBID will take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date the COBID receives the complete application including all supporting documentation.

(6) The COBID may conduct a phone interview or on-site investigation at the owner's place of business and/or jobsite if applicable. The purpose of the interview and/or site visit is to verify material submitted with the application and to substantiate eligibility.

(7) As part of its investigation, the COBID may require firms to provide information in addition to that requested on the application. The applicant has the burden of proving that he or she is eligible for certification.

(8) The applicant must cooperate fully with the investigation and make available any additional information requested by the COBID.

(9) The COBID shall notify applicants promptly by mail after making a decision. When the COBID denies an application, the letter shall set forth the specific reasons for the denial.

(10) In making certification determinations under this section, the COBID does not consider whether the business has previously performed or would be able to perform a commercially useful function. Repeated failure by a business to perform a commercially useful function may indicate,

however, that the business is not independent, owned, or controlled by a socially disadvantaged individual.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0040, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1400
Certification Review

(1) All certifications are valid for three years.

(2) The COBID will send an annual "no change" statement to firms, approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The applicant must complete the statement, provide federal tax information for the previous year, and provide documentation supporting any changes prior to the anniversary date, or the COBID will decertify the firm.

(3) The COBID will send a certification review notice to certified firms approximately two months prior to the firm's anniversary date. The applicant shall promptly return the application along with any requested documentation (e.g. by-law amendments, evidence of changes in ownership, etc.). The COBID will review the signed application to determine continued eligibility and may conduct an on-site investigation to verify information submitted.

(4) A firm owner must demonstrate that his or her business currently meets the qualifications for the requested certification. It is the responsibility of the firm to provide the information deemed necessary by the COBID to ascertain eligibility. Failure to return the certification review form or provide supporting documentation may lead to decertification.

Stat Auth.: ORS 200.005
Stats Implemented: ORS 200.006
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1500
Denial and Decertification of MBE, WBE, and SDV Firms

(1) The COBID may deny or decertify a firm at any time it determines that the firm does not or no longer meets the eligibility standards set out in OAR 123-200-1000 through 123-200-2300 and ORS 200.005. The procedure is as follows:

(a) In the case of denial of initial certification, the COBID will notify the applicant in writing of the denial and provide a detailed explanation supporting the reasons for denial.

(b) In the case of decertification, the COBID shall issue a Notice of Intent to Decertify the firm 21 days prior to the date of decertification and provide a detailed explanation to support the reasons for the determination.

(c) In the event of a denial or decertification, the applicant or certified firm has 21 calendar days from the date of notice in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of the COBID will issue a decision.

(d) If the applicant or certified firm does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the manager of the COBID for issuance of a final order.

(e) If the applicant or certified firm files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(2) The COBID may decertify a firm if the socially disadvantaged individual leaves the business or dies.

(3) An individual may withdraw his or her application or certification if he or she no longer wishes to participate in the program. The applicant must complete a notarized withdrawal form provided by the COBID.

(4) Any business denied initial certification is ineligible to reapply for a period of 12 months.

Stat Auth.: ORS 200.055
Stats. Implemented: ORS 200.005
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1600
Eligibility Standards

(1) The ESB program is race and gender neutral and is based on the size of the business, not the individual applicant.

(2) A firm's certification as an ESB may only last for a maximum of 12 consecutive years from the original certificate date and qualify as a tier one or tier two firm.

(a) A certified firm may only remain in each tier for a period of six years.

(b) If the firm graduates to a tier two status, due to size, before exhausting six years of certification under tier one, the firm's certification in tier two must not exceed a period of six years, regardless of the firm's certification period as tier one.

(c) If an applicant provides compelling information to show, to the satisfaction of the COBID, that he or she has not received an opportunity to bid on ESB projects during the 12 years of eligibility, the COBID will extend the certification of the firm for one additional year. A firm may receive the extension only once. The firm must provide a written request for an extension to the COBID, including any supporting documentation.

(3) To be eligible for certification as an ESB, a firm must meet the following criteria:

(a) Be in existence, operational, and in business for a profit.

(b) The principal place of business must be located in the State of Oregon as determined by the address used to file federal income taxes. If the business uses a P.O. Box, the COBID may require additional documentation to verify location.

(c) Be properly licensed and legally registered with the Secretary of State in the State of Oregon (i.e. registered as a domestic corporation, limited liability corporation, partnership, or assumed business name, etc.).

(d) Must not be a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, taken together, the group of firms do not qualify.

(e) Have average, annual gross receipts over the last three years that do not exceed monetary limitations determined by OBDD/COBID annually based on the Consumer Price Index.

(f) If state or local law requires a person to have a particular license or other credential in order to own and/or control a certain type of firm, then the certified applicant(s) who owns and controls an ESB must possess the required license or credential.

(g) The owner(s) must work a minimum of 20 hours per week for the business.

(h) The business must have 19 or fewer full-time employees to qualify for tier one or have 29 or fewer full-time employees to qualify to tier two. The COBID calculates a full-time employee as follows:

(A) Hours worked by all employees (part-time, seasonal, or full-time) shall be converted into equivalent hours; dividing the total hours worked by 2080.

(B) The COBID does not consider owners of the business in the calculation of the equivalent employees.

(C) The period of calculation shall be the same as the business' tax year.

Stat Auth.: ORS 200.055
Stats. Implemeted: ORS 200.055
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1700
ESB Certification: Application Form and Procedure

(1) The COBID will utilize ORS 200.170 to review a business' eligibility for certification as an ESB.

(2) A firm wishing to apply for certification in the ESB program shall complete the application provided by the COBID.

(3) The completed application, together with all required supporting documentation, shall be submitted to the Certification Office for Business Inclusion and Diversity at 775 Summer Street NE, Suite 200, Salem, OR 97301. The COBID will not process incomplete applications.

(4) The COBID will conduct a review and take action on completed applications as promptly as resources permit. The order of priority for processing applications shall be the date the COBID receives the completed application with all supporting documentation.

(5) The COBID shall make a determination based on the eligibility standards included in these rules and the applicable laws of the State of Oregon. As part of its investigation, the COBID may require the applicant firm to provide information in addition to that requested on the application. The applicant(s) has the burden of proving the firm is eligible for certification and meets all the requirements of the program. If the COBID certifies the firm, the agency will send a confirmation letter.

(6) The applicable emerging small business size standard for each applicant set out in ORS 123-200-1600 shall be determined by the business' primary service offered.

(7) Registration of the business with the Construction Contractors Board and/or Landscape Contractors Board will establish a firm as a construction firm. For the purposes of this program, the COBID will consider a construction-related trucking business as a construction firm. The COBID does not consider Engineering and Architecture firms as construction firms.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055, 200.170
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1800
Certification Review

(1) Certification as an ESB is valid for three years from the date of certification.

(2) The COBID will send an annual "no-change" statement to firms approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The applicant must submit a completed statement, along with federal tax information for the previous year and documentation of any changes, prior to the anniversary date or the firm will be decertified.

(3) The ESB shall notify the COBID within 30 days of any changes, which may affect its continued eligibility in the program. Failure to notify the COBID may result in denial or decertification.

(4) The COBID will send a certification review notice and application to certified firms 60 days prior to expiration of current certification. The applicant shall promptly return the completed application along with any requested documentation (i.e. evidence of change in ownership, federal tax returns for the last year, etc.). Continued certification is not automatic. The applicant must demonstrate that his or her business still meets the criteria set out in OAR 123-200-1600 through 123-200-1700.

(5) The COBID staff shall review the signed application to determine the firm has continued eligibility. The COBID may also request additional information to verify the firm has continued eligibility.

(6) Failure to return the completed review application by the expiration date shall result in decertification.

Stat Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-1900
Denial and Decertification of ESB Firms

(1) This rule applies only to the denial and decertification of a firm's ESB status under Oregon law. The COBID may deny certification or decertify a firm at any time if the agency determines that the firm no longer meets eligibility standards set out in OAR 123-200-1600. The procedure is as follows:

(a) The COBID will issue a Notice of Intent to Deny Certification in the case of denial of initial certification and the reasons therefore.

(b) In the case of decertification, the COBID shall issue a Notice of Intent to Decertify the firm 21 days prior to the date of decertification, and indicate the specific reasons for the decision.

(c) In the event of a denial or decertification, the applicant or firm representative has 21 calendar days from the date of notice in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of COBID will issue a decision.

(d) If the applicant or firm representative does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the COBID. The manager of the COBID will issue a final order.

(e) If the applicant or firm representative files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(2) An applicant or firm representative may withdraw an application or certification if there is no longer a desire to participate in the program. The applicant or firm representative must complete a withdrawal form provided by the COBID.

(3) Any business denied initial certification would be ineligible to reapply for a period of 12 months.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055, 183.310 - 183.550
Hist.: OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-2000
Complaints of Ineligibility for All Programs

(1) A complainant must submit a Complaint of Ineligibility regarding certification of an individual or firm to the COBID. The COBID will process complaints according to the following procedure:

(a) Any individual or agency who believes that an individual or certified firm does not qualify under the standards of eligibility for certification may file a complaint of ineligibility. The complainant(s) must fill out a formal complaint form provided by the COBID. The purpose of the complaint process is to maintain the transparency of all programs.

(b) The complainant must use the form provided and submit the document to the COBID setting forth facts, which indicate that the applicant or certified firm is not eligible. The complaint must include copies of any supporting documents the complainant(s) may possess. The complainant(s) shall describe the facts in as much detail as possible.

(c) The COBID will only investigate complaints based on firsthand knowledge and those that contain allegations supported by evidence. The COBID will not investigate anonymous or third party complaints. Complaints based on hearsay (i.e. third person account, general assumption, word-of-mouth, and/or speculation) will not be investigated. The COBID does not accept general allegations. The COBID will not investigate unsupported complaints and will return the document to the complainant.

(2) The COBID will notify the complainant(s) in writing when it refuses to investigate a complaint. The notification may include:

(a) The initial complaint filed by the complainant(s);

(b) Explanation of why the complaint is not being investigated; and

(c) A request for additional information, when applicable.

(3) The complainant(s) may submit a revised complaint addressing the COBID's concerns.

(4) The complainant(s) must sign the complaint and provide a physical mailing and email address, and telephone number where the COBID may reach the individual during the investigation.

(5) While responding to requests for information concerning any aspect of the programs, the COBID complies with provisions of the Federal Freedom of Information and Privacy Acts. The COBID may make available to the public any information concerning the programs not prohibited by federal or state law. Information submitted to the COBID is subject to public record law, ORS 192.410, 192.501, 192.502, and 192.505. The public may inspect certain information in the agency's possession. The information may include names of the complainant. Certain other records the COBID may keep confidential, under certain circumstances. These may include, but are not limited to: reports from creditors, employers, customers, suppliers, financial statements, tax returns, business records, employment history and other personal data submitted by the applicant, customer lists, bids, proposals, and contracting information, production, sales or cost data, and marketing strategy information. Although the agency will attempt to keep the information submitted confidential, it cannot guarantee confidentiality in all cases.

(6) The COBID may keep the identity of the complainant(s) confidential, at the complainant(s) election, throughout the course of the investigation. A complainant(s) may waive this privilege of confidentiality at any time. If such confidentiality will hinder the investigation, proceeding, hearing, or result in a denial of appropriate administrative due process to other parties, the COBID will advise the complainant(s) that, in some circumstances, failure to waive the privilege of confidentiality may result in the closure of the investigation or dismissal of the proceeding or hearing.

(7) The COBID will investigate each complaint as promptly as resources allow. If preliminary investigative results show good cause for in-depth investigation, the COBID will notify the applicant or certified firm identified in the complaint by certified mail. The notice will summarize the grounds for the challenge and will require the applicant or certified firm to provide to the COBID, within a reasonable period of time, information sufficient to permit the agency to evaluate the complaint and the application or certified firm's qualifications for the programs. The applicant, certified firm, and complainant(s) shall cooperate fully in the COBID's investigation.

(8) After the investigation is complete, the COBID will issue a written decision in the form of a rejection of the complaint, Notice of Intent to Deny, or Notice of Intent to Decertify. The decision will address each issue raised in the complaint and throughout the investigation and the reasoning for the decision. The COBID will mail the written decision to the applicant or certified firm and to the complainant(s). The COBID will not deny or decertify a firm based on a complaint without first giving the firm an opportunity to respond.

(9) The applicant or certified firm has 21 calendar days from the date of Notice of Intent to Deny or Notice of Intent to Decertify in which to submit a written appeal to the manager of the COBID. Following the review of the applicant's written appeal, the manager of COBID will issue a decision.

(10) If the applicant or certified firm does not agree with the manager's decision, he or she may request a contested case hearing. The COBID will conduct a contested case hearing in accordance with ORS 183.310 to 183.550. Following the contested case hearing, the Hearings Officer will forward a proposed order to the manager of the COBID for issuance of a final order.

(11) If the applicant or certified firm files an appeal in writing or requests a contested case hearing, the COBID will stay the denial or decertification pending the issuance of the final order. If the applicant or certified firm does not submit a written appeal or request for a contested case hearing to the COBID within the 21-day period, the denial or decertification shall be final.

(12) The COBID will not consider opposing information received about an applicant prior to the initial certification as a complaint, but will consider the information in the investigation of the application for certification.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0090, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-2200
Representation of the COBID by Officer or Employee in Contested Case Hearings

(1) An officer or employee of the COBID may appear on behalf of the COBID in contested case hearings, subject to the approval and authorization of the Attorney General.

(2) The COBID representative may not make legal argument on behalf of the COBID.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of the COBID to hear the contested case;

(B) The constitutionality of a statute, rule, or the application of a constitutional requirement to the COBID; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses, presentation of factual arguments, or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of the COBID in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence of the correctness of procedures followed.

(3) When an officer or employee of the COBID represents the agency, the presiding officer shall advise the representative of the manner in which to make objections and which matters to preserve for appeal. Such advice is of a procedural nature and does not change applicable law on waiver of the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.450(7) & 183.450(8)
Stats. Implemented: ORS 183.450(7)(b)
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0190, OBDD 7-2013, f. & cert. ef. 9-3-13; OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-2210
Contracting Agency Responsibilities

(1) It is the public agency's sole responsibility to perform commercially useful function (CUF) reviews.

(2) The COBID may consider and review the CUF reviews completed by the public contracting agency or any other relevant factors when determining whether the certified firm has exhibited a pattern of failing to perform CUFs.

(3) Notwithstanding any other part of this section, the COBID and a public contracting agency may enter into an agreement to share and protect information and otherwise cooperate in order to facilitate the enforcement of ORS 200.065 and ORS 200.075, as permitted by ORS 192.410 to 192.505.

(a) The COBID, for purposes of an investigation regarding certification, will consider CUF reviews under the following circumstances:

(i) During the course of a project

(ii) When multiple reviews occur over an extended period suggesting reoccurring violations

(iii) Within three years of the discovery of an alleged CUF failure.

(4) CUF reviews and investigations shall consider the following:

(a) Whether the certified firm is responsible for execution of the work outlined in the public contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. The public agency may evaluate the amount of work contracted and standard industry practices.

(b) Whether a certified firm is responsible, with respect to materials and supplies used on the contract, for negotiating price; determining quality and quantity; ordering the material and installing (where applicable); and paying for the material.

(c) Whether a certified firm has a role that is limited to that of an extra participant in a transaction, contract, or project through which participants pass funds in order to obtain the appearance of involvement by the certified firm. In determining whether a certified firm is such an extra participant and thus not performing a CUF, the public agency may examine similar transactions, particularly those in which non-certified firms participate.

(d) Whether a certified firm performs or exercises responsibility for at least 30 percent of the total cost of its contract with its own work force or subcontract with another firm certified by the State of Oregon. If it does not, the public agency may presume the certified firm is not performing a CUF. The firm must not subcontract a greater portion of the work of a contract to a non-certified firm than would be expected based on normal industry practice for the type of work involved.

(5) If a public agency determines that a certified firm is not performing a CUF as provided in paragraph (4) (b), (c), and (d) of this section, the certified firm may present evidence to rebut this presumption. The public agency may determine that the firm is performing a CUF given the type of work involved and normal industry practices.

(6) A public agency shall notify the COBID if the agency investigates a certified firm.

(7) The COBID may not decertify a firm based solely on a public agency's investigation.

(8) COBID, at its discretion, may perform its own investigation of a certified firm if it receives a complaint or notification that alleges a certified firm has failed to perform a CUF. As part of its investigation, COBID may request information from the complainant or author of the notification unless such requirements violate an agreement entered into by the public contracting agency and COBID under (3) of this section. If COBID does not receive sufficient information to conduct an investigation, COBID may in its discretion close the investigation without taking further action. Requested information may include:

(a) All documentation gathered by the public contracting agency during the CUF review and any additional documentation related to the complaint or investigation.

(b) Disclosure of all participants in a complaint or investigation.

(c) Confirmation that the public contracting agency notified the firm in question that it failed a CUF review and provided the firm an opportunity to present evidence to rebut the claim.

(d) List of current, open contracts let to the firm in question by the public contracting agency.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055, 200.065 and ORS.075
Hist.: OBDD 1-2016, f. & cert. ef. 1-5-16

123-200-2300
Directory

The COBID shall maintain a statewide-unified directory of certified firms as follows:

(1) Certified firms shall use the current business name as registered with the Secretary of State, Corporation Division. Businesses operating under the owner's individual name shall use the name listed on the business license. The firm may not use other names when contracting business. A firm may use an Assumed Business Name for contracting purposes, but only if the name is in conjunction with the registered business name.

(2) The directory will be maintained in an electronic format and available on-line. The directory shall indicate the certification status of each firm for all programs. The directory shall also include the firm's telephone numbers, fax number, and mailing address and list the firm's capabilities.

(3) The COBID shall update the directory on a daily basis including changes in business and email addresses and phone number(s).

(4) It is the responsibility of the applicant and certified business to notify the COBID within 30 days of any changes in its ownership or management, which may affect eligibility. Failure to notify the COBID may result in denial or decertification.

Stat. Auth.: ORS 200.055
Stats. Implemented: ORS 200.055
Hist.: OBDD 17-2010, f. 4-30-10, cert. ef. 5-1-10; Renumbered from 123-200-0180, OBDD 7-2013, f. & cert. ef. 9-3-13; Renumbered from 123-200-2100, OBDD 1-2016, f. & cert. ef. 1-5-16

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Oregon Department of Education
Chapter 581

Rule Caption: Allows qualifying school districts and charter schools to be one legal entity for audit purposes.
Adm. Order No.: ODE 19-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 10-1-2015
Rules Amended: 581-026-0210
Subject: Amends rule relating to auditing of public charter schools. Allows public charter school that is the only school in a district, and the school district in which the public charter school is located to be considered a single legal entity if the public charter school is the only school in the school district and: 1) the school does not have to be established as a nonprofit organization under the laws of Oregon; 2) the school does not have to apply to qualify as an exempt organization under section 501(c)(3) of the Internal Revenue Code; 3) if all of the members of the school district board are voting members of the public charter school governing body; 4) if the school district and the public charter school share employees; and 5) if the school district and the public charter school share assets and liabilities.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-026-0210
Annual Financial Reporting

(1)(a) A public charter school required to comply with ORS 338.035(2)(a)(B) and (C) shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(b) A public charter school that meets the definitions and criteria in ORS 338.035(6)(b) (A), (B), (C) and (D), may be treated as the same legal entity as the school district and is not required to submit a separate audit. The public charter school must comply with OAR 581-026-0200 and must be included in the audit of the sponsoring district. The district audit for the public charter school must minimally include:

(A) An audit of all accounts and funds associated with the public charter school;

(B) A summary of significant accounting policies, cash and investments, and internal controls; and

(C) A statement of activities and a balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

(2) After an audit, the public charter school shall forward a copy of the annual audit to the Department of Education.

(3) After an audit, the public charter school shall forward the following to the sponsor:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) A balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

Stat. Auth.: ORS 338.025
Stat. Implemented: ORS 338.095
Hist.: ODE 11-2010, f. & cert. ef. 6-30-10; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12; Renumbered from 581-020-0336, ODE 10-2014, f. & cert. ef. 2-19-14; ODE 48-2014, f. & cert. ef. 12-17-14; ODE 19-2015, f. & cert. ef. 12-18-15

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Rule Caption: Education Programs for Children at Residential Youth Care Centers
Adm. Order No.: ODE 20-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 9-1-2015
Rules Amended: 581-015-2595
Subject: Allows children placed in youth care center within a detention facility to receive educational services through Juvenile Detention Education Program.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2595
Education Programs for Children at Residential Youth Care Centers

The purpose of this rule is to ensure that school districts meet the provisions outlined in ORS 336.580.

(1) Definitions: For the purposes of this rule, the following definitions apply:

(a) "Consultation" means scheduled opportunities for the residential youth care center director and the education representative of the district, or its contractor, to share information and concerns about the behavioral characteristics, learning styles, educational needs, and level of educational support for the children residing at the residential youth care center in order to develop, review, and agree upon the education plan;

(b) "District" means the school district in which the residential youth care center is located;

(c) "Least restrictive environment" means serving a child in the educational setting in which the child can reasonably be expected to learn while maintaining integration in the local community;

(d) "Open entry-open exit" means that the education program provides opportunities for students to make progress in obtaining school credits or otherwise meeting their educational goals even though they may enroll or exit at any time during the school year.

(e) "Residential youth care center" means a community program defined in ORS 420.855 and operated by a public or private agency. Residential youth care centers where resident children receive educational services funded under ORS 343.961 are not included under the provisions of this rule;

(2) For children placed at a youth care center within a detention facility, as defined in ORS 419A.004, the children shall receive educational services through the Juvenile Detention Education Program as described in ORS 326.695.

(3)(a) The school district in which the residential youth care center is located is responsible for developing a plan which meets the provisions outlined in ORS 336.580. The district may contract this responsibility to another school district or ESD. The delivery of educational services may be provided by the residential youth care center;

(b) The plan must be developed by the district or its contractor after consultation with the residential youth care center director and shall address behavioral characteristics, learning styles, and educational needs of the children pursuant to OAR 581-022-1670;

(c) The plan for an education program must provide for open entry-open exit and must provide opportunities for students to earn school credits in accordance with OAR 581-022-1350, 581-022-1131, and 581-023-0008, opportunities for earning a GED when appropriate, or appropriate skill development to ensure educational progress. A continuum of educational services must be available which assure placement of children in the least restrictive environment in which they can reasonably be expected to be successful until they are exempted from compulsory attendance or receive a high school diploma or an equivalent;

(d) The plan must be approved annually by the school district board in which the youth care center is located.

(4) The district must ensure compliance with sections (3) of this rule. If the district does not comply directly or through its contractor, the State Superintendent will find the district deficient and may apply the penalty provided in ORS 327.103.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.580
Hist.: EB 9-1988(Temp), f. & cert. ef. 2-17-88; EB 29-1988, f. & cert. ef. 7-5-88; ODE 2-1998, f. & cert. ef. 2-27-98; Renumbered from 581-015-0505, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 28-2007, f. & cert. ef. 12-12-07; ODE 20-2015, f. & cert. ef. 12-18-15

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Rule Caption: Standards for public elementary and secondary schools - definitions
Adm. Order No.: ODE 21-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 9-1-2015
Rules Amended: 581-022-0102

Subject: Implements recent legislation by specifying that instructional time includes up to 15 minutes each day of the time that a student spends consuming breakfast in the classroom if instruction is being provided while the student in consuming breakfast.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-0102
Definitions

The following definitions apply to Oregon Administrative Rules 581-022-0102 through 581-022-1940, unless otherwise indicated by context:

(1) "Assessment": Systematic gathering of data with the purpose of appraising and evaluating children's social, physical, emotional, and intellectual development. Activities may include testing to obtain and organize information on student performance in specific subject areas.

(2) Career and Technical Education: A sequence of organized educational activities that:

(a) Provides individuals with coherent and rigorous content aligned with challenging academic standards and relevant technical knowledge and skills needed to prepare for further education and careers;

(b) Provides technical skill proficiency and may provide an industry-recognized credential, a certificate or an advanced degree; and

(c) Includes applied learning that contributes to an individual's academic and technical knowledge, higher-order reasoning and problem-solving skills, work attitudes and general employability skills.

(3) "Career Development": The exploration of personal interests and abilities with regard to career selection, and the development of tentative career goals.

(4) "Career Education": A process for improving educational programs to enhance student understanding of and preparation for work and continuing career development.

(5) "Career-Related Learning Experiences": Structured student activities in the community, the workplace, or in school that connect academic content and career-related learning to real life applications. These experiences extend, reinforce and support classroom learning. They include, but are not limited to:

(a) Workplace mentoring;

(b) Workplace simulations;

(c) School-based enterprises;

(d) Structured work experiences;

(e) Cooperative work and study programs;

(f) On-the-job training;

(g) Apprenticeship programs;

(h) Service learning; and

(i) Field-based investigations.

(6) "Charter school": A public charter school as defined in ORS 338.005.

(7) "Child development specialist program": An optional elementary (grades K-8 or any configuration thereof) component of a district's comprehensive guidance and counseling program for grades K-12.

(8) "Collection of Evidence": The work of a student collected and evaluated together to measure the student's ability to apply what the student knows and can do in relation to a set of standards or criteria.

(9) "Common Curriculum Goals": The knowledge and skills expected of all students as a result of their educational experience; defined by the state as:

(a) The Essential Learning Skills which means essential skills as defined by this rule; and

(b) The Common Knowledge and Skills in instructional programs as adopted by the State Board of Education.

(10) "Common Knowledge and Skills in Instructional Programs": Facts, concepts, principles, rules, procedures and methods of inquiry associated with specific subject matter areas as adopted by the State Board of Education.

(11) "Common School District": A school district other than a union high school district formed primarily to provide education in all or part of grades K through 12 to pupils residing within the district (ORS 330.005(2)(b)). See section (20) of this rule.

(12) "Community Partnerships": Collaborations to network resources to assist students to meet state and local standards and prepare students for post high school transitions. These partnerships include parents, students, business, education, government and community-based organizations.

(13) "Compliance Indicator": Statement of the action taken by a local district which can be accepted as evidence that the district is in compliance with the intent of a particular state standard.

(14) "Comprehensive guidance and counseling program: A program that is integral to a district's total PreK through 12 educational program that is planned, proactive and preventative in design to address each student's academic, career, personal and social development and community involvement.

(15) "Conditionally Standard School": A school that fails to meet the standards but has submitted a plan of correction, approved by the district school board, to the State Superintendent.

(16) "Course Goals": Statements describing the knowledge and skills students are expected to acquire as a result of having completed a course, elementary unit, or grade level.

(17) "Diploma": The document issued by school districts and charter schools in accordance with OAR 581-022-1130 or 581-022-1134.

(18) "District": A common or union high school district (ORS 332.002(2)).

(19) "District Goals": Statements related to State Board of Education goals (OAR 581-022-1030) which describe the local district and community's expectations for student learning.

(20) "District School Board": The board of directors of a common school district or a union high school district (ORS 332.002(1)).

(21) "Education Plan": A formalized plan and process in which a student identifies their academic, personal and career interests which helps the student to connect school activities with their post-high school goals.

(22) "Education Profile": Documentation of a student's academic achievement and progress toward their graduation requirements, post-high school goals and other personal accomplishments identified in their education plan.

(23) "Education Record": has the same meaning as in OAR 581-021-0220.

(24) "Elementary School": Any combination of grades K through 8.

(25) "Essential Skills": Process skills that cross academic disciplines and are embedded in the content standards. The skills are not content specific and can be applied in a variety of courses, subjects, and settings. The essential skills include: Read and comprehend a variety of text; Write clearly and accurately; Listen actively and speak clearly and coherently; Apply mathematics in a variety of settings; Think critically and analytically; Use technology to learn, live, and work; Demonstrate civic and community engagement; Demonstrate global literacy; and Demonstrate personal management and teamwork skills.

(26) "Extended Application Standard": The application and extension of knowledge and skills in new and complex situations related to the student's personal and career interests and post-high school goals.

(27) "Global Studies": An area of study for learning about the people and cultures of the world through history, geography and other social studies disciplines.

(28) "High School": Any combination of grades 10 through 12 in districts providing a junior high school containing grade 9; any combination of grades 9 through 12 organized as a separate unit; grades 9 through 12 housed with grades K through 12; grades 7 or 8 through 12, if approved by the Oregon Department of Education.

(29) "Identification Team" referred to as the "Team": A team of at least two district staff who carry out district identification procedures and determine the identification of students under OAR 581-022-1310.

(30)(a) "Instructional time" means time during which students are engaged in regularly scheduled instruction, learning activities, or learning assessments that are designed to meet Common Curriculum Goals and academic content standards required by OAR 581-022-1210, and are working under the direction and supervision of a licensed or registered teacher, licensed CTE instructor, licensed practitioner, or Educational Assistant who is assigned instructionally related activities and is working under the supervision of a licensed or registered teacher as required by OAR 581-037-0015.

(b) Instructional time shall include:

(A) Time that a student spends traveling between the student's school and a CTE center, internship, work experience site, or post-secondary education facility;

(B) Time that a student spends in statewide performance assessments; and

(C) Up to fifteen minutes each day of the time that a student spends consuming breakfast in the classroom if instruction is being provided while the student is consuming breakfast.

(c) Instructional time shall not include time that a student spends passing between classes, at recess, in non-academic assemblies, on non-academic fieldtrips, participating in optional school programs, or in study peri-

ods or advisory periods where attendance is not required and no instructional assistance is provided.

(31) "Junior High School": A secondary school composed of one or more of grades 7, 8, and 9 organized separately from other grades and approved by the Oregon Department of Education.

(32) "Kindergarten": A planned program that provides activities designed to foster the physical, social, emotional, and cognitive development of young children (ORS 336.092 and 336.095).

(33) "Middle School": An organizational unit composed of any combination of grades 5, 6, 7, and 8 organized separately from other elementary grades and identified as a middle school with the Oregon Department of Education.

(34) "Next steps": The education and/or career choices students make after leaving high school, which may include the workforce, community colleges, four-year colleges and universities, private career schools, apprenticeships, and the military.

(35) "Nonstandard School": A school which fails to meet the standards, and which within ninety days of the State Superintendent's notification of deficiencies, fails to submit a plan of correction or adhere to a plan of correction approved by the State Superintendent (ORS 327.103).

(36) "Parent": Has the same definition as in Oregon Revised Statute 343.035.

(37) "Planned Course Statement": Course title, course overview, course goals (including essential learning skills, career-related goals and common curriculum goals as set forth in OARs 581-022-1210) and, where appropriate, graduation competence assigned to the course for verification.

(38) "Potential": As used in OAR 581-022-1310, the demonstrated capacity to perform at or above the 97th percentile as determined by the team.

(39) "Program": A planned series of interrelated activities or services contributing to the attainment of a goal or set of goals.

(40) "Program Evaluation": A process for making judgments about the philosophy, goals, methods, materials and outcomes of a program to guide program improvement.

(41) "Program Goals" (instructional): Statements describing what students are expected to learn in each district instructional program in any combination of grades K through 12.

(42) "Program Goals" (support): Statements describing program outcomes which support the entire learning system, or one or more of its components, usually stated in terms of services to be performed.

(43) "Program Needs Identification": Procedures, which specify and rank the differences between actual and desired outcomes leading to the consideration of program revision.

(44) "School District": A common or union high school district (ORS 332.002). For the purposes of OARs 581-022-0403, 581-022-1310, 581-022-1320 and 581-022 1330, school district has the same meaning as in Oregon Revised Statute 343.395.

(45) "Standard School": A school, which is in compliance with all of the standards.

(46) "State Standards": State Board division 22 Administrative Rules for public elementary and secondary schools.

(47) "Student Activity Funds": All money raised or collected by and/or for school-approved student groups, excluding money budgeted in the general fund.

(48) "Talented and Gifted Students": Those children defined in Oregon Revised Statute 343.395.

(49) "Union High School District": A school district, other than a common school district, formed in accordance with ORS 335.210 to 335.485 (330.005).

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.011
Hist.: 1EB 19-1980, f. 6-17-80, ef. 7-1-80; 1EB 4-1986, f. 1-23-86, ef. 2-1-86; EB 8-1989, f. & cert. ef. 1-27-89; EB 6-1995, f. & cert. ef. 1-24-95; ODE 7-1999, f. & cert. ef. 1-15-99; ODE 12-2002, f. & cert. ef. 4-15-02; ODE 4-2003, f. & cert. ef. 3-14-03; ODE 25-2008, f. & cert. ef. 9-26-08; ODE 4-2015, f. 1-30-15, cert. ef. 7-1-15; ODE 21-2015, f. & cert. ef. 12-18-15

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Rule Caption: CTE Revitalization Grant Advisory Committee
Adm. Order No.: ODE 22-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 9-1-2015
Rules Amended: 581-044-0250
Subject: Requires committee to have equal representatives from business, industry, labor and education.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-044-0250
Grant Advisory Committee

(1) The Oregon Department of Education and the Bureau of Labor and Industries shall jointly convene a Grant Advisory Committee to set goals for the grant program, develop grant criteria, review all grant applications and recommend determinations on those applications.

(2) The Grant Advisory Committee must equally have representatives from business, industry, labor, and education providers. The Department and Bureau shall seek recommendations for membership on the committee from:

(a) Organizations who represent business, industry and labor; and

(b) Education providers including but not limited to the Department of Community Colleges and Workforce Development, community colleges, school districts and other public and private education providers.

(3) A member of the Grant Advisory Committee may not review a grant for which they have a declared conflict of interest.

(4) The Grant Advisory Committee shall receive training on the purpose of the Career and Technical Education Revitalization Grant program and RFP scoring procedures prior to scoring any proposals.

(5) In consultation with the Bureau of Labor and Industries, the Oregon Department of Education may appoint additional grant reviewers for the sole purpose of expediting the grant review process.

Stat. Auth.: ORS 344.075
Stats. Implemented: ORS 344.075
Hist.: ODE 14-2011(Temp), f. & cert. ef. 10-31-11 thru 4-28-12; ODE 11-2012, f. 3-30-12, cert. ef. 4-2-12; ODE 21-2013, f. & cert. ef. 9-27-13; ODE 22-2015, f. & cert. ef. 12-18-15

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Rule Caption: Allows exemption to student participation in Oregon statewide summative assessments
Adm. Order No.: ODE 23-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 10-1-2015
Rules Amended: 581-022-1910
Subject: Implements HB 2655. Allows students exemption from participation in Oregon statewide summative assessments used to meet both participation and performance requirements for state and federal accountability.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1910
Exemptions

(1) The school district may excuse students from a state required program or learning activity, where necessary, to accommodate students' disabilities or religious beliefs:

(a) Approval of the exemption shall be based upon and shall include:

(A) A written request from the student's parent or guardian or the student, if the student is 18 years of age or older or a legally emancipated minor, listing the reasons for the request and a proposed alternative for an individualized learning activity which substitutes for the period of time exempt from the program and meets the goals of the learning activity or course being exempt;

(B) An evaluation of the request and approval by appropriate school personnel (the alternative should be consistent with the student's educational progress and career goals as described in OARs 581-022-1670 and 581-022-1510).

(b) Following approval by the district school board, and upon completion of the alternative, credit shall be granted to the student.

(2) The school district may approve and grant credit to a student for the alternative to a state required program or learning activity if the procedures in section (1) of this rule are followed.

(3) Subsections (1) and (2) of this rule do not apply to exemption from participating in Oregon's statewide summative assessments, which are defined as statewide assessments used to meet both participation and performance requirements for state and federal systems accountability. Exemption from Oregon's statewide summative assessments is instead governed by Section 2, chapter 519, Oregon Laws 2015 (Enrolled House Bill 2655). ODE will annually publish notice about Oregon's statewide summative assessments and an opt-out form as required under by Section 2, chapter 519, Oregon Laws 2015 (Enrolled House Bill 2655).

(4) Subsection (3) of this rule will sunset as of July 1, 2021.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 326.051
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 23-2015, f. & cert. ef. 12-18-15

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Rule Caption: Amends Beginning Teacher and Administrator Mentoring Program to align to SB 216
Adm. Order No.: ODE 24-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 10-1-2015
Rules Amended: 581-018-0130, 581-018-0145, 581-018-0148
Subject: Senate Bill 216 adjusted the time requirement for hours of contact between the mentors and beginning teachers and administrators from 90 hours to a range of at least 75-90 hours. The legislation also added priorities to be addressed by the moneys received by the school districts for the mentorship programs, including: (a) efforts to increase the number of culturally and linguistically diverse educators hired, and (b) efforts to close the cultural and linguistic gap between the demographics of the district's teachers and administrators with the demographics of the student served. Additional changes were made in the considerations given for awarding grants on a competetive basis if funds are not sufficient to award all eligible proposals, including (a) the aforementioned priorities, and (b) whether the school district is small or rural.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-018-0130
Definitions

The following definitions apply to Oregon Administrative Rules 581-018-0130 through 581-018-0151 unless the context requires otherwise:

(1) "Administrator's Present Position" means being assigned in the role as a principal or a superintendent.

(2) "Beginning Administrator" means a principal or superintendent who:

(a) Possesses an administrative license issued by the Teacher Standards and Practices Commission;

(b) Is employed as a principal or superintendent by a school district; and

(c) Has been assigned for fewer than two school years in the administrator's present position.

(3) "Beginning Teacher" means a teacher who:

(a) Possesses a teaching license issued by the Teacher Standards and Practices Commission;

(b) Is employed at least half time, primarily as a classroom teacher, by a school district; and

(c) Has taught fewer than two school years, as a licensed teacher in any public, private, or state-operated school.

(4) "Classroom Teachers" means all teachers who provide direct instruction to students.

(5) "District" means a school district, an education service district, a state-operated school, or any legally constituted combination of such districts.

(6) "Mentor " means an individual who:

(a) Is an acting or retired teacher, principal or superintendent;

(b) Has met established best practice and research-based criteria as defined by the State Board of Education by rule

(c) Possesses a teaching or administrative license issued by the Teacher Standards and Practices Commission;

(d) Has successfully served for five or more years as a licensed teacher, principal or superintendent in any public school; and

(e) Has been selected and trained as described in ORS 329.815.

(7) "Mentorship program" means a program provided by a mentor to a beginning teacher or administrator that includes, but is not limited to, direct classroom observation and consultation; assistance in instructional planning and preparation; support in implementation and delivery of classroom instruction; development of school leadership skills and other assistance intended to assist the beginning teacher or administrator to become a confident and competent professional educator who makes a positive impact on student learning.

(8) "Teacher" means a licensed employee of a common or union high school district, an employee of an education service district or a state-operated school who has direct responsibility for instruction, coordination of educational programs or supervision of teachers and who is compensated for services from public funds. "Teacher" does not include a school nurse as defined in ORS 342.455 or a person whose duties require an administrative certificate.

(9) "Mentoring" means a professional relationship between an educator and a skilled mentor. In a confidential and trusting partnership, the mentor supports the educator to transform practice through a process of reflection and inquiry. The goals of this collaborative and continuous work are: to accelerate instructional practice, ensure equitable learning for all students, retain effective educators, and empower educational leaders.

(10) "Culturally or Linguistically Diverse" means characteristics of a person, including:

(a) Origins in any of the black racial groups of Africa but is not Hispanic;

(b) Hispanic in culture or origin, regardless of race;

(c) Origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Origins in any of the original peoples of North American, including American Indians or Alaskan Natives; or

(e) A first language that in not English.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0065 by ODE 43-2014, f. & cert. ef. 12-4-14; Renumbered from 581-020-0065 by ODE 1-2015, f. & cert. ef. 1-26-15; ODE 13-2015(Temp); f. & cert. ef. 7-15-15 thru 1-10-16; ODE 24-2015, f. & cert. ef. 12-18-15

581-018-0145
Grant Application

Each district that wishes to participate in the beginning teacher and administrator mentorship program shall submit a formal application to the Department of Education. The application shall include:

(1) A description of the priorities to be addressed by moneys received by a school district for the mentorship program, including:

(a) Efforts to increase the number of culturally and linguistically diverse educators hired; and

(b) Efforts to close the cultural and linguistic gap between the demographics of the district's teachers and administrators with the demographics of the students served by the school district.

(2) The names of all eligible beginning teachers and administrators employed by the district and a description of their assignments and;

(23) A description of the proposed mentorship program, which must provide at least 75-90 hours of frequent contact, totaling a minimum of 90 hours between mentors and beginning teachers and administrators, throughout the school year.

(3) A description of the research based training that will be provided to mentors and beginning teachers and administrators.

(4) A description of how the training will build relationships of trust and mutual collaboration with beginning teachers and administrators.

(5) A description of the professional development mentors will receive before the school year begins and throughout the school year.

(6) A school district shall certify in the application that no eligible beginning professional educators are or may be under a conditional license, except as provided for by rules of the Teacher Standards and Practices Commission.

Stat. Auth.: ORS 326.051 & 329.795
Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 9-1990, f. & cert. ef. 1-30-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0075 by ODE 43-2014, f. & cert. ef. 12-4-14; ODE 13-2015(Temp); f. & cert. ef. 7-15-15 thru 1-10-16; ODE 24-2015, f. & cert. ef. 12-18-15

581-018-0148
Funding

(1) Subject to ORS 291.230 to 291.260, the Department of Education shall distribute grants-in-aid to qualifying school districts to offset the costs of beginning teacher and administrator mentorship programs. A qualifying district shall receive annually an amount that is aligned with evidence-based best practices for beginning teachers and administrators approved for support.

(2) If the funds are insufficient for all eligible proposals, the Department of Education shall award grants on a competitive basis taking into consideration:

(a) Successful or promising efforts to increase the number of culturally and linguistically diverse educators hired; and

(b) Closing the cultural and linguistic gap between demographics of the district's teachers and administrators and the demographics of students served by of the school district; and

(3) Whether the school district is a small school district or serves a rural community, geographic and demographic diversity.

Stat. Auth.: ORS 326.051 & 329.795

Stats. Implemented: ORS 329.790 - 329.820
Hist.: EB 18-1988, f. & cert. ef. 3-16-88; EB 36-1988, f. & cert. ef. 8-5-88; EB 9-1990, f. & cert. ef. 1-30-90; EB 25-1990(Temp), f. & cert. ef. 5-18-90; ODE 2-2008, f. & cert. ef. 1-25-08; Renumbered from 581-020-0080 by ODE 43-2014, f. & cert. ef. 12-4-14; Renumbered from 581-020-0080 by ODE 1-2015, f. & cert. ef. 1-26-15; ODE 13-2015(Temp); f. & cert. ef. 7-15-15 thru 1-10-16; ODE 24-2015, f. & cert. ef. 12-18-15

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Rule Caption: Career Pathway Funding for CTE Programs for K–12 students.
Adm. Order No.: ODE 25-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15
Notice Publication Date: 9-1-2015
Rules Adopted: 581-017-0287, 581-017-0291, 581-017-0294, 581-017-0297
Subject: Establishes the definitions, purpose, funding and reporting of the Career Pathway Funding for CTE Programs.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0287
Definitions

The following definitions apply to OAR 581-017-0287 to 581-017-0297:

(1) "Annual Pathway Allocation Maximum" means the maximum amount that can be allocated to one district in a given fiscal year as determined by the Department of Education.

(2) "Career Pathway Funding" means the funding allocation established by section 1, chapter 763, Oregon Laws 2015 (Enrolled HB 3072).

(3) "High Demand" means having more than the median number of total (growth plus replacement) openings for statewide or a particular region.

(4) "High Wage" means a wage that is more than the all-industry, all-ownership median wage for statewide or a particular region.

(5) "Historically Underserved student" means an English language learner, a student of color, an economically disadvantaged student or a student with disabilities.

(6) "Industry Credential" means certification that can lead to a high wage and high demand job and has been approved by the Department of Education.

(7) "Pathway to a high wage and high demand job" means a program of study offered in the current school year that provides students with the training necessary for the student to obtain a high wage high and demand job upon graduation, or enroll in post-high school training or education that will lead to a high wage and high demand job.

(8) "Program of Study" means a sequence of courses, aligned to industry standards at the secondary and post-secondary level, that integrates technical and career skill proficiencies with academic content and has been approved by the Oregon Department of Education.

(9) "Qualifying student" means:

(a) A student who earned at least three high school credits in a career and technical education program of study that is a pathway to high wage and high demand jobs;

(b) A student who acquired an industry credential while enrolled in high school in a career and technical education program of study; and

(c) A student who meets the qualifications set forth in subsection (8)(a) or (b) and is historically underserved.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 25-2015, f. & cert. ef. 12-18-15

581-017-0291
Purpose

The purpose of the Career Pathway Grant is to fund activities related to career and technical education programs of study that are pathways to high wage high demand jobs.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 25-2015, f. & cert. ef. 12-18-15

581-017-0294
Funding

(1) The Department of Education shall determine for each fiscal year the portion of the funds available for the Career Pathway Funding allocation and the annual pathway allocation maximum.

(2) Prior to the allocation in each fiscal year, the Department of Education shall:

(a) Determine which programs of study are pathways to a high wage and high demand job;

(b) Identify qualifying students enrolled in the prior school year at each district; and

(c) Report the data to the CTE Regional Coordinators for verification of accuracy.

(d) For each qualifying student enrolled in a district in the prior school year, the district will earn one point for purposes of the allocation formula in section (4) of this rule. If one qualifying student meets the qualifications of more than one section in 581-017-0287(8), the district will earn more than one point, up to three points total.

(e) The Department shall determine the amount of the allocation to each school district based on the following formula:

Allocation Amount = number of points earned by a school district in the prior school year x (the total amount available for distribution for Career Pathway Funding in a fiscal year / the total number of points in the State in the prior school year), not to exceed the annual pathway allocation maximum.

(f) Funds received by a school district under this section must be separately accounted for and must be distributed to the career and technical education program of study that served the qualifying students for which the funds were received. If a program of study is no longer in existence, the school district may not receive Career Pathway Funds for the qualifying students served by the defunct program.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 25-2015, f. & cert. ef. 12-18-15

581-017-0297
Reporting

School districts are responsible for the following reporting to the Oregon Department of Education. Prior to the allocation in each fiscal year, a school district must provide the following written assurances to the Department of Education:

(1) The money received through the career pathway funding allocation will not supplant current funding provided by the district for career and technical education; and

(2) The career technical education teacher, regional coordinator, and school administration will be involved in any decision making regarding how to use the career pathway allocation funds.

(3) Funds received will only be spent on the career and technical education program of study that served the qualifying students for which the funds were received. Prior to the end of each school year, a school district that has received an allocation of the career pathway funding must file with the Department:

(a) An expenditure report; and

(b) Verification that the career pathway funding allocation did not supplant funding provided by the district for career and technical education.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 25-2015, f. & cert. ef. 12-18-15

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Rule Caption: Extended Assessments of students
Adm. Order No.: ODE 26-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 12-21-15
Notice Publication Date: 10-1-2015
Rules Amended: 581-022-0610
Subject: This rule updates the definition of "Oregon Statewide Assessments" by updating items in Oregon's Extended Assessment to reflect standards required by Oregon's adoption of the Common Core Standards and Next Generation State Standards, and to parallel the framework of the general assessment.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-0610
Administration of State Assessments

(1) Definitions. As used in this rule:

(a) "Accommodations" means changes in procedures or materials that increase equitable access during assessment and generate valid assessment results for students for whom there is documentation of need on an Individualized Education Program (IEP) or 504 (Plan); they allow these students to show what they know and can do.

(b) "Designated supports" means access features of the assessment available for use by any student for whom the need has been indicated by an educator or team of educators.

(c) "District test coordinator" (DTC) means district personnel who ensure secure administration of Oregon Statewide Assessments as defined by Oregon Revised Statute, Administrative Rules, and the Test Administration Manual, including but not limited to supervising the work of the school test coordinators and test administrators.

(d) "Force majeure" means an extraordinary circumstance (e.g., power outage or network disturbance lasting at least one full school day) or act of nature (e.g., flooding, earthquake, volcano eruption) which directly prevents a school district from making reasonable attempts to adhere to the Test Schedule.

(e) "Impropriety" means the administration of an Oregon Statewide Assessment in a manner not in compliance with the Test Administration Manual, Oregon Revised Statute, or this rule.

(f) "Invalidation" means the act of omitting test results and student responses from the testing, reporting, and accountability systems for a given testing event for which the student may not retest.

(g) "Irregularity" means an unusual circumstance that impacts a group of students who are testing and may potentially affect student performance on the assessment or interpretation of the students' scores. A force majeure is an example of a severe irregularity.

(h) "Modification" means practices and procedures that compromise the intent of the assessment through a change in the achievement level, construct, or measured outcome of the assessment.

(i) "Universal Tools" means access features of the assessment that are either provided as digitally-delivered components of the test administration system or separate from it. Universal tools are available to all students based on student preference and selection.

(j) "Oregon Statewide Assessments" means:

(A) The Oregon Assessment of Knowledge and Skills (OAKS) in:

(i) Science;

(i) Social Sciences;

(B) The Smarter Balanced Assessments (Smarter) in:

(i) Mathematics

(ii) English Language Arts (ELA)

(C) The English Language Proficiency Assessment (ELPA21);

(D) The Extended Assessment in:

(i) English Language Arts (ELA);

(ii) Mathematics;

(iii) Science; and

(E) The Kindergarten Assessment

(k) "Reset" means the removal of student responses from the web-based testing application for a given testing event for which the student may retest.

(l) "School building" means facilities owned, leased, or rented by a school district, educational service district, public charter school, private school, or private alternative program.

(m) "School district" means:

(A) A school district as defined in ORS 332.002;

(B) The Oregon School for the Deaf;

(C) The Juvenile Detention Education Program as defined in ORS 326.695;

(D) The Youth Corrections Education Program as defined in ORS 326.695;

(E) The Long Term Care Program as defined in ORS 343.961; and

(F) The Hospital Education Programs as defined in ORS 343.261.

(n) "School test coordinator" (STC) means school personnel who provide comprehensive training to test administrators and monitor the testing process.

(o) "Test Administration Manual" means a manual published annually by ODE that includes descriptions of the specific policies and procedures that school districts are required to follow when administering any component of the Oregon Statewide Assessments. References to the Test Administration Manual refer to the edition in effect at the time of test administration and include appendices and any addenda published in accordance with ODE's revision policy.

(p) "Test administrator" (TA) means an individual trained to administer the Oregon Statewide Assessments in accordance with the Test Administration Manual.

(q) "Test Schedule" means the Test Schedule and Required Ship Dates published annually by ODE that includes the windows in which school districts must offer their students the Oregon Statewide Assessments and the deadline by with DTCs must ship or postmark test materials.

(2)(a) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all students enrolled in a school operated by the district or enrolled in a public charter school that is located within the boundaries of the school district.

(b) School districts, as defined in ORS 332.002, must enforce the assessment policies described in this rule for all resident students enrolled in a private alternative education program, regardless of whether the private alternative education program is located within the boundaries of the school district.

(c) The Oregon School for the Deaf must enforce the assessment policies described in this rule for all students enrolled in that school.

(d) The Juvenile Detention Education Program and the Youth Corrections Education Program must enforce the assessment policies described in this rule for all students enrolled in that program.

(e) The Long Term Care Program and the Hospital Education Programs must enforce the assessment policies described in this rule for all students enrolled in that program.

(f) School districts may delegate responsibility for enforcing the assessment policies described in this rule to another school district or education service district under the conditions specified in the Test Administration Manual.

(3) School districts must administer Oregon Statewide Assessments in accordance with the Test Administration Manual and Test Schedule published by ODE. The results of these assessments are used to satisfy the requirements specified in OAR 581-022-1670 and 581-022-0606 and as a method to evaluate compliance with 581-022-1210.

(4) School districts must ensure that students are administered the proper Oregon Statewide Assessment and that the testing environment satisfies the following testing conditions:

(a) School districts must ensure that Oregon Statewide Assessments are administered by a trained TA who has signed an Assurance of Test Security form for the current school year on file in the district office;

(b) School districts must administer Oregon Statewide Assessments in a school building or in an environment that otherwise complies with the Test Administration Manual;

(c) School districts must apply the following criteria in deciding whether to provide a student with an accommodation during administration of an Oregon Statewide Assessment:

(A) School districts must decide whether to provide accommodations during an assessment on an individual student basis and separately for each content area to be assessed; and

(B) For students with an Individualized Education Plan (IEP) or 504 Plan, school districts must implement the assessment decision made by a student's IEP or 504 team and documented in the IEP or 504 Plan;

(d) School districts may only administer modifications to students with an IEP or 504 Plan and only in accordance with the assessment decision made by the student's IEP or 504 team and documented in the IEP or 504 Plan. Before administering an assessment using a modification, a student's IEP or 504 team must inform the student's parent that the use of a modification on an assessment will result in an invalid assessment;

(e) School districts must provide only those subject-specific accommodations, designated supports, and universal tools listed in the Oregon Accessibility Manual and must provide these supports in a manner consistent with the policies contained in the Test Administration Manual and Oregon Accessibility Manual;

(f) School districts must ensure that students do not access electronic communication devices such as cellular phones or personal digital assistants (PDAs) during an assessment; and

(g) School districts must follow all additional testing conditions specified in the Test Administration Manual.

(5) Failure by a school district to comply with section (4) of this rule constitutes an impropriety as defined in section (1)(e) of this rule. DTCs must report all potential improprieties or irregularities to ODE within one business day of learning of the potential impropriety or irregularity in accordance with the reporting procedures contained in the Test Administration Manual.

(6) The ODE may invalidate assessment results and student responses for assessments administered under conditions not meeting the assessment administration requirements specified in Sections 3 and 4 of this rule. In rare instances, ODE may reset a student assessment at the request of the school district if ODE determines that a reset would not compromise the security or validity of the assessment.

(7) ODE counts assessments that meet the following conditions as non-participants in ODE calculations of participation and does not include such assessments in ODE calculations of performance:

(a) Assessments administered using modifications as defined in section (1)(h) of this rule;

(b) Invalidated assessments;

(c) Assessments administered outside the testing window specified in the Test Schedule; or

(d) Assessments shipped or postmarked after the dates identified in the Test Schedule.

(8) ODE only allows extensions to the testing window or shipping deadlines identified in the Test Schedule in cases where a force majeure occurs within three days of the close of the testing window or shipping deadline and prevents a school district from meeting the deadline. Upon receiving a force majeure extension request from the school district, ODE may permit a one-day extension of the testing window or shipping deadline for each day of the force majeure, for up to five days. The force majeure extension begins on the first school day after normal operations resume and ends no later than the last school day in the month in which the testing window closes.

(9) School districts may only assess students using the Extended Assessment instead of OAKS or Smarter if the student has an IEP Plan and the student's Plan indicates that the student requires the Extended Assessment.

(10) School districts must administer ELPA annually to all students determined by the school district to be eligible for English language development (ELD) services under Title III of the Elementary and Secondary Education Act (ESEA), regardless of whether an eligible student actually receives ELD services.

(11) Administration of the Kindergarten Assessment is governed by OAR 581-022-2130.

Stat. Auth.: ORS 326.051 & 329.075
Stats. Implemented: ORS 329.075 & 329.485
Hist.: 1EB 2-1985, f. 1-4-85, ef. 1-7-85; EB 14-1990(Temp), f. & cert. ef. 3-5-90; ODE 6-2002(Temp), f. & cert. ef. 2-15-02 thru 6-30-02; ODE 16-2002, f. & cert. ef. 6-10-02; ODE 30-2008, f. 12-16-08, cert. ef. 12-19-08; ODE 12-2009, f. & cert. ef. 12-10-09; ODE 7-2010, f. & cert. ef. 5-27-10; ODE 7-2011, f. & cert. ef. 7-1-11; ODE 34-2014, f. & cert. ef. 6-24-14; ODE 26-2015, f. & cert. ef. 12-21-15

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Rule Caption: Revises content of Individual Education Plan relating to statewide assessments.
Adm. Order No.: ODE 27-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 12-21-15
Notice Publication Date: 10-1-2015
Rules Amended: 581-015-2200
Subject: Modifies Individualized Education Plan requirements relating to Oregon Extended Assessments.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2200
Content of IEP

(1) The individualized education program (IEP) must include:

(a) A statement of the child's present levels of academic achievement and functional performance, including how the child's disability affects the child's involvement and progress in the general education curriculum.

(b) A statement of measurable annual goals, including academic and functional goals (and, for children with disabilities who take alternate assessments aligned to alternate achievement standards, a description of short-term objectives) designed to:

(A) Meet the child's needs that result from the child's disability to enable the child to be involved in and make progress in the general education curriculum; and

(B) Meet each of the child's other educational needs that result from the child's disability.

(c) A description of how the child's progress toward meeting the annual goals will be measured and when periodic reports on the progress the child is making toward meeting the annual goals (such as through the use of quarterly or other periodic reports, concurrent with the issuance of report cards) will be provided;

(d) A statement of the specific special education and related services and supplementary aids and services, based on peer-reviewed research to the extent practicable, to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child:

(A) To advance appropriately toward attaining the annual goals;

(B) To be involved and progress in the general education curriculum and to participate in extracurricular and other nonacademic activities; and

(C) To be educated and participate with other children with disabilities and children without disabilities,

(e) The projected dates for initiation of services and modifications and the anticipated frequency, amount, location and duration of the services and modifications described in subsection (1)(d) of this rule.

(f) An explanation of the extent, if any, to which the child will not participate with children without disabilities in the regular class and activities described in subsection (1)(d) of this rule.

(g) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and district-wide assessments of student achievement that are needed for the child to participate in the assessment:

(A) A child may not be exempt from participation in State or district-wide assessment, including extended and juried assessments, because of a disability, unless the parent has requested an exemption under OAR 581-022-0612.

(B) If the IEP team determines that the child must take the alternate assessment instead of the regular Statewide or a district-wide assessment, a statement of why the child cannot participate in the regular assessment, and why the alternate assessment is appropriate for the child.

(2) For the purposes of transition, the IEP must include:

(a) Beginning not later than the first IEP to be in effect when the child turns 16, or younger, if determined appropriate by the IEP team, and updated annually thereafter:

(A) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills; and

(B) The transition services (including courses of study) needed to assist the child in reaching those goals.

(b) Beginning at least one year before a student reaches age 18, or when the district obtains actual knowledge that within one year the student will marry or become emancipated before age 18, a statement that the district has informed the student that procedural rights will transfer to the student upon age 18, marriage or emancipation, whichever occurs first.

Stat. Auth.: ORS 343.041, 343.045, 343.055 & 343.151
Stats. Implemented: ORS 343.151 & 34 CFR 300.320
Hist.: 1EB 269, f. & ef. 12-22-77; EB 9-1993, f. & cert. ef. 3-25-93; ODE 32-1999, f. 12-13-99, cert. ef. 12-14-99; ODE 2-2003, f. & cert. ef. 3-10-03; Renumbered from 581-015-0068, ODE 10-2007, f. & cert. ef. 4-25-07; ODE 26-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 27-2015, f. & cert. ef. 12-21-15

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Rule Caption: School Emergency Plans and Safety Programs, Facilities and Safety and Emergency Planning
Adm. Order No.: ODE 28-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15
Notice Publication Date: 9-1-2015
Rules Amended: 581-022-1420, 581-024-0275
Subject: Provides that school drills and instruction on safety threats include procedures related to lockdown, lockout, shelter in place and evacuation.

Adds school drills and instruction requirements to school district standards.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-1420
Emergency Plans and Safety Programs

The school district shall maintain a comprehensive safety program for all employees and students which shall:

(1) Include plans for responding to emergency situations.

(2) Specify general safety and accident prevention procedures with specific instruction for each type of classroom and laboratory.

(3) Provide instruction in basic emergency procedures for each laboratory, shop and studio, including identification of common physical, chemical, and electrical hazards.

(4) Require necessary safety devices and instruction for their use.

(5) Require that an accident prevention in service program for all employees be conducted periodically and documented.

(6) Provide assurance that each student has received appropriate safety instruction.

(7) Provide for regularly scheduled and documented safety inspections which will assure that facilities and programs are maintained and operated in a manner which protects the safety of all students and employees.

(8) Require reports of accidents involving school district property, or involving employees, students or visiting public, as well as prompt investi-

gation of all accidents, application of appropriate corrective measures, and monthly and annual analyses of accident data and trends.

(9) In schools operated by the district that are occupied by students, the district must ensure that all students are instructed and have drills on emergency procedures in compliance with ORS 336.071. The emergency procedures shall include drills and instruction on:

(a) Fires;

(b) Earthquakes, which shall include tsunami drills and instruction in schools in a tsunami hazard zone; and

(c) Safety threats including procedures related to lockdown, lockout, shelter in place and evacuation and other appropriate actions to take when there is a threat to safety.

Stat. Auth.: ORS 326.051
Stats. Implemented: ORS 336.071
Hist.: EB 18-1996, f. & cert. ef. 11-1-96; ODE 28-2015, f. & cert. ef. 12-22-15

581-024-0275
Facilities, Safety and Emergency Planning

(1) Each district shall operate and maintain an administration office and other physical facilities as necessary to accommodate district services. These facilities must be in compliance with applicable federal and state health and safety regulations.

(2) Each district shall maintain inspection reports showing the district in compliance with all applicable federal and state health and safety regulations.

(3) In facilities operated by the district, each district shall provide for regularly scheduled and documented safety inspections to assure that the facilities and services are operated and maintained in a manner that protects the safety and health of staff and students.

(4) In schools operated by the district that are occupied by students, the district must ensure that all students are instructed and have drills on emergency procedures in compliance with ORS 336.071. The emergency procedures shall include drills and instruction on:

(a) Fires;

(b) Earthquakes, which shall include tsunami drills and instruction in schools in a tsunami hazard zone; and

(c) Safety threats including procedures related to lockdown, lockout, shelter in place and evacuation and other appropriate actions to take when there is a threat to safety.

(5) In facilities operated by the district, each district must have a written plan for responding to emergency situations. Emergency situations include but are not limited to: injury accidents, fire, chemical spill, hazardous materials, exposure to contagious disease, fire arms on the premises, and other illegal acts that threaten the health and safety of staff and students.

(a) Emergency plans should be coordinated with appropriate police and fire services, ambulance services and area hospitals.

(b) There should be an adequate internal communication system in district operated facilities to transmit emergency information to staff and students in a rapid and clear manner.

(c) The emergency plan should be posted in conspicuous places throughout district operated facilities.

(d) There should be periodic training for staff and students regarding the emergency plan. Appropriate first-aid supplies and at least one staff member with a current first-aid/CPR card shall be available at all district operated facilities.

Stat. Auth.: ORS 334.125, 334.217 & 336.071
Stats. Implemented: ORS 334.125, 334.217 & 336.071
Hist.: 1EB 237, f. & ef. 7-9-76; 1EB 265, f. & ef. 8-22-77; 1EB 4-1985, f. 1-4-85, ef. 7-1-85; EB 10-1994, f. & cert. ef. 8-16-94; ODE 28-2008, f. 10-23-08, cert. ef. 10-24-08; ODE 28-2015, f. & cert. ef. 12-22-15

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Rule Caption: Training requirements for Safety of School Sports relating to concussions
Adm. Order No.: ODE 29-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15
Notice Publication Date: 8-1-2015
Rules Amended: 581-022-0421
Subject: The rule establishes requirements for safety of school sports relating to concussions. The amendments ensure coaches receive annual training to learn how to recognize concussion symptoms and how to seek medical treatment for person suspected of having concussion.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-022-0421
Safety of School Sports — Concussions

(1) As used in this rule:

(a) "Annual training" means once in a twelve month period.

(b) "Coach" means a person who instructs or trains members on a school athletic team and may be:

(A) A school district employee;

(B) A person who volunteers for a school district

(C) A person who is performing services on behalf of a school district pursuant to a contract.

(c) "Concussion" means exhibiting signs, symptoms or behaviors consistent with a concussion following an observed or suspected blow to the head or body.

(d) "Health care professional" means a medical doctor, osteopathic physician, psychologist, physician assistant or nurse practitioner licensed or certified under the laws of this state.

(e) "Proper medical treatment" means treatment provided by a licensed health care professional which is within their scope of practice.

(f) "Return to participation" means a student can rejoin the athletic event or training.

(g) "Training timeline" means every coach receives the training prior to the beginning of the season for the school athletic team they are specifically coaching.

(h) "Same day" means the same calendar day on which the injury occurs.

(2) Each school district shall:

(a) Develop a list of coaches.

(b) Identify which community (may include state or national) resources the district will use to provide the training as required in section (3) of this rule.

(c) Develop training timelines for coaches of all school athletic teams.

(d) Ensure coaches receive training once every twelve months.

(e) Develop a tracking system to document that all coaches meet the training requirements of this rule.

(f) Ensure no coach allows a member of a school athletic team to participate in any athletic event or training on the same calendar day that the member:

(A) Exhibits signs, symptoms or behaviors consistent with a concussion following an observed or suspected blow to the head or body; or

(B) Has been diagnosed with a concussion.

(g) Except as provided by subsection (3) in this section ensure no coach will allow a student who is prohibited from participating in an athletic event or training, as described in section (2)(f), to return to participate in an athletic event or training no sooner than the day after the student experienced a blow to the head or body. The student may not return to participate in an athletic event or training until the following two conditions have been met:

(A) The student no longer exhibits signs, symptoms or behaviors consistent with a concussion; and

(B) The student receives a medical release form from a health care professional.

(3) A coach may allow a member of a school athletic team to participate in any athletic event or training at any time after an athletic trainer registered by the Board of Athletic Trainers determines that the member has not suffered a concussion. The athletic trainer may, but is not required to, consult with a health care professional in making the determination that the member has not suffered a concussion.

(4) The training required of coaches under this rules shall include the following:

(a) Training in how to recognize the signs and symptoms of a concussion;

(b) Training in strategies to reduce the risk of concussions;

(c) Training in how to seek proper medical treatment for a person suspected of having a concussion; and

(d) Training in determination of when the athlete may safely return to the event or training.

Stat. Auth: ORS 336.485
Stats. Implemented: ORS 336.485
Hist.: ODE 13-2010, f. & cert. ef. 6-30-10; ODE 2-2011, f. 1-31-11, cert. ef. 2-1-11; ODE 29-2015, f. & cert. ef. 12-22-15

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Rule Caption: Changes the Executive Order number for Employment Related Transition Services from No.13-04 to No. 15-01.
Adm. Order No.: ODE 30-2015
Filed with Sec. of State: 12-22-2015

Certified to be Effective: 12-22-15
Notice Publication Date:
Rules Amended: 581-015-2930
Subject: Executive Order No.13-04 was implemented, July 1, 2013. This initial Executive Order was signed by Governor John Kitzhaber, M.D. and Secretary of State Kate Brown. In February of 2015 the Executive Order was revised and updated and subsequently resigned as Executive Order No.15-01. The amended rule reflects this change.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-015-2930
Employment-Related Transition Services

(1) This rule establishes the policies of Executive Order No. 15-01, related to the Department of Education's involvement with integrated employment services.

(2) For purposes of this rule, the following definitions apply:

(a) "Education Goals" means the following goals:

(A) Families, students, and educators will have the expectation that individuals with intellectual and developmental disabilities will work in integrated, community-based settings;

(B) Students transitioning to adult services will be prepared to transition to integrated work experiences; and

(C) Statewide systems will be coordinated to reach the goal of integrated employment opportunities as an outcome of students' education.

(b) "Transition age student" means a student with disabilities who is eligible for transition services under the Individuals with Disabilities Education Act (IDEA) and OAR 581-015-2200.

(c) "Transition Technical Assistance" is the substance of the work of the Statewide Transition Technical Assistance Network (TTAN) and includes development of competencies for teachers, administrators, and other educational service providers that include:

(A) Developing transition-related curriculum and instructional approaches which are consistent with the Education Goals;

(B) Developing outcome-based transition planning approaches that use precepts of discovery and person-centered planning;

(C) Implementing transition-related instructional approaches for students with disabilities, such as those that are community based, and which may include, but are not limited to, authentic experiences such as internships, mentorships, youth work experiences, job skill related instruction, and job shadowing;

(D) Facilitating and managing interagency teams and resources to help ensure students and families may utilize resources from applicable state agencies, local education agencies, and other available resources; and

(E) Encouraging the implementation of transition services in schools that are consistent with the Education Goals.

(F) Assisting Local Education Agencies to meet the requirements of OAR 581-015-2245 regarding the placement of students.

(3) The Department shall establish a statewide TTAN to assist high schools in Oregon in providing transition services. The TTAN shall seek to ensure that the Education Goals are implemented in assessment, curriculum, and instruction for transition age students.

(4) This rule and its provisions are not intended to expand or replace the obligations of the State or its schools under the IDEA.

Stat. Auth.: ORS 343.041, 343.045 & 343.055,
Stats. Implemented: ORS 343.041, 343.045 & 343.055
Hist.: ODE 29-2013, f. & cert. ef. 12-18-13; ODE 30-2015, f. & cert. ef. 12-22-15

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Rule Caption: School District Improvement Partnership Pilot
Adm. Order No.: ODE 32-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 12-28-15 thru 3-1-16
Notice Publication Date:
Rules Adopted: 581-020-0530, 581-020-0533, 581-020-0536, 581-020-0539, 581-020-0541
Subject: The 2015 Legislative Session provided the Oregon Department of Education (ODE) with resources to support school districts with large numbers of students experiencing difficulty meeting benchmarks in achievement, growth, and graduation. ODE convened a taskforce that met several times to outline their recommendations for the selection of districts and use of the resources. As such, ODE will begin partnering with selected school districts during the 2015-2017 biennium. The partnerships will be forged to support focused improvement efforts, through a pilot approach and will be guided by the recommendations of the taskforce, the support from the state legislature, and an interest in developing the most effective and sustainable state model for comprehensive district improvement efforts moving forward. The rules provide the criteria and process for the selection of the districts.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-020-0530
Definitions

The following definitions apply to 581-020-0530 to 581-020-0541:

(1) "Comprehensive Improvement Plan" or "CIP" refers to a school district's improvement plan created using the Indistar online planning tool.

(2) "District Improvement Partnership " is a formalized agreement to provide technical, adaptive and financial support to eligible and selected school districts.

(3) "School district" means a common or union high school district.

Stat. Auth.: ORS 327.800
Stats Implemented: ORS 327.800 & 329.105
Hist.: ODE 32-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-020-0533
Eligibility

To be eligible for selection as District Improvement Partnership district:

(1) The district must have 300 or more students enrolled in the district on a date specified by the Department; and

(2) Demonstrate a history of low performance as defined as "below state average" in the following metrics:

(a) 3rd grade reading achievement for all students as determined by a statewide standardized assessment;

(b) 3rd grade reading achievement for student subgroups as determined by a statewide standardized assessment;

(c) 4th grade through 8th grade reading growth for all students as determined by a statewide standardized assessment;

(d) 4th grade through 8th grade reading growth for student subgroups as determined by a statewide standardized assessment;

(e) 4th grade through 8th grade math growth for all students as determined by a statewide standardized assessment;

(f) 4th grade through 8th grade math growth for student subgroups as determined by a statewide standardized assessment;

(g) 9th grade chronic absenteeism; and

(h) 5-year cohort graduation rates. Data used by the Department to select school districts may be from different school years but must by the best data available as identified by the Department.

Stat. Auth.: ORS 327.800
Stats Implemented: ORS 327.800 & 329.105
Hist.: ODE 32-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-020-0536
Criteria

(1) The Department of Education shall determine eligible District Improvement Partnership districts by screening for the lowest 5%, or approximately ten districts, using the metrics identified in OAR 581-020-0533.

(2) When selecting districts, the Department shall further consider the district's willingness to engage with the Department and the following activities:

(a) Participation in a readiness assessment;

(b) A district needs assessment;

(c) Analysis of the needs assessment;

(d) CIP revision support (outside of the predetermined ODE monitoring timeline) based on needs assessment findings to clearly articulate (i) priority improvement interventions, (ii) leading indicators and success metrics, and (iii) lagging indicators and success metrics, (iv) improvement timelines and budget with activities scheduled to begin during the winter or spring of 2016. The CIP must be approved by the Department;

(e) The development and institution of an internal (district-run) quarterly routine to monitor improvement initiative attending to leading and lagging success metrics;

(f) Prepare quarterly monitoring reports based on the district routine described in paragraph (d) of this subsection; and

(g) Meet periodically with the Department to review progress.

(3) Based on the considerations described in this rule, the Department shall select and provide financial resources for a number of or all of the eli-

gible and identified District Improvement Partnership districts for the purpose of completing the activities identified in subsection (2) of this rule.

Stat. Auth.: ORS 327.800
Stats Implemented: ORS 327.800 & 329.105
Hist.: ODE 32-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-020-0539
Funding

(1) The Department of Education shall determine and support District Improvement Partnerships during the 2015-2017 biennium.

(2) The Department shall distribute funding to districts in three stages of activities:

(a) Stage 1: District Needs Assessment;

(b) Stage 2: Approved CIP improvement activity start-up funding;

(c) Stage 3: Continued improvement funding aligned to quality review analysis;

(3) The Department shall determine funding for each phase as follows:

(a) Stage 1: up to $25,000 per district

(b) Stages 2 and 3: formula grant based on estimated improvement planning and implementation activities (up to $400,000, total, per district per year of the biennium).

Stat. Auth.: ORS 327.800
Stats Implemented: ORS 327.800 & 329.105
Hist.: ODE 32-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-020-0541
Reporting & Monitoring

(1) Districts Improvement Partnership districts shall:

(a) Submit results of the district needs assessment to the Department of Education for review;

(b) Submit a revised Comprehensive Improvement Plan, informed by the district needs assessment, that includes leading and lagging indicators for no more than three district priority interventions;

(c) Submit quarterly district assessment data to ODE including, but not limited to:

(A) Percentage of students meeting standards for reading;

(B) Percentage of students meeting standards for math;

(C) Student attendance data; and

(D) An updated budget for the district.

(2) Annually, districts will submit updated Comprehensive Improvement Plans aligned to reflect progress and needs of the district for review and approval by the Department.

(3) In the event that participating districts fail to adhere to the aforementioned monitoring or reporting elements or in the event that adequate progress towards meeting goals is not met shall freeze funds available under the program until reports are received and adequate adjustments are made.

Stat. Auth.: ORS 327.800
Stats Implemented: ORS 327.800 & 329.105
Hist.: ODE 32-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

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Rule Caption: Establishes guidelines for new CTE Summer Youth Engagement Program
Adm. Order No.: ODE 33-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 12-28-15 thru 3-1-16
Notice Publication Date:
Rules Adopted: 581-017-0465, 581-017-0469, 581-017-0473, 581-017-0477, 581-017-0481, 581-017-0485
Subject: HB 3072 (2015) is the CTE/STEM framework bill. Included in HB 3072 is a new grant to support summer programs in career and technical education. The purpose of the program is to provide an intensive learning opportunity for middle and high school students, including access to advanced equipment, post-secondary connections, and industry professionals.
Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0465
Definitions

The following definitions apply to OAR 581-017-0465 to 581-017-0485:

(1) "CTE Summer Youth Engagement Program Grant" means the grant established by section 1, Chapter 763, Oregon Law 2015 (Enrolled House Bill 3072).

(2) "High Demand" means having more than the median number of total (growth plus replacement) openings for statewide or a particular region.

(3) "High Wage" means a wage that is more than the all-industry, all-ownership median wage for statewide or a particular region.

(4) "Historically Underserved student" means an English language learner, a student of color, an economically disadvantaged student or a student with disabilities.

(5) "Industry Credential" means certification that can lead to a high wage and high demand job and has been approved by the Department of Education.

(6) "Program of Study" means a sequence of courses, aligned to industry standards at the secondary and post-secondary level, that integrates technical and career skill proficiencies with academic content and has been approved by the Oregon Department of Education.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-017-0469
Establishment

The purpose of the CTE Summer Youth Engagement Program is to provide middle and high school students with access to state-of-the-art facilities, training, and mentoring that may not be available in their local community, and to encourage those students to pursue industry credentials in high wage and high demand fields.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-017-0473
Eligibility

The following entities shall be eligible to receive a CTE Summer Youth Engagement Program Grant:

(1) School districts;

(2) Education service districts (ESDs) as defined in ORS 334.003;

(3) Public schools;

(4) Public charter schools;

(5) Community colleges; and

(6) Public universities.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-017-0477
Criteria

(1) The Oregon Department of Education shall establish a request for proposal, application, or direct grant solicitation and approval process to be conducted each biennium for which CTE Summer Youth Engagement Program Grant funds are available.

(2) Requests for funding shall be evaluated and scored based on the following criteria:

(a) Summer programs serving students in grades 7 and 8 must:

(A) Focus on exploration of careers that include high wage and high demand occupations;

(B) Expose students to related CTE programs of study available at a student's future high school; and

(C) Include opportunities for students to interact with adults involved in related high wage and high demand occupations.

(b) Summer programs serving students who are in high school and have participated in a CTE course during the school year must:

(A) Focus on intensive CTE study addressing academic and technical attainment;

(B) Create opportunities for students to earn industry credentials or dual credit or both when appropriate;

(C) Align with CTE Programs of Study available in a student's high school;

(D) Include student interactions with related local businesses and industries; and

(E) Expose students to related educational opportunities through community colleges, universities, or apprenticeship programs.

(c) The Department of Education shall give priority to proposals that meet the minimum criteria and address the needs of historically underserved students.

(3) The Department of Education shall allocate funds for the grant program based on the evaluation of the grant application and the following considerations:

(a) Geographic location of districts to insure geographic diversity within the recipients of grant program funds throughout the state;

(b) Districts who have an achievement gap between subgroup populations; and

(c) Districts who have a high level of students in poverty.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-017-0481
Funding

(1) The Department of Education shall determine for each biennium the portion of the funds available for the CTE Summer Youth Engagement Program Grant.

(2) CTE Summer Youth Engagement Program Grant funds received by a grantee must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

581-017-0485
Reporting

(1) After being selected as a grantee but before receiving the allocation of CTE Summer Youth Engagement Program Grant funds, grant recipients must provide the Department of Education with the following:

(a) A risk management plan that addresses contact between minors and adults and the use of power tools and equipment; and

(b) A plan for recruiting and retaining historically underserved students.

(2) Recipients of the CTE Summer Youth Engagement Program Grant must report on the grant to the Department of Education. The report must include metrics developed by the Department of Education.

Stat. Auth.: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 33-2015(Temp), f. 12-23-15, cert. ef. 12-28-15 thru 3-1-16

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Rule Caption: Establishes guidelines for STEM Innovation Grant
Adm. Order No.: ODE 34-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 12-28-15 thru 4-1-16
Notice Publication Date:
Rules Amended: 581-017-0321, 581-017-0324, 581-017-0327, 581-017-0330, 581-017-0333
Subject: HB 3072 (2015) is the CTE/STEM framework bill. Included in HB 3072 is a grant program for innovative education and professional development related to STEM.

The purpose of the STEM Innovation Grant Program is to award grants that expand the implementation of effective programs relating to science, technology, engineering, and mathematics, that:

(1) Propose innovative approaches to STEM-based education; or

(2) Provide professional development relating to science, technology, engineering, and mathematics.

Rules Coordinator: Cindy Hunt—(503) 947-5651

581-017-0321
Establishment of the STEM Innovation Grants

The purpose of the STEM Innovation Grant Program is to award grants that expand the implementation of effective programs relating to science, technology, engineering, and mathematics, that:

(1) Propose innovative approaches to STEM-based education; or

(2) Provide professional development relating to science, technology, engineering, and mathematics.

Stat. Auth.: ORS 327.820; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: ORS 327.820; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 30-2014, f. & cert. ef. 6-24-14; ODE 34-2015(Temp) f. 12-23-15, cert. ef. 12-28-15 thru 4-1-16

581-017-0324
Eligibility of STEM Innovation Grant

The Oregon Department of Education shall allocate funds for the STEM Innovation Grant. The following entities are able to apply for the STEM Innovation Grant:

(1) STEM Hubs;

(2) School districts;

(3) Education service districts as defined in ORS 334.003

(4) Public schools;

(5) Public charter schools;

(6) Student-focused nonprofit organizations who are in partnership with an eligible fiscal agent under OAR 581-017-0302; or

(7) Post-secondary institutions who are, or are in partnership with, an eligible fiscal agent under OAR 581-017-0302.

Stat. Auth.: ORS 327.820; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Stat. Implemented: ORS 327.820; 2015 OL Ch. 763, Sec. 1 (Enrolled HB 3072)
Hist.: ODE 30-2014, f. & cert. ef. 6-24-14; ODE 34-2015(Temp) f. 12-23-15, cert. ef. 12-28-15 thru 4-1-16

581-017-0327
Criteria of STEM Innovation Grant

(1) The Oregon Department of Education shall establish a request for proposal, application, or direct grant solicitation and approval process to be conducted each biennium for which the STEM Innovation Grant funds are available.

(2) Eligible recipients will focus on STEM related education with a specific agenda that demonstrates a record of success or clearly established plans for addressing the following through innovative approaches:

(a) Closing the achievement gap for students who are historically underserved students or underrepresented in STEM or both with innovative approaches;

(b) Supporting effective implementation of Oregon's academic standards and relevant technical skills;

(c) Successfully moving students along a P-20 STEM workforce pathway; and

(d) Engaging all students in meaningful, authentic problem-based learning.

(3) The Department shall give priority to proposals that meet the minimum criteria and clearly demonstrates how the grant funds will be used to address the following:

(A) Establish how underserved and underrepresented students will be engaged and have increased learning opportunities;

(B) Support new or expand STEM programs and activities;

(C) Demonstrate a long-term sustainability plan; and

(D) Collaborate with local business and industry partners or Regional STEM Hubs or both.

(4) The Department of Education may consider the geographic location of grant applicants to ensure geographic diversity within the recipients of grant program funds throughout the state.

(5) Eligible recipients must have a comprehensive system for measuring students' quantitative and qualitative outcomes.

Stat. Auth.: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Stat. Implemented: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Hist.: ODE 30-2014, f. & cert. ef. 6-24-14; ODE 34-2015(Temp) f. 12-23-15, cert. ef. 12-28-15 thru 4-1-16

581-017-0330
Implementation of STEM Innovation Grant

(1) The Oregon Department of Education, in collaboration with the Chief Education Office and the STEM Council, shall determine for each biennium the funds available for the STEM Innovation Grants.

(2) STEM Innovation Grant funds received by a grantee must be separately accounted for and may be used only to provide funding for the purposes described in the application of the grant recipient.

Stat. Auth.: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Stat. Implemented: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Hist.: ODE 30-2014, f. & cert. ef. 6-24-14; ODE 34-2015(Temp) f. 12-23-15, cert. ef. 12-28-15 thru 4-1-16

581-017-0333
Reporting of STEM Innovation Grant

Recipients of the STEM Innovation Grant must report on the grant to the Department of Education. The report must include metrics developed by the Department of Education, in collaboration with the STEM Council and the Chief Education Office.

Stat. Auth.: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Stat. Implemented: 2013 OL Ch. 661, Sec. 4 (Enrolled HB 3232)
Hist.: ODE 30-2014, f. & cert. ef. 6-24-14; ODE 34-2015(Temp) f. 12-23-15, cert. ef. 12-28-15 thru 4-1-16

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Oregon Health Authority, Addictions and Mental Health Division: Addiction Services Chapter 415

Rule Caption: Temporary suspension of rules on standards for reducing tobacco use by minors.

Adm. Order No.: ADS 1-2016(Temp)
Filed with Sec. of State: 1-4-2016
Certified to be Effective: 1-5-16 thru 6-28-16
Notice Publication Date:
Rules Suspended: 415-060-0010, 415-060-0020, 415-060-0030, 415-060-0040, 415-060-0050
Subject: The Oregon Health Authority, Addictions and Mental Health Division is temporarily suspending administrative rules in chapter 415, division 60. The Oregon Health Authority has reorganized and rules for standards for reducing tobacco use by minors are now implemented by the Public Health Division under Oregon Administrative Rules chapter 333.
Rules Coordinator: Nola Russell—(503) 945-7652

415-060-0010
Purpose

The purpose of these rules (OAR 415-060-0010 to 0050) is to adopt procedures concerning random and targeted inspections of outlets that sell tobacco products consistent with Section 202, PL 102-321, (1992) 106 stat.394-95, codified at 42 USC §300x-26, which requires enforcement of laws to reduce tobacco use by minors as a condition of full block grant funding.

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420, 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; Suspended by ADS 1-2016(Temp), f. 1-4-16, cert. ef. 1-5-16 thru 6-28-16

415-060-0020
Definitions

(1) "Block Grant" means federal block grants to states for Prevention and Treatment of Substance Abuse pursuant to 42 USC 300x21e et seq.

(2) "Division" means the Addictions and Mental Health Division of the Oregon Health Authority.

(3) "Outlet" means any location which sells at retail or otherwise distributes tobacco products to consumers including, but not limited to, locations that sell such products over the counter or through vending machines.

(4) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(5) "Smoking Device" means any device in which tobacco is burned and the principal design and use of which is directly or indirectly to deliver tobacco smoke into the human body including but not limited to pipes, cigarette rolling papers, and rolling machines.

(6) "Tobacco Product" means cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting and sweepings of tobacco prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and shall include cigarettes as defined in ORS 323.010(1).

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420, 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; Suspended by ADS 1-2016(Temp), f. 1-4-16, cert. ef. 1-5-16 thru 6-28-16

415-060-0030
Laws Designed to Discourage Use of Tobacco by Minors

(1) Tobacco Sales to Minors: Pursuant to ORS 163.575:

(a) Any person who knowingly distributes, sells, or causes to be sold, tobacco in any form to a person under 18 years commits the crime of endangering the welfare of a minor; and

(b) Supplying tobacco to a minor is a violation punishable by a fine of not less than $100 or more than $500.

(2) Other Tobacco Produce Violation: Pursuant to ORS 431.840, it is unlawful to:

(a) Distribute free tobacco products to person under 18 years of age as part of a marketing strategy to encourage the use of tobacco products;

(b) Fail to post a notice in a location clearly visible to the seller and the purchaser that sale of tobacco products to persons under 18 years of age is prohibited;

(c) Sell cigarettes in any form other than a sealed package; and

(d) The civil penalty for violation of any of these provisions shall not be less than $100 or exceed $500.

(3) Vending Machines: Pursuant to ORS 167.402:

(a) No person shall locate a vending machine from which tobacco products in any form are dispensed in any place except in an establishment where the premises are posted as permanently and entirely off-limits to minors under rules adopted by the Oregon Liquor Control Commission; and

(b) This is a violation punishable by a fine or not more than $250. Each day of violation constitutes a separate offense.

(4) Tobacco Possession by Minors: Pursuant to ORS 167.400;

(a) It is unlawful for any person under 18 years of age to possess tobacco products; and

(b) This is a violation punishable by a fine of not more than $100.

(5) Devices for Smoking: Pursuant to ORS 163.575:

(a) A person commits the crime of endangering the welfare of a minor if the person knowingly sells to a person under 18 years of age any smoking device.; and

(b) This is a violation punishable by a fine of not less than $100 nor more than $500.

(6) Posting of Signs Concerning Smoking Devices: Pursuant to ORS 163.580;

(a) Any person who sells smoking devices shall display a sign clearly stating that the sale of such devices to persons under 18 years of age is prohibited by law; and

(b) Any person who violates this section commits a Class B violation.

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420 & 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; ADS 1-2009, f. 11-30-09, cert. ef. 1-1-10; Suspended by ADS 1-2016(Temp), f. 1-4-16, cert. ef. 1-5-16 thru 6-28-16

415-060-0040
Enforcement to Reduce Tobacco Use by Minors

(1) The Division is required to coordinate with law enforcement agencies to conduct annual, random and targeted, unannounced inspections of over-the counter and vending machine outlets to insure compliance with, and to enforce, Oregon laws designed to discourage the use of tobacco by minors. Nothing in these rules shall preempt local jurisdictions from passing ordinances to conduct unannounced inspections.

(2) Random Sample Procedures: Annual random, unannounced inspections will be based on the following methodological procedures:

(a) Cover a rage of outlets, not to be preselected on the basis of prior violations, to measure overall levels of compliance as well as to identify violations.

(b) Be conducted annually.

(c) Be conducted in such a way as to ensure a scientifically sound estimate to the success of enforcement actions being taken throughout the state;

(d) Use reliable methodological design and adequate sample design to reflect:

(A) Distribution of the population of those under 18 throughout the state;

(B) Distribution of outlets throughout the state; and

(C) Must further reflect that, because of location (e.g. near schools) or other factors, some outlets are more likely to be used by minors.

(e) Conduct inspections at times when minors are likely to purchase tobacco products

(3) Targeted Inspections: Pursuant to ORS 431.853(2)(c), targeted inspections are to focus on outlets where a compliance problem exists or is suspected. Information gained in targeted inspection will not be included in data used to determine rate of offense in random inspections.

(4) Conducting Inspections: Inspections may take place:

(a) Only in areas open to the public;

(b) Only during hours that tobacco products are sold or distributed; and

(c) No more frequently once a month in any single unless a compliance problem exists or is suspected. For purposes of this rule, a "single outlet" refers to a specific address location of an outlet, regardless of ownership.

(d) Using minors shall be at the discretion of the law enforcement officer or the Division.

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420, 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; Suspended by ADS 1-2016(Temp), f. 1-4-16, cert. ef. 1-5-16 thru 6-28-16

415-060-0050
Annual Report on Reduction of Tobacco Use by Minors

(1) Contents of Report: The Division will annually submit a report to the Oregon Legislature and, to the secretary, a report along with the state's application for block grant funding. The report will include:

(a) A description of the state's activities to enforce the laws described in these rules during the fiscal year preceding the fiscal year for which the state is seeking the grant;

(b) A description outlining the overall success the state has achieved during the previous fiscal year in reducing the availability of tobacco products to individuals under the age of 18, showing;

(A) Results of the random and targeted unannounced inspections;

(B) Results of over-the-counter and vending machine outlet inspections reported separately;

(c) A description of how the unannounced inspections were conducted and the methods used to identify outlets; and

(d) Strategies to be utilized by the state for enforcing such laws during the fiscal year for which the grant is sought.

(2) Public Comment required: The annual report shall be made public and public comment shall be obtained and considered before submitting the report to the secretary.

Stat. Auth.: ORS 409.410 & 431.853
Stats. Implemented: ORS 409.420, 431.853
Hist.: ADAP 2-1994, f. & cert. ef. 8-23-94; ADS 2-2008, f. & cert. ef. 11-13-08; Suspended by ADS 1-2016(Temp), f. 1-4-16, cert. ef. 1-5-16 thru 6-28-16

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Oregon Health Authority, Division of Medical Assistance Programs Chapter 410

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Rule Caption: Amend CCO Enrollment and Disenrollment Rules Aligning Current Practices and Pregnancy Enrollment Exemption Processes
Adm. Order No.: DMAP 72-2015(Temp)
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Rules Amended: 410-141-3060, 410-141-3080
Subject: The Division is amending OAR 410-141-3060 and 410-141-3080 to align these CCO rules reflecting current enrollment and disenrollment practices and to update them as they relate to the most recent pregnancy enrollment exemption protocols supporting OAR 410-130-0240, which provides the authority to withhold payment for out-of-hospital birth services if the pregnancy was not a low risk. http://arcweb.sos.state.or.us/pages/rules/oars_400/oar_410/410_130.html.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3060
Enrollment Requirements in a CCO

(1) For the purposes of this rule, the following definitions apply:

(a) "Client" means an individual found eligible to receive OHP health services. "Client" is inclusive of members enrolled in PHPs and CCOs as stated in OAR 410-120-0000;

(b) "Eligibility Determination" means an approval or denial of eligibility and a renewal or termination of eligibility as stated in OAR 410-200-0015;

(c) "Member" means a client enrolled with a pre-paid health plan or a coordinated care organization as stated in OAR 410-120-0000;

(d) "Newly Eligible" means recently determined through the eligibility determination process as having the right to obtain state health benefits, satisfying the appropriate conditions;

(e) "Redetermination" means a review of eligibility outside of regularly scheduled renewals. Redeterminations that result in the assignment of a new renewal date or a change in program are considered renewals as stated in OAR 410-200-0015;

(f) "Renewal" means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status.

(2) Pursuant to ORS 414.631, the following populations may not be enrolled into a CCO for any type of health care coverage including:

(a) Persons who are non-citizens and are Citizen/Alien Waivered-Emergency Medical program eligible for labor and delivery services and emergency treatment services;

(b) Clients receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs without other Medicaid;

(c) Persons who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly.

(3) The following populations may not be enrolled into a CCO under the following circumstances:

(a) Newly eligible clients are exempt from enrollment with a CCO but not exempt from enrollment in a DCO if they became eligible when admitted as an inpatient in a hospital. The client shall receive health care services on a fee-for-service (FFS) basis only until the hospital discharges the client. The individual shall receive dental services through the DCO;

(b) The client is covered under a major medical insurance policy or other third party resource (TPR) that covers the cost of services to be provided by a PHP as specified in ORS 414.631 and except as provided for children in Child Welfare through the Behavioral Rehabilitation Services (BRS) and PRTS programs outlined in OAR 410-141-3050. A client shall be enrolled with a DCO even if they have a dental TPR.

(4) Persons who are documented American Indian and Alaskan Native (AI/AN) beneficiaries are exempt mandatory enrollment into a managed care plan, as specified in 42 USC 1932, 2(C), but may elect to be manually enrolled.

(5) Populations specified below are exempt from mandatory enrollment into a physical health CCO but are subject to mandatory enrollment into both dental and mental health plans as available in the member's service area. The member may be manually enrolled into a physical health plan as deemed appropriate by the Authority. These populations are as follows:

(a) Children in the legal custody of the Department or where the child is expected to be in a substitute care placement for less than 30 calendar days unless:

(A) Access to health care on a FFS basis is not available; or

(B) Enrollment would preserve continuity of care;

(b) Clients who are dually eligible for Medicare and Medicaid but not enrolled in a program of all-inclusive care for the elderly. The following apply to these:

(A) A client has the option to enroll in a CCO regardless of whether they are enrolled in Medicare Advantage;

(B) A client enrolled in Medicare Advantage, whether or not they pay their own premium, has the option to enroll in a CCO even if the CCO does not have a corresponding Medicare Advantage plan;

(C) A client has the option to enroll with a CCO, even if the client withdrew from that CCO's Medicare Advantage plan. The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;

(D) A client has the option to enroll with a CCO even if the client is enrolled in Medicare Advantage with another entity.

(6) The Authority may temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis for those as follows:

(a) Children under 19 years of age who are medically fragile and who have special health care needs. The Authority may enroll these children in CCOs on a case-by-case basis. Children not enrolled in a CCO shall continue to receive services on a FFS basis;

(b) Until December 31, 2017, women who are pregnant and meet the qualifications in sub-sections A through F below may receive OHP benefits on a FFS basis for physical health only until 60 days after the birth of her child. Women meeting the criteria for the pregnancy enrollment exemption for their physical health plan coverage shall continue to be enrolled in the appropriate CCO plan in their service area for dental and mental health coverage. After the 60-day post estimated date of delivery, the member shall enroll in a plan as appropriate. Those women under consideration for a pregnancy enrollment exemption for their physical health enrollment shall receive a response from the Authority within 30 working days of request. Upon approval of the FFS pregnancy exemption for physical health enrollment only, the client shall remain FFS for as long as she continues to meet the requirements in A through F below. In order to qualify for the FFS pregnancy exemption for physical health only, there shall be no out of hospital birth option available to the client through her plan, and the client shall:

(A) Be pregnant;

(B) State that her intention is to have an out of hospital birth;

(C) Have an established relationship for the purpose of an out of hospital birth with a licensed, qualified practitioner who is not a participating provider with the client's CCO;

(D) Make a request to change to FFS. This request can be made through the end of the twenty-seventh week of pregnancy;

(E) Meet all administrative rules including, but not limited to, OAR 410-130-0240 and statutory requirements that define when an out of hospital birth is eligible for reimbursement by the Authority; and

(F) Meet any of the requirements specified in OAR 333-076-0650, either upon initial evaluation or once the exemption is granted. If a woman becomes unable to meet the requirements, the exemption shall be withdrawn and the client shall be subject to CCO enrollment requirements as stated in OAR 410-141-3060.

(c) The following apply to clients and exemptions relating to organ transplants:

(A) Newly eligible clients are exempt from enrollment with a CCO if the client is newly diagnosed and under the treatment protocol for an organ transplant;

(B) Newly eligible clients with existing transplants shall enroll into the appropriate CCO for their service area;

(d) Other just causes to preserve continuity of care include the following considerations:

(A) Enrollment would pose a serious health risk; and

(B) The Authority finds no reasonable alternatives.

(7) Unless stated above, CCO enrollment is mandatory in all areas served by a CCO. A client who is eligible for or receiving health services shall enroll in a CCO as required by ORS 414.631, except as provided in ORS 414.631(2), (3), (4) and (5) and this rule.

(8) Enrollment is voluntary in service areas without adequate access and capacity to provide health care services through a CCO or PHP.

(9) Enrollment is mandatory in service areas with adequate health care access and capacity to provide health care services through a CCO or PHP. If upon application or redetermination a client does not select a CCO, the Authority shall auto-assign the client and the client's household to a CCO that has adequate health care access and capacity. The following outlines the priority of enrollment in service areas where enrollment is mandatory and a PHP remains available for enrollment:

(a) Priority 1: The client shall enroll in a CCO that serves that area and has adequate health care access and capacity;

(b) Priority 2: The client has the option to enroll in a PHP through a manual process if:

(A) The client has an established relationship with a provider who is only contracted with the PHP; or

(B) The PHP serves an area that a CCO serves, but the CCO has inadequate health care services capacity to accept new members. Clients shall be FFS unless already established with a PHP's provider;

(c) Priority 3: The client shall receive services on an FFS basis.

(10) If a service area changes from mandatory enrollment to voluntary enrollment, the member shall remain with the PHP for the remainder of their eligibility period or until the Authority or Department redetermines eligibility, whichever comes sooner, unless otherwise eligible to disenroll pursuant to OAR 410-141-3080.

(11) Clients who are exempt from physical health services or who are enrolled with a PHP for physical health services shall receive managed or coordinated mental health and oral health services as follows:

(a) The client shall be enrolled with a CCO if the CCO offers mental health and oral health services; or

(b) The client shall be enrolled with an MHO for mental health services and with a DCO for oral health services if the CCO does not offer those services; or

(c) The client shall be enrolled with a DCO for oral health services and remain FFS for mental health services if an MHO is not available; or

(d) The client shall remain FFS for both mental health and oral health services if an MHO or DCO is unavailable.

(12) The following pertains to the effective date of the enrollment. If the enrollment occurs:

(a) On or before Wednesday, the date of enrollment shall be the following Monday; or

(b) After Wednesday, the date of enrollment shall be one week from the following Monday.

(13) Coordinated care services shall begin as of the effective date of enrollment with the CCO except for:

(a) A newborn's date of birth when the mother was a member of a CCO at the time of birth;

(b) For persons other than newborns who are hospitalized on the date enrolled, the date of enrollment shall be the first possible enrollment date after the date the client is discharged from inpatient hospital services;

(c) For members who are re-enrolled within 30 calendar days of disenrollment, the date of enrollment shall be the date specified by the Authority and may be earlier than the effective date outlined above.

(d) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 62-2012(Temp), f. 12-27-12, cert. ef. 1-1-13 thru 6-29-13; DMAP 4-2013(Temp), f. & cert. ef. 2-7-13 thru 6-29-13; DMAP 33-2013, f. & cert. ef. 6-27-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 35-2014(Temp), f. 6-25-14, cert. ef. 7-1-14 thru 12-27-14; DMAP 69-2014(Temp), f. 12-8-14, cert. ef. 12-27-14 thru 12-31-14; DMAP 70-2014, f. 12-8-14, cert. ef. 1-1-15; DMAP 72-2014(Temp), f. 12-9-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 8-2015, f. 2-26-15, cert. ef. 3-1-15; DMAP 56-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 2-4-16; DMAP 72-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

410-141-3080
Disenrollment from Coordinated Care Organizations

(1) For purposes of this rule, continuity of care means the ability to sustain services necessary for a person's treatment. Continuity of care is a concern when a member is transferred from one service provider to another.

(2) All member-initiated requests for disenrollment from a Coordinated Care Organization (CCO) or Dental Care Organization (DCO) shall be initiated orally or in writing by the primary person in the benefit group enrolled with a CCO or DCO, where primary person and benefit group are defined in OAR 461-001-0000, 461-001-0035, and 461-110-0750, respectively. For members who are not able to request disenrollment on their own, the request may be initiated by the member's representative.

(3) In accordance with 42 CFR 438.56(c)(2), the Authority, CCO, or DCO shall honor a member or representative request for disenrollment for the following:

(a) Without cause:

(A) Newly eligible members may change their CCO or DCO assignment within 90 days following the date of initial enrollment. The effective date of disenrollment shall be the first of the month following the Division's approval of disenrollment;

(B) At least once every 12 months thereafter;

(C) Existing members may change their CCO or DCO assignment within 30 days of the Authority's automatic assignment or reenrollment in a CCO or DCO;

(D) In accordance with ORS 414.645, members may disenroll from a CCO or DCO during their redetermination (enrollment period) or one additional time during their enrollment period based on the member's choice and with Authority approval. The disenrollment shall be considered "recipient choice."

(b) With cause:

(A) At any time;

(B) Due to moral or religious objections, the CCO or DCO does not cover the service the member seeks;

(C) When the member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the member's primary care provider or another provider determines that receiving the services separately would subject the member to unnecessary risk; or

(D) Other reasons including, but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to participating providers who are experienced in dealing with the member's health care needs. Examples of sufficient cause include, but are not limited to:

(i) The member moves out of the CCO or DCO's service area;

(ii) The member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program, or urban clinic and the Fee-For-Service (FFS) delivery system;

(iii) Continuity of care that is not in conflict with any section of OAR 410-141-3060 or as defined in this rule. Participation in OHP, including coordinated care or dental care, does not guarantee that any OHP member has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care shall be denied if the basis for this request is primarily for the convenience of an OHP member or a provider of a treatment, service, or supply, including, but not limited to, a decision of a provider to participate or decline to participate in a CCO or DCO;

(iv) As specified in ORS 414.647, the Authority may approve the transfer of 500 or more members from one CCO or DCO to another CCO or DCO if:

(I) The member's provider has contracted with the receiving CCO or DCO and has stopped accepting patients from or has terminated providing services to members in the transferring CCO or DCO; and

(II) Members are offered the choice of remaining enrolled in the transferring CCO or DCO; and

(III) The member and all family (case) members shall be transferred to the provider's new CCO or DCO; and

(IV) The transfer shall take effect when the provider's contract with their current CCO or DCO contractual relationship ends, or on a date approved by the Division; and

(V) Members may not be transferred under section (2) (E) (vi) until the Division has evaluated the receiving CCO or DCO and determined that the CCO or DCO meets criteria established by the Division as stated in rule including, but not limited to, ensuring that the CCO or DCO maintains a network of providers sufficient in numbers, areas of practice, and geographically distributed in a manner to ensure that the health services provided under the contract are reasonably accessible to members; and

(VI) The Division shall provide notice of a transfer to members affected by the transfer at least 90 days before the scheduled date of the transfer.

(E) If a member's disenrollment is denied, notice of denial shall be sent to the member pursuant to OAR 410-141-0263 and 410-141-3263 of their right to file a grievance or request a hearing.

(c) If the following conditions are met:

(A) As supported in 42 CFR 438.56(d) (2), clients at any point in the third trimester of pregnancy, separate from those clients requesting out of hospital births as referenced in OAR 410-141-3060, and those clients newly determined eligible for OHP, or those clients newly re-determined eligible for OHP and not enrolled in a CCO or DCO within the past three months;

(B) Members enrolled with a new CCO that does not contract with the member's current OB provider and the member wishes to continue obtaining maternity services from that non-participating OB provider;

(C) The enrollment exemption shall remain in place until 60 days post-estimated date of delivery, at which time the member shall select and be enrolled in the appropriate CCO plan in their service area.

(d) For purposes of a member's right to file a grievance or request a hearing, disenrollment does not include the following:

(A) Transfer of a member from a PHP to a CCO or DCO.

(B) Involuntary transfer of a member from a CCO or DCO to another CCO or DCO; or

(C) Automatic enrollment of a member in a CCO or DCO.

(e) Member disenrollment requests are subject to the following requirements:

(A) The member shall join another CCO or DCO, unless the member resides in a service area where enrollment is voluntary, or the member meets the exemptions to enrollment set forth in OAR 410-141-3060or 410-141-0060or the member meets disenrollment criteria stated in 42 CFR 438.56(c)(2), or there is not another CCO or DCO in the service area;

(B) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless the Division approves retroactively;

(C) If the Authority fails to make a disenrollment determination by the first day of the second month following the month in which the member files a request for disenrollment, the disenrollment is considered approved.

(4) The CCO or DCO may not disenroll members solely for the following reasons:

(a) Because of a physical, intellectual, developmental, or mental disability;

(b) Because of an adverse change in the member's health;

(c) Because of the member's utilization of services, either excessive or lack thereof;

(d) Because the member requests a hearing;

(e) Because the member exercises their option to make decisions regarding their medical care with which the CCO or DCO disagrees;

(f) Because of uncooperative or disruptive behavior resulting from the member's special needs.

(5) Subject to applicable disability discrimination laws, the Division may disenroll members for cause when the CCO or DCO requests it for cause, which includes, but is not limited to, the following:

(a) The member commits fraudulent or illegal acts related to the member's participation in the OHP such as: permitting the use of their medical ID card by others, altering a prescription, theft, or other criminal acts. The CCO or DCO shall report any illegal acts to law enforcement authorities and, if appropriate, to DHS Fraud Investigations Unit at 888-Fraud01 (888-372-8301) or http://www.oregon.gov/DHS/aboutdhs/fraud/ as appropriate, consistent with 42 CFR 455.13;

(b) The member became eligible through a hospital hold process and placed in the Adults and Couples category as required under OAR 410-141-3060;

(c) Requests by the CCO for routine disenrollment of specific members shall include the following procedures to be followed and documented prior to requesting disenrollment of a member:

(A) A request shall be submitted in writing to the Coordinated Account Representative (CAR). The CCO or DCO shall document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below shall be followed and documented prior to requesting disenrollment of a member;

(B) There shall be notification from the provider to the CCO or DCO at the time the problem is identified. The notification shall describe the problem and allow time for appropriate resolution by the CCO or DCO. Such notification shall be documented in the member's clinical record. The CCO or DCO shall conduct provider education or training regarding the need for early intervention, disability accommodation, and the services available to the provider;

(C) The CCO or DCO shall contact the member either verbally or in writing, if it is a severe problem, to inform the member of the problem that has been identified and attempt to develop an agreement with the member regarding the issue. Any contact with the member shall be documented in the member's clinical record. The CCO or DCO shall inform the member that their continued behavior may result in disenrollment from the CCO or DCO;

(D) The CCO or DCO shall provide individual education, disability accommodation, counseling, or other interventions with the member in a serious effort to resolve the problem;

(E) The CCO or DCO shall contact the member's care team regarding the problem and, if needed and with the agreement of the member, involve the care team and other appropriate individuals working with the member in the resolution within the laws governing confidentiality;

(F) If the severity of the problem warrants, the CCO or DCO shall develop a care plan that details how the problem is going to be addressed and coordinate a care conference with the member, their care team, and other individuals chosen by the member. If necessary, the CCO or DCO shall obtain an authorization for release of information from the member for the providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it shall be documented in the member's record;

(G) The CCO or DCO shall submit any additional information or assessments requested by the Division CAR;

(H) The Authority shall notify the member in writing of a disenrollment made as defined in the section above;

(I) If the member's behavior is uncooperative or disruptive including, but not limited to, threats or acts of physical violence as the result of his or her special needs or disability, the CCO or DCO shall also document each of the following:

(i) A written description of the relationship of the behavior to the special needs or disability of the individual and whether the individual's behavior poses a direct threat to the health or safety of others. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures. In determining whether a member poses a direct threat to the health or safety of others, the CCO or DCO shall make an individualized assessment based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration, and severity of the risk to the health or safety of others; the probability that potential injury to others shall actually occur; and whether reasonable modifications of policies, practices, or procedures shall mitigate the risk to others;

(ii) A CCO or DCO-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist and other health care professionals who have the appropriate clinical expertise in treating the member's condition to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(iii) If warranted, a clinical assessment of whether the behavior will respond to reasonable clinical or social interventions;

(iv) Documentation of any accommodations that have been attempted and why the accommodations haven't worked;

(v) Documentation of the CCO or DCO's rationale for concluding that the member's continued enrollment in the CCO or DCO seriously impairs the CCO's or DCO's ability to furnish services to either this particular member or other members;

(vi) If a Primary Care Provider (PCP) terminates the provider/patient relationship, the CCO or DCO shall attempt to locate another PCP on their panel who shall accept the member as their patient. If needed, the CCO or DCO shall obtain an authorization for release of information from the

member in order to share the information necessary for a new provider to evaluate whether they can treat the member. All terminations of provider/patient relationships shall be according to the CCO or DCO's policies and shall be consistent with CCO or DCO or PCP's policies for commercial members and with applicable disability discrimination laws. The CCO or DCO shall determine whether the PCP's termination of the provider/patient relationship is based on behavior related to the member's disability and shall provide education to the PCP about disability discrimination laws.

(d) In addition to the requirements in subsection (c), requests by the CCO or DCO for an exception to the routine disenrollment process shall include the following:

(A) In accordance with 42 CFR 438.56 the CCO or DCO shall submit a request in writing to the CAR for approval. An exception to the disenrollment process may only be requested for members who have committed an act of or made a credible threat of physical violence directed at a health care provider, the provider's staff, other patients, or the CCO or DCO's staff so that it seriously impairs the CCO or DCO's ability to furnish services to either this particular member or other members. A credible threat means that there is a significant risk that the member may cause grievous physical injury to others (including but not limited to death) in the near future, and that risk cannot be eliminated by a modification of policies, practices, or procedures. The CCO or DCO shall document the reasons for the request and provide written evidence to support the basis for the request prior to requesting an exception to the disenrollment process of a member;

(B) Providers shall immediately notify the CCO or DCO about the incident with the member. The notification shall describe the problem and be maintained for documentation purposes;

(C) The CCO or DCO shall attempt and document contact with the member and their care team regarding the problem and, if needed, involve the care team and other appropriate individuals in the resolution within the laws governing confidentiality;

(D) The CCO or DCO shall provide any additional information requested by the CAR, the Authority, or the Department assessment team;

(E) If the member's behavior could reasonably be perceived as the result of their special needs or disability, the CCO or DCO shall also document each of the following:

(i) A written description of the relationship between the behavior to the special needs or disability of the individual and whether the individual's behavior poses a credible threat of physical violence as defined in section (2)(b)(C)(i) of this rule;

(ii) In determining whether a member poses a credible threat to the health or safety of others, the CCO or DCO shall make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration, and severity of the risk to the health or safety of others; the probability that potential injury to others may actually occur; and whether reasonable modifications of policies, practices, or procedures may mitigate the risk to others;

(F) Documentation shall exist that verifies the provider or CCO or DCO immediately reported the incident to law enforcement. The CCO or DCO shall submit a copy of the police report or case number. If a report is not available, submit a signed entry in the member's clinical record documenting the report to law enforcement or other reasonable evidence;

(G) Documentation shall exist that verifies what reasonable modifications were considered and why reasonable modifications of policies, practices, or procedures may not mitigate the risk to others;

(H) Documentation shall exist that verifies any past incidents and attempts to accommodate similar problems with this member;

(I) Documentation shall exist that verifies the CCO or DCO's rationale for concluding that the member's continued enrollment in the CCO or DCO seriously impairs the CCO or DCO's ability to furnish services to either this particular member or other members.

(e) Approval or denial of disenrollment requests shall include the following:

(A) If there is sufficient documentation, the request shall be evaluated by the CCO or DCO's CAR or a team of CARs who may request additional information from Ombudsman Services, AMH, or other agencies as needed. If the request involves the member's mental health condition or behaviors related to substance abuse, the CAR shall also confer with the AMH's substance use disorder specialist;

(B) In cases where the member is also enrolled in the CCO or DCO's Medicare Advantage plan, the CCO or DCO shall provide proof to the Division of CMS' approval to disenroll the member. If approved by the Division, the date of disenrollment from both plans shall be the disenrollment date approved by CMS;

(C) If there is insufficient documentation, the CAR shall notify the CCO or DCO within two business days of initial receipt what supporting documentation is needed for final consideration of the request;

(D) The CARs shall review the request and notify the CCO or DCO of the decision within ten working days of receipt of sufficient documentation from the CCO or DCO;

(E) Written decisions shall be sent to the CCO or DCO within 15 working days from receipt of request and sufficient documentation from the CAR.

(6) The following procedures apply to all denied disenrollment requests:

(a) The CAR shall send the member a notice within five days after the decision for denial with a copy to the CCO or DCO and the member's care team;

(b) The notice shall give the disenrollment date, the reason for disenrollment, and the notice of the member's right to file a complaint, as specified in 410-141-3260 through 410-141-3266, and to request an administrative hearing and the option to continue enrollment in the PHP pending the outcome of the hearing, in accordance with 42 CFR 438.420. If the member requests a hearing, the disenrollment shall proceed unless the member requests continued enrollment pending a decision;

(c) If disenrollment is approved, the CAR shall contact the member's care team to arrange enrollment in a different plan. The Division may require the member to obtain services from FFS providers until such time as they can be enrolled with another CCO or DCO;

(d) If no other CCO or DCO is available to the member, the member shall be exempt from enrollment in that type of managed care plan for 12 months. If a member who has been disenrolled for cause is re-enrolled in the CCO or DCO, the CCO or DCO may request a disenrollment review by the CAR. A member may not be involuntarily disenrolled from the same CCO or DCO for a period of more than 12 months. If the member is re-enrolled after the 12-month period and the CCO or DCO again requests disenrollment for cause, the request shall be referred to the Authority assessment team for review.

(7) The following procedures apply to all approved disenrollment requests:

(a) The CAR shall send the member a notice within five days after the request was approved with a copy to the CCO or DCO and the member's care team;

(b) The notice shall give the disenrollment date, the reason for disenrollment, and the notice of member's right to file a complaint, as specified in OAR 410-141-3260 through 410-141-3266, and to request an administrative hearing and the option to continue enrollment in the CCO or DCO pending the outcome of the hearing, in accordance with 42 CFR 438.420. If the member requests a hearing, the disenrollment shall proceed unless the member requests continued enrollment pending a decision;

(c) The disenrollment effective date shall be ten calendar days after the disenrollment notice is sent to the member, unless the member requests a hearing and ongoing enrollment pending a hearing decision. The disenrollment shall become effective immediately upon the issuing of an Administrative Law Judge's decision to uphold disenrollment;

(d) If disenrollment is approved, the CAR shall contact the member's care team to arrange enrollment in a different plan. The Division may require the member to obtain services from FFS providers until such time as they can be enrolled with another CCO or DCO;

(e) If no other CCO or DCO is available to the member, the member shall be exempt from enrollment in that type of managed care plan for 12 months. If a member who has been disenrolled for cause is re-enrolled in the CCO or DCO, the CCO or DCO may request a disenrollment review by the CAR. A member may not be involuntarily disenrolled from the same CCO or DCO for a period of more than 12 months. If the member is re-enrolled after the 12-month period and the CCO or DCO or the member again requests disenrollment for cause, the request shall be referred to the Authority's assessment team for review.

(8) Other reasons for the CCO or DCO's requests for disenrollment may include the following:

(a) If the member is enrolled in the CCO or DCO on the same day the member is admitted to the hospital, the CCO or DCO shall be responsible for the hospitalization. If the member is enrolled after the first day of the inpatient stay, the member shall be disenrolled and enrolled on the next available enrollment date following discharge from inpatient hospital services;

(b) The member has surgery scheduled at the time their enrollment is effective with the CCO or DCO, the provider is not on the CCO or DCO's provider panel, and the member wishes to have the services performed by that provider;

(c) The Medicare member is enrolled in a Medicare Advantage plan and was receiving hospice services at the time of enrollment in the CCO or DCO;

(d) Excluding the DCOs, if the CCO determines that the member or MHO member has Third Party Liability (TPL), the CCO shall report the TPL to the Health Insurance Group (HIG) at www.reportTPL.org. If the member is determined to have active TPL, HIG shall disenroll the member from the CCO effective the end of the month the TPL is reported;

(e) If a CCO or DCO has knowledge of a member's change of address, the CCO or DCO shall notify the member's care team. The care team shall verify the address information and disenroll the member from the CCO or DCO if the member no longer resides in the CCO or DCO's service area. Members shall be disenrolled if out of the CCO or DCO's service area for more than three months unless previously arranged with the CCO or DCO. The effective date of disenrollment shall be the date specified by the Division, and if a partial month remains, the Division shall recoup the balance of that month's capitation payment from the CCO or DCO;

(f) The member is an inmate who is serving time for a criminal offense or confined involuntarily in a state or federal prison, jail, detention facility, or other penal institution. This does not include members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The CCO or DCO shall identify the members and provide sufficient proof of incarceration to the Division for review of the disenrollment request. The Division shall approve requests for disenrollment from CCO or DCOs for members who have been taken into custody;

(g) The member is in a state psychiatric institution.

(9) The Division may initiate and disenroll members as follows:

(a) If informed that a member has TPL, the Division shall refer the case to the HIG for investigation and possible exemption from CCO or DCO enrollment. The Division shall disenroll members who have TPL effective the end of the month in which HIG makes such a determination. In some situations, the Division may approve retroactive disenrollment;

(b) If the member moves out of the CCO or DCO's service area, the effective date of disenrollment shall be the date specified by the Division, and the Division shall recoup the balance of that month's capitation payment from the CCO or DCO;

(c) If the member is no longer eligible for OHP, the effective date of disenrollment shall be the date specified by the Division;

(d) If the member dies, the last date of enrollment shall be the date of death.

(10) Unless specified otherwise in these rules or in the Division notification of disenrollment to the CCO or DCO, all disenrollments are effective the end of the month the Authority approves the disenrollment with the following exceptions:

(a) The Authority may retroactively disenroll or suspend enrollment when the member is taken into custody. The effective date shall be the date the member was incarcerated;

(b) The Authority may retroactively disenroll enrollment if the member has TPL pursuant to this rule. The effective date shall be the end of the month in which HIG makes the determination.

Stat. Auth.: ORS 413.032, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 47-2012(Temp), f. & cert. ef. 10-16-12 thru 4-13-13; DMAP 55-2012(Temp), f. & cert. ef. 11-15-12 thru 4-13-13; Administrative correction 4-22-13; DMAP 19-2013, f. & cert. ef. 4-23-13; DMAP 25-2013, f. & cert. ef. 6-11-13; DMAP 38-2013(Temp), f. 7-8-13, cert. ef. 7-9-13 thru 1-5-14; DMAP 65-2013, f. & cert. ef. 11-29-13; DMAP 8-2014(Temp), f. 1-31-14, cert. ef. 2-1-14 thru 7-31-14; DMAP 30-2014, f. 5-23-14, cert. ef. 6-1-14; DMAP 71-2015, f. & cert. ef. 12-10-15; DMAP 72-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Former Foster Care Youth Medical-Specific Requirements
Adm. Order No.: DMAP 73-2015(Temp)
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 12-18-15 thru 6-14-16
Notice Publication Date:
Rules Adopted: 410-200-0407
Subject: This rule describes specific eligibility requirements for the Former Foster Care Youth Program effective December 1, 2015.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-200-0407
Specific Requirements—Former Foster Care Youth Medical Program

This rule describes specific eligibility requirements for the Former Foster Care Youth Program effective December 1, 2015.

(1) Individuals may not be eligible for the Former Foster Care Youth Medical Program with an effective date prior to January 1, 2014.

(2) There is no income test for the Former Foster Care Youth Medical Program.

(3) An individual is eligible for the Former Foster Care Youth Medical Program if the individual meets the requirements of all of the following:

(a) Is an adult at least age 18 and under age 26;

(b) Is not eligible for MAGI Child, MAGI CHIP, MAGI Pregnant Woman, or MAGI Parent or Other Caretaker Relative benefits;

(c) Was in foster care under the responsibility of the Oregon Department of Human Services or tribe and enrolled in Child Welfare Title XIX Medicaid upon attaining:

(A) Age 18; or

(B) If over 18, the age at which Oregon Medicaid or Oregon tribal foster care assistance ended under Title IV-E of the Act.

(d) Is not receiving Supplemental Security Income (SSI);

(e) Is not receiving adoption assistance or foster care maintenance payments.

Stat. Auth.: ORS 411.402, 411.404, 413.042, 414.534
Stats. Implemented: ORS 411.060, 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 411.447, 413.032, 413.038, 414.025, 414.231, 414.534, 414.536, 414.706
Hist.: DMAP 73-2015(Temp), f. & cert. ef. 12-18-15 thru 6-14-16

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Rule Caption: Update Reference to Current Covered and Non-Covered Dental Services Document, Incorporate Changes
Adm. Order No.: DMAP 74-2015(Temp)
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 410-123-1260
Subject: The amendment of OAR 410-123-1260 is needed to align the administrative rule to reflect recent changes to the Prioritized List of Health Services and the American Dental Association's (ADA) Code on Dental Procedures and Nomenclature (CDT Codes). Effective January 1, 2016, the Health Evidence Review Commission (HERC) added five oral health procedure codes to funded lines of the Prioritized List of Health Services. Four of these codes are either diagnostic or are payable dependent on other codes. The HERC also added a guideline to one of the codes, which this amendment reflects. In addition, the ADA deleted five CDT Codes that were on the prioritized list. Those changes are reflected in this amendment.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-123-1260
OHP Dental Benefits

(1) GENERAL:

(a) Early and Periodic Screening, Diagnosis and Treatment (EPSDT):

(A) Refer to Code of Federal Regulations (42 CFR 441, Subpart B) and OAR chapter 410, division 120 for definitions of the EPSDT program, eligible clients, and related services. EPSDT dental services include, but are not limited to:

(i) Dental screening services for eligible EPSDT individuals; and

(ii) Dental diagnosis and treatment that is indicated by screening at as early an age as necessary, needed for relief of pain and infections, restoration of teeth, and maintenance of dental health;

(B) Providers shall provide EPSDT services for eligible Division of Medical Assistance Programs (Division) clients according to the following documents:

(i) The Dental Services Program administrative rules (OAR chapter 410, division 123), for dentally appropriate services funded on the Oregon Health Evidence Review Commission's Prioritized List of Health Services (Prioritized List); and

(ii) The "Oregon Health Plan (OHP) — Recommended Dental Periodicity Schedule," dated January 1, 2010, incorporated in rule by reference and posted on the Division website in the Dental Services Provider Guide document at www.oregon.gov/oha/healthplan/Pages/dental.aspx;

(b) Restorative, periodontal, and prosthetic treatments:

(A) Documentation shall be included in the client's charts to support the treatment. Treatments shall be consistent with the prevailing standard of care and may be limited as follows:

(i) When prognosis is unfavorable;

(ii) When treatment is impractical;

(iii) A lesser-cost procedure would achieve the same ultimate result; or

(iv) The treatment has specific limitations outlined in this rule;

(B) Prosthetic treatment, including porcelain fused to metal crowns, are limited until rampant progression of caries is arrested and a period of adequate oral hygiene and periodontal stability is demonstrated; periodontal health needs to be stable and supportive of a prosthetic.

(2) ENHANCED ORAL HEALTH SERVICES IN PRIMARY CARE SETTINGS:

(a) Topical fluoride treatment:

(A) For children under 19 years of age, topical fluoride varnish may be applied by a licensed medical practitioner during a medical visit. Providers must bill:

(i) The Division directly when the client is fee-for-service (FFS), is enrolled in a Coordinated Care Organization (CCO) that does not include integrated medical and dental services, or is enrolled in a PHP that does not include integrated medical and dental services;

(ii) The client's CCO if the client is enrolled in a CCO that includes integrated medical and dental services;

(iii) Using a professional claim format with either the appropriate Current Dental Terminology (CDT) code (D1206-Topical Fluoride Varnish) or the appropriate Current Procedural Terminology (CPT) code (99188 – Application of topical fluoride varnish by a physician or other qualified health care professional);

(B) Topical fluoride treatment from a medical practitioner counts toward the overall maximum number of fluoride treatments, as described in subsection (4) of this rule;

(b) Assessment of a patient:

(A) For children under six years of age, CDT code D0191-Assessment of a Patient is covered as an enhanced oral health service in medical settings;

(B) For reimbursement in a medical setting, D0191-Assessment of a patient must include all of the following components:

(i) Caries risk assessment using a standardized tool endorsed by Oregon Oral Health Coalition, the American Dental Association, the American Academy of Pediatric Dentistry, or the American Academy of Pediatrics;

(ii) Anticipatory guidance and counseling with the client's caregiver on good oral hygiene practices and nutrition;

(iii) Referral to a dentist in order to establish a dental home;

(iv) Documentation in medical chart of risk assessment findings and service components provided;

(C) For reimbursement, the performing provider must meet all of the following criteria:

(i) Be a physician (MD or DO), an advance practice nurse, or a licensed physician assistant; and

(ii) Hold a certificate of completion from one of the following approved training programs within the previous three years:

(I) Smiles for Life; or

(II) First Tooth through the Oregon Oral Health Coalition;

(D) For reimbursement, the medical practitioners must bill:

(i) The Division directly when the client is fee-for-service (FFS), is enrolled in a Coordinated Care Organization (CCO) that does not include integrated medical and dental services, or is enrolled in a PHP that does not include integrated medical and dental services;

(ii) The client's CCO if the client is enrolled in a CCO that includes integrated medical and dental services;

(iii) Using a professional claim format with the appropriate CDT code (D0191-Assessment of a Patient);

(E) D0191 Assessment of a Patient may be reimbursed under this subsection up to a maximum of once every 12 months;

(F) D0191 Assessment of a Patient from a medical practitioner does not count toward the maximum number of CDT code D0191-Assessment of a Patient services performed by a dental practitioner described in subsection three (3) of this rule;

(c) For tobacco cessation services provided during a medical visit, follow criteria outlined in OAR 410-130-0190;

(3) DIAGNOSTIC SERVICES:

(a) Exams:

(A) For children under 19 years of age:

(i) The Division shall reimburse exams (billed as CDT codes D0120, D0145, D0150, or D0180) a maximum of twice every 12 months with the following limitations:

(I) D0150: once every 12 months when performed by the same practitioner;

(II) D0150: twice every 12 months only when performed by different practitioners;

(III) D0180: once every 12 months;

(ii) The Division shall reimburse D0160 only once every 12 months when performed by the same practitioner;

(B) For adults 19 years of age and older, the Division shall reimburse exams (billed as CDT codes D0120, D0150, D0160, or D0180) once every 12 months;

(C) For problem focused exams (urgent or emergent problems), the Division shall reimburse D0140 for the initial exam. The Division shall reimburse D0170 for related problem-focused follow-up exams. Providers must not bill D0140 and D0170 for routine dental visits;

(D) The Division only covers oral exams performed by medical practitioners when the medical practitioner is an oral surgeon;

(E) As the American Dental Association's Current Dental Terminology (CDT) codebook specifies, the evaluation, diagnosis, and treatment planning components of the exam are the responsibility of the dentist. The Division may not reimburse dental exams when performed by a dental hygienist (with or without an expanded practice permit);

(b) Assessment of a patient (D0191):

(A) When performed by a dental practitioner, the Division shall reimburse:

(i) If performed by a dentist outside of a dental office;

(ii) If performed by a dental hygienist with an expanded practice dental hygiene permit;

(iii) Only if an exam (D0120-D0180) is not performed on the same date of service. Assessment of a patient (D0191) is included as part of an exam (D0120-D0180);

(iv) For children under 19 years of age, a maximum of twice every 12 months; and

(v) For adults age 19 and older, a maximum of once every 12 months;

(B) An assessment does not take the place of the need for oral evaluations/exams;

(c) Radiographs:

(A) The Division shall reimburse for routine radiographs once every 12 months;

(B) The Division shall reimburse bitewing radiographs for routine screening once every 12 months;

(C) The Division shall reimburse a maximum of six radiographs for any one emergency;

(D) For clients under age six, radiographs may be billed separately every 12 months as follows:

(i) D0220 — once;

(ii) D0230 — a maximum of five times;

(iii) D0270 — a maximum of twice, or D0272 once;

(E) The Division shall reimburse for panoramic (D0330) or intra-oral complete series (D0210) once every five years, but both cannot be done within the five-year period;

(F) Clients shall be a minimum of six years old for billing intra-oral complete series (D0210). The minimum standards for reimbursement of intra-oral complete series are:

(i) For clients age six through 11 — a minimum of ten periapicals and two bitewings for a total of 12 films;

(ii) For clients ages 12 and older — a minimum of ten periapicals and four bitewings for a total of 14 films;

(G) If fees for multiple single radiographs exceed the allowable reimbursement for a full mouth complete series (D0210), the Division shall reimburse for the complete series;

(H) Additional films may be covered if dentally or medically appropriate, e.g., fractures (Refer to OAR 410-123-1060 and 410-120-0000);

(I) If the Division determines the number of radiographs to be excessive, payment for some or all radiographs of the same tooth or area may be denied;

(J) The exception to these limitations is if the client is new to the office or clinic and the office or clinic is unsuccessful in obtaining radiographs from the previous dental office or clinic. Supporting documentation outlining the provider's attempts to receive previous records shall be included in the client's records;

(K) Digital radiographs, if printed, shall be on photo paper to assure sufficient quality of images.

(4) PREVENTIVE SERVICES:

(a) Prophylaxis:

(A) For children under 19 years of age — Limited to twice per 12 months;

(B) For adults 19 years of age and older — Limited to once per 12 months;

(C) Additional prophylaxis benefit provisions may be available for persons with high risk oral conditions due to disease process, pregnancy, medications, or other medical treatments or conditions, severe periodontal disease, rampant caries and for persons with disabilities who cannot perform adequate daily oral health care;

(D) Are coded using the appropriate Current Dental Terminology (CDT) coding:

(i) D1110 (Prophylaxis — Adult) — Use for clients 14 years of age and older; and

(ii) D1120 (Prophylaxis — Child) — Use for clients under 14 years of age;

(b) Topical fluoride treatment:

(A) For adults 19 years of age and older — Limited to once every 12 months;

(B) For children under 19 years of age — Limited to twice every 12 months;

(C) Additional topical fluoride treatments may be available, up to a total of four treatments per client within a 12-month period, when high-risk conditions or oral health factors are clearly documented in chart notes for clients who:

(i) Have high-risk oral conditions due to disease process, medications, other medical treatments or conditions, or rampant caries;

(ii) Are pregnant;

(iii) Have physical disabilities and cannot perform adequate, daily oral health care;

(iv) Have a developmental disability or other severe cognitive impairment that cannot perform adequate, daily oral health care; or

(v) Are under seven years old with high-risk oral health factors, such as poor oral hygiene, deep pits and fissures (grooves) in teeth, severely crowded teeth, poor diet, etc.;

(D) Fluoride limits include any combination of fluoride varnish (D1206) or other topical fluoride (D1208);

(c) Sealants (D1351):

(A) Are covered only for children under 16 years of age;

(B) The Division limits coverage to:

(i) Permanent molars; and

(ii) Only one sealant treatment per molar every five years, except for visible evidence of clinical failure;

(d) Tobacco cessation:

(A) For services provided during a dental visit, bill as a dental service using CDT code D1320 when the following brief counseling is provided:

(i) Ask patients about their tobacco-use status at each visit and record information in the chart;

(ii) Advise patients on their oral health conditions related to tobacco use and give direct advice to quit using tobacco and a strong personalized message to seek help; and

(iii) Refer patients who are ready to quit, utilizing internal and external resources, to complete the remaining three A's (assess, assist, arrange) of the standard intervention protocol for tobacco;

(B) The Division allows a maximum of ten services within a three-month period;

(e) Space management:

(A) The Division shall cover fixed and removable space maintainers (D1510, D1515, D1520, and D1525) only for clients under 19 years of age;

(B) The Division may not reimburse for replacement of lost or damaged removable space maintainers.

(f) The Division limits reimbursement for interim caries arresting medicament application (D1354) to silver diamine fluoride applications, with a maximum of two applications per year.

(5) RESTORATIVE SERVICES:

(a) Amalgam and resin-based composite restorations, direct:

(A) Resin-based composite crowns on anterior teeth (D2390) are only covered for clients under 21 years of age or who are pregnant;

(B) The Division reimburses posterior composite restorations at the same rate as amalgam restorations;

(C) The Division limits payment for replacement of posterior composite restorations to once every five years;

(D) The Division limits payment of covered restorations to the maximum restoration fee of four surfaces per tooth. Refer to the American Dental Association (ADA) CDT codebook for definitions of restorative procedures;

(E) Providers shall combine and bill multiple surface restorations as one line per tooth using the appropriate code. Providers may not bill multiple surface restorations performed on a single tooth on the same day on separate lines. For example, if tooth #30 has a buccal amalgam and a mesial-occlusal-distal (MOD) amalgam, then bill MOD, B, using code D2161 (four or more surfaces);

(F) The Division may not reimburse for an amalgam or composite restoration and a crown on the same tooth;

(G) Interim therapeutic restoration on primary dentition (D2941) is covered to restore and prevent progression of dental caries. Interim therapeutic restoration is not a definitive restoration.

(H) Reattachment of tooth fragment (D2921) is covered once in the lifetime of a tooth when there is no pulp exposure and no need for endodontic treatment.

(I) The Division reimburses for a surface not more than once in each treatment episode regardless of the number or combination of restorations;

(J) The restoration fee includes payment for occlusal adjustment and polishing of the restoration;

(b) Indirect crowns and related services:

(A) General payment policies:

(i) The fee for the crown includes payment for preparation of the gingival tissue;

(ii) The Division shall cover crowns only when:

(I) There is significant loss of clinical crown and no other restoration will restore function; and

(II) The crown-to-root ratio is 50:50 or better, and the tooth is restorable without other surgical procedures;

(iii) The Division shall cover core buildup (D2950) only when necessary to retain a cast restoration due to extensive loss of tooth structure from caries or a fracture and only when done in conjunction with a crown. Less than 50 percent of the tooth structure must be remaining for coverage of the core buildup.

(iv) Reimbursement of retention pins (D2951) is per tooth, not per pin;

(B) The Division shall not cover the following services:

(i) Endodontic therapy alone (with or without a post);

(ii) Aesthetics (cosmetics);

(iii) Crowns in cases of advanced periodontal disease or when a poor crown/root ratio exists for any reason;

(C) The Division shall cover the following only for clients under 21 years of age or who are pregnant:

(i) Prefabricated plastic crowns (D2932) are allowed only for anterior teeth, permanent or primary;

(ii) Stainless steel crowns (D2930/D2931) are allowed only for anterior primary teeth and posterior permanent or primary teeth;

(iii) Prefabricated stainless steel crowns with resin window (D2933) are allowed only for anterior teeth, permanent or primary;

(iv) Prefabricated post and core in addition to crowns (D2954/D2957);

(v) Permanent crowns (resin-based composite — D2710 and D2712, and porcelain fused to metal (PFM) — D2751 and D2752) as follows:

(I) Limited to teeth numbers 6–11, 22 and 27 only, if dentally appropriate;

(II) Limited to four in a seven-year period. This limitation includes any replacement crowns allowed according to (E)(i) of this rule;

(III) Only for clients at least 16 years of age; and

(IV) Rampant caries are arrested, and the client demonstrates a period of oral hygiene before prosthetics are proposed;

(vi) PFM crowns (D2751 and D2752) shall also meet the following additional criteria:

(I) The dental practitioner has attempted all other dentally appropriate restoration options and documented failure of those options;

(II) Written documentation in the client's chart indicates that PFM is the only restoration option that will restore function;

(III) The dental practitioner submits radiographs to the Division for review; history, diagnosis, and treatment plan may be requested. (See OAR 410-123-1100 Services Reviewed by the Division);

(IV) The client has documented stable periodontal status with pocket depths within 1–3 millimeters. If PFM crowns are placed with pocket

depths of 4 millimeters and over, documentation shall be maintained in the client's chart of the dentist's findings supporting stability and why the increased pocket depths will not adversely affect expected long-term prognosis;

(V) The crown has a favorable long-term prognosis; and

(VI) If the tooth to be crowned is a clasp/abutment tooth in partial denture, both prognosis for the crown itself and the tooth's contribution to partial denture shall have favorable expected long-term prognosis;

(D) Crown replacement:

(i) Permanent crown replacement limited to once every seven years;

(ii) All other crown replacement limited to once every five years; and

(iii) The Division may make exceptions to crown replacement limitations due to acute trauma, based on the following factors:

(I) Extent of crown damage;

(II) Extent of damage to other teeth or crowns;

(III) Extent of impaired mastication;

(IV) Tooth is restorable without other surgical procedures; and

(V) If loss of tooth would result in coverage of removable prosthetic;

(E) Crown repair (D2980) is limited to only anterior teeth.

(6) ENDODONTIC SERVICES:

(a) Endodontic therapy:

(A) Pulpal therapy on primary teeth (D3230 and D3240) is covered only for clients under 21 years of age;

(B) For permanent teeth:

(i) Anterior and bicuspid endodontic therapy (D3310 and D3320) is covered for all OHP Plus clients; and

(ii) Molar endodontic therapy (D3330):

(I) For clients through age 20, is covered only for first and second molars; and

(II) For clients age 21 and older who are pregnant, is covered only for first molars;

(C) The Division covers endodontics only if the crown-to-root ratio is 50:50 or better and the tooth is restorable without other surgical procedures;

(b) Endodontic retreatment and apicoectomy:

(A) The Division does not cover retreatment of a previous root canal or apicoectomy for bicuspid or molars;

(B) The Division limits either a retreatment or an apicoectomy (but not both procedures for the same tooth) to symptomatic anterior teeth when:

(i) Crown-to-root ratio is 50:50 or better;

(ii) The tooth is restorable without other surgical procedures; or

(iii) If loss of tooth would result in the need for removable prosthodontics;

(C) Retrograde filling (D3430) is covered only when done in conjunction with a covered apicoectomy of an anterior tooth;

(c) The Division does not allow separate reimbursement for open-and-drain as a palliative procedure when the root canal is completed on the same date of service or if the same practitioner or dental practitioner in the same group practice completed the procedure;

(d) The Division covers endodontics if the tooth is restorable within the OHP benefit coverage package;

(e) Apexification/recalcification procedures:

(A) The Division limits payment for apexification to a maximum of five treatments on permanent teeth only;

(B) Apexification/recalcification procedures are covered only for clients under 21 years of age or who are pregnant.

(7) PERIODONTIC SERVICES:

(a) Surgical periodontal services:

(A) Gingivectomy/Gingivoplasty (D4210 and D4211) — limited to coverage for severe gingival hyperplasia where enlargement of gum tissue occurs that prevents access to oral hygiene procedures, e.g., Dilantin hyperplasia; and

(B) Includes six months routine postoperative care;

(C) The Division shall consider gingivectomy or gingivoplasty to allow for access for restorative procedure, per tooth (D4212) as part of the restoration and will not provide a separate reimbursement for this procedure;

(b) Non-surgical periodontal services:

(A) Periodontal scaling and root planing (D4341 and D4342):

(i) For clients through age 20, allowed once every two years;

(ii) For clients age 21 and over, allowed once every three years;

(iii) A maximum of two quadrants on one date of service is payable, except in extraordinary circumstances;

(iv) Quadrants are not limited to physical area, but are further defined by the number of teeth with pockets 5 mm or greater:

(I) D4341 is allowed for quadrants with at least four or more teeth with pockets 5 mm or greater;

(II) D4342 is allowed for quadrants with at least two teeth with pocket depths of 5 mm or greater;

(v) Prior authorization for more frequent scaling and root planing may be requested when:

(I) Medically/dentally necessary due to periodontal disease as defined above is found during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased scaling and root planing;

(B) Full mouth debridement (D4355):

(i) For clients through age 20, allowed only once every two years;

(ii) For clients age 21 and older, allowed once every three years;

(c) Periodontal maintenance (D4910):

(A) For clients through age 20, allowed once every six months;

(B) For clients age 21 and older:

(i) Limited to following periodontal therapy (surgical or non-surgical) that is documented to have occurred within the past three years;

(ii) Allowed once every twelve months;

(iii) Prior authorization for more frequent periodontal maintenance may be requested when:

(I) Medically/dentally necessary, such as due to presence of periodontal disease during pregnancy; and

(II) Client's medical record is submitted that supports the need for increased periodontal maintenance (chart notes, pocket depths and radiographs);

(d) Records shall clearly document the clinical indications for all periodontal procedures, including current pocket depth charting and/or radiographs;

(e) The Division may not reimburse for procedures identified by the following codes if performed on the same date of service:

(A) D1110 (Prophylaxis — adult);

(B) D1120 (Prophylaxis — child);

(C) D4210 (Gingivectomy or gingivoplasty — four or more contiguous teeth or bounded teeth spaces per quadrant);

(D) D4211 (Gingivectomy or gingivoplasty — one to three contiguous teeth or bounded teeth spaces per quadrant);

(E) D4341 (Periodontal scaling and root planning — four or more teeth per quadrant);

(F) D4342 (Periodontal scaling and root planning — one to three teeth per quadrant);

(G) D4355 (Full mouth debridement to enable comprehensive evaluation and diagnosis); and

(H) D4910 (Periodontal maintenance).

(8) REMOVABLE PROSTHODONTIC SERVICES:

(a) Clients age 16 years and older are eligible for removable resin base partial dentures (D5211-D5212) and full dentures (complete or immediate, D5110-D5140);

(b) The Division limits full dentures for clients age 21 and older to only those clients who are recently edentulous:

(A) For the purposes of this rule:

(i) "Edentulous" means all teeth removed from the jaw for which the denture is being provided; and

(ii) "Recently edentulous" means the most recent extractions from that jaw occurred within six months of the delivery of the final denture (or, for fabricated prosthetics, the final impression) for that jaw;

(B) See OAR 410-123-1000 for detail regarding billing fabricated prosthetics;

(c) The fee for the partial and full dentures includes payment for adjustments during the six-month period following delivery to clients;

(d) Resin partial dentures (D5211-D5212):

(A) The Division may not approve resin partial dentures if stainless steel crowns are used as abutments;

(B) For clients through age 20, the client shall have one or more anterior teeth missing or four or more missing posterior teeth per arch with resulting space equivalent to that loss demonstrating inability to masticate. Third molars are not a consideration when counting missing teeth;

(C) For clients age 21 and older, the client shall have one or more missing anterior teeth or six or more missing posterior teeth per arch with documentation by the provider of resulting space causing serious impairment to mastication. Third molars are not a consideration when counting missing teeth;

(D) The dental practitioner shall note the teeth to be replaced and teeth to be clasped when requesting prior authorization (PA);

(e) Replacement of removable partial or full dentures, when it cannot be made clinically serviceable by a less costly procedure (e.g., reline, rebase, repair, tooth replacement), is limited to the following:

(A) For clients at least 16 years and under 21 years of age, the Division shall replace full or partial dentures once every ten years, only if dentally appropriate. This does not imply that replacement of dentures or partials shall be done once every ten years, but only when dentally appropriate;

(B) For clients 21 years of age and older, the Division may not cover replacement of full dentures but shall cover replacement of partial dentures once every ten (10) years only if dentally appropriate;

(C) The ten year limitations apply to the client regardless of the client's OHP or Dental Care Organization (DCO)/Coordinated Care Organization (CCO) enrollment status at the time the client's last denture or partial was received. For example: A client receives a partial on February 1, 2002, and becomes a FFS OHP client in 2005. The client is not eligible for a replacement partial until February 1, 2012. The client gets a replacement partial on February 3, 2012 while FFS and a year later enrolls in a DCO or CCO. The client would not be eligible for another partial until February 3, 2022, regardless of DCO, CCO, or FFS enrollment;

(D) Replacement of partial dentures with full dentures is payable ten years after the partial denture placement. Exceptions to this limitation may be made in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical, and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant replacement;

(f) The Division limits reimbursement of adjustments and repairs of dentures that are needed beyond six months after delivery of the denture as follows for clients 21 years of age and older:

(A) A maximum of four times per year for:

(i) Adjusting complete and partial dentures, per arch (D5410-D5422);

(ii) Replacing missing or broken teeth on a complete denture, each tooth (D5520);

(iii) Replacing broken tooth on a partial denture, each tooth (D5640);

(iv) Adding tooth to existing partial denture (D5650);

(B) A maximum of two times per year for:

(i) Repairing broken complete denture base (D5510);

(ii) Repairing partial resin denture base (D5610);

(iii) Repairing partial cast framework (D5620);

(iv) Repairing or replacing broken clasp (D5630);

(v) Adding clasp to existing partial denture (D5660);

(g) Replacement of all teeth and acrylic on cast metal framework (D5670, D5671):

(A) Is covered for clients age 16 and older a maximum of once every ten (10) years, per arch;

(B) Ten years or more shall have passed since the original partial denture was delivered;

(C) Is considered replacement of the partial so a new partial denture may not be reimbursed for another ten years; and

(D) Requires prior authorization as it is considered a replacement partial denture;

(h) Denture rebase procedures:

(A) The Division shall cover rebases only if a reline may not adequately solve the problem;

(B) For clients through age 20, the Division limits payment for rebase to once every three years;

(C) For clients age 21 and older:

(i) There shall be documentation of a current reline that has been done and failed; and

(ii) The Division limits payment for rebase to once every five years;

(D) The Division may make exceptions to this limitation in cases of acute trauma or catastrophic illness that directly or indirectly affects the oral condition and results in additional tooth loss. This pertains to, but is not limited to, cancer and periodontal disease resulting from pharmacological, surgical, and medical treatment for aforementioned conditions. Severe periodontal disease due to neglect of daily oral hygiene may not warrant rebasing;

(i) Denture reline procedures:

(A) For clients through age 20, the Division limits payment for reline of complete or partial dentures to once every three years;

(B) For clients age 21 and older, the Division limits payment for reline of complete or partial dentures to once every five years;

(C) The Division may make exceptions to this limitation under the same conditions warranting replacement;

(D) Laboratory relines:

(i) Are not payable prior to six months after placement of an immediate denture; and

(ii) For clients through age 20, are limited to once every three years;

(iii) For clients age 21 and older, are limited to once every five years;

(j) Interim partial dentures (D5820-D5821, also referred to as "flippers"):

(A) Are allowed if the client has one or more anterior teeth missing; and

(B) The Division shall reimburse for replacement of interim partial dentures once every five years but only when dentally appropriate;

(k) Tissue conditioning:

(A) Is allowed once per denture unit in conjunction with immediate dentures; and

(B) Is allowed once prior to new prosthetic placement;

(9) MAXILLOFACIAL PROSTHETIC SERVICES:

(a) Fluoride gel carrier (D5986) is limited to those patients whose severity of oral disease causes the increased cleaning and fluoride treatments allowed in rule to be insufficient. The dental practitioner shall document failure of those options prior to use of the fluoride gel carrier;

(b) All other maxillofacial prosthetics (D5900-D5999) are medical services. Refer to the "Covered and Non-Covered Dental Services" document and OAR 410-123-1220:

(A) Bill for medical maxillofacial prosthetics using the professional (CMS1500, DMAP 505 or 837P) claim format:

(B) For clients receiving services through a CCO or PHP, bill medical maxillofacial prosthetics to the CCO or PHP;

(C) For clients receiving medical services through FFS, bill the Division.

(10) ORAL SURGERY SERVICES:

(a) Bill the following procedures in an accepted dental claim format using CDT codes:

(A) Procedures that are directly related to the teeth and supporting structures that are not due to a medical condition or diagnosis, including such procedures performed in an ambulatory surgical center (ASC) or an inpatient or outpatient hospital setting;

(B) Services performed in a dental office setting or an oral surgeon's office:

(i) Such services include, but are not limited to, all dental procedures, local anesthesia, surgical postoperative care, radiographs, and follow-up visits;

(ii) Refer to OAR 410-123-1160 for any PA requirements for specific procedures;

(b) Bill the following procedures using the professional claim format and the appropriate American Medical Association (AMA) CPT procedure and ICD-10 diagnosis codes:

(A) Procedures that are a result of a medical condition (i.e., fractures, cancer);

(B) Services requiring hospital dentistry that are the result of a medical condition/diagnosis (i.e., fracture, cancer);

(c) Refer to the "Covered and Non-Covered Dental Services" document to see a list of CDT procedure codes on the Prioritized List that may also have CPT medical codes. See OAR 410-123-1220. The procedures listed as "medical" on the table may be covered as medical procedures, and the table may not be all-inclusive of every dental code that has a corresponding medical code;

(d) For clients enrolled in a DCO or CCO responsible for dental services, the DCO or CCO shall pay for those services in the dental plan package;

(e) Oral surgical services performed in an ASC or an inpatient or outpatient hospital setting:

(A) Require PA;

(B) For clients enrolled in a CCO or FCHP, the CCO or FCHP shall pay for the facility charge and anesthesia services. For clients enrolled in a Physician Care Organization (PCO), the PCO shall pay for the outpatient facility charge (including ASCs) and anesthesia. Refer to the current Medical Surgical Services administrative rules in OAR chapter 410, division 130 for more information;

(C) If a client is enrolled in a CCO or PHP, the provider shall contact the CCO or PHP for any required authorization before the service is rendered;

(f) All codes listed as "by report" require an operative report;

(g) The Division covers payment for tooth re-implantation only in cases of traumatic avulsion where there are good indications of success;

(h) Biopsies collected are reimbursed as a dental service. Laboratory services of biopsies are reimbursed as a medical service;

(i) The Division does not cover surgical excisions of soft tissue lesions (D7410-D7415);

(j) Extractions — Includes local anesthesia and routine postoperative care, including treatment of a dry socket if done by the provider of the extraction. Dry socket is not considered a separate service;

(k) Surgical extractions:

(A) Include local anesthesia and routine post-operative care;

(B) The Division limits payment for surgical removal of impacted teeth or removal of residual tooth roots to treatment for only those teeth that have acute infection or abscess, severe tooth pain, or unusual swelling of the face or gums;

(C) The Division does not cover alveoloplasty in conjunction with extractions (D7310 and D7311) separately from the extraction;

(D) The Division covers alveoplasty not in conjunction with extractions (D7320-D7321) only for clients under 21 years of age or who are pregnant;

(l) Frenulectomy/frenulotomy (D7960) and frenuloplasty (D7963):

(A) The Division covers either frenulectomy or frenuloplasty once per lifetime per arch only for clients under age 21;

(B) The Division covers maxillary labial frenulectomy only for clients age 12 through 20;

(C) The Division shall cover frenulectomy/frenuloplasty in the following situations:

(i) When the client has ankyloglossia;

(ii) When the condition is deemed to cause gingival recession; or

(iii) When the condition is deemed to cause movement of the gingival margin when the frenum is placed under tension;

(m) The Division covers excision of pericoronal gingival (D7971) only for clients under age 21 or who are pregnant.

(11) ORTHODONTIA SERVICES:

(a) The Division limits orthodontia services and extractions to eligible clients:

(A) With the ICD-10-CM diagnosis of:

(i) Cleft palate; or

(ii) Cleft palate with cleft lip; and

(B) Whose orthodontia treatment began prior to 21 years of age; or

(C) Whose surgical corrections of cleft palate or cleft lip were not completed prior to age 21.

(b) PA is required for orthodontia exams and records. A referral letter from a physician or dentist indicating diagnosis of cleft palate or cleft lip shall be included in the client's record and a copy sent with the PA request;

(c) Documentation in the client's record shall include diagnosis, length, and type of treatment;

(d) Payment for appliance therapy includes the appliance and all follow-up visits;

(e) Orthodontists evaluate orthodontia treatment for cleft palate/cleft lip as two phases. Stage one is generally the use of an activator (palatal expander), and stage two is generally the placement of fixed appliances (banding). The Division shall reimburse each phase separately;

(f) The Division shall pay for orthodontia in one lump sum at the beginning of each phase of treatment. Payment for each phase is for all orthodontia-related services. If the client transfers to another orthodontist during treatment, or treatment is terminated for any reason, the orthodontist shall refund to the Division any unused amount of payment after applying the following formula: Total payment minus $300.00 (for banding) multiplied by the percentage of treatment remaining;

(g) The Division shall use the length of the treatment plan from the original request for authorization to determine the number of treatment months remaining;

(h) As long as the orthodontist continues treatment, the Division may not require a refund even though the client may become ineligible for medical assistance sometime during the treatment period;

(i) Code:

(A) D8660 — PA required (reimbursement for required orthodontia records is included);

(B) Codes D8010-D8690 — PA required.

(12) ADJUNCTIVE GENERAL AND OTHER SERVICES:

(a) Fixed partial denture sectioning (D9120) is covered only when extracting a tooth connected to a fixed prosthesis and a portion of the fixed prosthesis is to remain intact and serviceable, preventing the need for more costly treatment;

(b) Anesthesia:

(A) Only use general anesthesia or IV sedation for those clients with concurrent needs: age; physical, medical or mental status; or degree of difficulty of the procedure (D9223, D9241 and D9242);

(B) The Division reimburses providers for general anesthesia or IV sedation as follows:

(i) D9223 or D9243: For each 15-minute period, up to three and a half hours on the same day of service.

(ii) Each 15-minute period represents a quantity of one. Enter this number in the quantity column;

(C) The Division reimburses administration of Nitrous Oxide (D9230) per date of service, not by time;

(D) Oral pre-medication anesthesia for conscious sedation (D9248):

(i) Limited to clients under 13 years of age;

(ii) Limited to four times per year;

(iii) Includes payment for monitoring and Nitrous Oxide; and

(iv) Requires use of multiple agents to receive payment;

(E) Upon request, providers shall submit a copy of their permit to administer anesthesia, analgesia, and sedation to the Division;

(F) For the purpose of Title XIX and Title XXI, the Division limits payment for code D9630 to those oral medications used during a procedure and is not intended for "take home" medication;

(c) The Division limits reimbursement of house/extended care facility call (D9410) only for urgent or emergent dental visits that occur outside of a dental office. This code is not reimbursable for provision of preventive services or for services provided outside of the office for the provider or facilities' convenience;

(d) Oral devices/appliances (E0485, E0486):

(A) These may be placed or fabricated by a dentist or oral surgeon but are considered a medical service;

(B) Bill the Division, CCO, or the PHP for these codes using the professional claim format.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: HR 3-1994, f. & cert. ef. 2-1-94; HR 20-1995, f. 9-29-95, cert. ef. 10-1-95; OMAP 13-1998(Temp), f. & cert. ef. 5-1-98 thru 9-1-98; OMAP 28-1998, f. & cert. ef. 9-1-98; OMAP 23-1999, f. & cert. ef. 4-30-99; OMAP 8-2000, f. 3-31-00, cert. ef. 4-1-00; OMAP 17-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 48-2002, f. & cert. ef. 10-1-02; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 65-2003, f. 9-10-03 cert. ef. 10-1-03; OMAP 55-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 12-2005, f. 3-11-05, cert. ef. 4-1-05; DMAP 25-2007, f. 12-11-07, cert, ef. 1-1-08; DMAP 18-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 38-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 16-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 41-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 14-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 31-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 17-2011, f. & cert. ef. 7-12-11; DMAP 41-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 46-2011, f. 12-23-11, cert. ef. 1-1-12; DMAP 13-2013, f. 3-27-13, cert. ef. 4-1-13; DMAP 28-2013(Temp), f. 6-26-13, cert. ef. 7-1-13 thru 12-28-13; DMAP 68-2013, f. 12-5-13, cert. ef. 12-23-13; DMAP 75-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 10-2014(Temp), f. & cert. ef. 2-28-14 thru 8-27-14; DMAP 19-2014(Temp), f. 3-28-14, cert. ef. 4-1-14 thru 6-30-14; DMAP 36-2014, f. & cert. ef. 6-27-14; DMAP 56-2014, f. 9-26-14, cert. ef. 10-1-14; DMAP 7-2015(Temp), f. & cert. ef. 2-17-15 thru 8-15-15; DMAP 28-2015, f. & cert. ef. 5-1-15; DMAP 46-2015(Temp), f. 8-26-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 51-2015, f. 9-22-15, cert. ef. 10-1-15; DMAP 65-2015, f. 11-13-15, cert. ef. 12-1-15; DMAP 74-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Prioritized List, Effective 1/1/16, including Modifications Effective 10/1/15 and Biennial Changes January 1, 2016-December 31,2017

Adm. Order No.: DMAP 75-2015(Temp)

Filed with Sec. of State: 12-22-2015

Certified to be Effective: 1-1-16 thru 6-13-16

Notice Publication Date:

Rules Amended: 410-141-0520

Subject: The OHP program administrative rules govern the Division's payments for services provided to clients. The Authority is temporarily amending 410-141-0520. This change will reference the approved Health Evidence Review Committee (HERC) Prioritized List of Health Services, effective January 1, 2016 - December 31, 2017 and incorporate interim modifications made October 1, 2015. The changes will be effective January 1, 2016.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-0520

Prioritized List of Health Services

(1) The Health Evidenced Review Commission (HERC) Prioritized List of Health Services (Prioritized List) is the listing of physical and mental health services with "expanded definitions" of practice guidelines and statements of intent as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC main-

tains the most current list on their website: http://www.oregon.gov/oha/herc/Pages/index.aspx. For a hard copy, contact the Division within the Oregon Health Authority (Authority).

(2) This rule incorporates by reference the Centers for Medicare and Medicaid Services' (CMS) approved biennial January 1, 2016–December 31, 2017 Prioritized List of condition treatment pairs funded through line 475, including interim modifications approved at the October 1, 2015 and November 12, 2015 HERC meetings.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065 & 414.727
Hist.: HR 7-1994, f. & cert. ef. 2-1-94; OMAP 33-1998, f. & cert. ef. 9-1-98; OMAP 40-1998(Temp), f. & cert. ef. 10-1-98 thru 3-1-99; OMAP 48-1998(Temp), f. & cert. ef. 12-1-98 thru 5-1-99; OMAP 21-1999, f. & cert. ef. 4-1-99; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 9-2000(Temp), f. 4-27-00, cert. ef. 4-27-00 thru 9-26-00; OMAP 13-2000, f. & cert. ef. 9-12-00; OMAP 14-2000(Temp), f. 9-15-00, cert. ef. 10-1-00 thru 3-30-01; OMAP 40-2000, f. 11-17-00, cert. ef. 11-20-00; OMAP 22-2001(Temp), f. 3-30-01, cert. ef. 4-1-01 thru 9-1-01; OMAP 28-2001, f. & cert. ef. 8-10-01; OMAP 53-2001, f. & cert. ef. 10-1-01; OMAP 18-2002, f. 4-15-02, cert. ef. 5-1-02; OMAP 64-2002, f. & cert. ef. f. & cert. ef. 10-2-02; OMAP 65-2002(Temp), f. & cert. ef. 10-2-02 thru 3-15-0; OMAP 88-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 14-2003, f. 2-28-03, cert. ef. 3-1-03; OMAP 30-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 79-2003(Temp), f. & cert. ef. 10-2-03 thru 3-15-04; OMAP 81-2003(Temp), f. & cert. ef. 10-23-03 thru 3-15-04; OMAP 94-2003, f. 12-31-03 cert. ef. 1-1-04; OMAP 17-2004(Temp), f. 3-15-04 cert. ef. 4-1-04 thru 9-15-04; OMAP 28-2004, f. 4-22-04 cert. ef. 5-1-04; OMAP 48-2004, f. 7-28-04 cert. ef. 8-1-04; OMAP 51-2004, f. 9-9-04, cert. ef. 10-1-04; OMAP 68-2004(Temp), f. 9-14-04, cert. ef. 10-1-04 thru 3-15-05; OMAP 83-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 27-2005, f. 4-20-05, cert. ef. 5-1-05; OMAP 54-2005(Temp), f. & cert. ef. 10-14-05 thru 4-1-06; OMAP 62-2005, f. 11-29-05, cert. ef. 12-1-05; OMAP 71-2005, f. 12-21-05, cert. ef. 1-1-06; OMAP 6-2006, f. 3-22-06, cert. ef. 4-1-06; OMAP 46-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 14-2007(Temp), f. & cert. ef. 10-1-07 thru 3-28-08; DMAP 28-2007(Temp), f. & cert. ef. 12-20-07 thru 3-28-08; DMAP 8-2008, f & cert. ef. 3-27-08; DMAP 10-2008(Temp), f. & cert. ef. 4-1-08 thru 9-15-08; DMAP 23-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 31-2008(Temp), f. & cert. ef. 10-1-08 thru 3-29-09; DMAP 40-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 4-2009(Temp), f. & cert. ef. 1-30-09 thru 6-25-09; DMAP 6-2009(Temp), f. 3-26-09, cert. ef. 4-1-09 thru 9-25-09; DMAP 8-2009(Temp), f. & cert. ef. 4-17-09 thru 9-25-09; DMAP 26-2009, f. 8-3-09, cert. ef. 8-5-09; DMAP 30-2009(Temp), f. 9-15-09, cert. ef. 10-1-09 thru 3-29-10; DMAP 36-2009(Temp), f. 12-10-09 ef. 1-1-10 thru 3-29-10; DMAP 1-2010(Temp), f. & cert. ef. 1-15-10 thru 3-29-10; DMAP 3-2010, f. 3-5-10, cert. ef. 3-17-10; DMAP 5-2010(Temp), f. 3-26-10, cert. ef. 4-1-10 thru 9-1-10; DMAP 10-2010, f. & cert. ef. 4-26-10; DMAP 27-2010(Temp), f. 9-24-10, cert. ef. 10-1-10 thru 3-25-11; DMAP 43-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 4-2011, f. 3-23-11, cert. ef. 4-1-11; DMAP 24-2011(Temp), f. 9-15-11, cert. ef. 10-1-11 thru 3-26-12; DMAP 45-2011, f. 12-21-11, cert. ef. 12-23-11; DMAP 47-2011(Temp), f. 12-13-11, cert. ef. 1-1-12 thru 6-25-12; DMAP 22-2012(Temp), f. 3-30-12, cert. ef. 4-1-12 thru 9-21-12; DMAP 43-2012(Temp), f. 9-21-12, cert. ef. 9-23-12 thru 3-21-13; DMAP 11-2013, f. & cert. ef. 3-21-13; DMAP 50-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 57-2013(Temp), f. & cert. ef. 10-29-13 thru 3-30-14; DMAP 7-2014, f. & cert. ef. 1-31-14; DMAP 13-2014(Temp), f. 3-20-14, cert. ef. 4-1-14 thru 9-28-14; DMAP 31-2014, f. 5-30-14, cert. ef. 7-1-14; DMAP 63-2014(Temp), f. & cert. ef. 10-17-14 thru 12-31-14; DMAP 79-2014, f. 12-18-14, cert. ef. 12-31-14; DMAP 80-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 18-2015, f. & cert. ef. 4-1-15; DMAP 50-2015(Temp), f. 9-10-15, cert. ef. 10-1-15 thru 3-28-16; DMAP 75-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-13-16

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Rule Caption: Implement Prescription Synchronization Policy for Medical Assistance Recipients Not Enrolled in a Coordinated Care Organization
Adm. Order No.: DMAP 76-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 410-121-0000, 410-121-0146
Subject: The Authority is amending OAR 410-121-0000 and 410-121-0146 to implement a prescription synchronization policy for fee-for-service medical assistance recipients. Synchronization aligns a patient's refills to maximize the number that may be refilled at the same time. The amendment aligns policy with legislative intent, as contained in Oregon Laws 2015, chapter 800, section 2 (SB 841).
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0000
Foreword and Definition of Terms

(1) The Division of Medical Assistance Program's (Division) Oregon Administrative Rules (OAR) are designed to assist providers in preparing claims for services provided to the Division's fee-for-service clients. Providers must use Pharmaceutical OARs in conjunction with the General Rules OARs (chapter 410, division 120) for Oregon Medical Assistance Programs.

(2) Pharmaceutical services delivered through managed care plans contracted with the Division, under the Oregon Health Plan (OHP), are subject to the policies and procedures established in the OHP administrative rules (chapter 410, division 141) and by the specific managed health care plans.

(3) Definition of Terms:

(a) Actively Practicing: The active practice of medicine as described in ORS chapter 689, or the active practice of pharmacy as described in ORS chapter 677.

(b) Actual Acquisition Cost (AAC): The cost or basis for reimbursement of supplies. The AAC will be established by the Division or its contractor by rolling surveys of enrolled pharmacies to verify the actual invoice amount paid by the pharmacy or corporate entity to wholesalers, manufacturers, or distribution centers for the product and as such will serve as the basis for reimbursement;

(c) Authority: The Oregon Health Authority, see Oregon Health Authority definition in General Rules (chapter 410, division 120);

(d) Average Actual Acquisition Cost (AAAC): The AAAC will be the average of AAC invoice amounts for individual drug products based on the Generic Sequence Number (GSN);

(e) Average Manufacturer's Price (AMP): The average price that manufacturers sell medication to wholesalers and retail pharmacies, as further clarified in 42 CFR 447;

(f) Bulk Dispensing: Multiple doses of medication packaged in one container labeled as required by pertinent Federal and State laws and rules;

(g) Centers for Medicare and Medicaid Services (CMS) Basic Rebate: The quarterly payment by the manufacturer of a drug pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(3) of the Social Security act 42 U.S.C. 1396r-8(c)(1) and 42 U.S.C. 1396r-8 (c)(3). See 410-121-0157;

(h) CMS Consumer Price Index (CPI) Rebate: The quarterly payment by the manufacturer pursuant to the Manufacturer's CMS Medicaid Drug Rebate Agreement made in accordance with Section 1927(c)(2) of the Social Security act (42 U.S.C. 1396r-8(c)(2);

(i) Compendia: Those resources widely accepted by the medical profession in the efficacious use of drugs, including the following sources:

(A) The American Hospital Formulary Service drug information;

(B) The United States Pharmacopeia drug information;

(C) The American Medical Association drug evaluations;

(D) Peer-reviewed medical literature;

(E) Drug therapy information provided by manufacturers of drug products consistent with the federal Food and Drug Administration requirements;

(j) Community Based Care Living Facility: For the purposes of the Division's Pharmacy Program, a home, facility, or supervised living environment licensed or certified by the state of Oregon that provides 24 hour care, supervision, and assistance with medication administration. These include, but are not limited to:

(A) Supportive Living Facilities;

(B) 24-Hour Residential Services;

(C) Adult Foster Care;

(D) Semi-Independent Living Programs;

(E) Assisted Living and Residential Care Facilities;

(F) Group Homes and other residential services for people with developmental disabilities or needing mental health treatment; and

(G) Inpatient hospice;

(k) Compounded Prescription:

(A) A prescription that is prepared at the time of dispensing and involves the weighting of at least one solid ingredient that must be a reimbursable item or a legend drug in a therapeutic amount;

(B) Compounded prescription is further defined to include the Oregon Board of Pharmacy definition of compounding (see OAR 855-006-0005);

(L) Dispensing: Issuance of a prescribed quantity of an individual drug entity by a licensed pharmacist;

(m) Director: The Director of the Authority;

(n) Drug Order/Prescription:

(A) A medical practitioner's written or verbal instructions for a patient's medications; or

(B) A medical practitioner's written order on a medical chart for a client in a nursing facility;

(o) Durable Medical Equipment and supplies (DME): Equipment and supplies as defined in OAR 410-122-0010, Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

(p) Estimated Acquisition Cost (EAC): The estimated cost that the pharmacy can obtain the product listed in OAR 410-121-0155;

(q) Intermediate Care Facility: A facility providing regular health-related care and services to individuals at a level above room and board, but less than hospital or skilled nursing levels as defined in ORS 442.015;

(r) Legend Drug: A drug limited by § 503(b)(1) of the Federal Food, Drug, and Cosmetic Act to being dispensed by or upon a medical practitioner's prescription because the drug is:

(A) Habit-forming;

(B) Toxic or having potential for harm; or

(C) Limited in its use to use under a practitioner's supervision by the new drug application for the drug:

(i) The product label of a legend drug is required to contain the statement: "CAUTION: FEDERAL LAW PROHIBITS DISPENSING WITHOUT A PRESCRIPTION;"

(ii) A legend drug includes prescription drugs subject to the requirement of § 503(b)(1) of the federal Food, Drug, and Cosmetic Act which shall be exempt from § 502(F)(1) if certain specified conditions are met;

(s) Long Term Care Facility: Includes skilled nursing facilities and intermediate care facilities with the exclusions found in ORS 443.400 to 443.455;

(t) Maintenance Medication: Drugs that have a common indication for treatment of a chronic disease and the therapeutic duration is expected to exceed one year. This is determined by a First DataBank drug code maintenance indicator of "Y" or "1";

(u) Mental Health Drug: A type of legend drug defined by the Oregon Health Authority (Authority) by rule that includes, but is not limited to those drugs classified by First DataBank in the following Standard Therapeutic Classes:

(A) Therapeutic Class 7 ataractics-tranquilizers; and Therapeutic Class 11 psychostimulants-antidepressants;

(B) Depakote, Lamictal and their generic equivalents and other drugs that the Division specifically carved out from capitation from Fully Capitated Health Plans (FCHPs) in accordance with OAR 410-141-0070;

(v) Narrow Therapeutic Index (NTI) Drug: A drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring;

(w) Net Price: The amount a drug costs the Division and is calculated using the following formula: "Estimated Acquisition Cost minus CMS Basic Rebate minus CMS CPI Rebate minus State Supplemental Rebate";

(x) Non-Preferred Products: Any medication in a class that has been evaluated and that is not listed on the Practitioner-Managed Prescription Drug Plan Preferred Drug List in OAR 410-121-0030 and may be subject to co-pays;

(y) Nursing Facility: An establishment that is licensed and certified by the Department's Aging and People with Disabilities Division (APD) as a Nursing Facility;

(z) Pharmacist: An individual who is licensed as a pharmacist under ORS chapter 689;

(aa) Physical Health Drug: All other drugs not included in section (u) of this rule;

(bb) Point-of-Sale (POS): A computerized, claims submission process for retail pharmacies that provides on-line, real-time claims adjudication;

(cc) Preferred Drug List (PDL): A PDL consists of prescription drugs in selected classes that the Authority, in consultation with the Pharmacy & Therapeutics Committee (P & T), has determined represent the most effective drug(s) available at the best possible price. (See details for the Division's PMPDP PDL in OAR 410-121-0030):

(A) Enforceable Physical Health Preferred Drug List: The list of drug products used to treat physical health diagnosis that the Division has identified which shall be exempt from client co-pays and may be subject to prior authorization (PA). Drugs prescribed that do not appear on the PDL (non-preferred products) shall be subject to both co-pays and PA as determined to be appropriate by the Division;

(B) Voluntary Mental Health Preferred Drug List: The list of drug products used to treat mental health diagnosis. These drugs are exempt from client co-pay. Any drug prescribed for the treatment of mental health diagnosis shall be exempt from PA requirements by the Division;

(dd) Preferred Products: Products in classes that have been evaluated and placed on the Practitioner Managed Prescription Drug Plan (PMPDP) PDL in OAR 410-121-0030 and are not subject to co-pays;

(ee) Prescriber: Any person authorized by law to prescribe drugs;

(ff) Prescription Splitting: Any one or a combination of the following actions:

(A) Reducing the quantity of a drug prescribed by a licensed practitioner for prescriptions not greater than 34 days, except as needed for Prescription Synchronization (see OAR 410-121-0146);

(B) Billing the agency for more than one dispensing fee when the prescription calls for one dispensing fee for the quantity billed, except as needed for Prescription Synchronization (see OAR 410-121-0146);

(C) Separating the ingredients of a prescribed drug and billing the agency for separate individual ingredients, with the exception of compounded medications (see OAR 410-121-0146); or

(D) Using multiple 30-day cards to dispense a prescription when a lesser number of cards will suffice;

(gg) Prescription Synchronization: The process of, at the client's direction, aligning the refill dates of a client's prescription drugs so drugs that are refilled at the same frequency may be refilled concurrently;

(hh) Prior Authorization Program (PA): The Prior Authorization Program is a system of determining, through a series of therapeutic and clinical protocols, which drugs require authorizations prior to dispensing:

(A) OAR 410-121-0040 lists the drugs or categories of drugs requiring PA;

(B) The practitioner, or practitioner's licensed medical personnel listed in OAR 410-121-0060, may request a PA;

(ii) State Supplemental Rebates: The Division and CMS approved discounts paid by manufacturers per unit of drug. These rebates are authorized by the Social Security Act section 42 USC 1396r-8(a)(1) and are in addition to federal rebates mandated by the Omnibus Budget Rehabilitation Act (OBRA 90) and the federal rebate program;

(jj) Unit Dose: A sealed, single unit container of medication, so designed that the contents are administered to the patient as a single dose, direct from the container, and dispensed following the rules for unit dose dispensing system established by the Oregon Board of Pharmacy;

(kk) Urgent Medical Condition: A medical condition that arises suddenly, is not life-threatening, and requires prompt treatment to avoid the development of more serious medical problems;

(LL) Usual and Customary Price: A pharmacy's charge to the general public that reflects all advertised savings, discounts, special promotions, or other programs including membership based discounts, initiated to reduce prices for product costs available to the general public, a special population, or an inclusive category of customers;

(mm) Wholesale Acquisition Cost (WAC): The price paid by a wholesaler for drugs purchased from the wholesaler's supplier, typically the manufacturer of the drug. WAC is the price of a covered product by the National Drug Code (NDC) as published by First DataBank, MediSpan or Red Book;

(nn) 340B Pharmacy: A federally designated community health center or other federally qualified covered entity that is listed on the Health Resources and Services Administration (HRSA) website.

[ED NOTE: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042, 414.065 & 414.325

Stats. Implemented: ORS 414.065

Hist.: HR 29-1990, f. 8-31-90, cert. ef. 9-1-90; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 1-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 23-2011, f. 8-24-11, cert. ef. 9-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12, DMAP 76-2015, f. 12-22-15, cert. ef. 1-1-16

410-121-0146

Dispensing Limitations

(1) The Division of Medical Assistance Programs (Division) will reimburse the pharmacy for dispensed medication the lesser of:

(a) The quantity indicated by the prescriber on the prescription;

(b) The quantity indicated by the Division dispensing limitations as outlined in this rule; or

(c) The quantity needed for Prescription Synchronization.

(2) The pharmacy may only dispense less than the prescribed quantity when the prescribed quantity exceeds the Division's dispensing limitations, or when a lesser quantity is needed for Prescription Synchronization.

(3) The pharmacy may, at the client's direction, dispense less than the prescribed quantity of a maintenance medication in order to align the refill dates if the client has received the same dose for two months or more. (4) Unless otherwise specified in this rule, the Division will not reimburse claims for medications exceeding a 34-day supply.

(5) Exceptions to the 34-day supply do not apply to claims for the following Standard Therapeutic Classes of medications. Claims exceeding a 34-day supply for these medications will not be reimbursed under any circumstances:

(a) Ataractics, Tranquilizers — 07;

(b) Muscle Relaxants — 08;

(c) CNS Stimulants — 10;

(d) Psychostimulants, Antidepressants — 11;

(e) Amphetamine Preps — 12;

(f) Narcotic Analgesics — 40;

(g) Sedative Barbiturate — 46;

(h) Sedative Non-Barbiturate — 47.

(6) The Division will allow reimbursement for more than a 34-day supply if the medication's original package size cannot be divided.

(7) Except for medications listed in (5), claims for up to a 100-day supply of the following types of medications may be reimbursed to the Division's mail order pharmacy contractor, Indian Health mail order pharmacy providers, and 340B providers:

(a) A preferred PDL generic; and

(b) A generic drug not on the PDL, costing $10 per month or less.

(8) Any pharmacy provider will be reimbursed for up to a 100-day supply of family planning drugs.

(9) Maintenance Medications — Any pharmacy provider will be reimbursed for up to a 100-day supply of select classes of medications if the client has received the same dose for two months or more. Maintenance medications shall be determined by the Division based on the following criteria:

(a) Have low probability for dosage or therapy changes due to side effects; and

(b) Are used most commonly to treat a chronic disease state and not considered curative or promoting recovery; and

(c) Are administered continuously rather than intermittently.

(10) Selected medications identified by the Division will be limited to a 15-day supply for initial fills. These medications have been identified as having high side effect profiles, high discontinuation rates, or needing frequent dose adjustments.

(11) After stabilization of a diabetic, the pharmacy should provide a minimum of a one-month supply of insulin per dispensing.

(12) For vaccines available in multiple dose packaging, the Division will allow a dispensing fee for each multiple dose. When vaccines are administered at the pharmacy, refer to Oregon Administrative Rule (OAR) 410-121-0185.

(13) Splitting prescriptions:

(a) For compounded prescriptions, bill components of the prescription separately. Third party payments for compounded prescriptions must be split and applied equally to each component;

(b) The Division will consider any other form of prescription splitting as a billing offense and take appropriate action as described in the General Rules (OAR 410 division 120).

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065

Hist.: PWC 818(Temp), f. 10-22-76, ef. 11-1-76; PWC 831, f. 2-18-77, ef. 3-1-77; PWC 869, f. 12-30-77, ef. 1-1-78; AFS 70-1981, f. 9-30-81, ef. 10-1-81; AFS 44-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 99-1982, f. 10-25-82, ef. 11-1-82; AFS 12-1984, f. 3-16-84, ef. 4-1-84; AFS 26-1984, f. & ef. 6-19-84; AFS 53-1985, f. 9-20-85, ef. 10-1-85; AFS 52-1986, f. & ef. 7-2-86; AFS 15-1987, f. 3-31-87, ef. 4-1-87; AFS 4-1989, f. 1-31-89, cert. ef. 2-1-89; AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89, Renumbered from 461-016-0090; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0210; HR 16-1992, f. & cert. ef. 7-1-92; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1996(Temp), f. & cert. ef. 8-1-96; HR 27-1996, f. 12-11-96, cert. ef. 12-15-96; HR 20-1997, f. & cert. ef. 9-12-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 61-2001(Temp), f. 12-13-01, cert. ef. 12-15-01 thru 3-15-02; OMAP 1-2002, cert. ef. 2-15-02; OMAP 74-2002, f. 12-24-02, cert. ef. 1-1-03; OMAP 7-2004, f. 2-13-04 cert. ef. 3-15-04; OMAP 19-2004(Temp), f. & cert. ef. 3-15-04 thru 4-14-04; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 6-2010(Temp), f. & cert. ef. 4-1-10 thru 6-30-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12, DMAP 76-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: Rewrite Rule to Implement House Bill 2306 (2015 Regular Session) for a Pharmacy Management Program
Adm. Order No.: DMAP 77-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 410-121-0135
Subject: The Authority is rewriting OAR 410-121-0135 to align the Pharmacy Management Program with legislative intent, as contained in Oregon Laws 2015, chapter 467, section 2 (HB 2306). The program avoids overutilization of pharmaceutical services by restricting certain fee-for-service medical assistance recipients' pharmacy choices. Amendment of the existing rule will align the program with the statute.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0135
Pharmacy Management Program

(1) The Pharmacy Management Program promotes the appropriate use of quality pharmaceutical services by identifying and correcting overutilization of services.

(2) The Pharmacy Management Program limits some fee-for-service clients to receiving their prescription drugs through the following sources:

(a) A single retail pharmacy to pick up prescriptions;

(b) The Division of Medical Assistance Program (Division) mail order pharmacy contractor; and

(c) A specialty pharmacy.

(3) The Division will not include the following clients in the Pharmacy Management Program:

(a) Members enrolled in a Coordinated Care Organization;

(b) Clients with Medicare drug coverage in addition to OHP;

(c) Children in the care and custody of the Department of Human Services; or

(d) Inpatients or residents in a hospital, nursing facility, other medical institution or long term care facility.

(4) The Division will consider referrals of potential Pharmacy Management Program clients from the following sources:

(a) Providers;

(b) Division staff; and

(c) Division contractors.

(5) Reasons for referring a client to the Division for potential enrollment in the Pharmacy Management Program shall be limited to factors that indicate possible overutilization or drug misuse, or that raise concern for patient safety. Those factors are:

(a) Use of three or more pharmacies during the prior six months;

(b) Fills prescriptions from more than one prescriber for the same or comparable medications; or

(c) Evidence that the client altered a prescription; or

(d) Exhibits behaviors or patterns of behavior that the Pharmacy and Therapeutics Committee has identified as indicative of intentional overutilization or misuse.

(6) Clients referred to the Division for potential enrollment in the Pharmacy Management Program shall be enrolled in the program only when a licensed pharmacist appointed by the Division conducts a review and concludes the individual utilized pharmaceutical items or services at a frequency or amount that is not medically necessary based on factors including, but not limited to, those described in subsection (5) of this rule.

(7) When the Division concludes enrollment in the Pharmacy Management Program is appropriate as described in subsection (6), the Division shall send the client a notice that provides the following information:

(a) The Division plans to require that the client use a designated pharmacy for a 12-month period;

(b) The specific date when the requirement will begin;

(c) An explanation of the reason for enrollment in the Pharmacy Management Program, and the benefits of enrollment in the Pharmacy Management Program; and

(d) The client's right to request the following, within 45 days of the date of the notice:

(A) A different designated pharmacy; and

(B) An administrative hearing to appeal the Division's decision to enroll the client into the Pharmacy Management Program.

(8) Changing the Pharmacy Management Program client's enrolled pharmacy:

(a) Clients may change their enrolled pharmacy if they:

(A) Move out of area;

(B) Are reapplying for OHP benefits; or

(C) Are denied access to pharmacy services by their selected pharmacy for reasons other than the Pharmacy Management Program factors identified by the Division;

(b) Clients cannot change their choice of pharmacy more than once every 3 months.

(9) Pharmacy Management Program clients may receive drugs from a different pharmacy if the client urgently needs to fill a prescription and the enrolled pharmacy:

(a) Is not available;

(b) Does not have the prescribed drug in stock; or

(c) Is more than 50 miles away from the client's location at the time the prescription needs to be filled. However, DMAP may deny coverage if the client frequently fills prescriptions out of the area of the enrolled pharmacy.

(10) Call the Oregon Pharmacy Help Desk for authorization to fill a prescription in the situations described in (9)(a)–(c) above.

(11) The client's appeal rights and the process for appealing a Division decision to enroll a client in the Pharmacy Management Program are found in OAR 410-120-1860. If the client requests an administrative

hearing before the effective date of the client notice and requests that the services be continued, the Authority shall continue the services pursuant to OAR 410-120-1865.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065, OL 2013 Ch. 467 Sec. 2
Hist.: OMAP 26-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 18-2004, f. 3-15-04 cert. ef. 4-1-04; OMAP 9-2005, f. 3-9-05, cert. ef. 4-1-05; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 77-2015, f. 12-22-15, cert. ef. 1-1-16

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Rule Caption: Updating Rules to Align with Changes to the State Plan and the Oregon Eligibility System
Adm. Order No.: DMAP 78-2015(Temp)
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-22-15 thru 6-18-16
Notice Publication Date:
Rules Amended: 410-200-0015, 410-200-0100, 410-200-0105, 410-200-0110, 410-200-0111, 410-200-0115, 410-200-0120, 410-200-0125, 410-200-0130, 410-200-0135, 410-200-0140, 410-200-0200, 410-200-0215, 410-200-0230, 410-200-0235, 410-200-0240, 410-200-0310, 410-200-0415, 410-200-0425, 410-200-0440, 410-200-0505, 410-200-0510
Rules Suspended: 410-200-0500
Subject: The Authority is updating rules to align with changes to the state plan and the Oregon Eligibility System. This includes housekeeping, editing, and formatting changes.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-200-0015
General Definitions

(1) "Action" means a termination, suspension, denial, or reduction of Medicaid or CHIP eligibility or covered services.

(2) "Address Confidentiality Program (ACP)" means a program of the Oregon Department of Justice that provides a substitute mailing address and mail forwarding service for ACP participants who are victims of domestic violence, sexual assault, or stalking.

(3) "AEN" means Assumed Eligible Newborn (OAR 410-200-0115).

(4) "Affordable Care Act" means the Patient Protection and Affordable Care Act of 2010 (Pub. L. 111–148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), as amended by the Three Percent Withholding Repeal and Job Creation Act (Pub. L. 112–56).

(5) "Agency" means the Oregon Health Authority and Department of Human Services.

(6) "American Indian and Alaska Native income exceptions" means:

(a) Distributions from Alaska Native Corporations and Settlement Trusts;

(b) Distributions from any property held in trust, subject to federal restrictions, located within the most recent boundaries of a prior federal reservation or otherwise under the supervision of the Secretary of the Interior;

(c) Distributions and payments from rents, leases, rights of way, royalties, usage rights, or natural resource extraction and harvest, including farming, from:

(A) Rights of ownership or possession in any lands described in section (b) of this part; or

(B) Federally protected rights regarding off-reservation hunting, fishing, gathering, or usage of natural resources;

(d) Distributions resulting from real property ownership interests related to natural resources and improvements:

(A) Located on or near a reservation or within the most recent boundaries of a prior federal reservation; or

(B) Resulting from the exercise of federally-protected rights relating to such real property ownership interests;

(e) Payments resulting from ownership interests in or usage rights to items that have unique religious, spiritual, traditional, or cultural significance or rights that support subsistence or a traditional lifestyle according to applicable tribal law or custom;

(f) Student financial assistance provided under the Bureau of Indian Affairs education programs.

(7) "Applicant" means an individual who is seeking an eligibility determination for themselves or someone for whom they are applying through an application submission or a transfer from another agency, insurance affordability program, or the FFM.

(8) "Application" means:

(a) The single streamlined application for all insurance affordability programs developed by the Authority or the FFM; or

(b) An application designed specifically to determine eligibility on a basis other than the applicable MAGI standard, submitted by or on behalf of the individual who may be eligible or is applying for assistance on a basis other than the applicable MAGI standard.

(9) "APTC" means advance payments of the premium tax credit, which means payment of the tax credits specified in section 36B of the Internal Revenue Code (as added by section 1401 of the Affordable Care Act) that are provided on an advance basis to an eligible individual enrolled in a QHP through an Exchange in accordance with sections 1402 and 1412 of the Affordable Care Act.

(10) "Assumed eligibility" means an individual is deemed to be eligible for a period of time based on receipt of another program benefit or because of another individual's eligibility.

(11) "Authorized Representative" means an individual or organization that acts on behalf of an applicant or beneficiary in assisting with the individual's application and renewal of eligibility and other on-going communications with the Agency (OAR 410-200-0111).

(12) "Beneficiary" means an individual who has been determined eligible and is currently receiving OCCS medical program benefits, Aging and People with Disability medical program benefits, or APTC.

(13) "BRS" means Behavioral Rehabilitation Services.

(14) "Budget Month" means the calendar month from which financial and nonfinancial information is used to determine eligibility.

(15) "Caretaker" means a parent, caretaker relative, or non-related caretaker who assumes primary responsibility for a child's care.

(16) "Caretaker Relative" means a relative of a dependent child by blood, adoption, or marriage with whom the child is living who assumes primary responsibility for the child's care, which may but is not required to be indicated by claiming the child as a tax dependent for federal income tax purposes, and who is one of the following:

(a) The child's father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece;

(b) The spouse of the parent or relative even after the marriage is terminated by death or divorce;

(c) An individual described in this section who is a relative of the child based on blood, including those of half-blood, adoption, or marriage.

(17) "CAWEM" means Citizen/Alien-Waived Emergency Medical, which is Medicaid coverage for emergency medical needs for individuals who are not eligible for other medical programs solely because they do not meet citizenship and alien status requirements (OAR 410-200-0240).

(18) "CAWEM Prenatal" means medical services for pregnant CAWEM beneficiaries.

(19) "Child" means an individual including minor parent, under the age of 19. Child does not include an unborn. Child includes a natural or biological, adopted, or step child.

(20) "Children's Health Insurance Program" also called "CHIP" means Oregon medical coverage under Title XXI of the Social Security Act.

(21) "Citizenship" includes status as a "national of the United States" defined in 8 U.S.C. 1101(a) (22) that includes both citizens of the United States and non-citizen nationals of the United States.

(22) "Claim" means a legal action or a demand by, or on behalf of, an applicant or beneficiary for damages for or arising out of a personal injury that is against any person, public body, agency, or commission other than the State Accident Insurance Fund Corporation or Worker's Compensation Board.

(23) "Claimant" means an individual who has requested a hearing or appeal.

(24) "Code" means Internal Revenue Code of 1986 as amended.

(25) "Combined eligibility notice" means an eligibility notice that informs an individual, or multiple family members of a household when feasible, of eligibility for each of the OCCS Medical Programs for which a determination or denial was made by the Authority.

(26) "Community partner" means all external entities that partner with the Authority and enter into formal agreement with the Authority to conduct outreach or enrollment assistance, whether or not they are funded or compensated by the Authority. Insurance agents are not considered community partners.

(27) "Coordinated content" means information included in eligibility notice regarding the transfer of the individual's or household's electronic account to another insurance affordability program for a determination of eligibility.

(28) "Custodial Parent" means, for children whose parents are divorced, separated, or unmarried, the parent for whom:

(a) If living with one parent, a court order or binding separation, divorce, or custody agreement establishes physical custody controls; or

(b) If living with one parent and there is no such order or agreement described in section (a), or in the event of a shared custody agreement, the custodial parent is the parent with whom the child spends most nights;

(c) If a child does not live with either parent, the parent who claims the child as a tax dependent is treated as the custodial parent for the purposes of OCCS medical program eligibility.

(29) "Date of Request" means the earlier of:

(a) The date the request for medical benefits is received by the Agency, the FFM, or a community partner; or

(b) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day.

(30) "Decision notice" means a written notice of a decision made regarding eligibility for an OCCS medical program benefit. A decision notice may be a:

(a) "Basic decision notice" mailed no later than:

(A) The date of action given in the notice; or

(B) When suspending benefits due to incarceration (OAR 410-200-0140), the date on which the action is taken to suspend benefits effective the day following the date on which the individual became incarcerated.

(b) "Combined decision notice" informs an individual or multiple family members of a household, when feasible, of the eligibility decision made for each of the MAGI insurance affordability programs;

(c) "Timely continuing benefit decision notice" informs the client of the right to continued benefits and is mailed no later than ten calendar days prior to the effective date of the change, except for clients in the Address Confidentiality Program, for whom it shall be mailed no later than 15 calendar days prior to the effective date of the change.

(31) "Department" means the Department of Human Services.

(32) "Dependent child" means a child who is under the age of 18 or age 18 and a full-time student in a secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete the school or training.

(33) "ELA" (Express Lane Agency) means the Department of Human Services making determinations regarding one or more eligibility requirements for the MAGI Child or MAGI CHIP programs.

(34) "ELE" (Express Lane Eligibility) means the Oregon Health Authority's option to rely on a determination made within a reasonable period by an ELA finding that a child satisfies the requirements for MAGI Child or MAGI CHIP program eligibility.

(35) "Electronic account" means an electronic file that includes all information collected and generated by the Agency regarding each individual's Medicaid or CHIP eligibility and enrollment, including all required documentation and including any information collected or generated as part of a fair hearing process conducted by the Authority or the FFM appeals process.

(36) "Electronic application" means an application electronically signed and submitted through the Internet.

(37) "Eligibility determination" means an approval or denial of eligibility and a renewal or termination of eligibility.

(38) "Expedited appeal" also called "expedited hearing" means a hearing held within five working days of the Authority's receipt of a hearing request, unless the claimant requests more time.

(39) "Family size" means the number of individuals used to compare to the income standards chart for the applicable program. The family size consists of all members of the household group and each unborn child of any pregnant members of the household group.

(40) "Federal data services hub" means an electronic service established by the Secretary of the Department of Health and Human Services through which all insurance affordability programs can access specified data from pertinent federal agencies needed to verify eligibility, including SSA, the Department of Treasury, and the Department of Homeland Security.

(41) "Federal poverty level (FPL)" means the federal poverty level updated periodically in the Federal Register by the Secretary of the Department of Health and Human Services under the authority of 42 U.S.C. 9902(2) as in effect for the applicable budget period used to determine an individual's eligibility in accordance with 42 CFR 435.603(h).

(42) "Federally Facilitated Marketplace" also called "FFM" means a website used by consumers.

(43) "Hearing Request" means a clear expression, oral or written, by an individual or the individual's representative that the individual wishes to appeal an Authority or FFM decision or action.

(44) "Household group" consists of every individual whose income is considered for determining each medical applicant's eligibility as defined in OAR 410-200-0305.

(45) "Inmate" means:

(a) An individual living in a public institution that is:

(A) Confined involuntarily in a local, state, or federal prison, jail, detention facility, or other penal facility, including being held involuntarily in a detention center awaiting trial or serving a sentence for a criminal offense;

(B) Residing involuntarily in a facility under a contract between the facility and a public institution where, under the terms of the contract, the facility is a public institution;

(C) Residing involuntarily in a facility that is under governmental control; or

(D) Receiving care as an outpatient while residing involuntarily in a public institution;

(b) An individual is not considered an inmate when:

(A) The individual is released on parole, probation, or post-prison supervision;

(B) The individual is on home or work-release, unless the individual is required to report to a public institution for an overnight stay;

(C) The individual is receiving inpatient care at a medical institution not associated with the public institution where the individual is an inmate;

(D) The individual is staying voluntarily in a detention center, jail, or county penal facility after his or her case has been adjudicated and while other living arrangements are being made for the individual; or

(E) The individual is in a public institution pending other arrangements as defined in 42 CFR 435.1010.

(46) "Insurance affordability program" means a program that is one of the following:

(a) Medicaid;

(b) CHIP;

(c) A program that makes coverage available in a qualified health plan through the FFM with advance payments of the premium tax credit established under section 36B of the Internal Revenue Code available to qualified individuals;

(d) A program that makes coverage available in a qualified health plan through the FFM with cost-sharing reductions established under section 1402 of the Affordable Care Act.

(47) "Lawfully present" means an individual:

(a) Is a qualified non-citizen, as defined in this section;

(b) Has valid non-immigrant status, as defined in 8 U.S.C. 1101(a)(15) or otherwise under the immigration laws (as defined in 8 U.S.C. 1101(a)(17));

(c) Is paroled into the United States in accordance with 8 U.S.C. 1182(d)(5) for less than one year, except for an individual paroled for prosecution, for deferred inspection, or pending removal proceedings; or

(d) Belongs to one of the following classes:

(A) Granted temporary resident status in accordance with 8 U.S.C. 1160 or 1255a, respectively;

(B) Granted Temporary Protected Status (TPS) in accordance with 8 U.S.C. 1254a and individuals with pending applications for TPS who have been granted employment authorization;

(C) Granted employment authorization under 8 CFR 274a.12(c);

(D) Family Unity beneficiaries in accordance with section 301 of Public Law 101–649, as amended;

(E) Under Deferred Enforced Departure (DED) in accordance with a decision made by the President;

(F) Granted Deferred Action status;

(G) Granted an administrative stay of removal under 8 CFR part 241; (viii) Beneficiary of approved visa petition that has a pending application for adjustment of status;

(e) Is an individual with a pending application for asylum under 8 U.S.C. 158, or for withholding of removal under 8 U.S.C. 1231, or under the Convention Against Torture who:

(A) Has been granted employment authorization; or

(B) Is under the age of 14 and has had an application pending for at least 180 days;

(f) Has been granted withholding of removal under the Convention Against Torture;

(g) Is a child who has a pending application for Special Immigrant Juvenile status as described in 8 U.S.C. 1101(a)(27)(J);

(h) Is lawfully present in American Samoa under the immigration laws of American Samoa;

(i) Is a victim of a severe form of trafficking in persons, in accordance with the Victims of Trafficking and Violence Protection Act of 2000, Public Law 106–386, as amended (22 U.S.C. 7105(b)); or

(j) Exception: An individual with deferred action under the Department of Homeland Security's deferred action for childhood arrivals process, as described in the Secretary of Homeland Security's June 15, 2012 memorandum, may not be considered to be lawfully present with respect to any of the above categories in sections (a) through (i) of this rule.

(48) "Legal Argument" has the meaning given that term in OAR 137-003-0008(c).

(49) "Medicaid" means Oregon's Medicaid program under Title XIX of the Social Security Act.

(50) "MAGI" means Modified Adjusted Gross Income and has the meaning provided at IRC 36B(d)(2)(B) and generally means federally taxable income with the following exceptions:

(a) The income of the following individuals is excluded when they are not expected to be required to file a tax return for the tax year in which eligibility is being determined. This subsection applies whether or not the child or tax dependent actually files a tax return:

(A) Children, regardless of age, who are included in the household of a parent;

(B) Tax dependents;

(b) In applying subsection (a) of this section, IRC § 6012(a) (1) is used to determine who is required to file a tax return.

(51) "MAGI-based income" means income calculated using the same financial methodologies used to determine MAGI as defined in section 36B(d)(2)(B) of the Code with the following exceptions:

(a) American Indian and Alaska Native income exceptions;

(b) Child support;

(c) Life insurance proceeds;

(d) Non-taxable Veterans' benefits;

(e) Non-taxable workers' compensation benefits;

(f) Scholarships, awards, or fellowship grants used for educational expenses;

(g) Supplemental Security Income (SSI);

(h) An amount received as a lump sum is counted as income only in the month received. Lump sum income includes but is not limited to:

(A) Winnings;

(B) Countable educational income;

(C) Capital gains;

(D) Dividends, interest, royalties;

(i) Scholarships, awards, or fellowship grants used for education purposes and not for living expenses;

(j) Self-employment and business entity income is determined by adding gross receipts and other business income and subtracting deductions described in Internal Revenue Code (IRC) §§ 161 through 249. Items not deductible are described in IRC §§ 261 through 280 include, but are not limited to, most capital expenditures, such as business start-up costs, buildings, and furniture and payments or deductions for personal, living, or family use. Business structures are determined by state statutes and are dependent on elections made by business owners. Each state may use different regulations for business structures. Salaries and wages paid to employees, including those who are owners or stockholders, are countable income to the employees. Business income is countable to owners and stockholders as described below:

(A) Sole proprietors, independent contractors, and Limited Liability Companies (LLC) who choose to file federal taxes as a sole proprietor: The necessary and ordinary costs of producing income are subtracted from gross receipts and other business income to determine countable income. Expenses related to costs for both business and personal use are prorated according to the proportions used for each purpose. Costs are limited to those described in IRC §§161 through 199 and Treasury Regulations §§ Sec. 1.162 through 1.263;

(B) Partnerships that are not publicly traded and LLCs who choose to file federal taxes as a partnership: Owners' income is determined as follows:

(i) The distributive share of income, gain, and loss is determined proportionately according to the partnership agreement or the LLC agreement;

(ii) Income from other partnerships, estates, and trusts is added to the amount in paragraph (A) of this subsection;

(iii) The costs of producing income described in subsection (4) (a) except for oil and gas depletion and costs listed below are proportionately subtracted from gross receipts to determine each partner's countable income:

(I) Bad debts;

(II) Guaranteed payments to partners;

(III) Losses from other partnerships, farms, estates, and trusts;

(IV) Retirement plans;

(C) S Corporations and LLCs who choose to file federal taxes as an S Corporation: Shareholders' income is determined as follows:

(i) The distributive share of profits, gain, and loss are determined proportionately on the basis of the stockholders' shares of stock;

(ii) The costs of producing income described in subsection (a) are proportionately subtracted from gross receipts to determine each stockholder's countable income;

(iii) The distributive share of profits is countable income to the shareholders whether or not it is actually distributed to the shareholders;

(D) C Corporations and LLCs who choose to file taxes as C Corporations: Shareholders' income is countable when it is distributed to them through dividends.

(52) "MAGI income standard" means the monthly income standard for the relevant program and family size described in OAR 410-200-0315.

(53) "Minimum essential coverage" means medical coverage under:

(a) A government-sponsored plan, including Medicare Part A, Medicaid (excluding CAWEM), CHIP, TRICARE, the veterans' health care program, and the Peace Corps program;

(b) Employer-sponsored plans with respect to an employee, including coverage offered by an employer that is a government plan, any other plan or coverage offered in the small or large group market within the state, and any plan established by an Indian tribal government;

(c) Plans in the individual market;

(d) Grandfathered health plans; and

(e) Any other health benefits coverage, such as a state health benefits risk pool, as recognized by the HHS secretary in coordination with the Treasury Secretary.

(54) "Non-applicant" means an individual not seeking an eligibility determination for him or herself and is included in an applicant's or beneficiary's household to determine eligibility for the applicant or beneficiary.

(55) "Non-citizen" has the meaning given the term "alien" as defined in section 101(a)(3) of the Immigration and Nationality Act (INA), (8 U.S.C. 1101(a)(3)) and includes any individual who is not a citizen or national of the United States, defined at 8 U.S.C. 1101(a)(22).

(56) "OCCS" means the Office of Client and Community Services, part of the Division of Medical Assistance Programs under the Oregon Health Authority.

(57) "OCCS Medical Programs" means all programs under the Office of Client and Community Services including:

(a) "CEC" means Continuous Eligibility for OHP-CHP pregnant women. Title XXI medical assistance for a pregnant non-CAWEM child found eligible for the OHP-CHP program who, for a reason other than moving out of state or becoming a recipient of private major medical health insurance, otherwise would lose her eligibility;

(b) "CEM" means Continuous Eligibility for Medicaid: Title XIX medical assistance for a non-CAWEM child found eligible for Medicaid who loses his or her eligibility for a reason other than turning 19 years of age or moving out of state;

(c) "EXT" means Extended Medical Assistance. The Extended Medical Assistance program provides medical assistance for a period of time after a family loses its eligibility for the MAA, MAF, or PCR program due to an increase in their spousal support or earned income;

(d) "MAA" means Medical Assistance Assumed;

(e) "MAF" means Medical Assistance to Families. The Medical Assistance to Families program provides medical assistance to people who are ineligible for MAA but are eligible for Medicaid using ADC program standards and methodologies that were in effect as of July 16, 1996;

(f) "OHP" means Oregon Health Plan. The Oregon Health Plan program provides medical assistance to many low-income individuals and families. The program includes five categories of individuals who may qualify for benefits. The acronyms for these categories are:

(A) "OHP-CHP" Persons under 19. OHP coverage for persons under 19 years of age who qualify at or below the 300 percent income standard;

(B) "OHP-OPC" Children. OHP coverage for children who qualify under the 100 percent income standard;

(C) "OHP-OPP" Pregnant Females and their newborn children. OHP coverage for pregnant females who qualify under the 185 percent income standard and their newborn children;

(D) "OHP-OPU" Adults. OHP coverage for adults who qualify under the 100 percent income standard. A person eligible under OHP-OPU is referred to as a health plan new/non-categorical (HPN) client;

(E) "OHP-OP6" Children under 6. OHP coverage for children under age 6 who qualify under the 133 percent income standard;

(g) "Substitute Care" means medical coverage for children in BRS or PRTF;

(h) "BCCTP" means Breast and Cervical Cancer Treatment Program;

(i) "FFCYM" means Former Foster Care Youth Medical;

(j) "MAGI Medicaid/CHIP" means OCCS Medical Programs for which eligibility is based on MAGI, including:

(A) MAGI Child;

(B) MAGI Parent or Other Caretaker Relative;

(C) MAGI Pregnant Woman;

(D) MAGI Children's Health Insurance Program (CHIP);

(E) MAGI Adult.

(58) "OCWP" means Office of Child Welfare Programs.

(59) "OSIPM" means Oregon Supplemental Income Program Medical. Medical coverage for elderly and disabled individuals administered by the Department of Human Services, Aging and People with Disabilities and Developmental Disabilities.

(60) "Parent" means a natural or biological, adopted, or step parent.

(61) "Personal Injury" means a physical or emotional injury to an individual including, but not limited to, assault, battery, or medical malpractice arising from the physical or emotional injury.

(62) "Post-eligibility review" means a review period of 30 days following the eligibility determination during which the Authority shall verify information used to approve OCCS medical program benefits and ensure all non-financial eligibility requirements are met (OAR 410-200-0230).

(63) "Pregnant woman" means a woman during pregnancy and the postpartum period that begins on the date the pregnancy ends, extends 60 days and ends on the last day of the month in which the 60-day period ends.

(64) "Primary contact" means the primary person the Agency shall communicate with and:

(a) Is listed as the case name; or

(b) Is the individual named as the primary contact on the application.

(65) "Private major medical health insurance" means a comprehensive major medical insurance plan that at a minimum provides physician services, inpatient and outpatient hospitalization, outpatient lab, x-ray, immunizations, and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(66) "PRTF" means Psychiatric Residential Treatment Facility.

(67) "Public institution" means any of the following:

(a) A state hospital (ORS 162.135);

(b) A local correctional facility (ORS 169.005), a jail, or prison for the reception and confinement of prisoners that is provided, maintained, and operated by a county or city and holds individuals for more than 36 hours;

(c) A Department of Corrections institution (ORS 421.005), a facility used for the incarceration of individuals sentenced to the custody of the Department of Corrections, including a satellite, camp, or branch of a facility;

(d) A youth correction facility (ORS 162.135):

(A) A facility used for the confinement of youth offenders and other individuals placed in the legal or physical custody of the youth authority, including a secure regional youth facility, a regional accountability camp, a residential academy and satellite, and camps and branches of those facilities; or

(B) A facility established under ORS 419A.010 to 419A.020 and 419A.050 to 419A.063 for the detention of children, wards, youth or youth offenders pursuant to a judicial commitment or order;

(e) As used in this rule, the term public institution does not include:

(A) A medical institution as defined in 42 CFR 435.1010 including the Secure Adolescent Inpatient Program (SAIP) and the Secure Children's Inpatient Program (SCIP);

(B) An intermediate care facility as defined in 42 CFR 440.140 and 440.150; or

(C) A publicly operated community residence that serves no more than 16 residents, as defined in 42 CFR 435.1009.

(68) "Qualified Hospital" means a hospital that:

(a) Participates as an enrolled Oregon Medicaid provider;

(b) Notifies the Authority of their decision to make presumptive eligibility determinations;

(c) Agrees to make determinations consistent with Authority policies and procedures;

(d) Informs applicants for presumptive eligibility of their responsibility and available assistance to complete and submit the full Medicaid application and to understand any documentation requirements; and

(e) Are not disqualified by the Authority for violations related to standards established for the presumptive eligibility program under 42 CFR § 435.1110(d).

(69) "Reasonable opportunity period:"

(a) May be used to obtain necessary verification or resolve discrepancy regarding US citizenship or non-citizen status;

(b) Begins on and shall extend 90 days from the date on which notice is received by the individual. The date on which the notice is received is considered to be five days after the date on the notice, unless the individual shows that he or she did not receive the notice within the five-day period;

(c) May be extended beyond 90 days if the individual is making a good faith effort to resolve any inconsistencies or obtain any necessary documentation or the Agency needs more time to complete the verification process.

(70) "Redetermination" means a review of eligibility outside of regularly scheduled renewals. Redeterminations that result in the assignment of a new renewal date are considered renewals.

(71) "Renewal" means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status.

(72) "Required documentation" means:

(a) Facts to support the Agency's decision on the application; and

(b) Either:

(A) A finding of eligibility or ineligibility; or

(B) An entry in the case record that the applicant voluntarily withdrew the application, and the Agency sent a notice confirming the decision, that the applicant has died, or that the applicant cannot be located.

(73) "Secure electronic interface" means an interface which allows for the exchange of data between Medicaid or CHIP and other insurance affordability programs and adheres to the requirements in 42 CFR part 433, subpart C.

(74) "Shared eligibility service" means a common or shared eligibility system or service used by a state to determine individuals' eligibility for insurance affordability programs.

(75) "Sibling" means natural or biological, adopted, or half or step sibling.

(76) "Spouse" means an individual who is legally married to another individual under:

(a) The statutes of the state where the marriage occurred;

(b) The common law of the state in which two individuals previously resided while meeting the requirements for common law marriage in that state; or

(c) The laws of a country in which two individuals previously resided while meeting the requirements for legal marriage in that country.

(77) "SSA" means Social Security Administration.

(78) "Tax dependent" has meaning given the term "dependent" under section 152 of the Internal Revenue Code, as an individual for whom another individual claims a deduction for a personal exemption under section 151 of the Internal Revenue Code for a taxable year.

(79) "Title IV-E" means Title IV-E of the Social Security Act (42 U.S.C. §§ 671-679b).

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025, 414.534

Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536, 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0100

Coordinated Eligibility and Enrollment Process with the Department of Human Services and the Federally Facilitated Marketplace

(1) This rule describes Oregon Health Authority's (Authority) coordination of eligibility and enrollment with the Department of Human Services (Department), and the FFM. The Authority shall:

(a) Minimize the burden on individuals seeking to obtain or renew eligibility or to appeal a determination of eligibility for insurance affordability programs;

(b) Ensure determinations of eligibility and enrollment in the appropriate program without undue delay, consistent with timeliness standards described in OAR 410-200-0110 based on the application date;

(c) Provide coordinated content for those household members whose eligibility status is not yet determined; and

(d) Screen every applicant or beneficiary who submits an application or renewal form, or whose eligibility is being renewed under a change in circumstance for criteria that identify individuals for whom MAGI-based income methods do not apply.

(2) For individuals undergoing eligibility determination for OCCS Medical Programs, the Authority, consistent with the timeliness standards described in OAR 410-200-0110, shall:

(a) Determine eligibility for MAGI Medicaid/CHIP on the basis of having household income at or below the applicable MAGI-based standard; or

(b) If ineligible under section (a) or if eligible for CAWEM-level benefits only, direct as appropriate to the FFM.

(3) If ineligible for OCCS Medical Programs, the Authority shall, consistent with the timeliness standards described in OAR 410-200-0110:

(a) Screen for eligibility for non-MAGI programs as indicated by information provided on the application or renewal form;

(b) Transfer the individual's electronic account information to the Department via secure electronic interface, as appropriate;

(c) If transferred to the Department, the Authority shall provide notice to the individual that contains the following information:

(A) The Authority has determined the individual ineligible for OCCS Medical Programs;

(B) The Department is continuing to evaluate Medicaid eligibility on one or more other bases;

(C) The notice shall include coordinated content relating to the transfer of the individual's electronic account to the Department, as appropriate; and

(D) There is a right to a hearing to challenge the eligibility decision;

(d) Provide or assure that the Department has provided the individual with notice of the final determination of eligibility on one or more other bases.

(4) For beneficiaries found ineligible for ongoing OCCS medical program benefits who are referred to the Department for a non-MAGI Medicaid eligibility review, the Authority shall maintain OCCS medical program benefits while eligibility is being determined by the Department and may not take action to close benefits until determination of eligibility is complete.

(5) Coordination among agencies:

(a) The Authority shall maintain a secure electronic interface through which the Authority can receive an individual's electronic account from the Department and the FFM;

(b) The Authority may not request information or documentation from the individual included in the individual's electronic account or provided to the Agency; and

(c) If information is available through electronic data match and is useful and related to eligibility for OCCS Medical Programs, the Authority shall obtain the information through electronic data match.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 411.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0105
Hospital Presumptive Eligibility

This rule sets out when an individual is presumptively eligible for MAGI Medicaid/CHIP, BCCTP, and Former Foster Care Youth Medical (OAR 410-200-0407) based on the determination of a qualified hospital.

(1) The qualified hospital shall determine Hospital Presumptive Eligibility for MAGI Medicaid/CHIP, BCCTP, or Former Foster Care Youth Medical based on the following information attested by the individual:

(a) Family size;

(b) Household income;

(c) Receipt of other health coverage;

(d) US citizenship, US national, or non-citizen status.

(2) To be eligible via Hospital Presumptive Eligibility, an individual must be a US citizen, US National, or meet the citizenship and alien status requirements found in 410-200-0215 and one of the following:

(a) A child under the age of 19 with income at or below 300 percent of the federal poverty level;

(b) A parent or caretaker relative of a dependent child with income at or below the MAGI Parent or Other Caretaker Relative income standard for the appropriate family size in OAR 410-200-0315;

(c) A pregnant woman with income at or below 185 percent of the federal poverty level;

(d) A non-pregnant adult between the ages of 19 through 64 with income at or below 133 percent of the federal poverty level; or

(e) A woman under the age of 65 who has been determined eligible for the Breast and Cervical Cancer Treatment Program (OAR 410-200-0400);

(f) An individual under the age of 26 who was in Oregon foster care on their 18th birthday.

(3) To be eligible via Hospital Presumptive Eligibility, an individual may not:

(a) Be receiving Supplemental Security Income benefits;

(b) Be a Medicaid/CHIP beneficiary; or

(c) Have received Hospital Presumptive Eligibility for any portion of the full year (365 days) preceding a new Hospital Presumptive Eligibility period.

(4) In addition to the requirements outlined in sections (2) and (3) above, the following requirements also apply:

(a) To receive MAGI Adult benefits via Hospital Presumptive Eligibility, an individual may not be entitled to or enrolled in Medicare benefits under part A or B of Title XVIII of the Act;

(b) To receive MAGI CHIP benefits via Hospital Presumptive Eligibility, an individual may not be covered by any minimum essential coverage that is accessible (OAR 410-200-0410(2)(c));

(c) To receive BCCTP benefits via Hospital Presumptive Eligibility, an individual may not be covered by any minimum essential coverage.

(5) The Hospital Presumptive Eligibility period begins on the earlier of:

(a) The date the qualified hospital determines the individual is eligible; or

(b) The date that the individual received a covered medical service from the qualified hospital, if the hospital determines the individual is eligible and submits the decision to the Authority within five calendar days following the date of service.

(6) The Hospital Presumptive Eligibility period ends:

(a) For individuals on whose behalf a Medicaid/CHIP application has been filed by the last day of the month following the month in which the hospital presumptive eligibility period begins, the day on which the state makes an eligibility determination for MAGI Medicaid/CHIP and sends basic decision notice; or

(b) If subsection (a) is not completed, the last day of the month following the month in which the hospital presumptive eligibility period begins.

(7) A Hospital Presumptive Eligibility decision does not qualify a beneficiary for continuous eligibility (OAR 410-200-0135).

(8) A baby born to a woman receiving benefits during a Hospital Presumptive Eligibility period is not assumed eligible (OAR 410-200-0135).

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0110
Application and Renewal Processing and Timeliness Standards

(1) General information as it relates to application processing is as follows:

(a) An individual may apply for one or more medical programs administered by the Authority, the Department, or the FFM using a single streamlined application;

(b) An application may be submitted via the Internet, the FFM, by telephone, by mail, in person, or through other commonly available electronic means;

(c) The Agency shall ensure that an application form is readily available to anyone requesting one and that community partners or Agency staff are available to assist applicants to complete the application process;

(d) If the Agency requires additional information to determine eligibility, the Agency shall send the applicant or beneficiary written notice that includes a statement of the specific information needed to determine eligibility and the date by which the applicant or beneficiary shall provide the required information in accordance with section (7) of this rule.

(e) If an application is filed containing the applicant or beneficiary's name and address, the Agency shall send the applicant or beneficiary a decision notice within the time frame established in section (7) of this rule;

(f) An application is complete if all of the following requirements are met:

(A) All information necessary to determine the individual's eligibility and benefit level is provided on the application for each individual in the household group;

(B) The applicant, even if homeless, provides an address where they can receive postal mail;

(C) The application is signed in accordance with section (6) of this rule;

(D) The application is received by the Agency;

(g) To complete the application process, the applicant shall:

(A) With the exception of sections (5) and (6) of this rule, complete and sign an application; and

(B) Provide necessary information to the Agency within the time frame established in section (7) of this rule.

(2) General information as it relates to renewal and redetermination processing is as follows:

(a) The Authority shall redetermine eligibility at assigned intervals and whenever a beneficiary's eligibility becomes questionable;

(b) When renewing or redetermining medical benefits, the Agency shall, to the extent feasible, determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency;

(c) If the Agency is unable to determine a beneficiary's eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, then the Agency shall provide a pre-populated renewal form to the beneficiary containing information known to the Agency, a statement of the additional information needed to renew eligibility, and the date by which the beneficiary must provide the required information in accordance with section (7) of this rule;

(d) The Agency shall assist applicants seeking assistance to complete the pre-populated renewal form or gather information necessary to renew eligibility;

(e) The pre-populated renewal form is complete if it meets the requirements identified in section (1) (e) of this rule;

(f) If the Agency provides the individual with a pre-populated renewal form to complete the renewal process, the individual must:

(A) Complete and sign the form in accordance with section (6) of this rule;

(B) Submit the form via the Internet, by telephone, via mail, in person, and through other commonly available electronic means, and

(C) Provide necessary information to the Agency within the time frame established in section (7) of this rule;

(g) An individual may withdraw their pre-populated renewal form at any time.

(3) Except for individuals found eligible for MAGI Medicaid/CHIP through the Fast-Track enrollment process (OAR 410-200-0505), for renewals due between July 1, 2014 and December 31, 2014, the Authority shall:

(a) Utilize a pre-populated Expedited Renewal form to determine if the individual has experienced:

(A) A change in household members; or

(B) A change in income;

(b) Renew eligibility based on the individual's attested information on the Expedited Renewal form if:

(A) There is no change in household members; and

(B) The attested income allows all beneficiaries to remain eligible for Medicaid/CHIP;

(c) If unable to renew eligibility based on the individual's attested information on the Expedited Renewal form, the Authority shall send the beneficiary an application in order to complete a full eligibility review.

(4) A new application is required when:

(a) An individual requests medical benefits and no member of the household group currently receives OCCS medical program benefits;

(b) A child turns age 19, is no longer claimed as a tax dependent, and wishes to retain medical benefits;

(c) The Authority determines that an application is necessary to complete an eligibility determination.

(5) A new application is not required when:

(a) The Agency determines an applicant is ineligible in the month of application and:

(A) Is determining if the applicant is eligible the following month; or

(B) Is determining if the applicant is eligible retroactively (OAR 410-200-0130);

(b) Determining initial eligibility for OCCS Medical Programs via Fast-Track enrollment pursuant to OAR 410-200-0505;

(c) Benefits are closed and reopened during the same calendar month;

(d) An individual's medical benefits were suspended because they became an inmate and met the requirements of OAR 410-200-0140;

(e) An assumed eligible newborn (AEN) is added to a household group receiving medical program benefits;

(f) An individual not receiving medical program benefits is added to an on-going household group receiving medical program benefits, and eligibility can be determined using information found in the individual or beneficiary's electronic account and electronic data available to the Agency;

(g) Redetermining or renewing eligibility for beneficiaries and the Agency has sufficient evidence to redetermine or renew eligibility for the same or new program;

(h) At renewal, the beneficiary fails to submit additional information requested by the Agency within 30 days but provides the requested information within 90 days after the date medical benefits were terminated.

(6) Signature requirements are as follows:

(a) For an application submitted via the Oregon Eligibility (ONE) system, the individual identified as the primary applicant must electronically sign the application;

(b) For an application submitted by means other than the Oregon Eligibility (ONE) system, the application must be signed by one of the following:

(A) The primary contact;

(B) At least one caretaker relative or parent in the household group;

(C) The primary contact when there is no parent in the household group; or

(D) An authorized representative;

(c) Signatures accepted by the Agency may be:

(A) Handwritten;

(B) Electronic; or

(C) Telephonic

(d) Hospital Presumptive Eligibility may be determined without a signature described in section (a) through (c);

(e) When renewing eligibility, if the Agency is unable to determine eligibility using information found in the beneficiary's electronic account and electronic data accessible to the Agency, a signature is required on the pre-populated renewal form sent to the beneficiary for additional information;

(f) Signatures may be submitted and shall be accepted by the Agency via Internet, mail, telephone, in person, or other electronic means;

(7) Application and renewal processing timeliness standards are as follows:

(a) At initial eligibility determination, the Agency shall inform the individual of timeliness standards, make an eligibility determination, and send a decision notice not later than the 45th calendar day after the Date of Request if:

(A) All information necessary to determine eligibility is present; or

(B) The application is not completed by the applicant within 45 days after the Date of Request;

(b) At initial eligibility determination, the Agency may extend the 45-day period described in section (a) if there is an administrative or other emergency beyond the control of the Agency. The Agency must document the emergency;

(c) Except for periodic renewals of eligibility described in section (d), the Agency provides:

(A) The reasonable opportunity period to obtain necessary verification or resolve discrepancy regarding US citizenship or non-citizen status after eligibility has been determined; or

(B) The post-eligibility review period to verify information used to approve OCCS medical program benefits and ensure all non-financial eligibility requirements are met;

(d) At periodic renewal of eligibility, if additional information beyond data available to the Agency on the beneficiary's electronic account or electronic data is required, the Authority shall provide the beneficiary at least 30 days from the date of the renewal form to respond and provide necessary information.

(8) Individuals may apply through the FFM. If the FFM determines the individual potentially eligible for Medicaid, the FFM shall transfer the individual's electronic account to the Agency for OCCS medical program eligibility determination or referral to the Department.

(9) Medical program eligibility is determined in the following order:

(a) For a child applicant, the order is as follows:

(A) Assumed eligibility for OCCS Medical Programs (OAR 410-200-0135);

(B) Substitute Care, when the child is in Behavioral Rehabilitation Services (BRS) or in Psychiatric Residential Treatment Facility (PRTF) (OAR 410-200-0405);

(C) MAGI Parent or Other Caretaker Relative (OAR 410-200-0420);

(D) MAGI Pregnant Woman program (OAR 410-200-0425);

(E) MAGI Child (OAR 410-200-0415);

(F) Continuous Eligibility (OAR 410-200-0135);

(G) MAGI CHIP (OAR 410-200-0410);

(H) Former Foster Care Youth Medical (OAR 410-200-0407);

(H) EXT (OAR 410-200-0440);

(b) For an adult applicant, the order is as follows:

(A) Assumed eligibility for OCCS Medical Programs (OAR 410-200-0135);

(B) Substitute Care (OAR 410-200-0405);

(C) MAGI Parent or Other Caretaker Relative (OAR 410-200-0420);

(D) EXT (OAR 410-200-0440);

(E) MAGI Pregnant Woman (OAR 410-200-0425);

(F) MAGI Adult (OAR 410-200-0435);

(G) Former Foster Care Youth Medical (OAR 410-200-0407);

(H) BCCTP (OAR 410-200-0400).

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0111

Authorized Representatives

(1) The following individuals may designate an authorized representative:

(a) A caretaker;

(b) The primary contact when there is no caretaker in the household group;

(c) An adult in the household group; or

(d) The Agency, if an authorized representative is needed but has not been designated by the individual.

(2) The Agency shall accept an applicant or beneficiary's designation of an authorized representative via any of the following methods which must include either a handwritten or electronic signature of both the applicant or beneficiary and designated authorized representative:

(a) The Internet;

(b) E-mail;

(c) Mail;

(d) Telephonic recording;

(e) In person; or

(f) Other electronic means.

(3) Applicants and beneficiaries may authorize their authorized representative to:

(a) Sign an application on the applicant's behalf;

(b) Complete and submit a renewal form;

(c) Receive copies of the applicant or beneficiary's notices and other communications from the Agency; or

(d) Act on behalf of the applicant or beneficiary in any or all other matters with the Agency.

(4) The authorized representative must:

(a) Fulfill all responsibilities encompassed within the scope of the authorized representation as identified in section (3) to the same extent as the individual represented; and

(b) Maintain the confidentiality of any information regarding the applicant or beneficiary provided by the Authority.

(5) In addition to authorized representatives as designated in sections (1) through (4) above, an individual is treated as an authorized representative if the individual has been given authority under state law. Such authority includes but is not limited to:

(a) A court order establishing legal guardianship;

(b) A health care representative, when the individual is unable to make their own decisions; or

(c) A court order establishing power of attorney.

(6) As a condition of serving as an authorized representative, a provider or staff member or volunteer of an organization with a service-providing relationship to the beneficiary must affirm that he or she shall adhere to the regulations in 45 CFR 431, subpart F and at 45 CFR 155.260(f) and at 45 CFR 447.10 as well as other relevant state and federal laws concerning conflicts of interest and confidentiality of information.

(7) The power to act as an authorized representative is valid until the Agency is notified via any of the methods described in section (2) of any of the following:

(a) The applicant or beneficiary modifies the authorization or notifies the Agency that the representative is no longer authorized to act on his or her behalf;

(b) The authorized representative informs the Agency that he or she no longer is acting in such capacity; or

(c) There is a change in the legal authority upon which the individual or organization's authority was based.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0115

OCCS Medical Programs—Effective Dates

(1) Date of Request:

(a) For all OCCS Medical Programs, the applicant or an individual authorized to act on behalf of the applicant must contact the Authority, the Department, or the FFM to request medical benefits. The request may be via the Internet, by telephone, community partner, by mail, by electronic communication, or in person.

(b) For new applicants, the Date of Request is the earlier of the following:

(A) The date the request for medical benefits is received by the Agency, the FFM, or a community partner; or

(B) The date the applicant received a medical service, if the request for medical benefits is received by midnight of the following business day;

(c) For current beneficiaries of OCCS Medical Programs, the Date of Request is one of the following:

(A) The date the beneficiary reports a change requiring a redetermination of eligibility; or

(B) The date the Agency initiates a review, except that the automatic mailing of an application does not constitute a Date of Request;

(d) The Date of Request starts the application processing time frame;

(e) If the application is required under OAR 410-200-0110 and is not received within 45 days after the Date of Request or within the extended time that the Authority has allowed under OAR 410-200-0110, the new Date of Request is the date the application is submitted to the Agency.

(2) For EXT, the effective date is determined according to OAR 410-200-0440.

(3) Except for EXT, the effective date of medical benefits for new applicants for OCCS Medical Programs is whichever comes first:

(a) The first of the month in which the Date of Request is established, if the applicant is found eligible as of the Date of Request; or

(b) If ineligible on the Date of Request, the first day following the Date of Request on which the client is determined to be eligible within the month of the Date of Request or the following month.

(4) The effective date for retroactive medical benefits (OAR 410-200-0130) for MAGI Medicaid/CHIP and BCCTP is the first day of the earliest of the three months preceding the month in which the Date of Request was established. The Authority reviews each month individually for retroactive medical eligibility.

(5) Establishing a renewal date:

(a) Except for EXT and MAGI Pregnant Woman, as provided in subsection (b) for all OCCS Medical Programs, eligibility shall be renewed every 12 months. The renewal date is the last day of the month determined as follows:

(A) For initial eligibility, the renewal date is established by counting 12 full months, including the initial month of eligibility;

(B) For renewals that are regularly scheduled, the new renewal date is established by counting 12 full months following the current renewal month;

(b) For redeterminations that are initiated by a reported change, outside of the established renewal date, the renewal date is not adjusted.

(6) Acting on Reported Changes (also see Changes That Must Be Reported OAR 410-200-0235):

(a) When the beneficiary reports a change in circumstances at any time other than the renewal month, eligibility shall be redetermined for all household group members;

(b) Except for OHP-OPP, MAGI Pregnant Woman, and MAGI Parent or Other Caretaker Relative for pregnant women, based on the reported change, if the beneficiary is determined to be eligible for another OCCS medical program, the effective date for the change is:

(A) If reported on or before the 15th of the month, the first of the month following the month in which the determination was made; or

(B) If reported on or after the 16th of the month, the first of the month after the month following the month in which the determination was made.

(c) For OHP-OPP, MAGI Pregnant Woman, and MAGI Parent or Other Caretaker Relative for pregnant women, the effective date is the Date of Request;

(7) Suspending or Closing Medical Benefits:

(a) The effective date for closing OCCS medical program benefits is the earliest of:

(A) The date of a beneficiary's death;

(B) The last day of the month in which the beneficiary becomes ineligible and a timely continuing benefit decision notice is sent;

(C) The day prior to the start date for Office of Child Welfare Programs or OSIPM for beneficiaries transitioning from an OCCS medical program;

(D) The date the program ends; or

(E) The last day of the month in which a timely continuing benefit decision notice is sent if on-going eligibility cannot be determined because the beneficiary does not provide required information within 30 days;

(b) Prior to closing medical benefits, the Agency shall:

(A) Determine eligibility for all other OCCS Medical Programs; or

(B) Refer the beneficiary to the Department, if applicable, and confirm that the Department has made an eligibility decision.

(c) For beneficiaries of OCCS medical program benefits who become incarcerated (OAR 461-200-0140), the effective date of suspension is the day following the date on which the individual became incarcerated.

(8) Denial of Benefits. The effective date for denying OCCS medical program benefits is the earlier of the following:

(a) The date the decision is made that the applicant is not eligible and notice is sent; or

(b) The end of the application processing time frame, unless the time period has been extended to allow the applicant more time to provide required verification.

(9) Ninety-day Reconsideration Period for eligibility following closure:

(a) The Authority shall redetermine in a timely manner (OAR 410-200-0110), without requiring a new application, the eligibility of an individual who:

(A) Lost OCCS medical program eligibility because they did not submit required information needed to renew eligibility; and

(B) Within 90 days of the medical closure date, submits the required information needed to renew eligibility.

(b) If the individual is found to meet OCCS medical program eligibility based on the completed redetermination using the original budget month, eligibility shall be restored effective the earliest date following the medical closure date on which the individual requested benefits, as long as all necessary information is submitted within 90 days following the medical closure date.

(c) The date described in section (b) establishes a new date of request (see section (1)) and budget month (410-200-0310) if:

(A) The individual is ineligible based on the completed redetermination using the original budget month; or

(B) All necessary information is not submitted within 90 days following the medical closure date.

Stat. Auth.: ORS, 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0120
Notices

(1) Except as provided in this rule, the Authority shall send:

(a) A basic decision notice whenever an application for OCCS medical program benefits is approved or denied;

(b) A timely continuing benefit decision notice whenever OCCS medical program benefits are reduced or closed.

(2) For a beneficiary who is placed in a public institution or a correctional facility, the Authority shall send a basic decision notice to close, reduce, or suspend OCCS medical program benefits.

(3) For a beneficiary who has been placed in skilled nursing care, intermediate care, or long-term hospitalization, the Authority shall send a basic decision notice to close, suspend, or reduce OCCS medical program benefits.

(4) The Authority shall send a basic decision notice to close OCCS medical program benefits for a beneficiary who has received them for less than 30 days and who is ineligible for any insurance affordability program.

(5) When returned mail is received without a forwarding address and the beneficiary's whereabouts are unknown, the Authority shall send a basic decision notice to end benefits if the mail was sent by postal mail. If the returned mail was sent electronically, the Authority shall resend by postal mail within three business days. The date on the notice shall be the date the notice is sent by postal mail.

(6) The Authority shall send one of the following notices when a beneficiary ceases to be an Oregon Resident:

(a) A timely continuing benefit notice; or

(b) A basic decision notice if the beneficiary is eligible for benefits in the other state.

(7) Except as provided in section (9) of this rule, to close medical program benefits based on a request made by the beneficiary, another adult member of the household group or the authorized representative, the Authority shall send the following decisions notices:

(a) A timely continuing benefit decision notice when an oral request is made to close benefits;

(b) A basic decision notice when a request to withdraw, end, or reduce benefits is made with written signature or recorded verbal signature;

(c) A basic decision notice when an individual who is not a recipient of any Medicaid/CHIP benefits makes an oral request to withdraw an application for benefits.

(8) No other notice is required when an individual completes a voluntary agreement if all of the following are met:

(a) The Authority provides the individual with a copy of the completed agreement; and

(b) The Authority acts on the request by the date indicated on the form.

(9) No decision notice is required in the following situations:

(a) The only individual in the household group dies;

(b) A hearing was requested after a notice was received and either the hearing request is dismissed or a final order is issued.

(10) Decision notices shall be written in plain language and be accessible to individuals who are limited English proficient and individuals with disabilities. In addition:

(a) All decision notices shall include:

(A) A statement of the action taken;

(B) A clear statement listing the specific reasons why the decision was made and the effective date of the decision;

(C) Rules supporting the action;

(D) Information about the individual's right to request a hearing and the method and deadline to request a hearing;

(E) A statement indicating under what circumstances a default order may be taken;

(F) Information about the right to counsel at a hearing and the availability of free legal services;

(b) A decision notice approving OCCS medical program benefits including retroactive medical shall include:

(A) The level of benefits and services approved;

(B) If applicable, information relating to premiums, enrollment fees, and cost sharing; and

(C) The changes that must be reported and the process for reporting changes;

(c) A decision notice reducing, denying, or closing OCCS medical program benefits shall include information about a beneficiary's right to continue receiving benefits.

(11) The Authority may amend:

(a) A decision notice with another decision notice; or

(b) A contested case notice.

(12) Except as the notice is amended, or when a delay results from the client's request for a hearing, a notice to reduce or close benefits becomes void if the reduction or closure is not made effective on the date stated on the notice.

(13) The Authority shall provide individuals with a choice to receive decision notices and information referenced in this rule in an electronic format or by postal mail. If an individual chooses to receive notices and information electronically and has established an online account with the Applicant Portal of Oregon Eligibility (ONE), the Authority shall:

(a) Send confirmation of this decision by postal mail;

(b) Post notices to the individual's electronic account within one business day of the date on the notice;

(c) Send an email or SMS text message alerting the individual that a notice has been posted to their electronic account;

(d) At the request of the individual, send by postal mail any notice or information delivered electronically;

(e) Inform the individual of the right to stop receiving electronic notices and information and begin receiving these through postal mail; and

(f) If any electronic communication referenced above is undeliverable, send the notice by postal mail within three business days of the failed communication.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0125
Acting on Reported Changes

(1) When an OCCS medical program beneficiary or authorized representative makes a timely report of a change in circumstances at any time between regular renewals of eligibility that may affect the beneficiary's eligibility (any changes reported per OAR410-200-0235), the Authority shall promptly redetermine eligibility before reducing or ending medical benefits.

(2) The Authority shall limit requests for information from the individual to information related to the reported change.

(3) If a beneficiary remains eligible as a result of a redetermination due to a reported change, a new 12-month eligibility period is not established; the original renewal date is maintained.

(4) If the Authority has information about anticipated changes in a beneficiary's circumstances that may affect eligibility, it shall redetermine eligibility at the appropriate time based on the changes.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0130
Retroactive Medical

(1) The Authority may evaluate the following for retroactive medical eligibility:

(a) Applicants requesting OCCS Medical Programs who have unpaid medical bills or received donated medical services that would have been covered by Oregon Medicaid/CHIP in the three calendar months preceding the month in which the Date of Request was established.

(b) Deceased individuals who would have been eligible for Medicaid covered services had they, or someone acting on their behalf, applied.

(2) If eligible for retroactive medical, the individual's eligibility may not start earlier than the date indicated by OAR 410-200-0115 Effective Dates.

(3) The Authority reviews each month individually for retroactive medical eligibility.

(4) Retroactive medical eligibility may only be determined on the basis of a medical service received during a Hospital Presumptive Eligibility period (OAR 410-200-0105) if the medical service received is not covered by Hospital Presumptive Eligibility.

Stat. Auth.: ORS 411.402, 411.404 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0135
Assumed Eligibility and Continuous Eligibility for Children and Pregnant Women

(1) Assumed Eligibility — A child born to a mother who is eligible for and receiving Medicaid/CHIP benefits is assumed eligible for the MAGI Child program until the end of the month in which the child turns one year of age, unless:

(a) The child dies;

(b) The child is no longer a resident of Oregon; or

(c) The child's representative requests a voluntary termination of the child's eligibility.

(2) Continuous Eligibility for children — Children under age 19 who are eligible for and receiving medical assistance under any OCCS Medicaid or CHIP program who lose eligibility for all Medicaid or CHIP programs prior to the 12-month renewal date shall remain eligible until the end of the renewal month, regardless of any change in circumstances, except for the following:

(a) No longer an Oregon resident;

(b) Death;

(c) Turning age 19;

(d) For children in the CHIP program, receipt of minimum essential coverage; or

(e) When any adult in the household group requests the medical benefits are closed;

(3) Continuous Eligibility for pregnant women – Pregnant women who are eligible for and receiving medical assistance under any Medicaid program who lose eligibility for the medical program shall receive continuous eligibility through the end of the calendar month in which the 60th day following the last day of the pregnancy falls, except in the following circumstances:

(A) She is no longer an Oregon resident;

(B) Death; or

(C) She requests medical benefits are closed.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025 & 414.534
Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0140
Eligibility for Inmates

(1) An inmate of a public institution may not receive benefits with OCCS Medical Programs.

(2) If an OCCS medical program beneficiary becomes an inmate of a public institution with an expected stay of no more than 12 months, medical benefits shall be suspended for up to 12 full calendar months during the incarceration period.

(3) The effective date of the suspension of benefits is the day following the date on which the individual became incarcerated.

(4) Suspended benefits shall be restored to the first day the individual is no longer an inmate without the need for a new application when:

(a) The individual reports their release to the Agency within ten days of the release date;

(b) The individual reports their release to the Agency more than ten days from the release date, and there is good cause for the late reporting; or

(c) The inmate is released to a medical facility and begins receiving treatment as an inpatient, providing the facility is not associated with the institution where the individual was an inmate.

(5) When released, benefits shall be restored as described in section (3), and:

(a) If the individual is released prior to their eligibility renewal date, the eligibility renewal date may not be changed; or

(b) If the individual is released after the eligibility renewal date has passed, benefits shall be restored and a redetermination of eligibility processed.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025 & 414.534
Stats. Implemented: ORS, 411.070, 411.404, 411.439, 411.443, 411.445, 411.816, 412.014, 412.049 & 414.426
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0200
Residency Requirements

(1) To be eligible for OCCS Medical Programs, an individual must be a resident of Oregon.

(2) An individual is a resident of Oregon if the individual lives in Oregon except:

(a) An individual 21 years of age or older who is placed in a medical facility in Oregon by another state is considered to be a resident of the state that makes the placement if:

(A) The individual is capable of indicating intent to reside; or

(B) The individual became incapable of indicating intent to reside after attaining 21 years of age (see section (6));

(b) For an individual less than 21 years of age who is incapable of indicating intent to reside or an individual of any age who became incapable of indicating that intent before attaining 21 years of age, the state of residence is one of the following:

(A) The state of residence of the individual's parent or legal guardian at the time of application;

(B) The state of residence of the party who applies for benefits on the individual's behalf if there is no living parent or the location of the parent is unknown, and there is no legal guardian;

(C) Oregon, if the individual has been receiving medical assistance in Oregon continuously since November 1, 1981, or is from a state with which Oregon has an interstate agreement that waives the residency requirement;

(D) When a state agency of another state places the individual, the individual is considered to be a resident of the state that makes the placement.

(3) There is no minimum amount of time an individual must live in Oregon to be a resident. The individual is a resident of Oregon if:

(a) The individual intends to remain in Oregon; or

(b) The individual entered Oregon with a job commitment or is looking for work.

(4) An individual is not a resident if the individual is in Oregon solely for a vacation.

(5) An individual continues to be a resident of Oregon during a temporary period of absence if he or she intends to return when the purpose of the absence is completed.

(6) An individual is presumed to be incapable of indicating intent to reside if the individual falls under one or more of the following:

(a) The individual is assessed with an IQ of 49 or less based on a test acceptable to the Authority;

(b) The individual has a mental age of seven years or less based on tests acceptable to the Authority;

(c) The individual is judged legally incompetent by a court of competent jurisdiction;

(d) The individual is found incapable of indicating intent to reside based on documentation provided by a physician, psychologist, or other professional licensed by the State of Oregon in the field of intellectual disabilities.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0215

Citizenship and Alien Status Requirements

(1) To meet the citizen or alien status requirements for an OCCS medical program, an individual must be:

(a) A citizen of the United States;

(b) A non-citizen who meets the alien status requirements in section (4) of this rule;

(c) A citizen of Puerto Rico, Guam, the Virgin Islands or Saipan, Tinian, Rota or Pagan of the Northern Mariana Islands; or

(d) A national from American Samoa or Swains Islands.

(2) An individual is a qualified non-citizen if the individual is any of the following:

(a) A non-citizen lawfully admitted for permanent residence under the INA (8 U.S.C. 1101 et seq);

(b) A refugee admitted to the United States as a refugee under section 207 of the INA (8 U.S.C. 1157);

(c) A non-citizen granted asylum under section 208 of the INA (8 U.S.C. 1158);

(d) A non-citizen whose deportation is being withheld under section 243(h) of the INA (8 U.S.C. 1253(h)) (as in effect immediately before April 1, 1997) or section 241(b)(3) of the INA (8 U.S.C. 1231(b)(3)) (as amended by section 305(a) of division C of the Omnibus Consolidated Appropriations Act of 1997, Pub. L. No. 104-208, 110 Stat. 3009-597 (1996));

(e) A non-citizen paroled into the United States under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) for a period of at least one year;

(f) A non-citizen granted conditional entry pursuant to section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) as in effect prior to April 1, 1980;

(g) A non-citizen who is a Cuban and Haitian entrant (as defined in section 501(e) of the Refugee Education Assistance Act of 1980);

(h) An Afghan or Iraqi alien granted Special Immigration Status (SIV) under Section 8120 of the December 19, 2009 Defense Appropriations Bill (Public Law 111-118); or

(i) A battered spouse or child who meets the requirements of 8 U.S.C. 1641(c) as determined by the U.S. Citizenship and Immigration Services.

(3) A non-citizen meets the alien status requirements if the individual is:

(a) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act (INA) (8 U.S.C. 1359) apply;

(b) A member of an Indian tribe, as defined in section 4(e) of the Indian Self-Determination and Education Act (25 U.S.C. 450b(e));

(c) A veteran of the United States Armed Forces who was honorably discharged for reasons other than alien status and who fulfilled the minimum active-duty service requirements described in 38 U.S.C. 5303A(d);

(d) A member of the United States Armed Forces on active duty (other than active duty for training);

(e) The spouse or a child of an individual described in subsection (c) or (d) of this section.

(f) A qualified non-citizen and meets one of the following criteria:

(A) Effective October 1, 2009 is an individual under 19 years of age;

(B) Was a qualified non-citizen before August 22, 1996;

(C) Physically entered the United States before August 22, 1996, and was continuously present in the United States between August 22, 1996, and the date qualified non-citizen status was obtained. An individual is not continuously present in the United States if the individual is absent from the United States for more than 30 consecutive days or a total of more than 90 days between August 22, 1996 and the date qualified non-citizen status was obtained.;

(D) Has been granted any of the following alien statuses:

(i) Refugee under section 207 of the INA;

(ii) Asylum under section 208 of the INA;

(iii) Deportation being withheld under section 243(h) of the INA;

(iv) Cubans and Haitians who are either public interest or humanitarian parolees;

(v) An individual granted immigration status under section 584(a) of the Foreign Operations, Export Financing and Related Program Appropriations Act of 1988;

(vi) A "victim of a severe form of trafficking in persons" certified under the Victims of Trafficking and Violence Protection Act of 2000 (22 U.S.C. 7101 to 7112;

(vii) A family member of a victim of a severe form of trafficking in persons who holds a visa for family members authorized by the Trafficking Victims Protection Reauthorization Act of 2003 (22 U.S.C. 7101 to 7112);

(viii) An Iraqi or Afghan alien granted special immigrant status (SIV) under section 101(a)(27) of the INA;

(g) Under the age of 19 and is one of the following:

(A) A citizen of a Compact of Free Association State (i.e., Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau) who has been admitted to the U.S. as a non-immigrant and is permitted by the Department of Homeland Security to reside permanently or indefinitely in the U.S;

(B) An individual described in 8 CFR section 103.12(a)(4) who belongs to one of the following classes of aliens permitted to remain in the United States because the Attorney General has decided for humanitarian or other public policy reasons not to initiate deportation or exclusion proceedings or enforce departure:

(i) An alien currently in temporary resident status pursuant to section 210 or 245A of the INA (8 USC 1160 and 1255a);

(ii) An alien currently under Temporary Protected Status (TPS) pursuant to section 244 of the INA (8 USC 1229b);

(iii) Cuban-Haitian entrants, as defined in section 202(b) Pub. L. 99–603 (8 USC 1255a), as amended;

(iv) Family Unity beneficiaries pursuant to section 301 of Pub. L. 101–649 (8 USC 1255a), as amended;

(v) An alien currently under Deferred Enforced Departure (DED) pursuant to a decision made by the President;

(vi) An alien currently in deferred action status pursuant to Department of Homeland Security Operating Instruction OI 242.1(a)(22); or

(vii) An alien who is the spouse or child of a United States citizen whose visa petition has been approved and who has a pending application for adjustment of status;

(C) An individual in non-immigrant classifications under the INA who is permitted to remain in the U.S. for an indefinite period, including

those individuals as specified in section 101(a)(15) of the INA (8 USC 1101);

(D) An alien in non-immigrant status who has not violated the terms of the status under which he or she was admitted or to which he or she has changed after admission;

(E) Aliens who have been granted employment authorization under 8 CFR 274a.12(c)(9), (10), (16), (18), (20), (22), or (24);

(F) A pending applicant for asylum under section 208(a) of the INA (8 U.S.C. § 1158) or for withholding of removal under section 241(b)(3) of the INA (8 U.S.C. § 1231) or under the Convention Against Torture who has been granted employment authorization, and such an applicant under the age of 14 who has had an application pending for at least 180 days;

(G) An alien who has been granted withholding of removal under the Convention Against Torture;

(H) A child who has a pending application for Special Immigrant Juvenile status as described in section 101(a)(27)(J) of the INA (8 U.S.C. § 1101(a)(27)(J));

(I) An alien who is lawfully present in the Commonwealth of the Northern Mariana Islands under 48 U.S.C. § 1806(e); or

(J) An alien who is lawfully present in American Samoa under the immigration laws of American Samoa.

(4) Individuals 19 and older who are described in sections (2)(a), (2)(e), (2)(f), and (2)(i) of this rule who entered the United States or were given qualified non-citizen status on or after August 22, 1996 meet the alien status requirement five years following the date the non-citizen received the qualified non-citizen status.

(5) Individuals described in sections (2)(a) through (g), (2)(i), (3)(g)(B)(ii), (3)(g)(B)(iv), (3)(g)(B)(v), (3)(g)(B)(vii), and (3)(g)(D) through (J) with deferred action under Deferred Action for Childhood Arrivals (DACA) process do not meet the non-citizen requirement for OCCS Medical Programs.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 414.025, 414.231, 414.534, 414.536 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0230
Verification

(1) Except as described in section (6) of this rule, applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall attest to the following information:

(a) Age and date of birth;

(b) Application for other benefits;

(c) Caretaker relative status;

(d) Household composition;

(e) Legal name;

(f) Medicare;

(g) Pregnancy;

(h) Receipt or availability of other healthcare coverage;

(i) Residency;

(j) Social Security number; and

(k) American Indian/Alaska Native status.

(2) Applicants and beneficiaries who attest to US citizenship or US national status:

(a) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of US citizenship or US national status;

(b) Self-attested information shall be used to determine eligibility and verified post-eligibility via the federal data services hub or by electronic data match available to the Agency;

(c) In the event additional verification is needed, the Authority shall provide a reasonable opportunity period to verify US citizen or US national status.

(3) Applicants and beneficiaries who attest to being a non-citizen:

(a) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of non-citizen status:

(A) If an individual attests to being a non-citizen but does not provide information regarding their status, information shall be obtained by the Agency prior to making an eligibility determination;

(B) Self-attested information shall be used to approve OCCS Medicaid/CHIP as long as the information provided is considered satisfactory immigration status:

(i) The application is not considered incomplete even if the information provided does not include all the immigration information necessary to verify that the applicant meets Medicaid/CHIP non-citizen requirements; and

(ii) The information provided does not indicate that the applicant would be ineligible for full benefits;

(C) If information provided indicates the individual does not meet the Medicaid/CHIP non-citizen requirements, an otherwise eligible applicant shall be found eligible for CAWEM (OAR 410-200-0240);

(b) In the event additional verification is needed, the Authority shall provide a reasonable opportunity period to verify non-citizen status;

(c) The following are exempt from the requirement to verify citizen status:

(A) Individuals who are assumed eligible (OAR 410-200-0135);

(B) Individuals who are enrolled in Medicare;

(C) Individuals who are presumptively eligible for the BCCTP program through the BCCTP screening program or through the Hospital Presumptive Eligibility process (OAR 420-200-0400 and 410-200-0105);

(D) Individuals receiving Social Security Disability Income (SSDI); or

(E) Individuals whose citizen status was previously documented by the Agency. The Agency may not re-verify or require an individual to re-verify citizenship at a renewal of eligibility or subsequent application following a break in coverage;

(d) Non-citizen status shall be reviewed and verified at the following times:

(A) Initial determination of eligibility;

(B) Each redetermination of eligibility; or

(C) When a report of change of non-citizen status is received by the Agency.

(4) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of income:

(a) For individuals whose request for benefits is able to be processed using the federal data services hub, self-attested information shall be used to approve MAGI-based Medicaid/CHIP, and:

(A) Verified by documentary evidence through a match with available electronic data; or

(B) In the event that additional verification is needed, the Authority shall provide a post-eligibility pend period to verify income information;

(b) Individuals whose request for benefits is not able to be processed using the federal data services hub shall have their income information verified prior to eligibility determination:

(A) Using electronic data match available to the Agency; or

(B) By providing verification of information to the Agency;

(c) In the event that verification is not available via the federal data services hub, electronic data match available to the Agency, or by any other method, the attested information shall be accepted to determine eligibility;

(d) In the event that income verification via the federal data services hub or electronic data match available to the Agency is inconsistent with attested information:

(A) If the individual attests to income below the applicable standard and the data source indicates income above the applicable standard, verification or reasonable explanation shall be requested from the individual;

(B) If both the data source and attested information are below the applicable standard, the applicant is eligible for MAGI-based Medicaid/CHIP;

(C) If the individual's attested information is above the applicable standard but the data source verification is below the standard, the Agency shall accept the attested information, deny MAGI-based Medicaid/CHIP, and screen for potential APTC eligibility.

(5) Additional income verifications for MAGI-based Medicaid/CHIP program approvals shall occur during the post-eligibility review process, during which the results of a quarterly match against Employment Department wage data shall be reviewed as it becomes available. If necessary, documentation may be required per section (6).

(6) Applicants, beneficiaries, or individuals of the applicant or beneficiary's choosing shall make a declaration of receipt of private health insurance:

(a) For individuals whose request for benefits is able to be processed using the federal data services hub:

(A) Self-attested information shall be used to determine eligibility for MAGI-based Medicaid/CHIP if:

(i) Information obtained through a match with available electronic data does not conflict with self-attested information;

(ii) Information obtained through a match with available electronic data conflicts with self-attested information but does not affect eligibility; or

(iii) Verification is not available via a match with available electronic data or by any other method at the time of application processing;

(B) In the event that information obtained through a match with available electronic data conflicts with self-attested information and may affect eligibility, private health insurance information shall be verified prior to eligibility determination;

(b) Individuals whose request for benefits is not able to be processed using the federal data services hub who attest to private health insurance information that may affect eligibility shall have their private health insurance information verified prior to eligibility determination:

(A) Using electronic data match available to the Agency; or

(B) By providing verification of information to the Agency.

(7) The Authority may request that applicants and beneficiaries of medical assistance provide additional information, including documentation, to verify most eligibility criteria if data obtained electronically is not reasonably compatible with attested information.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0235
Changes That Must Be Reported

(1) Individuals shall report the following changes in circumstances affecting eligibility for beneficiaries within 30 calendar days of its occurrence:

(a) The receipt or loss of health care coverage;

(b) A change in mailing address or residence;

(c) A change in legal name;

(d) A change in pregnancy status of a household group member;

(e) A change in household group membership;

(f) A claim for a personal injury. The following information shall be reported:

(A) The names and addresses of all parties against whom the action is brought or claim is made;

(B) A copy of each claim demand; and

(C) If an action is brought, identification of the case number and the county where the action is filed;

(g) In addition to section (1)(a)–(f), for all OCCS Medical Programs except OHP-CHP and MAGI CHIP, a change in availability of employer-sponsored health insurance;

(h) In addition to section (1)(a)–(f), in the EXT program, when a household group member receiving medical assistance is no longer a dependent child;

(i) In addition to section (1)(a)–(f), adults in the MAA, MAF, EXT, MAGI Pregnant Woman, MAGI Parent or Other Caretaker Relative, and MAGI Adult programs:

(A) A change in source of income;

(B) A change in employment status;

(i) For a new job, the change occurs the first day of the new job;

(ii) For a job separation, the change occurs on the last day of employment;

(C) A change in earned income more than $100. The change occurs upon the receipt by the beneficiary of the first paycheck from a new job or the first paycheck reflecting a new rate of pay;

(D) A change in unearned income more than $50. The change occurs the day the beneficiary receives the new or changed payment.

(2) Beneficiaries, adult members of the household group, or authorized representatives may report changes via the Internet, by telephone, via mail, in person, and through other commonly available electronic means.

(3) A change is considered reported on the date the beneficiary, adult member of the household group, or authorized representative reports the information to the Agency.

(4) A change reported by the beneficiary, adult member of the household group, or authorized representative for one program is considered reported for all programs administered by the Agency in which the beneficiary participates.

(5) Beneficiaries, adult members of the household group, or authorized representatives are not required to report any of the following changes:

(a) Periodic cost-of-living adjustments to the federal Black Lung Program, SSB, SSDI, SSI, and veterans assistance under Title 38 of the United States Code;

(b) Changes in eligibility criteria based on legislative or regulatory actions.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0240
Citizen/Alien Waived Emergent Medical

(1) To be eligible for CAWEM benefits, an individual must be ineligible for OCCS Medical Programs solely because he or she does not meet the Citizen and Alien Status Requirements (OAR 410-200-0215). A child who is ineligible for OHP-CHP, MAGI CHIP, CEM, or CEC solely because he or she does not meet the citizen or alien status requirements is not eligible for CAWEM benefits.

(2) To be eligible for the CAWEM Prenatal enhanced benefit package, a CAWEM recipient must be pregnant.

(3) The pregnant CAWEM client's enhanced medical benefits package ends when the pregnancy ends.

(4) The woman remains eligible for CAWEM emergency benefits through the end of the calendar month in which the 60th day following the last day of the pregnancy falls.

Stat. Auth.: ORS 411.402, 411.404, 413.042, 414.025 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.447, 414.534, 414.536, 414.706 & 411.060
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0310
Eligibility and Budgeting; MAGI Medicaid/CHIP; Not BCCTP or EXT

(1) The budget month means the calendar month from which nonfinancial and financial information is used to determine eligibility for OCCS Medical Programs.

(2) The budget month is determined as follows:

(a) For a new applicant, the budget month is:

(A) The month in which medical assistance is requested; or

(B) If ineligible in the month in which medical assistance is requested, the budget month is the following month;

(b) For a current Medicaid/CHIP beneficiary, the budget month is:

(A) The final month of the twelve-month enrollment period;

(B) The month a change that affects eligibility is reported, if reported timely; or

(C) The month the individual ages off a medical program or is no longer eligible for a medical assistance program;

(c) For retroactive medical, the budget month is the month in which the applicant received medical services for which they are requesting payment. Retroactive medical is determined on a month-by-month basis.

(3) Countable income anticipated or received in the budget month is determined as follows:

(a) Income is calculated by adding together the income of the household group already received in the initial budget month and the income that is reasonably expected to be received in the remainder of the initial budget month;

(b) If ineligible using the initial budget month, countable income from the month following the initial budget month is considered. If eligible, eligibility shall begin as described in OCCS Medical Programs — Effective Dates (OAR 410-200-0115).

(c) If ineligible under subsections (a) or (b) of this section because the countable income is over the income standard for all OCCS Medical Programs, income shall be annualized using the requirements of 25 CFR §1.36 B-1(e) for the year in which medical has been requested:

(A) If the annualized income is below 100 percent FPL as identified in 26 CFR §1.36 B-1(e), income shall be converted to a monthly amount and applied to the initial budget month;

(B) If eligible for budget month eligibility pursuant to subsection (A), eligibility shall be determined for the appropriate program pursuant to OAR 410-200-0315 and begin as described in OCCS Medical Programs – Effective Dates (OAR 410-200-0115).

(4) The household group's budget month income is compared to the income standard for the appropriate family size to determine if an applicant may be eligible for an OCCS medical program.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, , 414.025, 414.231, 414.447 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-

2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0415
Specific Requirements; MAGI Child

In addition to eligibility requirements applicable to the MAGI Child program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Child program.

(1) Individuals may not be eligible for the MAGI Child program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Child program, the child must be under the age of 19 with household income at or below:

(a) 133 percent of the federal poverty level (OAR 410-200-0315) for the applicable family size for a child over the age of one but less than age 19; or

(b) 185 percent of the federal poverty level for the applicable family size for an infant under the age of one.

(3) To be eligible for the MAGI Child Program, an individual may not:

(a) Be receiving or deemed to be receiving SSI benefits;

(b) Be receiving Medicaid through another program.

(4) A child born to a mother eligible for and receiving Medicaid benefits is assumed eligible for medical benefits under this rule until the end of the month the child turns one year of age unless:

(a) The child dies;

(b) The child is no longer a resident of Oregon; or

(c) The child's representative requests a termination of the child's eligibility.

(5) To enroll a child in the MAGI Child program based on a determination made by an Express Lane Agency (ELA), the child's parent or guardian shall give consent in writing, by telephone, orally, or through electronic signature.

(6) ELE qualifies a child for medical assistance benefits based on a finding from the Department, even when the Department's eligibility methodology differs from that used for OCCS Medical Programs.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0425
Specific Requirements; MAGI Pregnant Woman

In addition to eligibility requirements applicable to the MAGI Pregnant Woman program in other rules in chapter 410 division 200, this rule describes specific eligibility requirements for the MAGI Pregnant Woman program.

(1) Individuals may not be eligible for the MAGI Pregnant Woman program with an effective date prior to January 1, 2014.

(2) To be eligible for the MAGI Pregnant Woman program, an individual must be pregnant and:

(a) Have household income that is at or below 185 percent of the federal poverty level (OAR 410-200-0315); or

(b) Be eligible for Continuous Eligibility according to the policy described in OAR 410-200-0135(2).

(3) To be eligible for the MAGI Pregnant Woman program, an individual must not be receiving Supplemental Security Income (SSI).

(4) Once a beneficiary is eligible and receiving Medicaid through the MAGI Pregnant Woman program, they are eligible through the end of the calendar month in which the 60th day following the last day of the pregnancy falls (OAR 410-200-0135) unless one or more of the following occur:

(a) The woman dies;

(b) The woman moves out of state;

(c) The woman becomes incarcerated; or

(d) The woman requests her benefits be closed.

Stat. Auth.: ORS 411.402, 411.404 & 413.042
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 414.025, 414.231, 414.447 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0440
Specific Requirements; Extended Medical Assistance

(1) The following individuals may be eligible for Extended Medical Assistance (EXT) if they lose eligibility for Medical Assistance Assumed (MAA), Medical Assistance to Families (MAF), or MAGI Parent or Other Caretaker Relative (MAGI PCR) benefits:

(a) Individuals who lose eligibility for MAA, MAF, or MAGI PCR due to the receipt or increase of earned income are eligible for 12 months of EXT if eligibility is redetermined and the individual is not eligible for any other Medicaid/CHIP program.

(b) Individuals who lose eligibility for MAA, MAF, or MAGI PCR due to the receipt or increase of spousal support are eligible for four months of EXT benefits if:

(A) Individuals were eligible for and receiving MAA, MAF, or MAGI PCR benefits for any three of the six months preceding the receipt or increase in spousal support that resulted in loss of eligibility, and;

(B) Eligibility is redetermined and the individual is not eligible for any other Medicaid/CHIP program.

(2) The EXT beneficiary must be a resident of Oregon.

(3) Individuals who lose EXT eligibility for one of the following reasons may regain EXT eligibility for the remainder of the original eligibility period if the requirements outlined in sections (1) and (2) are met:

(a) EXT eligibility is lost because the individual leaves the household during the EXT eligibility period. The individual may regain EXT eligibility if they return to the household; or

(b) EXT eligibility is lost due to a change in circumstance that results in eligibility for another OCCS medical program, and then a subsequent change in circumstance occurs that results in ineligibility for all OCCS Medical Programs, the individual may regain EXT eligibility.

(4) The effective date of EXT is the first of the month following the month in which MAA, MAF, or MAGI PCR program eligibility ends.

(5) If an individual receives MAA, MAF, or MAGI PCR benefits during months when they were eligible for EXT:

(a) Such months are not an overpayment;

(b) Any month in which an individual receives MAA, MAF, or MAGI PCR benefits when they were eligible for EXT is counted as a month of the EXT eligibility period.

(6) If a beneficiary of MAA, MAF, or MAGI PCR benefits experiences another change in conjunction with the receipt or increase of earned income or spousal support, and the other change, by itself, makes the beneficiary ineligible for the current program, the beneficiary is not eligible for EXT.

Stat. Auth.: ORS 411.095, 411.402, 411.404, 413.038, 414.025
Stats. Implemented: ORS 411.095, 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 411.447, 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14: DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 19-2015(Temp), f. & cert. ef. 4-2-15 thru 9-28-15; DMAP 31-2015(Temp), f. & cert. ef 6-16-15 thru 9-28-15; DMAP 53-2015, f. 9-22-15, cert. ef. 9-25-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0505
Specific Requirements; Fast Track Eligibility and Enrollment for MAGI Medicaid

For Fast Track eligibility and enrollment, the Authority provides MAGI Medicaid benefits based on an individual's eligibility for SNAP program benefits, or for individuals who are parents of children determined eligible for OCCS Medicaid programs.

(1) A SNAP recipient adult may be found eligible for Fast Track eligibility and enrollment based on findings from the Department, even if the Department's eligibility methodology differs from that used by the Authority for OCCS Medical Programs if the adult:

(a) Has SNAP income is at or below the applicable income standards for MAGI Adult;

(b) Indicates they wish to pursue medical assistance;

(c) Is not eligible for or receiving Supplemental Security Income;

(d) Agrees to cooperate with the Division of Child Support; and

(e) Meets the specific program requirements for MAGI Adult (OAR 410-200-0435).

(2) The adult parent or parents of a MAGI Medicaid eligible child may be found eligible for Fast Track eligibility and enrollment if the adult:

(a) Indicates they wish to pursue medical assistance;

(b) Is not eligible for or receiving Supplemental Security Income;

(c) Agrees to cooperate with the Division of Child Support; and

(d) Meets the specific program requirements for the applicable program.

(3) A new application is not required for Fast Track eligibility and enrollment.

(4) If the individual requests Fast Track eligibility and enrollment and is not eligible due to eligibility for or receipt of Supplemental Security Income, the Authority shall refer the applicant to the Department for an eligibility determination. The Date of Request is the date the Authority received consent for Fast Track eligibility and enrollment.

Stat. Auth.: ORS 411.402, 411.404, 413.042 & 413.038

Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 413.032, 413.038, 414.025, 414.231 & 414.706

Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

410-200-0510

Specific Program Requirements; BCCM, CEC, CEM, EXT, MAA, MAF, OHP, and Substitute Care

(1) This rule describes OCCS Medical Programs for which individuals may be determined eligible through December 31, 2013. See OAR 410-200-0500 for information regarding the treatment of those beneficiaries as of January 1, 2014.

(2) To be eligible for a program listed in this rule, an individual must meet the following:

(a) The eligibility factors set forth in OAR 410-200-0200 through 410-200-0240;

(b) The budgeting and income standard requirements set forth in OAR 410-200-0300 through 410-200-0315; and

(c) The individual must have established a Date of Request prior to January 1, 2014.

(3) For purposes of this rule, private major medical health insurance means a comprehensive major medical insurance plan that, at a minimum, provides physician services; inpatient and outpatient hospitalization; outpatient lab, x-ray, immunizations; and prescription drug coverage. This term does not include coverage under the Kaiser Child Health Program or Kaiser Transition Program but does include policies that are purchased privately or are employer-sponsored.

(4) For the purposes of this rule, the receipt of private major medical health insurance does not affect OCCS medical program eligibility if it is not accessible. Private major medical health insurance is not considered accessible if:

(a) The travel time or distance to available providers exceeds:

(A) In urban areas: 30 miles, 30 minutes, or the community standard, whichever is greater;

(B) In rural areas: 60 miles, 60 minutes, or the community standard, whichever is greater;

(b) Accessing the private major medical health insurance would place a filing group member at risk of harm.

(5) CEM provides eligibility for the balance of the 12-month eligibility period for non-CAWEM children who were receiving Child Welfare (CW) medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits and lost eligibility for reasons other than moving out of state or turning 19 years old. CEM benefits end when:

(a) The child becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits;

(b) The child turns 19 years of age;

(c) The child moves out of state; or

(d) Benefits are closed voluntarily.

(6) CEC provides eligibility for the OHP-CHP program for non-CAWEM pregnant children who were receiving OHP-CHP and would have otherwise lost eligibility for reasons other than moving out of state or becoming a recipient of private major medical health insurance. CEC eligibility for OHP-CHP ends the day following the end of the month in which the earliest of the following occur:

(a) The pregnancy ends;

(b) The individual moves out of state;

(c) The individual begins receiving private major medical health insurance;

(d) Benefits are closed voluntarily; or

(e) The individual becomes eligible for CW medical, EXT, MAA, MAF, OHP, OSIPM, or Substitute Care program benefits.

(7) For the Authority to enroll a child in the program based on a determination made by an ELA, the child's parent or guardian shall give consent in writing, by telephone, orally, or through electronic signature.

(8) To be eligible for EXT, an individual must have been eligible for and receiving MAA or MAF and became ineligible due to a caretaker relative's increased earned income or due to increased spousal support (OAR 410-200-0440).

(9) To be eligible for MAA or MAF, an individual must be one of the following:

(a) A dependent child who lives with a caretaker relative. However, a dependent child for whom foster care payments are made for more than 30 days is not eligible while the payments are being made;

(b) A caretaker relative of an eligible dependent child. However, a caretaker relative to whom foster care payments are made for more than 30 days is not eligible while the payments are being made;

(c) A caretaker relative of a dependent child, when the dependent child is ineligible for MAA or MAF for one of the following reasons:

(A) The child is receiving SSI;

(B) The child is in foster care but is expected to return home within 30 days; or

(C) The child's citizenship has not been documented;

(d) An essential person. An essential person is a member of the household group who:

(A) Is not required to be in the filing group;

(B) Provides a service necessary to the health or protection of a member of the household group who has a mental or physical disability; and

(C) Is less expensive to include in the benefit group than the cost of purchasing this service from another source;

(e) A parent of an unborn as follows:

(A) For the MAA program:

(i) Any parent whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls;

(ii) The father of an unborn child who does not meet the criteria described in subsection (e)(A)(i) of this part may be eligible if there is another dependent child in the household group;

(B) For the MAF program, a mother whose only child is an unborn child, once the mother's pregnancy has reached the calendar month preceding the month in which the due date falls.

(10) To be eligible for any OHP program in sections (12) through (15), an individual may not be:

(a) Receiving SSI benefits;

(b) Eligible for Medicare, except that this requirement does not apply to the OHP-OPP program;

(c) Receiving Medicaid through any other program concurrently.

(11) To be eligible for the OHP-OPC program, an individual must be less than 19 years of age.

(12) To be eligible for the OHP-OP6 program, a child must be less than six years of age and not eligible for OHP-OPC.

(13) To be eligible for the OHP-OPP program, an individual must:

(a) Be pregnant;

(b) Be within the time period through the end of the calendar month in which the 60th day following the last day of the pregnancy falls; or

(c) Be an infant under age one.

(14) To be eligible for the OHP-CHP program, an individual must be under 19 years of age and must:

(a) Not be eligible for the OHP-OPC, OHP-OPP, or OHP-OP6 programs; and

(b) Not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4).

(15) Effective July 1, 2004, the OHP-OPU program is closed to new applicants. Except as provided in subsections (a) and (b) of this section, a new applicant may not be found eligible for the OHP-OPU program:

(a) An individual is not a new applicant if the Department determines that the individual is continuously eligible for medical assistance as follows:

(A) The individual is eligible for and receiving benefits under the OHP-OPU program on June 30, 2004, and the Department determines that the individual continues after that date to meet the eligibility requirements for the OHP-OPU program;

(B) The individual is eligible for and receiving benefits under the CAWEM program on June 30, 2004 and is eligible for the CAWEM program based on the OHP-OPU program, and the Department determines that the individual continues to meet the eligibility requirements for the OHP-OPU program except for citizenship or alien status requirements;

(C) The eligibility of the individual ends under the BCCM, CEC, CEM, EXT, GAM, HKC, MAA, MAF, OHP-CHP, OHP-OPC, OHP-OPP, OSIPM, REFM, or Substitute Care program, or the related CAWEM program; or because the individual has left the custody of the Oregon Youth

Authority (OYA); and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program;

(D) The individual is a child in the custody of the Department whose eligibility for Medicaid ends because of the child's age and at that time the Department determines that the individual meets the eligibility requirements for the OHP-OPU program;

(E) The Department determines that the individual was continuously eligible for the OHP-OPU program on or after June 30, 2004 under paragraphs (A) to (D) of this section;

(b) An individual who is not continuously eligible under subsection (a) is not a new applicant if the individual:

(A) Has eligibility end under the BCCM, CEC, CEM, EXT, HKC, MAA, MAF, OHP-CHP, OHP-OPP, OHP-OPU, OSIPM, REFM, or Substitute Care program, or the related CAWEM program; because the individual has left the custody of the OYA; or is a child in the custody of the Department whose eligibility for Medicaid ends due to the child's age;

(B) Established a Date of Request prior to the eligibility ending date in paragraph (A) of this section; and

(C) Meets the eligibility requirements for the OHP-OPU program or the related CAWEM program within either the month of the Date of Request or, if ineligible in the month of the Date of Request, the following month.

(16) To be eligible for the OHP-OPU program, an individual must meet the requirements listed in section (16) and be 19 years of age or older and may not be pregnant. Additionally, and individual must meet the following requirements:

(a) Must be currently receiving Medicaid or CHIP benefits when determined eligible for OHP- OPU;

(b) Must not be covered by any private major medical health insurance. An individual may be eligible for OHP-CHP if the private major medical health insurance is not accessible as outlined in section (4);

(c) May not have been covered by private major medical health insurance during the six months preceding the effective date for starting medical benefits. The six-month waiting period is waived if:

(A) Any of the criteria in section (4) are met;

(B) The individual has a condition that, without treatment, would be life-threatening or would cause permanent loss of function or disability;

(C) The individual's health insurance premium was reimbursed because the individual was receiving Medicaid, and the Department or the Authority found the premium was cost-effective;

(D) The individual's health insurance was subsidized through FHIAP or the Office of Private Health Partnerships in accordance with ORS 414.231, 414.826, 414.831, and 414.839; or

(E) A member of the individual's household group was a victim of domestic violence.

(17) To be eligible for the Substitute Care program, an individual must meet the specific eligibility requirements for Substitute Care found in OAR 410-200-0405.

(18) Except for OHP-CHP and CEC, a pregnant woman who is eligible for and receiving benefits through any program listed in this rule remains eligible through the end of the calendar month in which the 60th day following the last day of the pregnancy falls.

(19) A child who becomes ineligible for the OHP program because of age while receiving in-patient medical services remains eligible until the end of the month in which he or she no longer receives those services if he or she is receiving in-patient medical services on the last day of the month in which the age requirement is no longer met.

Stat. Auth.: ORS 411.402, 411.404, , 413.042 & 414.534
Stats. Implemented: ORS 411.400, 411.402, 411.404, 411.406, 411.439, 411.443, 413.032, 413.038, 414.025, 414.231, 414.447, 414.534, 414.536 & 414.706
Hist.: DMAP 54-2013(Temp), f. & cert. ef. 10-1-13 thru 3-30-14; DMAP 4-2014(Temp), f. & cert. ef. 1-15-14 thru 3-30-14; DMAP 20-2014, f. & cert. ef. 3-28-14; DMAP 67-2014(Temp), f. 11-14-14, cert. ef. 11-15-14 thru 5-13-15; DMAP 3-2015, f. & cert. ef. 1-30-15; DMAP 78-2015(Temp), f. & cert. ef. 12-22-15 thru 6-18-16

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Rule Caption: PDL March26, May28, July 30, 2015 DUR/P&T Action; Align with Statute for Brandname Drug Reimbursement
Adm. Order No.: DMAP 79-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 12-27-15
Notice Publication Date: 12-1-2015
Rules Amended: 410-121-0030
Rules Repealed: 410-121-0030(T)
Subject: Aligns rule with ORS 414.325 to allow the Division to limit reimbursement to a brand name version of a covered drug when its cost is equal to or less than the cost of the generic version after receiving discounted prices and rebates.

The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:
Preferred:
Viekiera Pak™
Laxative drug class
- Polyethylene glycol 3350
- Lactulose
- Senna products
- Bulk forming laxatives less than $1/unit
- Osmotic laxatives less than $1/unit
- Surfactant, stimulant, and saline laxatives
Isosorbide dinitrate — capsule ER
Nitroglycerin — capsule ER
Adalimumab (Humira Pediatric Crohn's™)
Calcium Citrate - tablet
Buprenorphine HCL/Naloxone HCL
Dexmethylphenidate HCL
Chlorpromazine HCL
Fluphenazine HCL
Dabigatran
Rivaroxaban
Apixaban
Edoxaban
Linezolid
Tobramycin (Tobi Poldhaler™)
Tobramycin/Nebulizer (Kitabis™ Pak)
All rectal subclass products
All acetaminophen with codeine products
Ibuprofen containing products
Hydrocodone APAP solution
Metoprolol Succinate
Cilostazol
Fluticasone Propionate
Amlodipine-Olmesartan
Enalapril-Hydrochlorothiazide
Lisinopril-Hydrochlorothiazide
Losartan-Hydrochlorothiazide
Metoprolol Succinate-Hydrochlorothiazide
Olmesartan-Amlodipine-Hydrochlorothiazide
Olmesartan-Hydrochlorothiazide
Propranolol-Hydrochlorothiazide
Non-Preferred:
Bulk forming laxatives $1/unit or more
Osmotic laxatives $1/unit or more
Lubricant laxatives
Cimetidine — tablet
Spinosad
Semprivir Sodium
Tedizolid Phosphate
Ivacaftor (Kalydeco™)
All Butalbital subclass products
Pirfenidone
Nintedanib Esylate
All other agents in Intranasal Allergy
Ketoconazole
All other products in Combination Antihypertensives class
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that OHP fee-for-service clients have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners, who are informed by the latest peer reviewed research, make decisions concerning the clinical effectiveness of the prescription drugs;

(b) Licensed health care practitioners also consider the client's health condition, personal characteristics, and the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division uses to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL contains a list of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall ensure the drugs selected in section (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in section (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) The Division may evaluate more frequently if new safety information or the release of new drugs in a class or other information makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all revisions to the PDL using the rule-making process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision.

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise pursuant to OAR 410-121-0155;

(b) The Division notifies the pharmacy that the cost of the brand name particular drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted when:

(A) The prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Call Center; or

(B) Where the prescriber requests an exception subject to the requirement of section (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) **Table 121-0030-1**, PMPDP PDL dated November 1, 2015 is adopted and incorporated by reference and is found at: www.orpdl.org.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316

Stats. Implemented: ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-15; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14; DMAP 78-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-15; DMAP 88-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 10-2015(Temp), f. & cert. ef. 3-3-15 thru 8-29-15; DMAP 26-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 35-2015, f. 6-25-15, cert. ef. 6-26-15; DMAP 37-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; DMAP 57-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 12-27-15; DMAP 64-2015(Temp), f. & cert. ef. 11-3-15 thru 12-27-15; DMAP 66-2015(Temp), f. & cert. ef. 11-6-15 thru 12-27-15; DMAP 79-2015, f. 12-22-15, cert. ef. 12-27-15

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Rule Caption: Amending Prior Authorization Approval Criteria Guide

Adm. Order No.: DMAP 80-2015

Filed with Sec. of State: 12-23-2015

Certified to be Effective: 12-27-15

Notice Publication Date: 11-1-2015

Rules Amended: 410-121-0040

Rules Repealed: 410-121-0040(T)

Subject: The Pharmaceutical Services Program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx based on the P&T (Pharmacy and Therapeutic) Committee recommendations.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040

Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners shall obtain prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures set forth in OAR 410-121-0060.

(2) All drugs and categories of drugs including, but not limited to, those drugs and categories of drugs that require PA shall meet the following requirements for coverage:

(a) Each drug shall be prescribed for conditions funded by the Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication may not be covered unless there is a co-morbid condition for which coverage would be allowed. The use of the medication shall meet corresponding treatment guidelines and be included within the client's benefit package of covered services and not otherwise excluded or limited;

(b) Each drug shall also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Authority may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-for-Service Prior Authorization Approval Criteria (PA Criteria guide) dated October 9, 2015, adopted and incorporated by reference and found at: http://www.oregon.gov/OHA/healthplan/pages/pharmacy-policy.aspx.

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as rec-

ommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule. The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA shall be obtained for brand name drugs that have two or more generically equivalent products available and that are not determined Narrow Therapeutic Index drugs by the DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant shall be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant shall notify the Authority of patent expiration within 30 days of patent expiration for section (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in section (3) or (4) of this rule applies, follow that criteria;

(B) If section (6)(A) does not apply, the prescribing practitioner shall document that the use of the generically equivalent drug is medically contraindicated and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA shall be obtained for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV, or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP; or

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.330 - 414.414, 414.312, 414.316
Stats. Implemented: ORS 414.065, 414.334, 414.361, 414.371, 414.353, 414.354
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAP 75-2014, f. & cert. ef. 12-12-14; DMAP 76-2014(Temp), f. & cert. ef. 12-12-14 thru 6-7-15; DMAP 89-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-26-15; DMAP 4-2015(Temp), f. & cert. ef. 2-3-15 thru 6-26-15; DMAP 25-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 34-2015, f. 6-25-15, cert. ef 6-26-15; DMAP 36-2015(Temp), f. 6-26-15, cert. ef. 7-1-15 thru 12-27-15; DMAP 41-2015(Temp), f. & cert. ef. 8-7-15 thru 2-2-16; DMAP 44-2015(Temp), f. 8-21-15, cert. ef. 8-25-15 thru 12-27-15; DMAP 58-2015(Temp), f. & cert. ef. 10-9-15 thru 12-27-15; DMAP 80-2015, f. 12-23-15, cert. ef. 12-27-15

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Rule Caption: General Financial Reporting and Financial Solvency Matters; CCO Reporting
Adm. Order No.: DMAP 81-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 410-141-3345
Subject: The Division's rule requires CCOs to demonstrate that they are able to provide coordinated care service efficiently, effectively, and economically. This rule also provides CCOs with the parameters for three alternative methods for a CCO's solvency plan and reporting requirements, depending on the status of the CCO as described in rule.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3345
General Financial Reporting and Financial Solvency Matters; CCO Reporting Method

(1) Each CCO must demonstrate that it is able to provide coordinated care services efficiently, effectively, and economically. CCOs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports as provided in these rules.

(2) The Authority shall collaborate with the Department of Consumer and Business Services (DCBS) to review CCO financial reports and evaluate financial solvency. CCOs are not required to file financial reports with both OHA and DCBS except as provided in this section or as outlined in the CCO contract:

(a) Initial applicants for certification as a CCO shall submit all required information to the Authority as part of the application process, and the Authority shall transmit that information to DCBS for its review. In making its determination about the qualifications of the applicant, the Authority shall consult with DCBS about the financial materials and reports submitted with the application;

(b) For purposes of these financial reporting and solvency rules, DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with these rules. If quarterly reports or other evidence suggest that a CCO's financial solvency is in jeopardy, the Authority shall act as necessary to protect the public interest.

(3) The Authority may address any proper inquiries to any CCO or its officers in relation to the activities or condition of the CCO or any other matter connected with its transactions. The person shall promptly and truthfully reply to the inquiries using the form of communication requested by the Authority. The reply shall be timely, accurate, and complete and, if the Authority requires, verified by an officer of the CCO. A reply is subject to the provisions of ORS 731.260.

(4) OAR 410-141-3345 through 410-141-3395 provide for three alternative methods for a CCO's solvency plan and financial reporting requirements, depending on the status of the CCO as described in this rule:

(a) The Authority reporting CCO: The CCO complies with restricted reserve and net worth requirements the Authority used to regulate financial solvency of MCOs on July 1, 2012, submitting financial information and reports to the Authority as detailed in the CCO contract. Under this approach, the Authority shall monitor the CCO's financial solvency utilizing the same reporting format and financial standards that the Authority used for MCOs on July 1, 2012;

(b) DCBS reporting CCO: The CCO complies with financial requirements as detailed in the CCO contract and in OAR 410-141-3345 through 410-141-3395, including risk-based capital and NAIC reporting requirements. These requirements shall be monitored by DCBS;

(c) Certificate of Authority: The CCO has a certificate of authority and complies with financial reporting and solvency requirements applicable to licensed health entities pursuant to applicable DCBS requirements under the Oregon insurance code and DCBS rules. In addition, the CCO shall report to the Authority the schedules outlined in the CCO contract.

(5) CCO Status. The method described in this rule that applies to a CCO is determined as follows:

(a) If the CCO is a licensed health entity, the CCO shall use the method described in this rule for certificate of authority. The CCO shall submit a copy of its certificate of authority to the Authority, not later than the readiness review document submission date under the initial CCO con-

tract, and annually thereafter, not later than August 31. The CCO shall report to the Authority immediately at any time that this certificate of authority is suspended or terminated;

(b) If the CCO is neither a converting MCO nor a licensed health entity, the CCO shall use the method described in this rule for DCBS reporting CCO;

(c) If the CCO is a converting MCO and is not a licensed health entity, the CCO shall elect either the method described in this rule for the Authority reporting CCO or the method described in this rule for DCBS reporting CCO. The CCO shall notify the Authority of its election no later than the readiness review document submission date under the initial CCO contract. The CCO shall comply with the requirements applicable to its elected method until it notifies the Authority of its intent to change its election. If the CCO expects to change its election, any elements of the solvency plan, or solvency protection arrangements, the CCO shall provide written advance notice to the Authority, at least 90-calendar days before the proposed effective date of change. Such changes are subject to written approval from the Authority.

(6) CCOs may be required to use specific required reporting forms or items in order to supply information related to financial responsibility, financial solvency, and financial management. The Authority or DCBS, as applicable, shall provide supplemental instructions about the use of these forms.

(7) The standards established in OAR 410-141-3350 through 410-141-3395 are intended to be consistent with, and may utilize procedures and standards common to insurers and to DCBS in its administration of financial reporting and solvency requirements. Any reference in these rules to the insurance code or to rules adopted by DCBS under the insurance code may not be deemed to require a CCO to be an insurer but is adopted and incorporated by reference as the Authority standard.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651
Stats. Implemented: ORS 414.610 - 414.685
Hist.: DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12; DMAP 81-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Timeframes for Seeing, Referring, or Providing Services to OHP Fee-for-Service Pregnant Clients
Adm. Order No.: DMAP 82-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 410-123-1510
Subject: The rule implements Sections 2 and 4 of House Bill 3464, which passed in 2015. It creates a standard for access to dental care for pregnant women who receive Oregon Health Plan benefits through the fee-for-service delivery system that is as good as or better than the standard for clients who receive benefits through the managed care delivery system, as measured by how long it takes for a client to receive a dental appointment.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-123-1510
Dental Care Access Standards for Pregnant Women

(1) The Authority shall establish access standards for dental care for pregnant women who receive Oregon Health Plan (OHP) benefits through the fee-for-service delivery system. Those standards shall be as good as or better than the standards for clients who receive services through the managed care delivery system. Access shall be monitored by the Authority to determine the length of time it takes for a pregnant client in fee-for-service to receive a dental appointment. The standard shall be for the client to be seen, treated, or referred within the following time frames:

(a) Emergency dental care standard: Client shall be seen or treated within 24 hours;

(b) Urgent dental care standard: Client shall receive an appointment within one to two weeks or as indicated in the initial screening in accordance with OAR 410-123-1060;

(c) Routine dental care standard: Clients shall be seen for routine care within an average of four weeks, unless there is a documented special clinical reason that would make access longer than four weeks appropriate;

(d) Initial dental screening or examination standard: Client shall be seen within four weeks.

(2) The Authority shall reach out to pregnant clients by e-mail, mail, phone, or in person to assess each pregnant client's need for oral health care within one month of either enrollment in OHP or record of pregnancy, whichever is later. Within one week of assessment, the Authority shall refer the client to an appropriate oral health provider.

(3) The Authority shall generate regular reporting to monitor fee-for-service delivery system performance to these standards.

Stat. Auth.: ORS 413.042 & 414.065
Stats. Implemented: ORS 414.065
Hist.: DMAP 82-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending Prior Authorization Approval Criteria Guide
Adm. Order No.: DMAP 83-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 410-121-0040
Subject: The Pharmaceutical Services program administrative rules (division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows: The Authority is amending this rule to update the Oregon Medicaid Fee for Service Prior Authorization Criteria Guide found at http://www.oregon.gov/oha/healthplan/Pages/pharmacy-policy.aspx based on the P&T (Pharmacy and Therapeutic) Committee recommendations.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0040
Prior Authorization Required for Drugs and Products

(1) Prescribing practitioners shall obtain prior authorization (PA) for the drugs and categories of drugs requiring PA in this rule, using the procedures set forth in OAR 410-121-0060.

(2) All drugs and categories of drugs including, but not limited to, those drugs and categories of drugs that require PA shall meet the following requirements for coverage:

(a) Each drug shall be prescribed for conditions funded by the Oregon Health Plan (OHP) in a manner consistent with the Health Evidence Review Commission (HERC) Prioritized List of Health Services (OAR 410-141-0480 through 410-141-0520). If the medication is for a non-covered diagnosis, the medication may not be covered unless there is a co-morbid condition for which coverage would be allowed. The use of the medication shall meet corresponding treatment guidelines and be included within the client's benefit package of covered services and not otherwise excluded or limited;

(b) Each drug shall also meet other criteria applicable to the drug or category of drug in these pharmacy provider rules, including PA requirements imposed in this rule.

(3) The Authority may require PA for individual drugs and categories of drugs to ensure that the drugs prescribed are indicated for conditions funded by OHP and consistent with the Prioritized List of Health Services and its corresponding treatment guidelines (see OAR 410-141-0480). The drugs and categories of drugs that the Authority requires PA for this purpose are found in the Oregon Medicaid Fee-for-Service Prior Authorization Approval Criteria (PA Criteria guide) dated January 1, 2016, adopted and incorporated by reference and found at: http://www.oregon.gov/OHA/healthplan/pages/pharmacy-policy.aspx.

(4) The Authority may require PA for individual drugs and categories of drugs to ensure medically appropriate use or to address potential client safety risk associated with the particular drug or category of drug, as recommended by the Pharmacy & Therapeutics Committee (P&T) and adopted by the Authority in this rule. The drugs and categories of drugs for which the Authority requires PA for this purpose are found in the Pharmacy PA Criteria Guide.

(5) New drugs shall be evaluated when added to the weekly upload of the First Databank drug file:

(a) If the new drug is in a class where current PA criteria apply, all associated PA criteria shall be required at the time of the drug file load;

(b) If the new drug is indicated for a condition below the funding line on the Prioritized List of Health Services, PA shall be required to ensure that the drug is prescribed for a condition funded by OHP;

(c) PA criteria for all new drugs shall be reviewed by the DUR/P&T Committee.

(6) PA shall be obtained for brand name drugs that have two or more generically equivalent products available and that are not determined Narrow Therapeutic Index drugs by the DUR/P&T Committee:

(a) Immunosuppressant drugs used in connection with an organ transplant shall be evaluated for narrow therapeutic index within 180 days after United States patent expiration;

(b) Manufacturers of immunosuppressant drugs used in connection with an organ transplant shall notify the Authority of patent expiration within 30 days of patent expiration for section (5)(a) to apply;

(c) Criteria for approval are:

(A) If criteria established in section (3) or (4) of this rule applies, follow that criteria;

(B) If section (6)(A) does not apply, the prescribing practitioner shall document that the use of the generically equivalent drug is medically contraindicated and provide evidence that either the drug has been used and has failed or that its use is contraindicated based on evidence-based peer reviewed literature that is appropriate to the client's medical condition.

(7) PA shall be obtained for non-preferred Preferred Drug List (PDL) products in a class evaluated for the PDL except in the following cases:

(a) The drug is a mental health drug as defined in OAR 410-121-0000;

(b) The original prescription is written prior to 1/1/10;

(c) The prescription is a refill for the treatment of seizures, cancer, HIV, or AIDS; or

(d) The prescription is a refill of an immunosuppressant.

(8) PA may not be required:

(a) When the prescription ingredient cost plus the dispensing fee is less than the PA processing fees as determined by the Authority;

(b) For over-the-counter (OTC) covered drugs when prescribed for conditions covered under OHP; or

(c) If a drug is in a class not evaluated from the Practitioner-Managed Prescription Drug Plan under ORS 414.334.

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.330 - 414.414, 414.312, 414.316
Stats. Implemented: ORS 414.065, 414.334, 414.361, 414.371, 414.353, 414.354
Hist.: AFS 56-1989, f. 9-28-89, cert. ef. 10-1-89; AFS 2-1990, f. & cert. ef. 1-16-90; HR 29-1990, f. 8-31-90, cert. ef. 9-1-90, Renumbered from 461-016-0170; HR 10-1991, f. & cert. ef. 2-19-91; HR 14-1993, f. & cert. ef. 7-2-93; HR 25-1994, f. & cert. ef. 7-1-94; HR 6-1995, f. 3-31-95, cert. ef. 4-1-95; HR 18-1996(Temp), f. & cert. ef. 10-1-96; HR 8-1997, f. 3-13-97, cert. ef. 3-15-97; OMAP 1-1999, f. & cert. ef. 2-1-99; OMAP 29-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 31-2001, f. 9-24-01, cert. ef. 10-1-01; OMAP 44-2002, f. & cert. ef. 10-1-02; OMAP 66-2002, f. 10-31-02, cert. ef. 11-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 40-2003, f. 5-27-03, cert. ef. 6-1-03; OMAP 43-2003(Temp), f. 6-10-03, cert. ef. 7-1-03 thru 12-15-03; OMAP 49-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 84-2003, f. 11-25-03 cert. ef. 12-1-03; OMAP 87-2003(Temp), f. & cert. ef. 12-15-03 thru 5-15-04; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 71-2004, f. 9-15-04, cert. ef. 10-1-04; OMAP 74-2004, f. 9-23-04, cert. ef. 10-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 4-2006(Temp), f. & cert. ef. 3-15-06 thru 9-7-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 41-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 26-2007, f. 12-11-07, cert. ef. 1-1-08; DMAP 9-2008, f. 3-31-08, cert. ef. 4-1-08; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 14-2009 f. 6-12-09, cert. ef. 7-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 27-2011(Temp), f. & cert. ef. 9-30-11 thru 3-15-12; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 23-2012(Temp), f. & cert. ef. 4-20-12 thru 10-15-12; DMAP 27-2012(Temp), f. & cert. ef. 5-14-12 thru 10-15-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 14-2014(Temp), f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 27-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 38-2014, f. & cert. ef. 6-30-14; DMAP 46-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 49-2014(Temp), f. & cert. ef. 8-13-14 thru 1-11-15; DMAP 62-2014(Temp), f. 10-13-14, cert. ef. 10-14-14 thru 1-11-15; DMAP 75-2014, f. & cert. ef. 12-12-14; DMAP 76-2014(Temp), f. & cert. ef. 12-12-14 thru 6-7-15; DMAP 89-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-26-15; DMAP 4-2015(Temp), f. & cert. ef. 2-3-15 thru 6-26-15; DMAP 25-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 34-2015, f. 6-25-15, cert. ef 6-26-15; DMAP 36-2015(Temp), f. 6-26-15, cert. ef. 7-1-15 thru 12-27-15; DMAP 41-2015(Temp), f. & cert. ef. 8-7-15 thru 2-2-16; DMAP 44-2015(Temp), f. 8-21-15, cert. ef. 8-25-15 thru 12-27-15; DMAP 58-2015(Temp), f. & cert. ef. 10-9-15 thru 12-27-15; DMAP 80-2015, f. 12-23-15, cert. ef. 12-27-15; DMAP 83-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Amending PDL November 19, 2015 DUR/P&T Action
Adm. Order No.: DMAP 84-2015(Temp)
Filed with Sec. of State: 12-23-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 410-121-0030
Subject: The Pharmaceutical Services Program administrative rules (Division 121) govern Division payments for services provided to certain clients. The Division needs to amend rules as follows:

410-121-0030:

Preferred:
Budesonide
Exenatide Pen Injector
Non-Preferred:
Ciclesonide Nasal Spray/ Pump

Due to changes in supplemental rebate contracts, the following changes were made:
Removed Pegasys™
Added Sovaldi™
Added Evotaz™
Added Eliquis™
Added Pradaxa™
Removed Androgel™
Added Janumet™
Removed Humalog™
Removed Humalog Mix 50/50™
Removed Humalog Mix 75/25™
Removed Humulin R™
Removed Humulin N™
Removed Humulin 70/30™
Removed Makena™
Removed Apriso™
Removed Exelon™
Removed Capaxone™
Removed Avonex™
Removed Betaseron™
Removed Stalevo™
Removed Zubsolv™
Removed Bethkis™
Added Renagel™

Clerical — Various clerical changes were made to system class, drug and form names.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-121-0030
Practitioner-Managed Prescription Drug Plan

(1) The Practitioner-Managed Prescription Drug Plan (PMPDP) is a plan that ensures that OHP fee-for-service clients have access to the most effective prescription drugs appropriate for their clinical conditions at the best possible price:

(a) Licensed health care practitioners, who are informed by the latest peer reviewed research, make decisions concerning the clinical effectiveness of the prescription drugs;

(b) Licensed health care practitioners also consider the client's health condition, personal characteristics, and the client's gender, race, or ethnicity.

(2) PMPDP Preferred Drug List (PDL):

(a) The PDL is the primary tool the Division uses to inform licensed health care practitioners about the results of the latest peer-reviewed research and cost effectiveness of prescription drugs;

(b) The PDL contains a list of prescription drugs that the Division, in consultation with the Drug Use Review (DUR)/Pharmacy & Therapeutics Committee (P&T), has determined represent the most effective drugs available at the best possible price;

(c) The PDL shall include drugs that are Medicaid reimbursable and the Food and Drug Administration (FDA) has determined to be safe and effective.

(3) PMPDP PDL Selection Process:

(a) The Division shall utilize the recommendations made by the P&T that result from an evidence-based evaluation process as the basis for selecting the most effective drugs;

(b) The Division shall ensure the drugs selected in section (3)(a) that are available for the best possible price and shall consider any input from the P&T about other FDA-approved drugs in the same class that are available for a lesser relative price. The Division shall determine relative price using the methodology described in section (4);

(c) The Division shall evaluate selected drugs for the drug classes periodically:

(A) The Division may evaluate more frequently if new safety information or the release of new drugs in a class or other information makes an evaluation advisable;

(B) New drugs in classes already evaluated for the PDL shall be non-preferred until the new drug has been reviewed by the P&T;

(C) The Division shall make all revisions to the PDL using the rule-making process and shall publish the changes on the Division's Pharmaceutical Services provider rules website.

(4) Relative cost and best possible price determination:

(a) The Division shall determine the relative cost of all drugs in each selected class that are Medicaid reimbursable and that the FDA has determined to be safe and effective;

(b) The Division may also consider dosing issues, patterns of use, and compliance issues. The Division shall weigh these factors with any advice provided by the P&T in reaching a final decision.

(5) Pharmacy providers shall dispense prescriptions in the generic form unless:

(a) The practitioner requests otherwise pursuant to OAR 410-121-0155;

(b) The Division notifies the pharmacy that the cost of the brand name particular drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(6) The exception process for obtaining non-preferred physical health drugs that are not on the PDL drugs shall be as follows:

(a) If the prescribing practitioner in their professional judgment wishes to prescribe a physical health drug not on the PDL, they may request an exception subject to the requirements of OAR 410-121-0040;

(b) The prescribing practitioner must request an exception for physical health drugs not listed in the PDL subject to the requirements of OAR 410-121-0060;

(c) Exceptions shall be granted when:

(A) The prescriber in their professional judgment determines the non-preferred drug is medically appropriate after consulting with the Division or the Oregon Pharmacy Call Center; or

(B) Where the prescriber requests an exception subject to the requirement of section (6)(b) and fails to receive a report of PA status within 24 hours, subject to OAR 410-121-0060.

(7) **Table 121-0030-1**, PMPDP PDL dated January 1, 2016 is adopted and incorporated by reference and is found at: www.orpdl.org.

[ED. NOTE: Table referenced are available from the agency.]

Stat. Auth.: ORS 413.032, 413.042, 414.065, 414.325, 414.330 to 414.414, 414.312 & 414.316

Stats. Implemented: ORS 414.065; 414.325, 414.334, 414.361, 414.369, 414.371, 414.353 & 414.354

Hist.: OMAP 25-2002, f. 6-14-02 cert. ef. 7-1-02; OMAP 31-2002, f. & cert. ef. 8-1-02; OMAP 36-2002, f. 8-30-02, cert. ef. 9-1-02; OMAP 29-2003, f. 3-31-03 cert. ef. 4-1-03; OMAP 35-2003, f. & cert. ef. 5-1-03; OMAP 47-2003, f. & cert. ef. 7-1-03; OMAP 57-2003, f. 9-5-03, cert. ef. 10-1-03; OMAP 70-2003(Temp), f. 9-15-03, cert. ef. 10-1-03 thru 3-15-04; OMAP 82-2003, f. 10-31-03, cert. ef. 11-1-03; OMAP 9-2004, f. 2-27-04, cert. ef. 3-1-04; OMAP 29-2004, f. 4-23-04 cert. ef. 5-1-04; OMAP 34-2004, f. 5-26-04 cert. ef. 6-1-04; OMAP 45-2004, f. 7-22-04 cert. ef. 8-1-04; OMAP 81-2004, f. 10-29-04 cert. ef. 11-1-04; OMAP 89-2004, f. 11-24-04 cert. ef. 12-1-04; OMAP 19-2005, f. 3-21-05, cert. ef. 4-1-05; OMAP 32-2005, f. 6-21-05, cert. ef. 7-1-05; OMAP 58-2005, f. 10-27-05, cert. ef. 11-1-05; OMAP 16-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 32-2006, f. 8-31-06, cert. ef. 9-1-06; OMAP 48-2006, f. 12-28-06, cert. ef. 1-1-07; DMAP 4-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 16-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 36-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 39-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 17-2010, f. 6-15-10, cert. ef. 7-1-10; DMAP 40-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 2-2011(Temp), f. & cert. ef. 3-1-11 thru 8-20-11; DMAP 19-2011, f. 7-15-11, cert. ef. 7-17-11; DMAP 44-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 12-2012(Temp), f. & cert. ef. 3-16-12 thru 9-11-12; DMAP 18-2012, f. 3-30-12, cert. ef. 4-9-12; DMAP 26-2012, f. & cert. ef. 5-14-12; DMAP 29-2012, f. & cert. ef. 6-21-12; DMAP 33-2012(Temp), f. 7-18-12, cert. ef. 7-23-12 thru 1-18-13; DMAP 40-2012(Temp), f. & cert. ef. 8-20-12 thru 1-18-13; DMAP 44-2012(Temp), f. & cert. ef. 9-26-12 thru 1-18-13; DMAP 61-2012, f. 12-27-12, cert. ef. 1-1-13; DMAP 6-2013(Temp), f. & cert. ef. 2-21-13 thru 8-19-13; DMAP 23-2013(Temp), f. 4-30-13, cert. ef. 5-1-13 thru 8-19-13; Administrative correction, 7-18-13; DMAP 43-2013, f. & cert. ef. 8-16-13; DMAP 76-2013(Temp), f. 12-31-13, cert. ef. 1-1-14 thru 6-30-14; DMAP 1-2014(Temp), f. & cert. ef. 1-10-14 thru 7-9-14; DMAP 15-2014, f. & cert. ef. 3-21-14 thru 9-17-14; DMAP 28-2014(Temp), f. & cert. ef. 5-2-14 thru 6-30-14; DMAP 37-2014, f. & cert. ef. 6-30-14; DMAP 47-2014(Temp), f. & cert. ef. 7-15-14 thru 1-11-15; DMAP 52-2014(Temp), f. & cert. ef. 9-16-14 thru 1-11-15; DMAP 64-2014(Temp), f. 10-24-14, cert. ef. 10-29-14 thru 12-30-14; DMAP 77-2014, f. & cert. ef. 12-12-14; DMAP 78-2014(Temp), f. & cert. ef. 12-12-14 thru 6-9-15; DMAP 88-2014(Temp), f. 12-31-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 10-2015(Temp), f. & cert. ef. 3-3-15 thru 8-29-15; DMAP 26-2015(Temp), f. 4-17-15, cert. ef. 4-18-15 thru 6-26-15; DMAP 35-2015, f. 6-25-15, cert. ef. 6-26-15; DMAP 37-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; DMAP 57-2015(Temp), f. 9-30-15, cert. ef. 10-1-15 thru 12-27-15; DMAP 64-2015(Temp), f. & cert. ef. 11-3-15 thru 12-27-15; DMAP 66-2015(Temp), f. & cert. ef. 11-6-15 thru 12-27-15; DMAP 79-2015, f. 12-22-15, cert. ef. 12-27-15; DMAP 84-2015(Temp), f. 12-23-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Process for Resolving Disputes between CCOs and the Oregon Health Authority
Adm. Order No.: DMAP 85-2015
Filed with Sec. of State: 12-24-2015
Certified to be Effective: 12-27-15
Notice Publication Date: 11-1-2015
Rules Adopted: 410-141-3267
Rules Repealed: 410-141-3267(T)
Subject: These rules provide the existing Coordinated Care Organizations direction and clarification regarding recourse available when in dispute with the Oregon Health Authority. This rule offers Administrative Review, as specified in OAR 410-120-1580, and mediation, as outlined in the Attorney General's Model Rules located in the Administrative Procedures Act.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3267
Process for Resolving Disputes between Coordinated Care Organizations (CCOs) and the Oregon Health Authority

(1) If a CCO has a dispute with the Oregon Health Authority (Authority) as a result of a Division of Medical Assistance Programs (Division) decision that is perceived as adversely affecting a CCO, the CCO may submit a request to the Division director or his or her designee requesting an Administrative Review, as prescribed in OAR 410-120-1580.

(2) An example of such disputes include, but is not limited to, Authority decisions made through the OHA Provider Discrimination Review Process as a result of a provider discrimination appeal. These disputes primarily address legal or policy issues that may arise in the context of a Division decision that is perceived by the CCO to adversely affect the CCO and is not otherwise reviewed as a claim redetermination, a contested case, or client appeal. This rule does not involve claims that the Authority has breached its contract with a CCO. This CCO process is not mandatory, and it need not be exhausted before a CCO seeks judicial review or brings any other form of action related to any CCO/Authority dispute related decision.

(3) Within thirty calendar days of the conclusion of the administrative review, or such other time as may be agreed to by the CCO and the Division, the Division shall send written results of the administrative review to the initiating CCO and any other affected CCO. Should a resolution be reached through administrative review that is mutually agreeable to all involved, the process shall be considered complete and binding.

(4) If the dispute between the CCO and the Authority remains unresolved as a result of the administrative review, the CCO may request an alternative dispute resolution as set forth in section (5) of this rule to attempt to resolve the issue. The alternative dispute process is conducted pursuant to the Attorney General's Uniform Model Rules OAR 137-005-0060 and 137-005-0070.

(5) Not more than ten business days after receipt of the final administrative review decision, the CCO may contact the Division director indicating the CCO's intent to pursue mediation. In that request, the CCO may request to stay the administrative review decision, which the Division will grant if the CCO alleges sufficient facts and provides good cause for the stay as provided in OAR 137-004-0090.The Division shall respond within ten business days of the date of the stay request

(6) After both the CCO and the Authority agree to enter into mediation, both shall attempt to agree on the selection of the mediator and complete paperwork required to secure the mediator's services. If the CCO and the Authority are unable to agree on the selection of a mediator, both shall appoint a mediator, and those mediators shall select the final mediator. To be qualified to propose resolutions for disputes under this rule, the mediator shall:

(a) Be a knowledgeable and experienced mediator;

(b) Be familiar with health care and the disputed matters; and

(c) Follow the terms and conditions specified in this rule for the mediation process.

(7) If the dispute is likely to impact another CCO, the Authority shall notify all CCOs potentially impacted by the dispute and provide an opportunity for the impacted CCOs to participate in the dispute resolution process.

(8) The CCO and the Authority shall share in the cost of all mediation expenses, whether the dispute is resolved or not.

(9) Within ten business days of a selection of a mediator or upon a different schedule, as agreed to by the parties and the mediator, the CCO and the Authority shall submit to each other and to the mediator the following:

(a) Dispute resolution offer; and

(b) Explanation of their position, i.e., advocacy brief.

(10) The parties will engage in mediation as arranged by the mediator.

(11) The Authority shall maintain the confidentiality of proprietary information of all participating CCOs to the extent the information is protected under state or federal law.

Stat. Auth: ORS 413.042
Stats. Implemented: ORS 183.484, 183.502 & 413.042
Hist.: DMAP 39-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; DMAP 85-2015, f. 12-24-15, cert. ef. 12-27-15

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Rule Caption: Annual Updates; Relative Value Unit (RVU) Weight; Clinical Lab, ASC
Adm. Order No.: DMAP 86-2015(Temp)
Filed with Sec. of State: 12-24-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 410-120-1340
Subject: The Division of Medical Assistance Programs (Division) General Rules, administrative rules govern payments for services provided to certain eligible clients. The Division temporarily amends OAR 410-120-1340 to implement the annual updates by the Centers for Medicare and Medicaid (CMS) Relative Value Unit (RVU) weights for physician services, Clinical Lab and Ambulatory Surgical Centers.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-120-1340
Payment

(1) The Division of Medical Assistance Programs (Division) shall make payment only to the enrolled provider (see OAR 410-120-1260) who actually performs the service or to the provider's enrolled billing provider for covered services rendered to eligible clients.

(2) Division reimbursement for services may be subject to review prior to reimbursement.

(3) The Division that is administering the program under which the billed services or items are provided sets fee-for-service (FFS) payment rates.

(4) The Division uses FFS payment rates in effect on the date of service that are the lesser of:

(a) The amount billed;

(b) The Division maximum allowable amount or;

(c) Reimbursement specified in the individual program provider rules.

(5) Amount billed may not exceed the provider's "usual charge" (see definitions).

(6) The Division's maximum allowable rate setting process uses the following methodology for:

(a) Relative Value Unit (RVU) weight-based rates: For all CPT/HCPCS codes assigned an RVU weight, the 2016 Total RVU weights published in the Federal Register, Vol. 80, November 16, 2015 to be effective for dates of services on or after January 1, 2016:

(A) For professional services not typically performed in a facility, the Non-Facility Total RVU weight;

(B) For professional services typically performed in a facility, the Facility Total RVU weight;

(C) The Division applies the following conversion factors:

(i) $40.79 for labor and delivery codes (59400-59622);

(ii) $36.0666 for Federally Qualified primary care codes billed by providers meeting the criteria in OAR 410-130-0005 for dates of service between January 1, 2013 and December 31, 2014;

(iii) $27.82 for Oregon primary care providers and services not specified in sub-paragraph (ii). A current list of primary care CPT, HCPCs, and provider specialty codes is available at http://www.oregon.gov/oha/healthplan/Pages/providers.aspx

(iv) $25.48 for all remaining RVU weight based CPT/HCPCS codes.

(D) Rate calculation: Effective January 1, 2016, the Division shall calculate rates for each RVU weight-based code using statewide Geographic Practice Cost Indices (GPCIs) as follows:

(i) Work RVU) X (Work GPCI of 1) + (Practice Expense RVU) X (Practice GPCI of 0.974) + (Malpractice RVU) X (Malpractice GPCI of 0.708);

(ii) Sum in paragraph (D)(i) multiplied by the applicable conversion factor in paragraph (C).

(b) Non RVU based rates:

(A) $20.78 is the base rate for anesthesia service codes 00100-01996. The rate is based on per unit of service;

(B) Clinical lab codes are priced at 70 percent of the 2016 Medicare clinical lab fee schedule;

(C) All approved Ambulatory Surgical Center (ASC) procedures are reimbursed at 80 percent of the 2016 Medicare fee schedule;

(D) Physician administered drugs, billed under a HCPCS code, are based on Medicare's Average Sale Price (ASP). When no ASP rate is listed, the rate shall be based upon the Wholesale Acquisition Price (WAC) plus 6.25 percent. If no WAC is available, then the rate shall be reimbursed at Acquisition Cost. Pricing information for WAC is provided by First Data Bank. These rates may change periodically based on drug costs;

(E) All procedures used for vision materials and supplies are based on contracted rates that include acquisition cost plus shipping and handling;

(F) Individual provider rules may specify reimbursement rates for particular services or items.

(7) The rates in section (6) are updated periodically and posted on the Authority web site at

http://www.oregon.gov/oha/healthplan/pages/feeschedule.aspx

(8) The Division reimburses inpatient hospital service under the DRG methodology, unless specified otherwise in the Hospital Services program administrative rules (chapter 410, division 125). Reimbursement for services, including claims paid at DRG rates, may not exceed any upper limits established by federal regulation.

(9) The Division reimburses all out-of-state hospital services at Oregon DRG or FFS rates as published in the Hospital Services Program rules (OAR chapter 410, division 125) unless the hospital has a contract or service agreement with the Division to provide highly specialized services.

(10) Payment rates for in-home services provided through Department of Human Services (Department) Aging and People with Disabilities (APD) may not exceed the costs of nursing facility services unless the criteria in OAR 411-027-0020 have been met.

(11) The Division sets payment rates for out-of-state institutions and similar facilities, such as skilled nursing care facilities and psychiatric and rehabilitative care facilities at a rate that is:

(a) Consistent with similar services provided in the State of Oregon; and

(b) The lesser of the rate paid to the most similar facility licensed in the State of Oregon or the rate paid by the Medical Assistance Programs in that state for that service; or

(c) The rate established by APD for out-of-state nursing facilities.

(12) The Division may not make payment on claims that have been assigned, sold, or otherwise transferred or when the billing provider, billing agent, or billing service receives a percentage of the amount billed or collected or payment authorized. This includes, but is not limited to, transfer to a collection agency or individual who advances money to a provider for accounts receivable.

(13) The Division may not make a separate payment or copayment to a nursing facility or other provider for services included in the nursing facility's all-inclusive rate. The following services are not included in the all-inclusive rate (OAR 411-070-0085) and may be separately reimbursed:

(a) Legend drugs, biologicals and hyperalimentation drugs and supplies, and enteral nutritional formula as addressed in the Pharmaceutical Services Program administrative rules (chapter 410, division 121) and Home Enteral/Parenteral Nutrition and IV Services Program administrative rules (chapter 410, division 148);

(b) Physical therapy, speech therapy, and occupational therapy provided by a non-employee of the nursing facility within the appropriate program administrative rules (chapter 410, division 129 and 131);

(c) Continuous oxygen that exceeds 1,000 liters per day by lease of a concentrator or concentrators as addressed in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122);

(d) Influenza immunization serum as described in the Pharmaceutical Services program administrative rules (chapter 410, division 121);

(e) Podiatry services provided under the rules in the Medical-Surgical Services program administrative rules (chapter 410, division 130);

(f) Medical services provided by a physician or other provider of medical services, such as radiology and laboratory, as outlined in the Medical-Surgical Services program rules (chapter 410, division 130);

(g) Certain custom fitted or specialized equipment as specified in the Durable Medical Equipment, Prosthetics, Orthotics and Supplies program administrative rules (chapter 410, division 122).

(14) The Division reimburses hospice services based on CMS Core-Based Statistical Areas (CBSA's). A separate payment may not be made for services included in the core package of services as outlined in OAR chapter 410, division 142.

(15) Payment for Division clients with Medicare and full Medicaid:

(a) The Division limits payment to the Medicaid allowed amount, less the Medicare payment, up to the Medicare co-insurance and deductible,

whichever is less. The Division's payment may not exceed the co-insurance and deductible amounts due;

(b) The Division pays the allowable rate for covered services that are not covered by Medicare.

(16) For clients with third-party resources (TPR), the Division pays the allowed rate less the TPR payment but not to exceed the billed amount.

(17) The Division payments, including contracted PHP or CCO payments, unless in error, constitute payment in full, except in limited instances involving allowable spend-down or copayments. For the Division, payment in full includes:

(a) Zero payments for claims where a third party or other resource has paid an amount equivalent to or exceeding Division allowable payment; and

(b) Denials of payment for failure to submit a claim in a timely manner, failure to obtain payment authorization in a timely and appropriate manner, or failure to follow other required procedures identified in the individual provider rules.

(18) Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025, 414.033, 414.065, 414.095, 414.727, 414.728, 414.742 & 414.743

Hist.: PWC 683, f. 7-19-74, ef. 8-11-784; PWC 803(Temp), f. & ef. 7-1-76; PWC 812, f. & ef. 10-1-76; Renumbered from 461-013-0061; PWC 833, f. 3-18-77, ef. 4-1-77; Renumbered from 461-013-0061; AFS 5-1981, f. 1-23-81, ef. 3-1-81; Renumbered from 461-013-0060, AFS 47-1982, f. 4-30-82 & AFS 52-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the branch offices of North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 117-1982, f. 12-30-82, ef. 1-1-83; AFS 24-1985, f. 4-24-85, ef. 6-1-85; AFS 50-1985, f. 8-16-85, ef. 9-1-85; HR 2-1990, f. 2-12-90, cert. ef. 3-1-90, Renumbered from 461-013-0081, 461-013-0085, 461-013-0175 & 461-013-0180; HR 41-1991, f. & cert. ef. 10-1-91; HR 32-1993, f. & cert. ef. 11-1-93, Renumbered from 410-120-0040, 410-120-0220, 410-120-0200, 410-120-0240 & 410-120-0320; HR 2-1994, f. & cert. ef. 2-1-94; HR 5-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 10-1999, f. & cert. ef. 4-1-99; OMAP 3-2003, f. 1-31-03, cert. ef. 2-1-03; OMAP 62-2003, f. 9-8-03, cert. ef.10-1-03; OMAP 10-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 39-2005, f. 9-2-05, cert. ef. 10-1-05; OMAP 15-2006, f. 6-12-06, cert. ef. 7-1-06; OMAP 45-2006, f. 12-15-06, cert. ef. 1-1-07; DMAP 24-2007, f. 12-11-07 cert. ef. 1-1-08; DMAP 34-2008, f. 11-26-08, cert. ef. 12-1-08; DMAP 35-2008, f. 12-11-08, cert. ef. 1-1-09; DMAP 38-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 39-2010, f. 12-28-10, cert. ef. 1-1-11; DMAP 22-2011(Temp), f. 7-29-11, cert. ef. 8-1-11 thru 1-25-12; DMAP 36-2011, f. 12-13-11, cert. ef. 1-1-12; DMAP 28-2012, f. 6-21-12, cert. ef. 7-1-12; DMAP 41-2012(Temp), f. 8-22-12, cert. ef. 9-1-12 thru 2-28-13; DMAP 49-2012, f. 10-31-12, cert. ef. 11-1-12; DMAP 14-2013(Temp), f. & cert. ef. 3-29-13 thru 9-25-13; DMAP 49-2013, f. & cert. ef. 9-25-13; DMAP 71-2013, f. & cert. ef. 12-27-13; DMAP 24-2014, f. & cert. ef. 4-4-14; DMAP 83-2014(Temp), f. 12-23-14, cert. ef. 1-1-15 thru 6-29-15; DMAP 11-2015, f. & cert. ef. 3-4-15; DMAP 86-2015(Temp), f. 12-24-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Aligns Non-Emergent Medical Transportation Vehicle and Subcontractor Standards with New Statute Regarding Inhalants

Adm. Order No.: DMAP 87-2015

Filed with Sec. of State: 12-29-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 12-1-2015

Rules Amended: 410-136-3040

Subject: This amendment adds language regarding aerosolizing or vaporizing to the existing rule to bring subcontractor and vehicle standards into alignment with changes to the Oregon Indoor Clean Air Act made in HB 2456, which passed in the 2015 legislative session.

Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-136-3040

Vehicle Equipment and Subcontractor Standards

(1) Brokerages shall require subcontractors to maintain their vehicles for the comfort and safety of the clients. The vehicles shall meet the following requirements:

(a) The interior of the vehicle shall be clean;

(b) The subcontractor shall not smoke, aerosolize or vaporize an inhalant or permit smoking, aerosolizing or vaporizing of an inhalant in the vehicle at any time; and

(c) The subcontractor shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. The vehicle shall include, but is not limited to, the following safety equipment:

(A) Safety belts for all passengers if the vehicle is legally required to provide safety belts;

(B) A first aid kit;

(C) A fire extinguisher;

(D) Roadside reflective or warning devices;

(E) A flashlight;

(F) Tire traction devices when appropriate;

(G) Disposable gloves; and

(H) All equipment necessary to transport clients using wheelchairs or stretchers if the subcontractor uses the vehicle for these modes of transport.

(2) The subcontractor shall follow a preventative maintenance schedule that incorporates at least all of the maintenance recommended by the vehicle manufacturer. The vehicle must be in good operating condition and shall include, but is not limited to:

(a) Side and rear view mirrors;

(b) A horn; and

(c) Working turn signals, headlights, taillights and windshield wipers.

(3) Brokerages shall require the subcontractors' drivers to receive training on their job duties and responsibilities, including:

(a) Understanding NEMT services in general, reporting forms, vehicle operation, requirements for fraud and abuse reporting and the geographic area in which subcontractors will provide service;

(b) Requiring the subcontractors' drivers to complete the National Safety Council Defensive Driving course or an equivalent course within six months of the date of hire and at least every three years thereafter;

(c) Requiring the subcontractors' drivers to complete Red Cross-approved First Aid, Cardiopulmonary Resuscitation and blood spill procedures courses or equivalent courses within six months of the date of hire and to maintain the certification as a condition of employment;

(d) Requiring the subcontractors' drivers to complete the Passenger Service and Safety course or an equivalent course within six months of the date of hire and at least every three years thereafter;

(e) Understanding established procedures for subcontractors and the subcontractors' drivers in the event that the client needs emergency care during the ride; and

(f) If providing ground or air ambulance services, verifying that the Authority has licensed the subcontractor to operate ground or air ambulance. If the subcontractor is located in a contiguous state and regularly provides rides to OHP eligible clients, the brokerage must ensure that both the Authority and the contiguous state have licensed the subcontractor.

(4) Brokerages shall require the following when hiring a subcontractor:

(a) The subcontractor's driver must have valid driver license. The license must be the class of license, with any required endorsements, that permits the subcontractor's driver to legally operate the vehicle for which they are hired to drive per ORS Chapter 807 and OAR chapter 735, division 062, or the applicable statutes of other states; and

(b) The subcontractor's drivers must pass a criminal background check in accordance with ORS 181.534 and 181.537 and OAR chapter 257, division 10, or if the brokerage is a mass transit district formed under ORS Chapter 267, the subcontractor's drivers must pass a criminal background check in accordance with ORS 267.237 and the mass transit district's background check policies. The brokerage may request an exception to this requirement in writing to the Authority, but only the Authority may grant the exception. Approval of the exception is dependent upon when the crime occurred, the nature of the offense, and any other circumstances to ensure that the client is not at risk of harm from the subcontractor. If approved, the Authority shall document the approval within 30 days of the request.

(5) For authorized out-of-state NEMT services in which the subcontractor solely performs work in the other state and for which the brokerage has no oversight authority, the brokerage is not responsible for requiring that the subcontractor's vehicle and the subcontractor's standards meet the requirements set forth in this rule.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13; DMAP 87-2015, f. 12-29-15, cert. ef 1-1-16

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Rule Caption: Aligns Non-Emergent Medical Transportation Vehicle and Subcontractor Standards with New Statute Regarding Inhalants

Adm. Order No.: DMAP 88-2015

Filed with Sec. of State: 12-29-2015

Certified to be Effective: 1-1-16

Notice Publication Date: 12-1-2015

Rules Amended: 410-141-3440
Subject: This rule amendment adds language regarding aerosolizing or vaporizing to the existing rule to bring subcontractor and vehicle standards into alignment with changes to the Oregon Indoor Clean Air Act made in HB 2456, which passed in the 2015 legislative session.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3440
Vehicle Equipment and Driver Standards

(1) This rule does not apply to ambulance providers, ambulance vehicles, or ambulance personnel that are licensed and regulated by ORS Chapter 682 and OAR chapter 333, divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.

(2) The CCO shall require all vehicles used for NEMT services to meet the following requirements for the comfort and safety of the members:

(a) The interior of the vehicle shall be clean and free from any debris impeding a member's ability to ride comfortably;

(b) Smoking, aerosolizing or vaporizing of inhalants is prohibited in the vehicle at all times in accordance with ORS 433.835 to 433.990 and OAR 333-015-0025 to 333-015-0090; and

(c) The transportation provider shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. The vehicle shall include, but is not limited to, the following safety equipment:

(A) Safety belts for all passengers if the vehicle is legally required to provide safety belts;

(B) First aid kit;

(C) Fire extinguisher;

(D) Roadside reflective or warning devices;

(E) Flashlight;

(F) Tire traction devices when appropriate;

(G) Disposable gloves; and

(H) All equipment necessary to transport members using wheelchairs or stretchers, if the member is using a wheelchair or stretcher.

(3) A preventative maintenance schedule shall be followed for each vehicle that incorporates at least all of the maintenance recommended by the vehicle manufacturer. The vehicle must be in good operating condition and shall include, but is not limited to, the following equipment:

(a) Side and rear view mirrors;

(b) Horn; and

(c) Working turn signals, headlights, taillights, and windshield wipers.

(4) Prior to hiring an NEMT driver, the CCO shall require the following:

(a) The driver must have a valid driver license. The license must be the class of license with any required endorsements that permits the driver to legally operate the vehicle for which they are hired to drive pursuant to ORS chapter 807 and OAR chapter 735, division 062, or the applicable statutes of other states; and

(b) The driver must pass a criminal background check in accordance with ORS 181.534, 181.537, and OAR chapter 257, division 10. If the driver is employed by a mass transit district formed under ORS Chapter 267, the driver must pass a criminal background check in accordance with ORS 267.237 as well as the mass transit district's background check policies. A CCO shall have an exception process to the criminal background check requirement that may allow approval of a driver with a criminal background under certain circumstances. The exception process must include review and consideration of when the crime occurred, the nature of the offense, and any other circumstances to ensure that the member is not at risk of harm from the driver. Any approvals made through the exception process must be documented and maintained for three calendar years, even if the CCO is no longer a Medicaid enrolled provider before the end of the three years. The Authority may request this information at any time during the three year retention period.

(5) Drivers authorized to provide NEMT services must receive training on their job duties and responsibilities including:

(a) Understanding NEMT services in general, reporting forms, vehicle operation, requirements for fraud and abuse reporting, and the geographic area in which drivers will provide service;

(b) Completing the National Safety Council Defensive Driving course or equivalent within six months of the date of hire and at least every three years thereafter;

(c) Completing Red Cross-approved First Aid, Cardiopulmonary Resuscitation, and blood spill procedures courses or equivalent within six months of the date of hire and maintain the certification;

(d) Completing the Passenger Service and Safety course or equivalent course within six months of the date of hire and at least every three years thereafter; and

(e) Understanding the CCO's established procedures for responding to a member's needs for emergency care should they arise during the ride.

(6) For authorized out-of-state NEMT services in which the transportation provider solely performs work in the other state and for which the CCO has no oversight authority, the CCO is not responsible for requiring that the subcontractor's vehicle and standards meet the requirements set forth in this rule.

Stat. Auth.: ORS 413.042 & 414.625
Stats. Implemented: ORS 414.625
Hist.: DMAP 40-2014, f. & cert. ef. 7-1-14; DMAP 88-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: OHP FFS Program, Begin Requiring PA for Billing Out-Of-Hospital Birth and Gender Dysphoria Surgery Services
Adm. Order No.: DMAP 89-2015
Filed with Sec. of State: 12-30-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 410-130-0200
Rules Repealed: 410-130-0200(T)
Subject: This rule specifies the medical billing codes for which the OHP FFS medical surgical program requires prior authorization (PA) for reimbursement. The codes for which PA is required are listed in Table 1 of the rule. The amendments to the rule add the billing codes used for out-of-hospital birth services and gender dysphoria surgeries to the list of codes requiring prior authorization.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-130-0200
Prior Authorization

(1) For fee-for-service (FFS) clients, prior authorization (PA) is required for all procedure codes listed in Table 130-0200-1 regardless of the setting in which they are performed unless the setting is otherwise specified in Table 1 of this rule. For details on where to obtain PA, download a copy of the Medical-Surgical Services Supplemental Information booklet at: http://www.oregon.gov/oha/healthplan/Pages/medical-surgical.aspx.

(2) Providers must obtain PA from the OHP payer, either FFS or CCO; which shall be responsible for payment at the time the service is delivered.

(3) The Division shall authorize for the level of care or type of service that meets the client's medical need consistent with the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List) and guideline notes, as referenced in OAR 410-141-0520.

(4) Codes for which medical need has not been specified by the HERC shall be authorized based on medical appropriateness as the term is defined in OAR 410-120-0000.

(5) For out-of-hospital birth PA requests, initial documentation adequate to assess pregnancy risk per OAR 410-130-0240 must be received before 27 weeks 6 days gestation. Exceptions to the 27 week 6 day limit may be granted in cases where the member has recently moved into Oregon, provided requirements for prior prenatal care documentation are met. Requests for ongoing documentation to continue the support of assessment of pregnancy risk must also be met per OAR 410-120-1320(2)(3).

(6) For bariatric surgery, PA is required in two steps from:

(a) The OHP primary care provider prior to referral to a bariatric surgery center, and

(b) The bariatric surgery center prior to surgery.

(7) PA is not required:

(a) For clients with both Medicare and Medical Assistance Program coverage, and the service is covered by Medicare. However, PA is still required for bariatric surgeries and evaluations and most transplants, even if they are covered by Medicare;

(b) For kidney and cornea transplants unless they are performed out-of-state;

(c) For emergent or urgent procedures or services;

(d) For hospital admissions unless the procedure requires PA.

(8) A second opinion may be requested by the Division or the contractor before PA is given.

(9) Treating and performing practitioners are responsible for obtaining PA.

(10) PA documentation must be complete and legible.

(11) PA shall be considered based on the documentation submitted.

(12) Refer to Table 130-0200-1 for all services and procedures requiring PA.

(13) **Table 130-0200-1**.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065

Hist.: AFS 868, f. 12-30-77, ef. 2-1-78; AFS 65-1980, f. 9-23-80, ef. 10-1-80; AFS 27-1982, f. 4-22-82 & AFS 51-1982, f. 5-28-82, ef. 5-1-82 for providers located in the geographical areas covered by the AFS branch offices located in North Salem, South Salem, Dallas, Woodburn, McMinnville, Lebanon, Albany and Corvallis, ef. 6-30-82 for remaining AFS branch offices; AFS 23-1986, f. 3-19-86, ef. 5-1-86; AFS 38-1986, f. 4-29-86, ef. 6-1-86; AFS 50-1986, f. 6-30-86, ef. 8-1-86; AFS 5-1989(Temp), f. 2-9-89, cert. ef. 3-1-89; AFS 48-1989, f. & cert. ef. 8-24-89, Renumbered from 461-014-0045; HR 10-1990, f. 3-30-90, cert. ef. 4-1-90, Renumbered from 461-014-0630; HR 25-1990(Temp), f. 8-31-90, cert. ef. 9-1-90; HR 44-1990, f. & cert. ef. 11-30-90; HR 17-1991(Temp), f. 4-12-91, cert. ef. 5-1-91; HR 24-1991, f. & cert. ef. 6-18-91; HR 40-1992, f. 12-31-92, cert. ef. 2-1-93; HR 6-1994, f. & cert. ef. 2-1-94; HR 42-1994, f. 12-30-94, cert. ef. 1-1-95; HR 4-1997, f. 1-31-97, cert. ef. 2-1-97; OMAP 3-1998, f. 1-30-98, cert. ef. 2-1-98; OMAP 17-1999, f. & cert. ef. 4-1-99; OMAP 31-2000, f. 9-29-00, cert. ef. 10-1-00; OMAP 23-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 69-2003 f. 9-12-03, cert. ef. 10-1-03; OMAP 13-2004, f. 3-11-04, cert. ef. 4-1-04; OMAP 58-2004, f. 9-10-04, cert. ef. 10-1-04; OMAP 8-2005, f. 3-9-05, cert. ef. 4-1-05; OMAP 50-2005, f. 9-30-05, cert. ef. 10-1-05; OMAP 26-2006, f. 6-14-06, cert. ef. 7-1-06; DMAP 5-2007, f. 6-14-07, cert. ef. 7-1-07; DMAP 27-2007(Temp), f. & cert. ef. 12-20-07 thru 5-15-08; DMAP 12-2008, f. 4-29-08, cert. ef. 5-1-08; DMAP 20-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 18-2009, f. 6-12-09, cert. ef. 7-1-09; DMAP 15-2010, f. 6-10-10, cert. ef. 7-1-10; DMAP 34-2010, f. 12-15-10, cert. ef. 1-1-11; DMAP 43-2011, f. 12-21-11, cert. ef. 1-1-12; DMAP 43-2014, f. & cert. ef. 7-8-14; DMAP 55-2014(Temp), f. 9-26-14, cert. ef. 10-1-14 thru 3-30-15; DMAP 13-2015, f. & cert. ef. 3-10-15; DMAP 68-2015(Temp), f. 11-25-15, cert. ef. 12-1-15 thru 5-28-16; DMAP 89-2015, f. 12-30-15, cert. ef. 1-1-16

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Rule Caption: Flexible Services, Definition, Direction and Reporting of Non-State Plan, Health Related Services
Adm. Order No.: DMAP 90-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 410-141-3150
Rules Repealed: 410-141-3150(T)
Subject: The Division needs to amend this rule to provide the CCO framework for compliance with the 1115 Waiver demonstration for the Oregon Health Plan-Waiver as they apply to non-state plan, health related services provided in-lieu of Medicaid managed care benefits. These services are intended to improve care delivery and member health and lower costs.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3150
Flexible Services

(1) Flexible Services, as cross referenced in OAR 410-141-0000, in alignment with the CMS Waiver, and for purposes of this rule, means non-state plan, non-covered health related services. These services are provided instead of or as an adjunct to benefits and are intended to improve health delivery and member health and lower costs. Flexible services are likely to be cost-effective alternatives to covered benefits and are likely to generate savings. These services may effectively treat or prevent physical, oral, or behavioral health conditions, improve health outcomes, and prevent or delay health deterioration. Flexible services are consistent with the member's treatment plan as developed by the member's care team and documented in the member's medical record as specified in OAR 410-141-3180. Flexible services lack traditional billing or encounter codes, are not encounterable, and cannot be reported for utilization purposes.

(2) The Authority requires all CCOs to reflect the above standardized definition of flexible services in their policies and procedures (P&Ps). These P&Ps shall be written in collaboration with the Authority and are intended for administration of flexible services through their provider network. Flexible services P&Ps shall encourage transparency and provider and member engagement, reflect streamlined administrative processes that do not create unnecessary barriers, and provide for accountability.

(3) CCO flexible services policies shall:

(a) Describe how members and primary care teams are engaged;

(b) Allow providers outside of the primary care team to render and coordinate flexible services efficiently;

(c) Provide mechanisms to capture services within the treatment plan and clinical record as specified in OAR 410-141-3180;

(d) Provide efficient decision making processes that are separate from CCO prior authorization protocols;

(e) Describe how community resources are considered and coordinated with community partners;

(f) Describe the data collection and tracking reporting plan;

(g) Efficiently and effectively reduce costs and improve care; validate that no cost sharing is required and that no administrative burden is imposed on the member;

(h) Provide clear accountability for service delivery;

(i) Allow for consideration of any flexible services requested; and

(j) Not limit the range of possible flexible services.

(4) Flexible services provided to individual members shall be consistent with the member's treatment plan as developed by the member's care team and agreed to by the CCO. The care team and the CCO shall work with the member and, as appropriate, the family of the member in determination of the additional health related services effective as alternative in the member's care. These services shall be documented in the member's treatment plan and clinical record, as specified in OAR 410-141-3180.

(5) Flexible services provided on a community based level and initiated by the CCO shall, for documentation purposes, be reflected with date and details within the Community Advisory Council (CAC) minutes in the same calendar quarter as the activity occurrence. Such activities might include: Programs to improve the general community health, e.g., farmers' market in the "food desert" or classes on healthy meal preparation.

(6) An enrollee's request to have an approved state plan service rather than a flexible service must be honored when medically necessary.

(7) Flexible services are not accounted for in the medical expenses part of the capitation rate.

(8) CCOs shall submit their financial reporting for flexible services as directed through their contracting agreement with the Authority.

(9) As allowed under 42 CFR 438.6(e), CCOs are always at liberty to offer any additional health related services. The services are separate from flexible services and delivered at the complete discretion of the CCO.

(10) All CCOs shall have written P&Ps for a grievance system. A grievance process, described in OAR 410-141-3261, applies only to those situations in which the member or their representative expresses concern or dissatisfaction about any matter other than an "Action," as referenced in 42 CFR 438.400, (b)(6). A flexible services outcome is not an "Action." CCOs shall have written procedures to acknowledge the receipt, disposition, and documentation of each grievance from members as specified in 42 CFR 438.402-408 and OAR 410-141-3260 through 410-141-3264.

(11) CCOs shall provide to members a written outcome regarding flexible services requests and shall be copied to any representative of the member and any provider who made or participated in the request on the member's behalf. Flexible services outcomes are subject to the grievance provisions of OAR 410-141-3260 and 410-141-3261. The written outcomes shall inform the member and any provider of the member's right to file a grievance in response to the outcome.

(12) Except as provided in section (11), members have no appeal or hearing rights in regard to a flexible services outcome.

Stat. Auth.: ORS 413.042

Stats Implemented: ORS 413.042

Hist.: DMAP 43-2015(Temp), f. & cert. ef. 8-13-15 thru 2-8-16; DMAP 90-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Service Area Change for Existing CCOs
Adm. Order No.: DMAP 1-2016
Filed with Sec. of State: 1-7-2016
Certified to be Effective: 1-7-16
Notice Publication Date: 11-1-2015
Rules Adopted: 410-141-3040
Rules Repealed: 410-141-3040(T)
Subject: These rules provide the framework for existing Coordinated Care Organizations (CCOs) electing to apply to the Authority for service area change, once the Authority has stated that it has a need for network and capacity in a given service area. The rule provides for the service area change process and the review tool and mechanism and designates a means for dispute should a CCO not agree with the application review findings or process.
Rules Coordinator: Sandy Cafourek—(503) 945-6430

410-141-3040
Service Area Change (SAC) for Existing Coordinated Care Organizations (CCOs)

This rule shall be effective retroactively to December 27, 2015.

(1) For purposes of this rule, the following definitions apply:

(a) "Applicant" means a coordinated care organization (CCO) as defined in ORS 414.625 with a CCO contract with the Authority that submits an application seeking recertification and a contract amendment for a

new service area. The CCO is described for purposes of this rule as the applicant upon its submission of the CCO Letter of Intent to Apply;

(b) "Document Review" means the review conducted by the Authority, occurring at the point after the receipt of the completed SAC packet and before the effective date of the contract amendment, to determine applicant's ability to serve Medicaid beneficiaries in the requested service areas;

(c) "Letter of intent to apply (LOIA)" means a letter from a CCO to the Authority stating the CCO's intent to submit a SAC packet in response to a service area need. A LOIA may be binding or non-binding, as specified in the Authority's announcement of the service area need;

(d) "Recertification" means the process outlined in this rule, allowing the CCO to submit an abbreviated application to apply as an existing CCO for a new CCO service area and that meets the requirements of ORS 414.625 and the standards set forth in this rule;

(e) "SAC packet" means the packet of application documents that the Authority provides to CCOs applying for a SAC;

(f) "Service Area Change" or "SAC" means a change in a CCO's service area as specified in the Authority's contract with the CCO;

(g) "Service area need" means when the Authority identifies a need, as defined in section (3) of this rule, for existing CCOs to apply to the Authority for a SAC to serve a service area.

(2) A CCO that desires to withdraw from all or a portion of its service area shall make every effort to provide the Authority with a form Letter of Intent to Exit the service area at least 150 calendar days prior to the intended date of withdrawal. The template for this form can be found on the CCO Contract Forms page at: www.oregon.gov/OHA/healthplan/pages/CCO-Contract-Forms.aspx. The Authority shall work with the CCO and any other impacted CCO for a workable exit transition.

(3) The Authority may determine a service area need exists, or is anticipated to exist, when a CCO would no longer be serving all or a portion of its service area.

(4) The Authority shall follow the process set forth in this rule when announcing a need for a SAC:

(a) Within thirty days of the Authority's identification of a need for a SAC, the Authority shall notify all existing CCOs that the Authority will begin accepting LOIAs for the SAC. The announcement shall specify when the LOIA is due;

(b) Not later than fifteen calendar days from the date of the Authority's notification in section (4)(a) above, the Authority shall issue a second announcement of the Authority's identification of a need for a SAC and when LOIAs are due;

(c) To be considered for a SAC, interested CCOs shall submit their LOIAs by the deadline indicated in the Authority's notice of a need for a SAC. CCOs shall designate a sole point of contact in their LOIA for this process. The Authority will not accept a LOIA or any subsequent SAC application materials from a CCO that has not submitted a LOIA by the deadline indicated in the Authority's notice;

(d) The Authority shall send a letter of acknowledgement to the CCO within ten calendar days of receipt of the LOIA.

(5) Within thirty calendar days of the date specified by the Authority as the due date for submission of a LOIA, the CCO shall complete a SAC packet in its entirety and submit it to the contract administration unit at the address indicated in the SAC application packet. CCOs can locate a SAC packet on the CCO Contract Forms page at: www.oregon.gov/OHA/healthplan/pages/CCO-Contract-Forms.aspx. The completed SAC recertification application is the applicant's offer to enter into a contract for the period and service area specified in the SAC packet.

(6) CCOs applying for the service area change process outlined in this rule must meet the requirements set forth in ORS 414.625 and submit documentation as it applies to the new service areas indicated in the application. Documentation requirements, based on criteria set forth in OAR 410-141-3010 and 410-141-3015, shall be included in the acknowledgement letter sent by the Authority as described in section 4(d), which shall include, but is not limited to, information related to the following:

(a) Delivery system network and provider capacity reports highlighting any providers operating in the new service area or existing contracted providers expanding their services into the new service area. This report would include providers of physical health, oral health, behavioral health, and non-emergent medical transportation. New relationships with dental care organizations (DCOs) and Non-Emergent Medical Transportation brokerages are to be included;

(b) Updated financial reports;

(c) Updated CCO governance organizational charts reflecting any changes due to new service area including CCO leadership and managerial staffing, changes to Community Advisory Committee members, Clinical Advisory Panels membership, and any other committee or governance structure change as a result of operating in the new service area;

(d) Letters of community support from the community or communities in the new service area in which the CCO is applying to operate;

(e) List of specific new zip codes the CCO intends to serve and the estimated enrollment for each zip code area;

(f) Memorandums of understanding or letters of intent to enter into memorandums of understanding with local APD/AAA agencies, local mental health authority, local public health authority, and any other key stakeholders represented in the new service area;

(g) Updated Community Health Improvement Plan (CHP) reflecting new service area goals, if applicable;

(h) Updated Transformation Plan benchmarks or focus areas reflecting new service area goals, if applicable;

(i) Information related to how services in the new service area will impact existing operations including updated policies and procedures as applicable;

(j) Information related to identifying regional, cultural, socioeconomic, and racial disparities in health care that exist among the enrollees in the new service area and establishing community support for those areas of need; and,

(k) Information related to coordination of care and transfer of new members, specifically high risk members or members with special health care needs.

(7) The Authority shall review SAC packets from all CCOs that have timely submitted a LOIA and SAC packet as required by this rule and that are considered responsive and completed as set forth in this rule.

(8) During its review of the SAC packets, the Authority may request additional information from a CCO. If additional information is requested, the CCO shall submit the additional information to the Authority within 30 days of the request.

(9) Within sixty calendar days from the date the initial SAC packets were due, the Authority shall complete its document review. This includes the final submission date for the SAC packet and receipt by the Authority of all additional requested information. Applicants are eligible for recertification based on criteria specified in section (6) of this rule, supporting documentation submitted by the applicant, and any additional information that the Authority obtains as part of the SAC process. To be eligible for recertification in the new service area, the applicant must meet standards established by the Authority, this rule, and be in compliance with the contract between the CCO and the Authority.

(10) If two or more CCOs meet the requirements to expand into a service area based on criteria set forth in this rule, the Authority shall determine which CCO will be selected to serve the new service area utilizing the criteria set forth in OAR 410-141-3015(4).

(11) The Authority shall prepare a contract amendment for document review and signature to each CCO that receives recertification to expand into the new service area. The CCO shall have sixty calendar days to return an executed contract amendment for the service area change.

(12) Applicants shall have the right to dispute any Authority actions or decisions pertaining to service area changes as set forth in OAR 410-141-3267.

Stat. Auth: ORS 413.042, 414.645, 414.625
Stats. Implemented: ORS 413.042
Hist.: DMAP 38-2015(Temp), f. & cert. ef. 7-1-15 thru 12-27-15; DMAP 67-2015(Temp), f. & cert. ef. 11-6-15 thru 12-27-15; DMAP 1-2016, f. & cert. ef. 1-7-16

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Oregon Health Authority,
Health Licensing Office
Chapter 331

Rule Caption: Adds a pathway to polysomnography licensure for RPSGT credentialed individuals pursuant to HB 2305.
Adm. Order No.: HLO 5-2015
Filed with Sec. of State: 12-21-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 9-1-2015
Rules Amended: 331-710-0050
Subject: The 2015 Legislature passed HB 2305 which allows applicants to obtain a polysomnographic technologist license if the applicant meets a combination of education or training as of March 1, 2013 and holds an active credential as a registered polysomnographic

technologist (RPSGT) through the Board of Registered Polysomnographic Technologists (BRPT).

The amendment adds an additional pathway to licensure for individuals who have obtained the RPSGT credential through the BRPT either before or after meeting the combined education and training requirements established by the BRPT as of March 1, 2013. This allows individuals who are coming into Oregon from other states where there is no licensing requirements for polysomnography to obtain licensure in Oregon without having to retake the RPSGT examination or be supervised for 18 months.

The rule also requires information be sent directly to the Health Licensing Office from the BRPT including examination results and completion of education and training.

Rules Coordinator: Samantha Patnode—(503) 373-1917

331-710-0050

Application Requirements for Polysomnographic Technologist License

(1) An individual applying for licensure to practice polysomnography must:

(a) Meet the requirements of OAR chapter 331 division 30;

(b) Submit a completed application form prescribed by the Agency, containing the information listed in OAR 331-030-0000 and accompanied by payment of the required fees;

(c) Submit fingerprint-based national criminal background check pursuant to OAR 331-030-0004;

(d) Be at least 18 years of age, and must provide documentation, confirming date of birth, such as a copy of the birth certificate, driver's license or passport;

(e) Submit proof of having a high school diploma or equivalent;

(f) Submit current certification in cardiopulmonary resuscitation by an Agency approved provider; and

(2) Submit documentation of qualification through one of the following pathways:

(a) License Pathway One Academic Degree: An applicant under pathway one must:

(A) Submit official transcripts defined under OAR 331-705-0050 showing successful completion of an Associate's degree in polysomnography, polysomnographic technology, or sleep technology from an accredited community college, college or university, or successful completion of a polysomnography course of study from a CAAHEP accredited institution. In addition to an official transcript defined under 331-705-0050 an applicant who has obtained education through a CAAHEP accredited institution must submit a statement, signed by the Registrar or a Dean of a college or university and sent directly to the Agency from that college or university, verifying the applicant has successfully completed a polysomnography course of study;

(B) Submit satisfactory evidence of passage a Board approved examination listed under OAR 331-712-0010(1) within two years before the date of application. Examination results must be submitted to the Agency directly from the examination provider; examination results or other documentation provided directly by the applicant are not acceptable;

(C) Submit examination fees;

(D) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(E) Submit licensing fees.

(b) License Pathway Two Polysomnographic Technologist Temporary Licensee: An applicant under pathway two must applying for permanent licensure must:

(A) Submit documentation showing completion of 18 months of training and work experience pursuant to OAR 331-710-0110, obtained under polysomnographic technologist temporary-DS licensure (See 331-710-0060) and temporary-IS licensure (See 331-710-0080), including verification by an approved supervisor pursuant to 331-710-0100, and certification of successful completion and satisfactory performance of such experience by a qualified medical director for polysomnography, all on forms provided by the Agency;

(B) Submit satisfactory evidence of passage of a Board approved examination listed under OAR 331-712-0010(1) or (2) within two years before the date of application. Examination results must be submitted to the Agency directly from the examination provider; examination results or other documentation provided directly by the applicant are not acceptable;

(C) Submit examination fees;

(D) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(E) Submit licensing fees.

(c) License Pathway Three Reciprocity: An applicant under pathway three must:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040, from every state where the applicant has been licensed as a polysomnographic technologist, including an affidavit of licensure demonstrating proof of a current polysomnographic technologist license from another state, obtained through qualifications substantially equivalent to Oregon's requirements. At least one of the applicant's out-of-state licenses must be active and all of the applicant's out-of-state licenses must not be subject to current or pending disciplinary action, and must be free from disciplinary history for three years before the date of application for Oregon polysomnographic licensure;

(B) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(C) Submit licensing fees.

(d) License Pathway Four Endorsement: An applicant may qualify for licensure by endorsement if the applicant holds a qualifying professional credential in another field. An applicant under pathway four must:

(A) Submit an affidavit of licensure pursuant to OAR 331-030-0040 demonstrating proof of a current license, which is active with no current or pending disciplinary action, and no disciplinary history for the three years before the date of application for Oregon polysomnographic licensure, as a:

(B) Physician (Doctor of Medicine or Doctor of Osteopathy) licensed under ORS Chapter 677;

(C) Respiratory therapist licensed under ORS chapter 688 with the RPSGT credential from the BRPT; or

(D) CRT or RRT who holds a Sleep Disorder Specialty credential through NBRC;

(E) Submit examination fees;

(F) Submit satisfactory evidence of having passed the Board approved examination listed under OAR 331-712-0010(3) within two years before the date of application; and

(G) Submit licensing fees.

(e) License Pathway Five BRPT Credential: Pursuant to Oregon Law 2015, Chapter 78 an applicant under pathway five must submit documentation showing completion of a combined education and training program required and approved by the BRPT as of March 1, 2013; and must:

(A) Prove successful passage of the RPSGT examination provided by the BRPT:

(i) After completing a combined education and training program required and approved by the BRPT as of March 1, 2013; or

(ii) Before the BRPT required an individual to complete a combined education and training program in order to take the examination, and has since met the education and training requirements established by the BRPT as of March 1, 2013;

(B) Submit examination fees; and

(C) Submit satisfactory evidence of having passed the Oregon Laws and Rules examination for polysomnography listed under OAR 331-712-0010(3) within two years before the date of application.

(D) For the purpose of subsection (e) of this rule "education" includes a self-study education program approved by the BRPT as of March 1, 2013.

(E) For the purpose of subsection (e) of this rules combined education and training and examination results must be submitted to the Agency directly from the BRPT; examination results or other documentation provided directly by the applicant are not acceptable.

(F) A copy of the 2013 BRPT RPSGT Candidate Handbook is available at the Health Licensing Office or a PDF version is available at http://www.brpt.org/downloads/exam/BRPT-RPSGT-Candidate-Handbook_2014_11-2014.pdf.

Stat. Auth.: ORS 676.605, 676.615, 688.815 & 688.830

Stats. Implemented: ORS 676.605, 676.615, 688.815 & 688.830

Hist.: HLA 15-2011, f. 12-30-11, cert. ef. 1-1-12; HLA 14-2012, f. 9-12-12, cert. ef. 9-14-12; HLA 4-2013, f. 3-12-13, cert. ef. 4-1-13; HLA 16-2013, f. 12-31-13, cert. ef. 1-1-14; HLO 5-2015, f. 12-21-15, cert. ef. 1-1-16

Oregon Health Authority,
Health Policy and Analytics
Chapter 409

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Rule Caption: Temporary amendment to the Patient-Centered Primary Care Home Program (PCPCH) rules.
Adm. Order No.: OHP 10-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-24-16
Notice Publication Date:
Rules Amended: 409-055-0010, 409-055-0030, 409-055-0040, 409-055-0060, 409-055-0070
Subject: The Oregon Health Authority is proposing to make amendments relating to the recognition criteria to the Patient-Centered Primary Care Program (PCPCH) and update definitions and language as a result of organizational changes.
Rules Coordinator: Zarie Haverkate—(503) 931-6420

409-055-0010
Definitions

The following definitions apply to OAR 409-055-0000 to 409-055-0090:

(1) "Authority" means the Oregon Health Authority.

(2) "CHIPRA Core Measure Set" means the initial core set of children's health care quality measures released by the Centers for Medicare and Medicaid Services in 2009 for voluntary use by Medicaid and CHIP programs.

(3) "NCQA" means National Committee for Quality Assurance.

(4) "Patient Centered Medical Home (PCMH)" means a practice or provider who has been recognized as such by the National Committee for Quality Assurance.

(5) "Patient-Centered Primary Care Home (PCPCH)" means a health care team or clinic as defined in ORS 414.655, meets the standards pursuant to OAR 409-055-0040, and has been recognized through the process pursuant to OAR 409-055-0040.

(6) "Personal Health Information" means demographic information, medical history, test and laboratory results, insurance information and other data that is collected by a health care professional to identify an individual and determine appropriate care.

(7) "Practice" means an individual, facility, institution, corporate entity, or other organization which provides direct health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(8) "Program" means Patient-Centered Primary Care Home Program.

(9) "Program website" means www.primarycarehome.oregon.gov.

(10) "Provider" means an individual, facility, institution, corporate entity, or other organization which provides direct health care services or items, also termed a performing provider, or bills, obligates and receives reimbursement on behalf of a performing provider of services, also termed a billing provider (BP). The term provider refers to both performing providers and BP(s) unless otherwise specified.

(11) "Recognition" means the process through which the Authority determines if a practice has met the Oregon Patient-Centered Primary Care Home Standards.

(12) "Recognized" means that the Authority has affirmed that a practice meets the Oregon Patient-Centered Primary Care Home Standards.

(13) "Tier" means the level of Patient-Centered Primary Care Home at which the Authority has scored a practice.

(14) "Verification" means the process that Office for Oregon Health Policy and Research shall conduct to ensure that a practice has submitted accurate information to the Authority for purposes of Patient-Centered Primary Care Home recognition.

(15) "3 STAR" means a designation assigned to Patient-Centered Primary Care Homes meeting advanced PCPCH criteria.

Stat. Auth: ORS 413.042, 414.655 & 442.210
Stats. Implemented: 413.042, 414.655 & 442.210
Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16

409-055-0030
Practice Application and Recognition Process

(1) Practices, or other entities on behalf of the practice, that wish to be recognized as a PCPCH shall submit a PCPCH Recognition Application electronically to the Authority via the Program's online application system found on the Program website or by mail to the address posted on the Program website. The application shall include the quantitative data described in OAR 409-055-0040.

(2) The Authority shall review the application within 60 days of its submission to determine whether it is accurate, complete, and meets the recognition requirements. If the application is incomplete the applicant will be notified in writing of the information that is missing and when it must be submitted.

(3) The Authority shall review a complete application within 60 days of submission. If the Authority determines that the applicant has met the requirements of these rules the Authority shall:

(a) Inform the applicant in writing that the application has been approved as a recognized PCPCH,

(b) Assign a Tier level, and

(c) Include the effective recognition date.

(4) The Authority shall maintain instructions and criteria for submitting a PCPCH Recognition Application posted on the Program website.

(5) The Authority may deny PCPCH recognition if an applicant does not meet the requirements of these rules.

(6) A Practice may request that the Authority reconsider the denial of PCPCH recognition or reconsider the assigned tier level. A request for reconsideration must be submitted in writing to the Authority within 90 days of the date of the denial or approval letter and must include a detailed explanation of why the practice believes the Authority's decision is in error along with any supporting documentation. The Authority shall inform the practice in writing whether it has reconsidered its decision.

(7) Practices submitting applications on or after September 3, 2013 must apply to renew their recognition once every two years. Recognition will expire two years from the effective date of recognition that was issued by the Authority.

(a) At the Authority's discretion a 30-day grace period may be allowed for PCPCHs to submit their renewal application without having a lapse in recognition status.

(b) If a PCPCH believes that it meets the criteria to be recognized at a higher tier or increase it's point threshold by at least 15 points, it may request to have its tier status reassessed by re-submitting an application not more than once every six months. The Authority may grant exceptions to the six month time period for good cause shown.

(c) Currently recognized PCPCHs that are due to reapply between January 1, 2016 and December 31, 2016 will be granted an extension of their PCPCH recogntion until January 1, 2017.

(d) Currently recognized PCPCHs that choose to reapply for recognition between January 1, 2016 and December 31, 2016 will be recognized until January 1, 2017.

(e) Practices applying for PCPCH recogitinon for the first time between January 1, 2016 and December 31, 2016 will be recognized until January 1, 2017.

Stat. Auth: ORS 413.042, 414.655 & 442.210
Stats. Implemented: 413.042, 414.655 & 442.210
Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 7-2012(Temp), f. & cert. ef. 10-4-12 thru 4-1-13; OHP 5-2013, f. 3-22-13, cert. ef. 4-1-13; OHP 6-2013, f. 8-23-13, cert. ef. 9-3-13; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16

409-055-0040
Recognition Criteria

(1) The PCPCH recognition criteria are divided into "Must-Pass" measures and other measures that place the practice on a scale of maturity or 'tier' that reflect basic to more advanced PCPCH functions.

(2) Must-Pass and 5 point measures focus on foundational PCPCH elements that should be achievable by most practices in Oregon with significant effort, but without significant financial outlay.

(3) 10 and 15 point measures reflect intermediate and advanced functions.

(4) Except for the 10 Must-Pass measures, each measure is assigned a point value. A practice must meet the following point allocation criteria to be recognized as a PCPCH:

(a) Tier 1: 30–60 points and all 10 Must-Pass Measures

(b) Tier 2: 65–125 points and all 10 Must-Pass Measures

(c) Tier 3: 130 points or more and all 10 Must-Pass Measures

(5) The Authority shall calculate a practice's point score through the recognition process described in OAR 409-055-0030.

(6) Table 1, incorporated by reference, contains the detailed list of Measures and corresponding point assignments.

(7) Table 2, incorporated by reference, contains a detailed list of the PCPCH Quality Measures.

(8) Measure specifications, thresholds for demonstrating improvement, and benchmarks for quantitative data elements are available on the Program website.

(9) National Committee for Quality Assurance (NCQA) recognition shall be acknowledged in the Authority's PCPCH recognition process; however, a practice is not required to use its NCQA recognition to meet the Oregon PCPCH standards. A practice that does not wish to use its NCQA recognition to meet the Oregon PCPCH standards must indicate so during the PCPCH application process and submit a complete PCPCH application.

(10) A practice seeking Oregon PCPCH recognition based on its NCQA recognition must:

(a) Submit a PCPCH application and evidence of its NCQA recognition along with its application;

(b) Comply with Table 3, incorporated by reference, for NCQA PCMH practices using 2008 NCQA criteria; or

(c) Comply with Table 4, incorporated by reference, for NCQA PCMH practices using 2011 NCQA criteria.

(11) The Authority may designate a practice as a Tier 3 STAR Patient-Centered Primary Care Home for implementing multiple advanced PCPCH criteria as described in OAR 409-055-0045.

[ED. NOTE: Tables reference are available from the agency.]

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 2-2015, f. 1-16-15, cert. ef. 2-1-15; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16

409-055-0060
Verification

(1) The Authority shall conduct at least one on-site verification review of each recognized PCPCH to determine compliance with PCPCH criteria every five years and at such other times as the Authority deems necessary or at the request of the Health Systems Division (Division), or any other applicable program within the Authority. The purpose of the review is to verify reported attestation and quantitative data elements for the purposes of confirming recognition and Tier level.

(2) PCPCHs selected for verification shall be notified no less than 30 days prior to the scheduled review.

(3) PCPCHs shall permit Authority staff access to the practice's place of business during the review.

(4) A verification review may include but is not limited to:

(a) Review of documents and records.

(b) Review of patient medical records.

(c) Review of electronic medical record systems, electronic health record systems, and practice management systems.

(d) Review of data reports from electronic systems or other patient registry and tracking systems.

(e) Interviews with practice management, clinical and administrative staff.

(f) On-site observation of practice staff.

(g) On-site observation of patient environment and physical environment.

(5) Following a review, Authority staff may conduct an exit conference with the PCPCH representative(s). During the exit conference Authority staff shall:

(a) Inform the PCPCH representative of the preliminary findings of the review; and

(b) Give the PCPCH a reasonable opportunity to submit additional facts or other information to the Authority staff in response to those findings.

(6) Following the review, Authority staff shall prepare and provide the PCPCH specific and timely written notice of the findings.

(7) If the findings result in a referral to the Division per OAR 409-055-0070, Authority staff shall submit the applicable information to the Division for its review and determination of appropriate action.

(8) If no deficiencies are found during a review, the Authority shall issue written findings to the PCPCH indicating that fact.

(9) If deficiencies are found, the Authority shall take informal or formal enforcement action in compliance with OAR 409-055-0070.

(10) The Authority may share application information and content submitted by practices and/or verification findings with managed or coordinated care plans, and/or insurance carriers.

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16

409-055-0070
Compliance

(1) If the Authority finds that the practice is not in compliance with processes as attested to, the Authority shall issue a written warning requiring the practice to submit an improvement plan to the Program within 90 days of the date of the written warning. The improvement plan must include a description of the practice's plan and timeline to correct the deficiency and proposed documentation or other demonstration that would verify the practice is in compliance.

(2) Authority will review the improvement plan and any documentation the practice submits in accordance with the deficiency, and if remedied, no further action will be taken.

(3) If a practice fails to submit the improvement plan or move into compliance within 90 days of the date of the written warning, the Authority may issue a letter of non-compliance and amend the practice's PCPCH recognition to reflect the appropriate Tier level or revoke its PCPCH status.

(4) If the Authority amends a practice's tier level or revokes PCPCH status this information will be made available to the Health Services Division (Division), the coordinated care or managed care plans, and insurance carriers.

(5) A practice that has had its PCPCH status revoked may have it reissued after reapplying for recognition and when the Authority determines that compliance with PCPCH Standards has been achieved satisfactorily.

(6) In order for the Authority to receive federal funding for Medicaid clients receiving services through a PCPCH, documentation of certain processes are required by the Centers for Medicare and Medicaid Services. Documentation requirements can be found in OAR 410-141-0860. If non-compliance is due to lack of service documentation required per OAR 410-141-0860, a referral may be made to the Division.

(7) If the Authority finds a lack of documentation per OAR 410-141-0860 to support the authorized tier level, the Authority may make a referral to the Division and may conduct an audit pursuant to the standards in OAR 943-120-1505.

Stat. Auth: ORS 413.042, 414.655 & 442.210

Stats. Implemented: 413.042, 414.655 & 442.210

Hist.: OHP 6-2011(Temp), f. 9-29-11, cert. ef. 10-1-11 thru 3-15-12; OHP 2-2012, f. 2-29-12, cert. ef. 3-1-12; OHP 9-2013, f. 10-1-13, cert. ef. 1-1-14; OHP 10-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-24-16

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Rule Caption: Amendment to the All Payer All Claims data reporting program rule.
Adm. Order No.: OHP 1-2016
Filed with Sec. of State: 1-5-2016
Certified to be Effective: 1-5-16
Notice Publication Date: 12-1-2015
Rules Amended: 409-025-0100, 409-025-0110, 409-025-0120, 409-025-0130, 409-025-0140, 409-025-0150, 409-025-0160, 409-025-0170
Subject: The Oregon Health Authority is amending the rules in order to update language and align procedures with program needs, OHA priorities, and statutory requirements.
Rules Coordinator: Zarie Haverkate—(503) 931-6420

409-025-0100
Definitions

The following definitions apply to OAR 409-025-0100 to 409-025-0170:

(1) "Accident policy" means an insurance policy that provides benefits only for a loss due to accidental bodily injury.

(2) "Allowed amount" means the actual amount of charges for healthcare services, equipment, or supplies that are covered expenses under the terms of an insurance policy or health benefits plan.

(3) "APAC" means all payer all claims.

(4) "Association" means any organization, including a labor union, that has an active existence for at least one year, that has a constitution and bylaws and that has been organized and is maintained in good faith primarily for purposes other than that of obtaining insurance.

(5) "Attending provider" means the individual health care provider who delivered the health care services, equipment, or supplies specified on a health care claim.

(6) "Authority" means the Oregon Health Authority.

(7) "Billing provider" means the individual or entity that submits claims for health care services, equipment, or supplies delivered by an attending provider.

(8) "Capitated services" means services rendered by a provider through a contract in which payments are based upon a fixed dollar amount for each enrolled member on a monthly basis.

(9) "Carrier" shall have the meaning given that term in ORS 743.730.

(10) "Certificate of authority" shall have the meaning given that term in ORS 731.072.

(11) "Charges" means the actual dollar amount charged on the claim.

(12) "Claim" means an encounter or request for payment under the terms of an insurance policy, health benefits plan, Medicare, or Medicaid.

(13) "Co-insurance" means the percentage an enrolled member pays toward the cost of a covered service.

(14) "Coordinated Care Organization (CCO)" shall have the meaning given that term in ORS 414.025.

(15) "Co-payment" means the fixed dollar amount an enrolled member pays to a health care provider at the time a covered service is provided or the full cost of a service when that is less than the fixed dollar amount.

(16) "Data file" means electronic health information including medical claims files, eligibility files, medical provider files, pharmacy claims files, control totals files, subscriber billed premiums files, and any other related information specified in these rules.

(17) "Data set" means a collection of individual data records, whether in electronic or manual files.

(18) "DCBS" means the Oregon Department of Consumer and Business Services.

(19) "Deductible" means the total dollar amount an enrolled member pays toward the cost of covered services over an established period of time before the carrier or third-party administrator makes any payments under an insurance policy or health benefit plan.

(20) "De-identified health information" means health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual.

(21) "Direct personal identifier" means information relating to an individual patient or enrolled member that contains primary or obvious identifiers, including:

(a) Names;

(b) Business names when that name would serve to identify a person;

(c) Postal address information other than town or city, state, and 5-digit zip code;

(d) Specific latitude and longitude or other geographic information that would be used to derive postal address;

(e) Telephone and fax numbers;

(f) Electronic mail addresses;

(g) Social security numbers;

(h) Vehicle identifiers and serial numbers, including license plate numbers;

(i) Medical record numbers;

(j) Health plan beneficiary numbers;

(k) Certificate and license numbers;

(l) Internet protocol (IP) addresses and uniform resource locators (URL) that identify a business that would serve to identify a person;

(m) Biometric identifiers, including finger and voice prints; and

(n) Personal photographic images.

(22) "Disability policy" means an insurance policy that provides benefits for losses due to a covered illness or disability.

(23) "Disclosure" means the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information.

(24) "DRC" means Data Review Committee.

(25) "Dual Eligible Special Needs Plan" means a Special Needs Plan that enrolls beneficiaries entitled to both Medicare and Medicaid.

(26) "Eligibility file" means a data set containing demographic information for each individual enrolled member eligible for medical benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEBB group health insurance plan, or services provided in Oregon.

(27) "Eligible employee" shall have the meaning given that term in ORS 743.730.

(28) "Employee" shall have the meaning given that term in ORS 654.005.

(29) "Employer" shall have the meaning given that term in ORS 654.005.

(30) "Encrypted identifier" means a code or other means of identification to allow individual patients or enrolled members to be tracked across data sets without revealing their identity.

(31) "Encryption" means a method by which the true value of data has been disguised in order to prevent the identification of individual patients or enrolled members and does not provide the means for recovering the true value of the data.

(32) "Enrolled member" means enrollee as defined in ORS 743.730.

(33) "Facility" means a health care facility as defined in ORS 442.015.

(34) "Genetic test" shall have the meaning given that term in ORS 192.531.

(35) "Group health insurance" shall have the meaning given that term in ORS 731.098.

(36) "Health benefit plan" shall have the meaning given that term in ORS 743.730.

(37) "Health care" shall have the meaning given that term in ORS 192.556.

(38) "Health care operations" means certain administrative, financial, legal, and quality improvement activities that are necessary to run programs including, but not limited to, conducting quality assessment and improvement activities, population-based activities relating to improving health or reducing health care costs, case management and care coordination, evaluating practitioner, provider, or health plan performance, and underwriting, enrollment, premium rating and other activities related to creation, renewal, or replacement of a health insurance contract.

(39) "Health care provider" shall have the meaning given that term in ORS 192.556.

(40) "Health information" shall have the meaning given that term in ORS 192.556.

(41) "Healthcare Common Procedure Coding System (HCPCS)" means a medical code set, maintained by the United States Department of Health and Human Services, that identifies health care procedures, equipment, and supplies for claim submission purposes.

(42) "HIPAA" means Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996, 42 USC 1320d, et seq. and the federal regulations adopted to implement the Act.

(43) "Hospital indemnity policy" means an insurance policy that provides benefits only for covered hospital stays.

(44) "Indirect personal identifier" means information relating to an individual patient or enrolled member that a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods could apply to render such information individually identifiable by using such information alone or in combination with other reasonably available information.

(45) "Individual", when used in a list of required lines of business, means individual health benefit plans.

(46) "Individually identifiable health information" shall have the meaning given that term in ORS 192.556.

(47) "Insurance" shall have the meaning given that term in ORS 731.102.

(48) "Labor union" means any organization which is constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms or conditions of employment or of other mutual aid or protection in connection with employees.

(49) "Large group" means health benefit plans for employers with more than 50 employees.

(50) "Limited data set" means protected health information that excludes direct personal identifiers and is disclosed for research, health care operations, or to a public health authority for public health purposes.

(51) "Long-term care insurance" shall have the meaning given that term in ORS 743.652.

(52) "Managed care organization" (MCO) means a prepaid managed care health services organization as defined in ORS 414.736.

(53) "Mandatory reporter" means any reporting entity defined as a mandatory reporter in OAR 409-025-0110.

(54) "Medicaid" means medical assistance provided under 42 U.S.C. section 1396a (section 1902 of the Social Security Act), as administered by the Authority's Health Services Division.

(55) "Medicaid fee-for-service"(Medicaid FFS) means that portion of Medicaid where a health care provider is paid a fee for each covered health care service delivered to an eligible Medicaid patient.

(56) "Medical claims file" means a data set composed of health care service level remittance information for all adjudicated claims for each billed service including but not limited to member demographics, provider information, charge and payment information, and clinical diagnosis and procedure codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEBB group health insurance plan, or services provided in Oregon.

(57) "Medical provider file" means a data set containing information about health care providers providing health care services, equipment, or supplies to enrolled members during the reporting period.

(58) "Medicare" means coverage under Part A, Part B, Part C, or Part D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(59) "Medicare Modernization Act" means the Medicare Prescription Drug, Improvement, and Modernization Act of 2003(Public Law 108-173) and the federal regulations adopted to implement the Act.

(60) "OEBB" means the Oregon Educators Benefit Board.

(61) "OMIP" means the Oregon Medical Insurance Pool.

(62) "Patient" means any person in the data set who is the subject of the activities of the claim performed by the health care provider.

(63) "Paid amount" means the actual dollar amount paid for claims.

(64) "PEBB" means the Oregon Public Employees' Benefit Board.

(65) "Person" shall have the meaning given that term in ORS 731.116.

(66) "Pharmacy benefit manager (PBM)" means a person or entity that performs pharmacy benefit management, including a person or entity in a contractual or employment relationship with a person or entity performing pharmacy benefit management for a health benefits plan.

(67) "Pharmacy claims file" means a data set containing service level remittance information from all adjudicated claims including, but not limited to, enrolled member demographics, provider information, charge and payment information, and national drug codes for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEBB group health insurance plan, or services provided in Oregon.

(68) "Pharmacy eligibility file" means a data set containing demographic information for each individual enrolled member eligible for pharmacy benefits for one or more days of coverage at any time during a calendar month for an Oregon resident as defined in ORS 803.355, a non-Oregon resident who is a member of a PEBB or OEBB group health insurance plan, or services provided in Oregon.

(69) "Policy" shall have the meaning given that term in ORS 731.122.

(70) "Prepaid amount" means the fee for the service equivalent that would have been paid for a specific service if the service had not been capitated.

(71) "Premium" shall have the meaning given that term in ORS 743.730.

(72) "Principal investigator (PI)" means the person in charge of a research project that makes use of limited data sets. The PI is the custodian of the data and shall comply with all state and federal restrictions, limitations, and conditions of use associated with the data release.

(73) "Protected health information" shall have the meaning given that term in ORS 192.519.

(74) "Public health authority" means the Public Health Division of the Authority or local public health authority as defined in ORS 431.260.

(75) "Public health purposes" means the activities of a public health authority for the purpose of preventing or controlling disease, injury, or disability including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, investigations, and interventions.

(76) "Public use data set" means a publicly available data set of de-identified health information containing only the data elements specified by the Authority for inclusion.

(77) "Registered entity" means any person required to register with DCBS under ORS 744.714.

(78) "Reporting entity" means:

(a) An insurer as defined in ORS 731.106 or fraternal benefit society as defined in ORS 748.106 required to have a certificate of authority to transact health insurance business in Oregon.

(b) A health care service contractor as defined in ORS 750.005 that issues medical insurance in Oregon.

(c) A third-party administrator required to obtain a license under ORS 744.702.

(d) A pharmacy benefit manager or fiscal intermediary, or other person that is by statute, contract, or agreement legally responsible for payment of a claim for a health care item or service.

(e) A prepaid managed care health services organization as defined in ORS 414.736.

(f) An insurer providing coverage funded under Part A, Part B, or Part D of Title XVIII of the Social Security Act, subject to approval by the United States Department of Health and Human Services.

(79) "Research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalized knowledge.

(80) "Self-insured plan" means any plan, program, contract, or any other arrangement under which one or more employers, unions, or other organizations provide health care services or benefits to their employees or members in this state, either directly or indirectly through a trust or third-party administrator.

(81) "Small employer health insurance" means health benefit plans for employers whose workforce consists of at least two but not more than 50 eligible employees.

(82) "Special Needs Plan" means a Medicare health benefit plan created by the Medicare Modernization Act that is specifically designed to provide targeted care to individuals with special needs.

(83) "Specific disease policy" means an insurance policy that provides benefits only for a loss due to a covered disease.

(84) "Strongly-encrypted" means an encryption method that uses a cryptographic key with a large number of random keyboard characters.

(85) "Subscriber" means the individual responsible for payment of premiums or whose employment is the basis for eligibility for membership in a health benefit plan.

(86) "Summarized data" means data aggregated by one or more categories. Summarized data created from protected health information may not contain direct or indirect identifiers.

(87) "Third-party administrator (TPA)" means any person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of Oregon or residents of another state from offices in Oregon, in connection with life insurance or health insurance coverage; or any person or entity who must otherwise be licensed under ORS 744.702.

(88) "Transact insurance" shall have the meaning given that term in ORS 731.146.

(89) "Trust" means a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association.

(90) "Vision policy" means a health benefits plan covering only vision health care.

(91) "Voluntary reporter" means any registered or reporting entity, other than a mandatory reporter, that voluntarily elects to comply with the reporting requirements in OAR 409-025-0100 to 409-025-0170.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 5-2012(Temp), f. 6-23-12, cert. ef. 6-1-12 thru 11-15-12; OHP 6-2012; f. 6-26-12, cert. ef. 7-9-12; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0110

General Reporting Requirements

(1) Definition of "mandatory reporter":

(a) For carriers and licensed third-party administrators, the Authority shall identify mandatory reporters using information collected by DCBS including, but not limited to, data from the Health Insurance Member Enrollment Report.

(A) The Authority shall aggregate the most recent four quarters of data.

(B) The Authority shall calculate the mean total lives for each carrier and licensed third-party administrator.

(C) All carriers and licensed third-party administrators with calculated mean total lives of 5,000 or higher shall be mandatory reporters.

(b) All PBMs shall be mandatory reporters.

(c) All MCOs shall be mandatory reporters.

(d) All CCOs shall be mandatory reporters.

(e) All reporting entities with Dual Eligible Special Needs Plans in Oregon shall be mandatory reporters.

(f) All insurers providing coverage funded under Part A, Part B or Part D of Title XVIII of the Social Security Act, subject to approval by the United States Department of Health and Human Services.

(2) Voluntary reporters may elect to participate by notifying the Authority in writing.

(3) Mandatory and voluntary reporters shall submit data files for all required lines of business and may not submit claims for any excluded lines of business.

(a) Required lines of business include:

(A) Medicare (parts C and D);

(B) Medicaid;

(C) Individual;

(D) Small employer health insurance;

(E) Large group;

(F) Associations and trusts; and

(G) Self-insured plans.

(b) Excluded lines of business include:

(A) Accident policy;

(B) Dental insurance;

(C) Disability policy;

(D) Hospital indemnity policy;

(E) Long-term care insurance;

(F) Medicare supplemental insurance;

(G) Specific disease policy;

(H) Stop-loss plans;

(J) Student health policy;

(K) Vision-only insurance; and

(L) Workers compensation.

(4) Mandatory and voluntary reporters shall comply with data file layout, format, and coding requirements in OAR 409-025-0120.

(5) Mandatory and voluntary reporters shall comply with data submission requirements in OAR 409-025-0130.

(6) Unless otherwise required by state or federal rules, regulations or statutes, mandatory and voluntary reporters may not submit claims subject to stricter disclosure limits imposed by state or federal rules, regulations, or statutes.

(7) The Authority shall provide written notification by July 1 of each year to all mandatory reporters subject to the reporting requirements of these rules for the following calendar year.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 5-2012(Temp), f. 6-23-12, cert. ef. 6-1-12 thru 11-15-12; OHP 6-2012; f. 6-26-12, cert. ef. 7-9-12

409-025-0120

Data File Layout, Format, and Coding Requirements

(1) All data files shall include:

(a) Medical claims;

(b) Eligibility;

(c) Medical provider;

(d) Pharmacy claims;

(e) Control totals; and

(f) Subscriber billed premiums.

(2) The medical claims file shall be submitted using the approved layout, format, and coding described in Appendix A.

(3) The eligibility file shall be submitted using the approved layout, format, and coding described in Appendix B.

(a) Mandatory reporters shall report race and ethnicity data as outlined in Appendix B. This layout aligns with the Office of Management and Budget's (OMB) Federal Register Notice of October 30, 1997 (62 FR 58782-58790).

(b) Mandatory reporters shall report primary language in accordance with ANSI/NISO guidance using the three-character string outlined in Codes for the Representation of Languages for Information Interchange.

(c) Race, ethnicity and primary language data shall be collected in a manner that aligns with the following principles:

(A) To the greatest extent practicable, race, ethnicity, and preferred language shall be self-reported.

(i) Collectors of race, ethnicity and primary language data may not assume or judge ethnic and racial identity or preferred signed, written and spoken language, without asking the individual.

(ii) If an individual is unable to self-report and a family member, advocate, or authorized representative is unable to report on his or her behalf, the information shall be recorded as unknown.

(B) When an individual declines to identify race, ethnicity or preferred language, the information shall be reported as refused.

(4) The medical provider file shall be submitted using the approved layout, format, and coding described in Appendix C.

(5) The pharmacy claims file shall be submitted using the approved layout, format, and coding described in Appendix D.

(6) The control totals file shall be submitted using the approved layout, format, and coding described in Appendix E.

(7) The subscriber billed premium file shall be submitted using the approved layout, format, and coding described in Appendix F.

(8) All data elements are required unless specified as optional or situational.

(9) All required data files shall be submitted as delimited ASCII files.

(10) Numeric data are positive integers unless otherwise specified.

(a) Negative values are allowed for revenue codes, quantities, charges, payment, co-payment, co-insurance, deductible, and prepaid amount.

(b) Negative values shall be preceded by a minus sign.

(11) The Authority shall convene a technical advisory group to advise the Authority and associated contractors on submission specifications including but not limited to Appendices A-F, Schedule A and any additional data submission requirements. The advisory group shall include, but is not limited to representatives from:

(a) Mandatory reporters;

(b) Providers;

(c) Researchers, and;

(d) Other stakeholders and interested parties.

(12) All data files shall pass edit checks and validations implemented by the Authority or the data vendor.

(a) Data vendors may perform quality and edit checks on data file submissions. If data files do not pass data vendor edit checks or validation, mandatory reporters must make corrections and resubmit data. Mandatory reporters must submit corrected data or an exception request within 14 calendar days of notification of error.

(b) Mandatory reporters must participate in efforts to validate and check the quality of current and historic APAC data, as prescribed and requested by the Authority.

(A) The Authority may request from mandatory reporters information from their internal records that is reasonably necessary to validate and check the quality of APAC data. This information may include, but is not limited to, aggregated number of enrolled members, number of claims and claim lines, charges, allowed amounts, paid amounts, co-insurance, co-payments, premiums, number of visits to primary care, emergency department, inpatient, and other health care treatment settings, and number of prescriptions.

(B) Mandatory reporters shall provide the aggregated information within 30 days of the Authority's request.

(C) If the Authority finds errors through edit checks or validation, mandatory reporters must make corrections and resubmit data or submit an exception request within 30 days or at the next regularly scheduled submission due date.

[ED. NOTE: Appendices and Schedules referenced are avaliable from the agency.]

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0130

Data Submission Requirements

(1) Mandatory reporters shall submit data files as specified in Schedule A. Voluntary reporters may consult with the Authority to submit healthcare claims data files on an alternative schedule.

(2) Mandatory and voluntary reporters shall submit data files directly to the data vendor unless otherwise specified by the Authority.

(3) Mandatory and voluntary reporters shall transmit data files using one of the following approved processes:

(a) Secure file transfer protocol (SFTP) including separate strong encryption of data files prior to SFTP transmission; or

(b) Any process incorporating strong encryption that is approved in writing by both the Authority and the data vendor.

[ED. NOTE: Schedule A referenced is available from the agency]

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0140

Waivers and Exceptions

(1) The Authority may grant a waiver, deadline extension, or exception to the reporting and validation requirements.

(2) Mandatory reporters shall notify the Authority of their inability to meet requirements.

(a) A mandatory reporter shall submit a Waiver or Exception of Reporting Requirements Form (APAC-1) to the Authority. Mandatory reporters may submit an APAC-1 form for the following reasons:

(A) To request an exception to the data file layout, format or threshold prior to data submission. The request shall be submitted 14 calendar days prior to the applicable reporting deadline;

(B) To request a deadline extension for any of the following scenarios: initial submission, data correction or validation. The request shall be submitted 14 calendar days prior to the applicable reporting deadline; or

(C) To request a waiver of all reporting or validation requirements. The request shall be submitted 60 calendar days prior to the applicable reporting deadline.

(b) Mandatory reporters seeking exception requests for data element formats or thresholds during the current data file submissions shall submit a request to the Authority's data vendor, using the data vendor's online interface. Requests must be made at time of quarterly submission.

(c) The Authority shall approve or deny the waiver or exception request and provide written notification to the requestor within 14 calendar days of receipt of the request.

(d) If the Authority denies the request, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 business days of the denial. The appeal process is conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700. The requestor shall have the burden to prove a compelling need for the waiver or exception.

(e) The waiver or exception shall expire at the end of the calendar year unless otherwise specified by the Authority.

[ED. NOTE: Forms referenced are available on the agency's website at http://www.oregon.gov/oha/OHPR/RSCH/pages/apac.aspx]

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0150

Compliance and Enforcement

Penalties for failure to comply shall be enforced by the Authority.

(1) Unless approved by a waiver or exception, failure to comply with general reporting requirements shall include but is not limited to:

(a) Failure to submit data files for a required line of business; and

(b) Submitting health information for an excluded line of business.

(2) Unless approved by a waiver or exception, failure to comply with data file requirements shall include but is not limited to:

(a) Submitting a data file in an unapproved layout;

(b) Submitting a data element in an unapproved format;

(c) Submitting a data element with unapproved coding;

(d) Failure to submit a required data element; or

(e) Failure to comply with validation and quality control efforts, including resubmitting or correcting data as requested by the Authority.

(3) Unless approved by a waiver or exception, failure to comply with data submission requirements shall include but is not limited to:

(a) Failure to submit test files as specified by the data vendor;

(b) Submitting data files later than five days after the submission due date as outlined in Schedule A;

(c) Rejection of a data file by the data vendor that is not resubmitted or corrected by the submitter within 14 calendar days from notification of error; or

(d) Transmitting data files using an unapproved process.

(4) The Authority shall provide mandatory reporters written notification of each failure to comply.

(5) The Authority may impose fines of up to $500 per day for each failure to comply that is not resolved within 30 calendar days of written notification.

(6) If a mandatory reporter has made documented efforts to comply with these rules, the Authority may consider this a mitigating factor before imposing regulatory action against the mandatory reporter.

[ED. NOTE: Schedule A referenced is available from the agency.]

Stat. Auth.: ORS 442.466 & 442.993

Stats. Implemented: ORS 442.464, 442.466 & 442.993

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0160

Data Access and Release

(1) The Authority shall comply with all relevant state and federal data privacy, security, and antitrust regulations, including The Health Insurance Portability and Accountability Act (HIPAA), when sharing APAC data.

(2) The Authority may collect payment to recoup costs when APAC data requests are fulfilled.

(3) The Authority shall provide a public use data set, which shall include de-identified health information, in compliance with applicable Authority policies and state and federal rules, regulations, and statutes.

(a) The Authority shall maintain a list of data elements that may be included in APAC public use data sets. The public use data sets shall comply with applicable Authority policies and state and federal rules, regulations, and statutes.

(b) Requestors seeking access to an APAC public use data set shall complete a Pre-Application for APAC Data Files (APAC-2) and comply with the application procedures for public use data sets outlined on the APAC website.

(c) The Authority shall approve or deny the completed request and provide written notification to the requestor within 30 calendar days of receipt of the request.

(d) The Authority shall deny the completed request for reasons which include, but are not limited to:

(A) Requestor or any person who will have access to the data has previously violated a data use agreement with the Authority.

(B) The Authority finds that the specific details of the request do not sufficiently explain the proposed use.

(C) The Authority finds that the specific details of the request violate any state or federal rule, regulation, or statute.

(D) Full payment is not included with the application.

(e) If the Authority denies the Pre-Application for APAC Data Files (APAC-2):

(A) The Authority shall provide written notification stating the reason for the denial; and

(B) The requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 business days of the denial. The appeal process is conducted pursuant to ORS chapter 183 and the Attorney General's Uniform and Model Rules of Procedure, OAR 137-003-0501 to 137-003-0700. The requestor shall have the burden to prove that the Authority unreasonably denied the application.

(f) The public use data sets may not be used to identify any individual, including but not limited to patients, physicians, and other health care providers. The requestor may not use outside information to attempt to ascertain the identity of particular individuals who are the subject of public use data sets.

(4) The Authority shall provide limited data sets, in compliance with applicable Authority policies and state and federal rules, regulations, and statutes. Limited data sets may include protected health information from which certain direct identifiers have been removed.

(a) The Authority shall maintain a list of data elements that may be included in APAC limited data sets.

(b) APAC limited data sets may be disclosed for purposes allowed by state and federal regulations, including research, public health, and health care operations.

(c) Requestors seeking access to APAC limited data sets shall complete the Pre-Application for APAC Data Files (APAC-2). The Authority may require requestors to provide additional information by completing the Application for APAC Data Files (APAC-3). Requestors must comply with the application procedures for limited data sets outlined on the APAC website.

(5) The Authority shall create a process to request custom data sets.

(a) APAC custom data sets may be disclosed for purposes allowed by state and federal regulations, including research, public health, and health care operations.

(b) Requestors seeking access to APAC custom data sets shall complete the Pre-Application for APAC Data Files (APAC-2). The Authority may require requestors to provide additional information by completing the Application for APAC Data Files (APAC-3). Requestors must comply with the application procedures for custom data sets outlined on the APAC website.

(6) The Authority shall review for completeness all applications and provide requestors written notification of completeness within 30 calendar days of receipt of the request.

(a) If the Authority determines that the application is incomplete, the requestor shall have 30 calendar days from notification of incompleteness to complete the application. Incomplete applications that are not completed shall be discarded without further notification to the requestor.

(b) The Authority shall convene a Data Review Committee (DRC) to evaluate completed applications.

(A) The Authority may accept nominations for and make appointments to the DRC. The DRC shall include at least one mandatory reporter to serve in an advisory capacity.

(B) The DRC evaluation shall include, but is not limited to:

(i) Whether proposed purpose for accessing APAC data is allowable under Authority policies and state and federal rules, regulations, and statutes;

(ii) Whether IRB documentation is required and, if submitted, sufficient.

(iii) Whether the proposed privacy and security protections are sufficient.

(iv) Whether additional clarification is needed to complete the review.

(C) The Authority shall publish a DRC meeting schedule on its website and post applications scheduled to be reviewed, which detail the proposed use of the data and detail the data elements requested to be released, at least two weeks prior to the next DRC meeting. The Authority shall receive public comment on applications scheduled for review. The DRC will review and consider all public comments as part of the data request review process.

(D) The Authority shall schedule completed applications for review by the DRC on a first-come-first-served basis.

(E) The DRC shall recommend that The Authority approve or deny the application, or defer action pending clarification from the requestor.

(F) The Authority shall accept or reject the DRC's recommendation and notify the requestor within ten business days of the review.

(G) The Authority shall deny a completed application for reasons which include, but are not limited to:

(i) Requestor or any person who will have access to the data has previously violated a data use agreement with the Authority.

(ii) Full payment is not included with the application.

(iii) The proposed privacy and security protections are not sufficient.

(iv) Information provided is not sufficient to approve the request.

(v) Proposed purpose for accessing APAC data is not allowable under authority policies or state or federal rules, regulations, or statutes.

(H) If the DRC requests clarification, the requestor shall have 30 calendar days to provide the requested information to the Authority. After 30 calendar days, applications with incomplete requests for clarification shall be discarded without further notification to the requestor.

(I) Upon receipt of the requested clarification the Authority shall schedule re-evaluation with the DRC on a first-come-first-served basis.

(J) If the Authority denies the application:

(i) The Authority shall provide written notification stating the reason for the denial.

(ii) The requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 business days of the denial. The appeal process is conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model rules of Procedure, OAR 137-003-0501 to 137-003-0700. The requestor shall have the burden to prove that the Authority unreasonably denied the application.

[ED. NOTE: Forms and lists referenced are available on the agency's website: http://www.oregon.gov/oha/OHPR/RSCH/pages/apac.aspx]

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 4-2012, f. 5-23-12, cert. ef. 6-1-12; OHP 2-2013, f. 1-24-13, cert. ef. 2-1-13; OHP 1-2016, f. & cert. ef. 1-5-16; OHP 1-2016, f. & cert. ef. 1-5-16

409-025-0170

Public Disclosure

(1) The Authority and applicable contractors, shall perform data analyses and publish data and reports that serve the public's interest. This may include, but is not limited to:

(a) Comparing healthcare cost and quality;

(b) Assessing health care utilization;

(c) Assessing the capacity and distribution of healthcare resources;

(d) Assessing health care purchasing decisions;

(e) Assessing the effectiveness of public health programs; or

(f) Assessing disparities in health care delivery and outcomes.

(2) The Authority may convene advisory groups to advise the Authority on topics related to the All Payer All Claims Reporting Program. The advisory groups shall include, but not be limited to representatives from:

(a) Mandatory reporters, including carriers, TPAs, PBMs, and CCOs; and;

(b) Other stakeholders and interested parties.

Stat. Auth.: ORS 442.466

Stats. Implemented: ORS 442.464 & 442.466

Hist.: OHP 1-2010, f. 2-26-10, cert. ef. 3-1-10; OHP 1-2016, f. & cert. ef. 1-5-16

Oregon Health Authority, Public Health Division
Chapter 333

Rule Caption: Prescription Drug Monitoring Program
Adm. Order No.: PH 28-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Renumbered: 410-121-4015 to 333-023-0815, 410-121-4020 to 333-023-0820
Rules Ren. & Amend: 410-121-4000 to 333-023-0800, 410-121-4005 to 333-023-0805, 410-121-4010 to 333-023-0810
Subject: The Oregon Health Authority (Authority) is permanently amending OAR 410-121-4010 and renumbering it to OAR 333-023-0810 to revise reporting requirements for the Prescription Drug Monitoring Program, based on the passage of SB 71 (Oregon Laws 2015, chapter 481). The Authority is also amending and renumbering rules in OAR chapter 410 (Medical Assistance Programs), division 121 pertaining to the Prescription Drug Monitoring Program to chapter 333 (Public Health), division 23 since the Public Health Division is responsible for the administration of the program.
Rules Coordinator: Brittany Sande—(971) 673-1291

Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

333-023-0800

Purpose

The purpose of the Prescription Drug Monitoring Program rules (OAR 333-023-0800 through 333-023-0820) is to define operational processes of a prescription drug monitoring program.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; Renumbered from 410-121-4000, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16

333-023-0805

Definitions

Unless otherwise stated in OAR 333-023-0800 through 333-023-0820, or the context of OAR 333-023-0800 through 333-023-0820 requires otherwise, the following definitions apply to OAR 333-023-0800 through 333-023-0820:

(1) "Authority" means the Oregon Health Authority.

(2) "Controlled substance" means a prescription drug classified in Schedules II through IV under the Federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified under ORS 475.035.

(3) "Delegate" means a member of staff of a practitioner or pharmacist who is authorized by the practitioner or pharmacist to access the system on his or her behalf.

(4) "Dispense" and "dispensing" have the meaning given those terms in ORS 689.005.

(5) "Health professional regulatory board" has the meaning given that term in ORS 676.160.

(6) "Pharmacy" has the meaning given that term in ORS 689.005 but does not include a pharmacy in an institution as defined in ORS 179.010.

(7) "Practitioner" has the meaning given that term in ORS 431.960.

(8) "Prescription drug" has the meaning given that term in ORS 689.005.

(9) "System" means the secure electronic system used to monitor reported prescription drug information.

(10) "Unsecure data" means data that is electronic and is not encrypted at the level established by the National Institute of Standards and Technology.

(11) "Vendor" means the private entity under contract with the Authority to operate the system.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 - 431.978 & 431.992

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13; Renumbered from 410-121-4005, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16

333-023-0810

Reporting Requirements

(1) Not later than 72 hours after dispensing a controlled substance a pharmacy shall electronically report to the Authority the following information for prescription drugs dispensed that are classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811 and

812, as modified by the State Board of Pharmacy by rule under ORS 475.035:

(a) Patient's full name, address, date of birth, and sex;

(b) Pharmacy Drug Enforcement Administration Registration Number (or other identifying number in lieu of such registration number);

(c) Prescriber name and Drug Enforcement Administration Registration Number (or other identifying number in lieu of such registration number);

(d) Identification of the controlled substance using a national drug code number;

(e) Prescription number;

(f) Date the prescription was written;

(g) Date the drug was dispensed;

(h) Number of metric units dispensed;

(i) Number of days supplied; and

(j) Number of refills authorized by the prescriber and the number of the fill of the prescription.

(2) A pharmacy located outside of the state and licensed by the Oregon Board of Pharmacy shall electronically report the required information for controlled substances dispensed to residents of Oregon.

(3) A pharmacy shall submit data formatted in the American Society for Automation in Pharmacy (ASAP) 2007 version 4 release 1 specification standard.

(4) Data submitted by a pharmacy shall meet criteria prescribed by the Authority before it is uploaded into the system.

(5) A pharmacy shall be responsible for the correction of errors in the submitted data. Corrections shall be submitted no later than one week after the data was submitted.

(6) A pharmacy that has not dispensed any controlled substances during a seven-day reporting period must submit a zero report to the Authority at the end of the reporting period.

(7) A pharmacy that does not dispense any controlled substances or any controlled substances directly to a patient may request a waiver from the Authority for exemption from the reporting requirement. A pharmacy requesting a no reporting waiver shall submit to the Authority a written waiver request form provided by the Authority.

(8) If the Authority approves or denies the no reporting waiver request, the Authority shall provide written notification of approval or denial to the pharmacy. The duration of the waiver shall be two years at which time the pharmacy must reapply.

(9) A pharmacy may request a waiver from the Authority for exemption from the electronic reporting method. A pharmacy requesting an electronic reporting waiver shall submit to the Authority a written waiver request form provided by the Authority that contains the reason for the requested waiver.

(10) The Authority may grant a waiver of the electronic reporting requirement for good cause as determined by the Authority. Good cause includes financial hardship and not having an automated recordkeeping system.

(a) If the Authority approves the electronic reporting waiver, the Authority shall provide written notification to the pharmacy. The Authority shall determine an alternative reporting method for the pharmacy granted a waiver. The duration of the waiver shall be two years at which time the pharmacy must reapply.

(b) If the Authority denies the electronic reporting waiver, the Authority shall provide written notification to the pharmacy explaining why the request was denied. The Authority may offer alternative suggestions for reporting to facilitate participation in the program.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962 & 431.964

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13; Renumbered from 410-121-4010, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16

333-023-0815

Notification to Patients

Using language provided by the Authority, a pharmacy shall notify each patient receiving a controlled substance about the Prescription Drug Monitoring Program before or when the controlled substance is dispensed to the patient. The notification shall include that the prescription will be entered into the system.

Stat. Auth.: ORS 431.962

Stats. Implemented: ORS 431.962

Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; Renumbered from 410-121-4015, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16

333-023-0820

Information Access

(1) System Access. Only the following individuals or entities may access the system:

(a) Practitioners and pharmacists authorized to prescribe or dispense controlled substances;

(b) Delegates;

(c) Designated representatives of the Authority and any vendor contracted to establish or maintain the system; and

(d) State Medical Examiner and designees of the State Medical Examiner.

(2) All entities or individuals who request access from the Authority for the creation of user accounts shall agree to terms and conditions of use of the system.

(3) All delegates must be authorized by a practitioner or pharmacist with an active system account.

(4) The Authority shall monitor the system for unusual and potentially unauthorized use. When such use is detected, the user account shall be immediately deactivated.

(5) The vendor, a practitioner, a pharmacist or a pharmacy shall report to the Authority within 24 hours any suspected breach of the system or unauthorized access.

(6) When the Authority is informed of any suspected breach of the system or unauthorized access, the Authority shall notify the Authority's Information Security Office and investigate.

(7) If patient data is determined to have been breached or accessed without proper authorization, the Authority shall notify all affected patients, the Attorney General, and the applicable health professional regulatory board as soon as possible but no later than 30 days from the date of the final determination that a breach or unauthorized access occurred. Notice shall be made by first class mail to a patient or a patient's next of kin if the patient is deceased. The notice shall include:

(a) The date the breach or unauthorized access was discovered and the date the Authority believes the breach or unauthorized access occurred;

(b) The data that was breached or accessed without proper authorization;

(c) Steps the individual can take to protect him or herself from identity or medical identity theft;

(d) Mitigation steps taken by the Authority; and

(e) Steps the Authority will take to reasonably ensure such a breach does not occur in the future.

(8) Practitioner, Pharmacist, and Delegate Access. A practitioner, pharmacist, or delegate who chooses to request access to the system shall apply for a user account as follows:

(a) Complete and submit an application provided by the Authority that includes identifying information and credentials;

(b) Agree to terms and conditions of use of the system that defines the limits of access, allowable use of patient information, and penalties for misuse of the system; and

(c) Mail to the Authority a notarized application.

(9) State Medical Examiner Access. The State Medical Examiner or his or her designee shall apply for a user account as required in section (8) of this rule and indicate their license type as Medical Examiner.

(10) The Authority shall compare the licensure requirements between Oregon practitioners and similarly licensed professionals in California, Idaho, and Washington. The Authority's determination of similar licensure requirements shall be based upon scope of practice and formulary.

(11) The Authority shall review each application to authenticate before granting approval of a new account.

(12) If the Authority learns that an applicant has provided inaccurate or false information on an application, the Authority shall deny access to the system or terminate access to the system if access has already been established. The Authority may send written notification to the appropriate health professional regulatory board or oversight entity.

(13) A practitioner or pharmacist who is an authorized system user shall notify the Authority when his or her license or DEA registration has been limited, revoked, or voluntarily retired. A practitioner or pharmacist who changes or terminates employment shall notify the Authority of that change.

(14) When the Authority learns that a practitioner or pharmacist's license has been limited or revoked, the Authority shall deny further access to the system.

(15) When a delegate for any reason is no longer authorized as a delegate by a practitioner or pharmacist, the practitioner or pharmacist shall revoke the delegation and notify the Authority.

(16) When the account of a delegate is inactive for more than six months, the account shall be deactivated by the Authority.

(17) When for any reason access of a designee of the State Medical Examiner must be revoked, the State Medical Examiner shall notify the Authority.

(18) Each time a practitioner or pharmacist makes a patient query he or she shall certify that requests are in connection with the treatment of a patient in his or her care and agree to terms and conditions of use of the system.

(19) Each time the State Medical Examiner or designee of the State Medical Examiner makes a patient query he or she shall certify that requests are for the purpose of conducting a specific medicolegal investigation or autopsy where there is reason to believe controlled substances contributed to the death and agree to terms and conditions of use of the system.

(20) Each time a delegate makes a patient query he or she shall certify that requests are in connection with the treatment of a patient of the practitioner or pharmacist for whom the delegate is conducting the query, agree to terms and conditions of use, and indicate the authorizing practitioner or pharmacist for whom the delegate is conducting the query.

(21) Practitioners and pharmacists with delegates must conduct monthly audits of delegate use to monitor for potential misuse of the system.

(22) When a practitioner or pharmacist learns of any potential unauthorized use of the system or system data by a delegate, the practitioner or pharmacist shall:

(a) Revoke the delegation; and

(b) Notify the Authority of the potential unauthorized use.

(23) When the State Medical Examiner learns of any potential unauthorized use of the system or system data by a designee, the State Medical Examiner shall notify the Authority.

(24) When the Authority learns of any potential unauthorized use of the system or system data, the Authority shall revoke the user's access to the system, notify the Authority's Information Security Office, and investigate.

(a) If the Authority determines unauthorized use occurred, the Authority shall send written notification to the appropriate health professional regulatory board, the Attorney General and all affected individuals.

(b) If the Authority determines unauthorized use did not occur, the Authority shall reinstate access to the system.

(25) The Authority shall send written notification to a user or a potential user when an account has been deactivated or access has been denied.

(26) Patient Access. A patient may request a report of the patient's own controlled substance record. The patient shall mail to the Authority a request that contains the following documents:

(a) A signed and dated patient request form provided by the Authority; and

(b) A copy of the patient's current valid U.S. driver's license or other valid government issued photo identification.

(27) The Authority shall review the personal information submitted and verify that the patient's identification and request match before taking further action.

(28) If the Authority cannot verify the information, the Authority shall send written notification to the patient explaining why the request cannot be processed.

(29) After the Authority has verified the request, the Authority shall query the system based upon the patient information provided in the request and securely send the report to the patient at no cost to the patient. The report shall include:

(a) A list of controlled substances dispensed to the patient including the dates of dispensation, the practitioners who prescribed the controlled substances, and the pharmacies that dispensed them; and

(b) A list of users who accessed the system for information on that specific patient with the date of each instance of access.

(30) If no data is found that matches the patient identified in the request, the Authority shall send written notification to the patient explaining possible reasons why no patient data was identified.

(31) A patient may send written notification to the Authority if he or she believes unauthorized access to his or her information has occurred. The notification shall include the patient's name, who is suspected to have gained unauthorized access to the patient's information, what information is suspected to have been accessed by unauthorized use, when the suspected unauthorized access occurred, and why the patient suspects the access was unauthorized. The Authority shall treat such patient notifications as potential unauthorized use of the system.

(32) A patient may request that the Authority correct information in a patient record report as follows:

(a) The patient shall specify in writing to the Authority what information in the report the patient considers incorrect.

(b) When the Authority receives a request to correct a patient's information in the system, the Authority shall make a note in the system that the information is contested and verify the accuracy of the system data with the vendor. The vendor shall verify that the data obtained from the query is the same data received from the pharmacy.

(c) If the data is verified incorrect, the Authority shall correct the errors in consultation with the vendor and document the correction. The Authority shall send to the patient the corrected report.

(d) If the vendor verifies the data is correct, the Authority shall send written notification informing the patient that the request for correction is denied. The notice shall inform the patient of his or her rights as are applicable to the prescription drug monitoring program, the process for filing an appeal, and if there are no appeal rights, how to otherwise address or resolve the issue.

(33) The Authority shall respond to all patient requests within 10 business days after the Authority receives a request. Each response shall include information that informs the patient of his or her rights as are applicable to the prescription drug monitoring program.

(34) If the Authority denies a patient's request to correct information, or fails to grant a patient's request within 10 business days after the Authority receives the request, a patient may appeal the denial or failure by requesting a contested case hearing. The appeal shall be filed within 30 days after the request to correct information is denied. The appeal process is conducted pursuant to ORS chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings (OAH), OAR 137-003-0501 through 137-003-0700.

(35) Law Enforcement Access. A federal, state, or local law enforcement agency engaged in an authorized drug-related investigation of an individual may request from the Authority controlled substance information pertaining to the individual to whom the information pertains. The request shall be pursuant to a valid court order based on probable cause.

(36) A law enforcement agency shall submit to the Authority a request that contains the following:

(a) A form provided by the Authority specifying the information requested; and

(b) A copy of the court order documents.

(37) The Authority shall review the law enforcement request.

(a) If the form is complete and the court order is valid, the Authority shall query the system for the requested information and securely provide a report to the law enforcement agency.

(b) If the request or court order is not valid, the Authority shall respond to the law enforcement agency providing an explanation for the denial.

(38) Health Professional Regulatory Board Access. A health professional regulatory board investigating an individual regulated by the board may request from the Authority controlled substance information pertaining to the member.

(a) A health professional regulatory board shall submit to the Authority a form provided by the Authority specifying the information requested. The board's executive director shall certify that the requested information is necessary for an investigation related to licensure, renewal, or disciplinary action involving the applicant, licensee, or registrant to whom the requested information pertains.

(b) The Authority shall review the regulatory board request.

(A) If a request is valid, the Authority shall query the system for the requested information and securely provide a report to the health professional regulatory board.

(B) If a request is not valid, the Authority shall respond to the health professional regulatory board providing an explanation for the denial.

(39) Researcher Access. The Authority may provide de-identified data for research purposes to a researcher. A researcher shall submit a research data request form provided by the Authority.

(a) The request shall include but is not limited to a thorough description of the study aims, data use, data storage, data destruction, and publishing guidelines.

(b) The Authority shall approve or deny research data requests based on application merit.

(c) If a request is approved, the requestor shall sign a data use agreement provided by the Authority.

(d) The Authority shall provide the minimum data set necessary that does not identify individuals.

(e) The Authority may charge researchers a reasonable fee for services involved in data access.

Stat. Auth.: ORS 431.962
Stats. Implemented: ORS 431.962 & 431.966
Hist.: DMAP 6-2011, f. & cert. ef. 5-5-11; DMAP 64-2013, f. & cert. ef. 11-19-13; Renumbered from 410-121-4020, PH 28-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: List of high priority chemicals of concern for children's health when used in children's products
Adm. Order No.: PH 29-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 333-016-2000, 333-016-2010, 333-016-2020, 333-016-2030
Subject: The Oregon Health Authority (Authority), Public Health Division is permanently adopting administrative rules in chapter 333, division 16 related to high priority chemicals of concern for children's health.

SB 478 (Oregon Laws 2015, chapter 786) was passed by the Oregon Legislature during the 2015 legislative session. The law requires the Authority to maintain a list of high priority chemicals of concern for children's health when used in children's products. The law states that the initial Authority list shall "include on the list chemicals that are listed on the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children". These rules establish the initial list of high priority chemicals of concern for children's health when used in children's products that a manufacturer of children's products sold or offered for sale in this state shall provide biennial notice to the Oregon Health Authority beginning on January 1, 2018. This rulemaking is only establishing the list of high priority chemicals of concern for children's health when used in children's products. No requirements are being imposed on manufacturers at this time.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-016-2000
Purpose, Scope, and Effective Date

(1) These rules establish the initial list of high priority chemicals of concern for children's health when used in children's products. The presence of a high priority chemical of concern in a children's product does not necessarily mean that the product is harmful to human health or that there is any violation of existing safety standards or laws. The information required to be reported in these rules will help fill a data gap that exists for both consumers and agencies.

(2) A manufacturer of children's products sold or offered for sale in this state must provide biennial notice to the Oregon Health Authority, of all children's products that contain a high priority chemical listed in OAR 333-016-2020.

(3) A manufacturer's first report is due no later than January 1, 2018.

Stat. Auth.: OL 2015, ch. 786, sec. 3
Stats. Implemented: OL 2015, ch. 786, sec. 3
Hist.: PH 29-2015, f. 12-29-15, cert, ef. 1-1-16

333-016-2010
Definitions

(1) "Chemical" means:

(a) A substance with a distinct molecular composition and the breakdown products of the substance that form through decomposition, degradation or metabolism.

(b) A group of structurally related substances and the breakdown products of the substances that form through decomposition, degradation or metabolism.

(2) "Children's cosmetics" means products that are intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, moisturizing, beautifying, promoting attractiveness or altering the appearance. "Children's cosmetics" does not mean soap, dietary supplements or food and drugs approved by the United States Food and Drug Administration.

(3)(a) "Children's product" means:

(A) Any of the following products that are made for, marketed for use by or marketed to children under 12 years of age:

(i) A product designed or intended by the manufacturer to facilitate sucking, teething, sleep, relaxation, feeding or drinking.

(ii) Children's clothing and footwear.

(iii) Car seats.

(iv) Children's cosmetics.

(v) Children's jewelry.

(vi) Toys.

(B) Any component part of a product specified in paragraph (A) of this subsection.

(b) "Children's product" does not mean:

(A) Athletic shoes with cleats or spikes.

(B) Batteries.

(C) BB guns, pellet guns and air rifles.

(D) Bicycles and tricycles.

(E) Chemistry sets.

(F) Consumer electronic products, including personal computers, audio and video equipment, calculators, wireless telephones and game consoles, handheld devices that incorporate a video screen and are used to access interactive software, and the associated peripherals.

(G) Interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs.

(H) Model rockets.

(I) Pocketknives and multitools.

(J) Roller skates.

(K) Scooters.

(L) Sets of darts with metallic points.

(M) Slings and catapults.

(N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and bindings.

(O) Sporting equipment and accessories, including but not limited to bats, balls, gloves, sticks, pucks, pads, helmets and other protective equipment, weight training and exercise aids, protective eyewear, backpacks and tents, raingear, sport bags and luggage, and golf equipment.

(P) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding 24 volts.

(Q) Food and beverages and food and beverage packaging regulated by the United States Food and Drug Administration or the United States Department of Agriculture.

(4) "These rules" mean OAR 333-016-2000 through 333-016-2030.

Stat. Auth.: OL 2015, ch. 786, sec. 3
Stats. Implemented: OL 2015, ch. 786, sec. 3
Hist.: PH 29-2015, f. 12-29-15, cert, ef. 1-1-16

333-016-2020
Chemicals of High Concern to Children

The following chemicals are designated as high priority chemicals of concern for children's health when used in children's products:

(1) Formaldehyde (50-00-0).
(2) Aniline (62-53-3).
(3) N-Nitrosodimethylamine (62-75-9).
(4) Benzene (71-43-2).
(5) Vinyl chloride (75-01-4).
(6) Acetaldehyde (75-07-0).
(7) Methylene chloride (75-09-2).
(8) Carbon disulfide (75-15-0).
(9) Methyl ethyl ketone (78-93-3).
(10) 1,1,2,2-Tetrachloroethane (79-34-5).
(11) Tetrabromobisphenol A (79-94-7).
(12) Bisphenol A (80-05-7).
(13) Diethyl phthalate (84-66-2).
(14) Dibutyl phthalate (84-74-2).
(15) Di-n-hexyl phthalate (84-75-3).
(16) Phthalic anhydride (85-44-9).
(17) Butyl benzyl phthalate (BBP) (85-68-7).
(18) N-Nitrosodiphenylamine (86-30-6).
(19) Hexachlorobutadiene (87-68-3).
(20) Propyl paraben (94-13-3).
(21) Butyl paraben (94-26-8).
(22) 2-Aminotoluene (95-53-4).
(23) 2,4-Diaminotoluene (95-80-7).
(24) Methyl paraben (99-76-3).
(25) p-Hydroxybenzoic acid (99-96-7).
(26) Ethylbenzene (100-41-4).
(27) Styrene (100-42-5).
(28) 4-Nonylphenol (104-40-5); 4-NP and its isomer mixtures including CAS 84852-15-3 and CAS 25154-52-3.
(29) para-Chloroaniline (106-47-8).
(30) Acrylonitrile (107-13-1).

(31) Ethylene glycol (107-21-1).
(32) Toluene (108-88-3).
(33) Phenol (108-95-2).
(34) 2-Methoxyethanol (109-86-4).
(35) Ethylene glycol monoethyl ester (110-80-5).
(36) Tris(2-chloroethyl) phosphate (115-96-8).
(37) Di-2-ethylhexyl phthalate (117-81-7).
(38) Di-n-octyl phthalate (DnOP) (117-84-0).
(39) Hexachlorobenzene (118-74-1).
(40) 3,3'-Dimethylbenzidine and Dyes Metabolized to 3,3'-Dimethylbenzidine (119-93-7).
(41) Ethyl paraben (120-47-8).
(42) 1,4-Dioxane (123-91-1).
(43) Perchloroethylene (127-18-4).
(44) Benzophenone-2 (Bp-2); 2,2',4,4'-Tetrahydroxybenzophenone (131-55-5).
(45) 4-tert-Octylphenol; 4(1,1,3,3-Tetramethylbutyl) phenol (140-66-9).
(46) Estragole (140-67-0).
(47) 2-Ethylhexanoic acid (149-57-5).
(48) Octamethylcyclotetrasiloxane (556-67-2).
(49) Benzene, Pentachloro (608-93-5).
(50) C.I. Solvent yellow 14 (842-07-9).
(51) N-Methylpyrrolidone (872-50-4).
(52) 2,2',3,3',4,4',5,5',6,6'-Decabromodiphenyl ether; BDE-209 (1163-19-5).
(53) Perfluorooctanyl sulphonic acid and its salts; PFOS (1763-23-1).
(54) Phenol, 4-octyl (1806-26-4).
(55) 2-Ethyl-hexyl-4-methoxycinnamate (5466-77-3).
(56) Mercury (7439-97-6) and mercury compounds including methyl mercury (22967-92-6).
(57) Molybdenum and molybdenum compounds (7439-98-7).
(58) Antimony and Antimony compounds (7440-36-0).
(59) Arsenic and Arsenic compounds (7440-38-2), including arsenic trioxide (1327-53-3) and dimethyl arsenic (75-60-5).
(60) Cadmium and cadmium compounds (7440-43-9).
(61) Cobalt and cobalt compounds (7440-48-4).
(62) Tris(1,3-dichloro-2-propyl)phosphate (13674-87-8).
(63) Butylated hydroxyanisole; BHA (25013-16-5).
(64) Hexabromocyclododecane (25637-99-4).
(65) Diisodecyl phthalate (DIDP) (26761-40-0).
(66) Diisononyl phthalate (DINP) (28553-12-0).
Stat. Auth.: OL 2015, ch. 786, sec. 3
Stats. Implemented: OL 2015, ch. 786, sec. 3
Hist.: PH 29-2015, f. 12-29-15, cert, ef. 1-1-16

333-016-2030
Modifications to the List of High Priority Chemicals of Concern for Children's Health

(1) The Oregon Health Authority shall consider adding a chemical to the list of high priority chemicals of concern for children's health in OAR 333-016-2020 if that the chemical, on or after the effective date of these rules:
(a) Has been added to any of the following:
(A) Washington's list of Chemicals of High Concern to Children (WAC 173-334-130);
(B) Maine's list of Chemicals of High Concern (Maine law 38 § 1693-A(2));
(C) Minnesota's list of Chemicals of High Concern (Minn. Stat. 2010 116.9401 – 116.9407);
(D) Vermont's list of Chemicals of high concern to children (18 V.S.A. chapter 38A § 1773);
(b) Is currently or subsequently identified by the United States Environmental Protection Agency (USEPA) as being "carcinogenic to humans", or "likely to be carcinogenic to humans" through USEPA's Integrated Risk Information System;
(c) Has been or is subsequently found to have a reference dose or reference concentration based on neurotoxicity through USEPA's Integrated Risk Information System;
(d) Is currently or subsequently identified in monographs on the Potential Human Reproductive and Developmental Effects, United States Office of Health and Human Services National Toxicology Program, Office of Health Assessment and Translation as a reproductive or developmental toxicant; or
(e) Is currently or subsequently identified by the Centers for Disease Control and Prevention in its National Report on Human Exposure to Environmental Chemicals.
(2) The Authority shall also consider adding a chemical to the list of high priority chemicals of concern for children's health in OAR 333-016-2020 if that the chemical, on or after the effective date of these rules:
(a) Is found to have the potential, as demonstrated by credible, peer-reviewed scientific evidence to:
(A) Harm the normal development of a fetus or child or cause other developmental toxicity;
(B) Act as a carcinogen;
(C) Cause genetic damage or reproductive harm;
(D) Disrupt the endocrine system;
(E) Damage the nervous system, immune system or organs;
(F) Cause other systemic toxicity;
(G) Be a very persistent toxic substance by having a half-life greater than or equal to one of the following:
(i) A half-life in soil or sediment of greater than one hundred eighty days.
(ii) A half-life greater than or equal to sixty days in water or evidence of long-range transport; or
(H) Be a very bioaccumulative toxic substance by having a bioconcentration factor or bioaccumulation factor greater than or equal to five thousand, or if neither are available, having a log Kow greater than 5.0; and
(b) Has been found through:
(A) Biomonitoring to be present in human blood, umbilical cord blood, breast milk, urine or other bodily tissues or fluids;
(B) Sampling and analysis to be present in household dust, indoor air, drinking water or elsewhere in the home environment; or
(C) Monitoring to be present in fish, wildlife or the natural environment.
(3) The Oregon Health Authority may remove a chemical from the list if the Authority determines that:
(a) The chemical is no longer being used in children's products; or
(b) The chemical has been removed from any of the lists identified in subsection (1)(a) through (e) of this rule.
(4) The list of high priority chemicals of concern for children's health in OAR 333-016-2020 may only be modified by following the Administrative Procedures Act rulemaking process.
Stat. Auth.: OL 2015, ch. 786, sec. 3
Stats. Implemented: OL 2015, ch. 786, sec. 3
Hist.: PH 29-2015, f. 12-29-15, cert, ef. 1-1-16

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Rule Caption: Implementing changes to the Oregon Indoor Clean Air Act (ICAA)
Adm. Order No.: PH 30-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 333-015-0030, 333-015-0035, 333-015-0040, 333-015-0045, 333-015-0064, 333-015-0068, 333-015-0070, 333-015-0075, 333-015-0078, 333-015-0085
Subject: The Oregon Health Authority, Public Health Division is permanently amending administrative rules in chapter 333, division 15 related to the Oregon Indoor Clean Air Act (ICAA).

This rulemaking:

(1) Amends and adds definitions to bring the rules into line with the ICAA, better reflect the purpose of the statute, and/or add clarity to the rules.

(2) Includes 'inhalant delivery systems' and 'inhalants' as part of the ICAA.

(3) Allows on premises consumption of food and drink, excluding alcoholic drinks, in certified smoke shops.

(4) Provides exemption for medical use of marijuana in the place of employment of a licensee of a professional licensing board as described in ORS 475.328.

(5) Revises content of ICAA related signs.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-015-0030
Definitions

For purposes of OAR chapter 333, division 15, the following definitions shall apply:

(1) "Accessibility ramp" means a ramp intended to provide access for people with disabilities to and from an entrance or exit.

(2) "Act" means the Oregon Indoor Clean Air Act as it appears in ORS 433.835 through 433.875 and 433.990(5).

(3) "Authority" means the Oregon Health Authority.

(4) "Certificate holder" means the individual or entity on record with the Oregon Health Authority as the owner of a certified cigar bar or smoke shop.

(5) "Cigar bar" means a business that:

(a) Has on-site sales of cigars as defined in ORS 323.500;

(b) Has a humidor on the premises;

(c) Allows the smoking of cigars on the premises but prohibits the smoking, aerosolizing or vaporizing of other inhalants on the premises;

(d) Has been issued and operates under a full on-premises sales license issued under ORS 471.175;

(e) Prohibits persons under 21 years of age from entering the premises and posts notice of the prohibition;

(f) Does not offer video lottery games as authorized under ORS 461.217;

(g) Has a maximum seating capacity of 40 persons;

(h) Has a ventilation system that exhausts smoke from the business, and is designed and terminated in accordance with the state building code standards for the occupancy classification in use; and

(i) Requires all employees to read and sign a form approved and published by the Public Health Division that explains the dangers of exposure to secondhand smoke.

(6) "Cigarillos" means a smoking device wrapped in tobacco leaf, rather than paper, that contains less than three grams of tobacco and measures less than 100 mm in length.

(7) "Employer" means any entity or individual who engages an individual to perform work or services in an area where smoking is prohibited under the employer's control.

(8) "Enclosed area" means all space between a floor and a ceiling that is enclosed on two or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps. If no ceiling is present, "enclosed area" means all space that is included by three or more sides by permanent or temporary walls or windows, exclusive of doors, passageways or gaps.

(9) "Entity in charge of a public place" means any person or organization that has responsibility because of ownership, proprietorship, management, or oversight over a place that is open to the public. Entity in charge of a public place is used to refer only to a person or organization in charge that is not also an employer.

(10) "Entrance" means any point of ingress, including an accessibility ramp, to an enclosed area from a non-enclosed area.

(11) "Exit" means any point of egress, including an accessibility ramp, from an enclosed area to a non-enclosed area.

(12) "Extended period of time" means more than 365 consecutive days.

(13) "Gross revenue" means all receipts from the sale of product(s) less the amount of any rebates, refunds, or credits.

(14) "Humidor" means a storage container designed to allow controlled airflow and equipped with a device that maintains the internal humidity in the range of 68 percent to 75 percent and an internal temperature in the range of 68 degrees to 70 degrees Fahrenheit.

(15) "Inhalant" means nicotine, a cannabinoid or any other substance that:

(a) Is in a form that allows the nicotine, cannabinoid or substance to be delivered into a person's respiratory system;

(b) Is inhaled for the purpose of delivering the nicotine, cannabinoid or other substance into a person's respiratory system; and

(c)(A) Is not approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose; or

(B) If approved by, or emitted by a device approved by, the United States Food and Drug Administration for a therapeutic purpose, is not marketed and sold solely for that purpose.

(16)(a) "Inhalant delivery system" means:

(A) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(B) A component of a device described in this subsection or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subsection, whether the component or substance is sold separately or is not sold separately.

(b) Inhalant delivery system does not include:

(A) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and

(B) Tobacco products.

(17) "Local Public Health Authority" or "LPHA" means the county government, unless a health district has been formed under ORS 431.414, the county has contracted with a person or agency to act as the public health authority, or the county has relinquished its authority to the state.

(18) "Maximum seating capacity" means the total number of seats available to patrons, including, but not limited to, bar stools, seating at cocktail tables, seats at buddy-bar tables, banquette seating, dining seating, couch space, and floor pillows intended as seating; as well as the total number of patrons a business permits inside the business at the same time.

(19) "Noncommercial tobacco products" means unprocessed tobacco plants or tobacco by-products used for ceremonial or spiritual purposes by American Indians.

(20) "Place of employment" means an enclosed area under the control of a public or private employer, including work areas, employee lounges, vehicles that are operated in the course of an employer's business and that are not operated exclusively by one employee, rest rooms, conference rooms, classrooms, cafeterias, hallways, meeting rooms, elevators and stairways. Place of employment does not include a private residence unless it is used as a child care facility as defined in ORS 657A.250 or a facility providing adult day care as defined in 410.490.

(21) "Private residence" means a residence or part of a residence that is not operated as a place of business where clients or customers use the premises. A residence that is considered a place of employment or public place is subject to ORS 433.835 through 433.875 during its hours of operation. Only that part of a residence used as a place of business is subject to ORS 433.835 through 433.875.

(22) "Public Health Director" means the director of the Public Health Division of the Oregon Health Authority.

(23) "Public Health Division" means the Public Health Division of the Oregon Health Authority.

(24) "Public place" means an enclosed area open to the public.

(25) "Rooms designated by the owner or entity in charge of a hotel or motel as rooms in which smoking is permitted" means sleeping rooms or suites in that hotel or motel.

(26) "Smoking instrument" means any cigar, cigarette, pipe, or other instrument used to smoke tobacco, marijuana or any other inhalant.

(27) "Smoke shop" means a business that is certified with the Oregon Health Authority as a smoke shop under OAR 333-015-0068.

(28) "Stand-alone business" means a business that is not attached to, does not use or occupy the same space as, is not located within, and does not share a common entryway or area with another business, another place of employment, or residential property.

(29) "Tobacco Prevention and Education Program" means the Tobacco Prevention and Education Program in the Public Health Division of the Oregon Health Authority.

(30) "Wall" means any architectural partition, permanent or temporary, with a height and length greater than its thickness, used to divide or enclose an area or to support another structure. Walls include, but are not limited to, partitions constructed of plastic, mesh or other screening materials, slats, louvered blinds, fabric, or blankets, and partitions with latticing or other open frameworks.

(31) "10 feet" means 10 linear feet, measured in a straight line between the points in question.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835
Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 5-2011(Temp), f. & cert. ef. 7-1-11 thru 12-27-11; PH 11-2011, f. & cert. ef. 10-27-11; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0035
General Provision

(1) No person shall smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument in a public place except in those areas that are not required to be smoke, aerosol or vapor free under ORS 433.850(2) and OAR 333-015-0035(5) and (6).

(2) Employers shall provide for employees a place of employment that is free of all smoke, aerosols and vapors containing inhalants; and may not allow employees to smoke, aerosolize or vaporize inhalants at the place of employment, except in those areas listed in ORS 433.850(2) and in OAR

333-015-0035(4) through (7). In providing a smoke, aerosol, or vapor free place of employment, an employer is responsible for taking steps to ensure that no person smokes, aerosolizes or vaporizes an inhalant within 10 feet of the following parts of a place of employment:

(a) Entrances;

(b) Exits;

(c) Windows that open;

(d) Ventilation intakes that serve an enclosed area; and

(e) Accessibility ramps.

(3) No person shall smoke, aerosolize or vaporize an inhalant or carry a lighted smoking instrument within 10 feet of the following parts of public places or places of employment:

(a) Entrances;

(b) Exits;

(c) Windows that open;

(d) Ventilation intakes that serve an enclosed area; and

(e) Accessibility ramps.

(4) The owner or entity in charge of a hotel or motel may designate up to 25 percent of the sleeping rooms of the hotel or motel as rooms in which smoking, aerosolizing or vaporizing is permitted.

(a) If the owner or entity in charge of a hotel or motel chooses to designate up to 25 percent of sleeping rooms as smoking, aerosolizing or vaporizing permitted, all smoking, aerosolizing or vaporizing rooms on the same floor must be contiguous. The status of the rooms may not be changed, except to add more non-smoking, non-aerosolizing or non-vaporizing rooms.

(b) The owner or entity in charge of a hotel or motel shall provide written notice to patrons upon check-in as to the smoking, aerosolizing or vaporizing status of the sleeping rooms.

(c) The owner or entity in charge of a hotel or motel shall post signs at each entrance and exit in accordance with OAR 333-015-0040, with the exception of sleeping room entrances and exits. Signs shall notify all patrons that smoking, aerosolizing or vaporizing is limited to certain sleeping rooms.

(d) The owner or entity in charge of a hotel or motel shall provide written information to patrons upon check-in, describing how patrons may notify management of smoking, aerosolizing or vaporizing occurring in non-smoking, non-aerosolizing or non-vaporizing areas or rooms.

(e) Nothing in these rules shall prevent the owner or entity in charge of a hotel or motel from prohibiting smoking, aerosolizing or vaporizing on the entire premises.

(5) Smoking of noncommercial tobacco products for ceremonial purposes is permitted in spaces designated for traditional ceremonies in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996.

(6) The following areas are not required to be smokefree:

(a) Smoke shops that are certified by the Authority under OAR 333-015-0068;

(b) Cigar bars if:

(A) The cigar bar generated on-site retail sales of cigars of at least $5,000 for the calendar year ending December 31, 2006; and

(B) The cigar bar has provided the Public Health Division with proper documentation as required by OAR 333-015-0066.

(c) Up to 25 percent of the sleeping rooms of a hotel or motel, as designated by the owner or entity in charge. The hotel or motel must be in compliance with the rules set forth in OAR 333-015-0035(4).

(7) The medical use of marijuana is permitted in the place of employment of a licensee of a professional licensing board as described in ORS 475.328.

(8) Nothing in these rules shall prevent an employer in charge of a place of employment or an entity in charge of a public place from designating the entire place of employment or public place as smoke, aerosol or vapor free.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0040
Signs

(1) An employer or entity in charge, except in those places described in OAR 333-015-0035(5) and (6), shall post signs prohibiting smoking, aerosolizing or vaporizing of inhalants. Nothing in these rules shall prevent an employer from increasing the amount of property where smoking, aerosolizing or vaporizing of inhalants is prohibited beyond the 10-foot requirement or from designating the entire premises as smoke, aerosol or vapor free. Signs may be used without specifically including the words "within 10 feet" if the signs specify a restriction greater than 10 feet or designate the entire premises as smoke, aerosol or vapor free. Signs shall be posted prominently at each entrance and exit to the place of employment or public place.

(2) In addition to requirements under this rule, an owner or entity in charge of a hotel or motel shall comply with signage requirements as described in OAR 333-015-0035(4).

(3) An owner or entity in charge of tables or outdoor seating or dining areas within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of a public place or place of employment, or any portion of an accessibility ramp shall clearly mark the tables or outdoor seating or dining areas as non-smoking, non-vaporizing and non-aerosolizing.

(4) In a cigar bar where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises;

(b) Smoking, aerosolizing or vaporizing of inhalants that are not cigars is prohibited; and

(c) Anyone under the age of 21 is prohibited from entering the premises.

(5) In a smoke shop where smoking is allowed under OAR 333-015-0035(6), the employer or entity in charge shall post signs at each entrance and exit clearly stating that:

(a) Smoking is allowed on all or part of the premises;

(b) Anyone under the age of 18 is prohibited from entering the premises; and

(c) Cigarette smoking is prohibited on the premises, in smoke shops where cigarette smoking is not allowed under OAR 333-015-0068(7)(e).

(d) Smoking, aerosolizing or vaporizing of inhalants that are not tobacco products is prohibited. (6) All signs used to describe whether smoking is prohibited or allowed in a place of employment or public place shall be placed at a height and location easily seen by a person entering the establishment and shall not be obscured in any way.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 18-2008, f. 11-14-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0045
Ashtrays

(1) Ashtrays and any receptacles to be used for smoking, aerosolizing or vaporizing or depositing cigarette or inhalant delivery system debris are prohibited within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of a public place or place of employment, and any portion of an accessibility ramp.

(2) Except for those areas described in OAR 333-015-0035(6), ashtrays and any receptacles to be used for smoking or depositing cigarette or inhalant delivery system debris are prohibited inside public places and places of employment.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: HD 10-1983, f. & ef. 7-1-83; OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0064
Outdoor Smoking Areas

(1) The owner or entity in charge of a place of business may establish an outdoor smoking, aerosolizing or vaporizing of inhalants area if that area is:

(a) Not within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp;

(b) Not, at any time, an enclosed area as defined in OAR 333-015-0030(8); and

(c) In compliance with all other state, city, and county codes.

(2) Nothing in these rules shall prevent an employer from increasing the amount of property where smoking, aerosolizing or vaporizing is prohibited beyond the 10-foot requirement or from designating the entire premises as smokefree.

Stat. Auth.: ORS 433.855

Stats. Implemented: ORS 433.835 - 433.870

Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0068
Smoke Shops

(1) A business must apply to the Authority for certification prior to allowing smoking on the premises.

(2) A business must apply for smoke shop certification on a form prescribed by the Authority (this form is available at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program at 971-673-0984).

(3) To obtain certification as a smoke shop under any part of this rule, a business must agree to allow the Authority or LPHA to make unannounced inspections of the business to determine compliance with the Act.

(4) Smoke shop certification is only valid for the business location authorized by the Authority.

(5) Certification Criteria:

(a) A business may apply for smoke shop certification by submitting the following documentation to the Authority, along with a completed application form:

(A) A notarized, sworn statement attesting that the business:

(i) Is primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derives at least 75 percent of its gross revenue from such sales;

(ii) Prohibits persons under 18 years of age from entering the premises;

(iii) Does not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

(iv) Does not sell or offer food, beverages or alcoholic beverages. On-premises consumption of food or beverages, excluding alcoholic beverages is permitted;

(v) Has a maximum seating capacity of no more than four persons;

(vi) Allows the smoking of tobacco product samples only for the purpose of making retail purchase decisions, in a manner that complies with ORS 180.486 and 431.840; and

(vii) Does not allow the smoking, aerosolizing or vaporizing of inhalants that are not tobacco products.

(B) Documentation of the business's sales, broken down by category of product;

(C) Evidence, such as photographs, of signs prohibiting:

(i) Persons under 18 years of age from entering the premises, and

(ii) On premises consumption of alcohol.

(D) A building map and photographs of the premises demonstrating that the business is a stand-alone business;

(E) A site map of the premises that denotes maximum seating capacity and includes a detailed seating chart; and

(F) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(b) A business existing on December 31, 2008, may apply for certification as a smoke shop by submitting the following documentation to the Authority, along with a completed application form:

(A) Proof of registration with the Oregon Secretary of State, Corporation Division, since 2008 or, if not required to be registered, tax documentation proving that the business has been in operation since 2008;

(B) A notarized, sworn statement attesting that:

(i) On December 31, 2008, the business:

(I) Was primarily engaged in the sale of tobacco products and smoking instruments intended for off-premises consumption or use, and derived at least 75 percent of its gross revenue from such sales;

(II) Prohibited persons under 18 years of age from entering the premises;

(III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises; and

(IV) Did not sell or offer food or beverages, including alcoholic beverages. On premises consumption of food and beverages, excluding alcohol, is permitted.

(ii) Presently, the business meets the criteria listed under subparagraph (5)(b)(B)(i) of this rule;

(C) Documentation of the business's sales, broken down by category of product;

(D) Either of the following:

(i) Documentation, such as a building map or photographs, demonstrating that on December 31, 2008, the business was a stand-alone business with no other businesses or residential property attached; or

(ii) Documentation demonstrating that on December 31, 2008, it had a ventilation system that exhausted smoke from the business and was designed and terminated in accordance with the state building code standards for the occupancy classification in use. Such documentation must include either:

(I) A certificate of occupancy that was current on December 31, 2008, and official documentation from the building authority with jurisdiction of the occupancy classification for which the business was approved; or

(II) If the documentation described in (5)(b)(D)(ii)(I) of this rule is unavailable, a current certificate of occupancy, proof that the business's ventilation system was installed in 2008 or earlier, and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;

(E) Either of the following:

(i) Documentation, such as a building map or photographs, demonstrating that the business presently is a stand-alone business with no other businesses or residential property attached; or

(ii) A current certificate of occupancy and official documentation from the building authority with jurisdiction that the business was approved as a smoking lounge;

(F) Evidence, such as photographs, of signs prohibiting persons under 18 years of age from entering the premises; and

(G) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(c) A business that filed an application with the Authority for certification as a smoke shop prior to June 30, 2011, may be certified by the Authority on or before December 31, 2012, according to the requirements of the Act as it was in effect on June 29, 2011. To achieve certification under these criteria, the business must submit the following documentation to the Authority:

(A) A notarized, sworn statement attesting that:

(i) At the time of application, the business:

(I) Was primarily engaged in the sale of tobacco products and smoking instruments, and derived at least 75 percent of its gross revenue from such sales;

(II) Prohibited persons under 18 years of age from entering the premises;

(III) Did not offer video lottery games as authorized under ORS 461.217, social gaming, or betting on the premises;

(IV) Did not sell or offer on-premises consumption of alcoholic beverages; and

(V) Was a stand-alone business with no other businesses or residential property attached to the premises; and

(ii) Presently, the business meets the criteria listed under subparagraph (5)(c)(A)(i) of this rule;

(B) Documentation of the business's sales, broken down by category of product, including cigarette sales; and

(C) Any other documentation, as specified in the application form, necessary to demonstrate compliance with the Act or these rules.

(6) Application Review:

(a) The Authority shall review application materials within 45 days of receipt and determine whether the application is complete.

(b) Within 15 days of declaring an application complete, the Authority shall deny or grant the application. The Authority shall grant a business certification if, upon review of the application materials, the Authority finds that sufficient documentation has been provided to demonstrate the business's compliance with this rule. In lieu of denying an application, the Authority may request additional information from the business for the purpose of assessing compliance with this rule.

(c) The Authority may deny an application for smoke shop certification if the Authority issued a civil penalty against an applicant for any violation of the Act or these rules within 12 months prior to application.

(d) The Authority may deny an application for smoke shop certification and prohibit an applicant from reapplying for up to two years if the applicant provides information that is false or deliberately misleading.

(7) Ongoing Requirements for Certification:

(a) A smoke shop certified under this rule must continue to meet the criteria for certification once certified. The Authority may revoke certification if the smoke shop ceases to meet the criteria for certification.

(b) Every year, within 30 days of the calendar date on which certification was originally granted, a smoke shop must provide the Authority with documentation demonstrating that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments. Such documentation must include:

(A) A notarized, sworn statement attesting that at least 75 percent of the smoke shop's gross revenue is derived from the sale of tobacco products or smoking instruments; and

(B) Documentation of the smoke shop's sales broken down by category of product, including cigarette sales if the business is certified under subsection (5)(b) or (5)(c) of this rule and permits cigarette smoking on the premises.

(c) The Authority may inspect a business's financial records to determine compliance with the Act and these rules. The Authority shall attempt to contact the business and provide at least 48 hours' notice prior to conducting such an inspection.

(d) A smoke shop must maintain up-to-date contact information with the Authority. If the Authority is unable, despite a good-faith effort, to contact the smoke shop because the smoke shop's mailing address, phone number, and other contact information are out of date, then the Authority may suspend the smoke shop's certification until up-to-date contact information is provided.

(e) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule may not allow the smoking of cigarettes unless at least 75 percent of its gross revenue, as reflected in the documentation described in paragraph (7)(b)(B) of this rule, is derived from the sale of cigarettes.

(f) A smoke shop that is closed for an extended period of time or otherwise ceases to operate at the location that is certified is considered by the Authority to not meet certification requirements.

(8) Renewal of Certification:

(a) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule must renew its certification every five years within 30 days of the calendar date on which certification was originally granted.

(b) To renew certification, a smoke shop certified under subsection (5)(b) or (5)(c) of this rule must submit:

(A) Updated versions of the documentation required for initial certification under subsection (5)(b) or (5)(c) of this rule, respectively; and

(B) If the smoke shop allows the smoking of cigarettes, documentation demonstrating that the smoke shop derives at least 75 percent of its gross revenue from the sale of cigarettes.

(9) Transfer of Certification with Ownership:

(a) Smoking is not permitted on the premises of a smoke shop operating under new ownership until certification is effectively transferred from the certificate holder to the new owner in accordance with this section.

(b) If a smoke shop certified under subsection (5)(a) of this rule changes ownership, the following steps must be completed before the Authority shall transfer certification to the new owner:

(A) The certificate holder must notify the Authority of the intent to transfer ownership and certification;

(B) The new owner must submit a notarized, sworn statement to the Authority attesting that the smoke shop will continue to meet the certification requirements under the new ownership; and

(C) The certificate holder or the new owner must update the business's certification documentation with the Authority.

(c) If a smoke shop certified under subsection (5)(b) or (5)(c) of this rule changes ownership, the certificate holder or new owner of the smoke shop must submit the following documentation to the Authority to transfer certification to the new owner:

(A) Proof of transfer of ownership of the smoke shop, including, where applicable, updated registration with the Oregon Secretary of State, Corporation Division;

(B) A notarized, sworn statement attesting that the business will continue to meet the requirements for certification under the new ownership; and

(C) A completed application for transfer of certification (available on the Internet at www.healthoregon.org/smokefree or by calling the Tobacco Prevention and Education Program at 971-673-0984).

(d) After certification is transferred, the new certificate holder must submit financial documentation, including, but not limited to, sales receipts, demonstrating that at least 75 percent of the smoke shop's gross revenue during the first 90 days of operation under new ownership was derived from the sale of tobacco products or smoking instruments.

(10) Change of Location:

(a) A smoke shop certified under subsection (5)(a) of this rule that seeks to operate the business at a different location must reapply for certification in the new location.

(b) A smoke shop certified under subsection (5)(b) or (5)(c) of this rule that seeks to operate the business at a different location must submit the following documentation to the Authority, along with a completed application for transfer of certification, at least 30 days prior to permitting smoking at the new location:

(A) A copy of the deed or rental lease for the new location, indicating that the business does not occupy more than 3,500 square feet unless the original location exceeded 3,500 square feet;

(B) If the new location occupies more than 3,500 square feet, documentation demonstrating that the square footage of the new location is no more than 110 percent of the square footage of the location at which the smoke shop was originally certified;

(C) A notarized, sworn statement attesting that the smoke shop will cease to operate in the old location; and

(D) Documentation demonstrating that the smoke shop, as operated in the new location:

(i) Meets the original requirements for certification set forth in subsection (5)(b) or (5)(c), respectively;

(ii) Does not allow the smoking of cigarettes unless at least 75 percent of the gross revenue of the business is derived from the sale of cigarettes.

(c) Smoking is not permitted on the premises of the new location until the Authority certifies the new location pursuant to subsection (10)(a) or (10)(b) of this rule.

(11) Certification may be revoked if a smoke shop is closed for an extended period of time or ceases operating at the location that is certified. The certificate holder must notify the Authority immediately if the smoke shop is closing for an extended period of time or will no longer be operating.

(12) Certification may be revoked if a smoke shop fails to meet certification requirements or fails to submit required documentation in accordance with subsection (7)(b) of this rule.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0070
Oregon Health Authority Responsibilities

(1) The Authority shall maintain a system for receiving complaints, providing educational materials, conducting site visits, and issuing notices of violation.

(2) The Authority shall:

(a) Upon request and satisfactory review, provide certification to cigar bars and smoke shops verifying that they have met the definitions and standards for allowing smoking as set forth in ORS 433.835(1) and 433.850(2)(d) and these rules;

(b) Provide education and assistance to employers and entities in charge of public places to help them comply with the Act;

(c) Receive, respond to, and investigate complaints of non-compliance with the Act and these rules;

(d) Prepare and follow up on remediation plans with sites found to be out of compliance with the Act or these rules; and

(e) Issue citations to violators of the Act or these rules, and conduct contested cases under ORS chapter 183 as necessary.

(3) Upon request of the LPHA that assumes authority for any or all of the responsibilities pursuant to ORS 433.855(4), provide consultation and technical assistance to the LPHA.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0075
Complaint Response

The Authority or the LPHA shall respond to complaints as follows:

(1) Initial Complaint:

(a) The Authority or the LPHA shall assess whether the site in question is required to be smoke, aerosol or vapor free under the provisions of ORS 433.835 through 433.850.

(b) If the Authority or the LPHA determines that the place of employment, or public place (or any portion thereof), is required to be smoke, aerosol or vapor free, the Authority or the LPHA shall send a letter ("initial response letter") to the place of employment, or public place named in the complaint within 10 business days after receipt of the complaint of violation. The letter shall contain notification that the employer, or public place was reported as being in violation of the Act or these rules, and information on whom to contact for further information and assistance with compliance.

(c) The Authority or the LPHA shall send a form letter to the complainant, if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and

is being investigated or that the place of employment is not required to be smokefree under ORS 433.835 through 433.850.

(2) Second or Subsequent Complaint:

(a) If the Authority or the LPHA receives additional complaint(s) about the site within five business days after the "initial response letter" was sent, the Authority or the LPHA shall send a form letter to the complainant if the complainant has supplied his or her name and contact information, notifying the complainant that the complaint has been received and the investigation process begun.

(b) If the Authority or the LPHA receives a second or subsequent complaint about the site more than five business days after the "initial response letter" was sent, a representative of the Authority or the LPHA shall make an unannounced site visit within 30 days of complaint receipt to determine whether the employer or public place is in violation of the Act or these rules.

(c) An employer, entity in charge of a public place, smoke shop or cigar bar must permit the Authority or the LPHA access to the place of employment, public place (or any portion thereof), or smoke shop or cigar bar, in order to determine compliance with the ICAA. Failure to permit the Authority or LPHA access is a violation and may result in the imposition of civil penalties under OAR 333-015-0085(1).

(3) Remediation Plan:

(a) If, after a site visit, the Authority or LPHA finds violations of the ICAA an employer or entity in charge of a public place, certified smoke shop or cigar bar, or his or her designee, must cooperate with the Authority or LPHA to develop a remediation plan. All remediation plans must be completed within 15 days of the site visit.

(b) In special circumstances, an employer or entity in charge may request in writing an extension of time in which to complete the remediation plan. An extension may be granted only by the Public Health Director or designee.

(4) Post-remediation plan follow-up site visit:

(a) The Authority or the LPHA shall make a follow-up visit within 30 days of the remediation plan completion date to confirm completion.

(b) If a violation of the ICAA is found during the follow-up site visit the Authority may impose civil penalties.

(5) Post-remediation plan complaints:

(a) If an additional complaint is received within three years of the date the remediation plan was entered into, the Authority or the LPHA shall make an unannounced site visit within 21 days of complaint receipt. If a violation is found the Authority may impose a civil penalty.

(b) If an additional complaint is received more than three years of the date the remediation plan was entered into and there is no evidence of other violations in that three-year period, the Authority or the LPHA shall make an unannounced site visit and must follow the procedures in sections (3) and (4) of this rule.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0078
Violations

(1) The following are violations of the ICAA:

(a) Smoking, aerosolizing, vaporizing or carrying a lighted smoking instrument or inhalant delivery systems in an area where smoking, aerosolizing, or vaporizing of inhalants is prohibited.

(b) Cigar or cigarette butts in an area where smoking is prohibited.

(c) Ashtrays intended for use in an area where smoking is prohibited.

(d) Absence or insufficiency of signs that are required under these rules.

(e) Operating a cigar bar without proper certification from the Authority.

(f) Operating as a smoke shop without proper certification from the Authority.

(g) Smoking of non-cigar tobacco products in a cigar bar.

(h) Smoking, aerosolizing or vaporizing instruments intended for use in an area where smoking, aerosolizing or vaporizing of inhalants is prohibited.

(i) Non-compliance with any of the cigar bar or smoke shop certification requirements set forth in the Act or these rules.

(j) Smoking, aerosolizing or vaporizing of inhalants or carrying a lighted smoking instrument or inhalant delivery system within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.

(k) Ashtrays intended to be used for smoking within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.

(l) Tables or outdoor seating or dining areas not clearly marked as non-smoking, non-aerosolizing or non-vaporizing, within 10 feet of entrances, exits, windows that open, ventilation intakes that serve an enclosed area of any public place or place of employment, or any portion of an accessibility ramp.

(m) Failure of an employer or entity in charge to cooperate in developing a remediation plan.

(n) Failure of an employer or entity in charge of a public place, a cigar bar or smoke shop to permit the Authority or the LPHA to inspect all or any part of the premises.

(o) Failure of an employer to provide a smoke, aerosol, or vapor free place of employment by permitting smoking, aerosolizing or vaporizing of inhalants within 10 feet of the entrances, exits, windows that open, ventilation intakes that serve an enclosed area, and accessibility ramps.

(2) Notice of Violation:

(a) If the Authority has evidence of violations of the ICAA or these rules the Authority may impose civil penalties against an individual, an employer, an entity in charge of a public place, a cigar bar or smoke shop, in accordance with OAR 333-015-0085.

(b) A Notice of Violation must be issued in compliance with the notice and civil penalty provision in ORS chapter 183 and OAR 333-015-0085.

(c) Payment of civil penalties shall be made by mail to the Public Health Director and credited to the Tobacco Use Reduction Account, as required by ORS 433.855(1)(c).

(3) Failure to Cooperate: In addition to imposing civil penalties under OAR 333-015-0085 the Authority may initiate further legal action against an employer or entity in charge of a public place, a cigar bar or smoke shop including, but not limited to, requesting a court to enjoin operation of the business or public place if the employer or entity in charge of a public for violations of the ICAA or these rules.

(4) Revocations: The Authority may revoke a smoke shop certification for a substantial violation of any of the prohibitions of OAR 333-015-0078.

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

333-015-0085
Penalties

The Authority may impose a civil penalty of up to $500 per day for each violation according to the following schedule:

(1) $500 for violations of OAR 333-015-0078(1)(a) (c), (e), (f), (g), (i) and (n).

(2) $300 for the first violation of OAR 333-015-0078(1)(b), (d), (h), (j), (k), (l), (m) and (o).

(3) $500 for the second violation of OAR 333-015-0078(1)(a), (c), (e), (f), (g), (i) and (n).

(4) $400 for the second violation of OAR 333-015-0078(1)(b), (d), (h), (j), (k), (l), (m) and (o).

(5) $500 for the third and any subsequent violations of OAR 333-015-0078(1)(a) through (o).

Stat. Auth.: ORS 433.855
Stats. Implemented: ORS 433.835 - 433.870
Hist.: OHD 8-2002(Temp), f. & cert. ef. 5-28-02 thru 11-22-02; OHD 12-2002, f. & cert. ef. 8-27-02; PH 18-2004(Temp), f. & cert. ef. 5-7-04 thru 10-27-04; PH 27-2004, f. & cert. ef. 8-19-04; PH 12-2008, f. 8-15-08, cert. ef. 1-1-09; PH 2-2010, f. & cert. ef. 1-14-10; PH 2-2012, f. & cert. ef. 2-1-12; PH 26-2014, f. & cert. ef. 10-8-14; PH 30-2015, f. 12-29-15, cert. ef. 1-1-16

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Rule Caption: Environmental Laboratory Accreditation to Implement Marijuana Testing
Adm. Order No.: PH 31-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 333-064-0005, 333-064-0010, 333-064-0025, 333-064-0060
Subject: The Oregon Health Authority, Public Health Division, Oregon State Public Health Laboratory is temporarily amending administrative rules in chapter 333, division 64 pertaining to environmental

laboratory accreditation to implement marijuana testing as a result of the passage of HB 3400 (Oregon Laws 2015, chapter 614). The Oregon Environmental Laboratory Accreditation Program (ORELAP) is a fee based program that accredits laboratories by Matrix-Technology/Method-Analyte. In order for ORELAP to accredit laboratories testing marijuana pursuant to licensure through the Oregon Liquor Control Commission (OLCC), the rule amendments will expand the scope of accreditation by means of adding liquid chromatography tandem mass spectrometry, polymerase chain reaction and sampling to the Complex Field of Testing, and defining matrix to include cannabinoid products, concentrates or extracts.

Rules Coordinator: Brittany Sande—(971) 673-1291

333-064-0005

Purpose

These rules are for the purpose of implementing Oregon Revised Statutes (ORS) 438.605 to 438.620, 448.280 and the Oregon Drinking Water Quality Act of 1981. ORS 438.610 states that the Oregon Health Authority shall by adopting standards in concurrence with the accrediting body, implement an environmental laboratory accreditation program hereafter referred to as the Oregon Environmental Laboratory Accreditation Program (ORELAP). These rules establish requirements for the accreditation of laboratories analyzing environmental samples under the guidance of the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and the Resource, Conservation and Recovery Act (RCRA) and sections 91 to 99, chapter 614, Oregon Laws 2015. The Oregon Health Authority shall accept ORELAP accreditation for ORS 448.150(1) that states that water samples from public water systems shall be analyzed in a laboratory approved by the Oregon Health Authority.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620, OL 2015, ch. 614, sec. 94

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620, OL 2015, ch. 614, sec. 94

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 6-2011, f. & cert. ef. 8-9-11; PH 31-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-064-0010

Scope

(1) These rules apply to testing laboratories seeking accreditation and performing environmental or agricultural testing, and laboratories testing cannabis and sampling as required by section 94, chapter 614, Oregon Laws 2015.

(2) Accreditation as described in these rules is required for all environmental laboratories reporting drinking water analysis results to the Oregon Health Authority except for Oregon Department of Agriculture Laboratory, Oregon Department of Environmental Quality Laboratory and the Oregon State Public Health Laboratory which must be certified by the United States Environmental Protection Agency for drinking water analysis.

(3) Accreditation as described in these rules is required for all Oregon laboratories testing marijuana items.

Stat. Auth.: ORS 448.150(1), 448.131, 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620, OL 2015, ch. 614, sec. 94

Stats. Implemented: ORS 448.280(1)(b) & (2), 438.605, 438.610, 438.615 & 438.620, OL 2015, ch. 614, sec. 94

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 6-2011, f. & cert. ef. 8-9-11; PH 31-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-064-0025

Definitions

As used in these rules, unless the context indicates otherwise:

(1) "Accrediting Body" means the official accrediting authority for the Oregon Environmental Laboratory Accreditation Program comprised of the Administrator of the Oregon State Public Health Laboratory or designee, the Laboratory Administrator of the Department of Environmental Quality or designee and the Laboratory Administrator of the Department of Agriculture or designee.

(2) "Air" as matrix means air samples, which are analyzed for possible contaminants under the guidance of the Clean Air Act.

(3) "Authority" means the Oregon Health Authority.

(4) "Biological Tissue" as matrix means samples of biological tissue, excluding those of human origin.

(5) "Clean Air Act (CAA)" means the enabling legislation, 42 U.S.C. 7401 et seq. (1974), Public Law 91-604, 84 Stat. 1676 Public Law 95-95, 91 Stat., 685 and Public Law 95-190, 91 Stat., 1399, that empowers the EPA to promulgate air quality standards, monitor and enforce them.

(6) "Clean Water Act (CWA)" means the enabling legislation under 33 U.S.C. 1251 et seq., Public Law 92-50086, Stat. 816 that empowers the EPA to set discharge limitations, write discharge permits, monitor and bring enforcement action for non-compliance.

(7) "Drinking Water" as matrix means samples of presumed potable water and source water, which are analyzed for possible contaminants under the guidance of the Safe Drinking Water Act.

(8) "Environmental laboratory" means a fixed location or mobile facility that analyzes environmental samples in a controlled and scientific manner.

(9) "Fields of Accreditation" means those matrix, technology/method, and analyte combinations for which ORELAP offers accreditation.

(10) "Fields of Testing" means those technologies for which ORELAP offers accreditation.

(11) "Marijuana items" has the meaning given that term in section 91, chapter 614, Oregon Laws 2015.

(12) "Mobile Category 1 Laboratory" means any facility, deployed for no more than six consecutive months and no more than six months during a calendar year, that:

(a) Analyzes environmental samples utilizing the staff and equipment from the parent fixed laboratory;

(b) Operates under the quality system of its parent fixed laboratory;

(c) Is capable of moving or being moved from site to site, such as but not limited to vans, trailers and motor coaches; and

(d) May operate under the fixed laboratory's accreditation.

(13)(a) "Mobile Category 2 Laboratory" means any facility that:

(A) Analyzes environmental samples;

(B) Operates under its own quality system;

(C) Is capable of moving or being moved from site to site, such as but not limited to vans, trailers and motor coaches; and

(D) Issues the final reports or is a mobile laboratory operating with a fixed laboratory's quality system, but is deployed for more than six consecutive months or more than six months in a calendar year.

(b) Mobile category 2 laboratories require separate accreditation and are accredited to their vehicle identification numbers (VIN).

(14) "National Environmental Laboratory Accreditation Program (NELAP)" means the program established to oversee the implementation of the TNI Standards.

(15) "NELAP approved accrediting body" means a state or federal department/agency that has been approved by NELAP as being an entity whose accreditation and assessment program meets all of the requirements of the TNI Standards.

(16) "Non-Potable Water" as matrix means aqueous samples, which are analyzed under the guidance of the Clean Water Act or the Resource, Conservation and Recovery Act.

(17) "On-site assessment" means an on-site visit to the laboratory to verify items addressed in the ORELAP application and to evaluate the facility and analytical performance for conformance with the TNI Standards.

(18) "ORELAP approved assessor" means an assessor whose qualification has been evaluated by ORELAP and found to meet TNI Standards for laboratory on-site assessors.

(19) "Primary Accreditation" means accreditation by a NELAP approved accrediting body based on a laboratory's compliance to TNI Standards after a review of the laboratory's application, quality manual, PT results and on-site assessment results as described in the TNI Standards.

(20) "Proficiency testing (PT)" means the analysis of samples obtained from providers that meet the TNI standards for PT providers. The composition of the sample is unknown to the laboratory performing the analysis, and is used in part to evaluate the ability of the laboratory to produce precise and accurate results.

(21) "Public water system" means a water system as defined in OAR 333-061-0010.

(22) "Quality Manual (QM)" means a document stating the management policies, objectives, principles, organizational structure and authority, responsibilities, accountability, and implementation of a laboratory to ensure the quality of its product and the utility of its product to its users.

(23) "Resource Conservation and Recovery Act (RCRA)" means the enabling legislation, 42 U.S.C. section 6901 et seq. (1976), that requires the EPA to protect human health and protecting and monitoring the environment by regulating hazardous waste disposal practices.

(24) "Safe Drinking Water Act (SDWA)" means the SDWA enacted in 1974 and the Safe Drinking Water Amendments of 1986, 42 U.S.C. 300f et seq., Public Law 93-523, that is the enabling legislation that requires the

EPA to protect the quality of drinking water in the U.S. by setting maximum allowable contaminant levels, monitoring, and enforcing violations.

(25) "Sampling" means an activity related to obtaining a representative sample of the object of conformity assessment, according to a procedure in accordance with 2009 TNI Standard Environmental Laboratories Volume 1, Module 2, Section 5.7, Collection of Samples.

(26) "Secondary Accreditation" means the recognition by reciprocity for the fields of accreditation, methods and analytes for which the laboratory holds current primary accreditation by another NELAP recognized accrediting body.

(27) "Solids" as a matrix means samples of soil, solid, sludge and other non-aqueous compounds including cannabinoid products and cannabinoid concentrates or extracts as defined in section 91, chapter 614, Oregon Laws 2015.

(28) "TNI" means the NELAC (National Environmental Laboratory Accreditation Conference) Institute. TNI is a voluntary organization of state and federal environmental officials and interest groups purposed primarily to establish mutually acceptable standards for accrediting environmental laboratories.

(29) "TNI Standards" means the adopted 2009 TNI Standards (© 2009 The NELAC Institute), which are documents describing the elements of laboratory accreditation that was developed and established by the consensus principles of TNI and meets the approval requirements of TNI procedures and policies.

(30) "These rules" means the Oregon Administrative Rules encompassed by OAR 333-064-0005 through 333-064-0065.

(31) "Third party assessor" means an ORELAP approved assessor who has a current contract with the Oregon Health Authority to perform on-site assessments of laboratories for ORELAP and is not employed by the state agencies comprising ORELAP's accrediting body.

(32) "United States Environmental Protection Agency (EPA)" means the federal government agency with the responsibility for protecting public health and safeguarding and improving the natural environment (i.e., air, water, and land) upon which human life depends.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 438.605, 438.610, 438.615, 438.620, 448.131, 448.150(1), 448.280(1)(b) & (2)

Stats. Implemented: ORS 438.605, 438.610, 438.615, 438.620, 448.280(1)(b) & (2)

Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 5-2003, f. 5-15-03, cert. ef. 7-1-03; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 23-2004, f. & cert. ef. 7-1-04; PH 8-2005, f. 6-1-05, cert. ef. 7-1-05; PH 6-2011, f. & cert. ef. 8-9-11; PH 31-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-064-0060
Fee Schedule

Fees will be charged to Oregon in-state and out-of-state environmental laboratories according to the following schedule. A mobile category 2 laboratory that operates as an entity of an Oregon fixed base facility will be considered an in-state laboratory, and one that does not operate as an entity of an Oregon fixed base facility will be considered an out-of-state laboratory. Mobile category 1 laboratories are covered under the parent fixed laboratory's accreditation and are not required to pay an additional fee.

(1) A non-refundable application fee must be paid for each application requesting accreditation for methods.

(a) For laboratories located in Oregon, one of three levels of fees, Tier 1 at $450, Tier 2 at $900, and Tier 3 at $1,600 will be charged. The Tiers will be determined by the total number of points derived from the number of fields of testing requested for accreditation listed in subsections (2)(a) through (c) of this rule.

(A) Each Basic Field of Testing has a multiplier of 1.

(B) Each Moderate Field of Testing has a multiplier of 3.

(C) Each Complex Field of Testing has a multiplier of 5.

(D) The total number of points is determined by first summing the number of fields of testing within each category (Basic, Moderate or Complex) and then multiplying the sums by their appropriate multiplier as given in this rule. The sum of these results determines the total number of points for each laboratory. Laboratories with a total of 1 to 10 points are to be considered Tier 1 laboratories, 11 to 25 points are Tier 2 laboratories and 26 or more points are Tier 3 laboratories.

(b) For each out-of-state laboratory requesting primary or secondary accreditation through ORELAP, one of three levels of fees, Tier 1 at $1,375, Tier 2 at $2,200 and Tier 3 at $3,300 will be charged with each Tier determined according to subsection (1)(a) of this rule.

(c) If a new owner acquires the laboratory and wishes the laboratory to remain accredited, the laboratory must submit a new owner application, and may be required to pay the application fee and be subject to a new on-site assessment and payment of on-site assessment fees as described in this rule.

(2) Upon ORELAP's review of a laboratory's application, each laboratory requesting primary accreditation through ORELAP, when ORELAP personnel will be used for the assessment, the laboratory will be charged an assessment fee based on the number fields of testing and matrices as follows:

(a) Oregon laboratories will be charged $90 and out-of-state laboratories will be charged $100 for each of the following Basic Fields of Testing requested for accreditation:

(A) Chromofluorogenic (Microbiology);

(B) Membrane Filter and/or Heterotrophic Plate Count (Microbiology);

(C) Multiple Tube Fermentation/Most Probable Number (MPN) (Microbiology);

(D) Gravimetric;

(E) Physical;

(F) Probe.

(b) Oregon laboratories will be charged $350 and out-of-state laboratories will be charged $385 for each of the following Moderate Fields of Testing requested for accreditation:

(A) Inorganic Atomic absorption spectrometry;

(B) Inorganic Atomic fluorescence spectrometry;

(C) Inorganic-non-metals automated colorimetric;

(D) Inorganic-non-metals manual colorimetric;

(E) Inorganic-ion chromatography (IC);

(F) Organic-liquid chromatography (LC);

(G) Organic-gas chromatography (GC) — volatiles;

(H) Organic-gas chromatography (GC) — extractables;

(I) Whole Effluent Toxicity Immunoassay;

(J) Asbestos (bulk);

(K) Asbestos — electron microscopy

(L) Radiochemistry.

(c) Oregon laboratories will be charged $500 and out-of-state laboratories will be charged $550 for each of the following Complex Fields of Testing requested for accreditation:

(A) Organic — gas chromatography/mass spectrometry (GC/MS) — volatiles;

(B) Organic — gas chromatography/mass spectrometry (GC/MS) — extractables;

(C) Organic — liquid chromatography/mass spectrometry (LC/MS);

(D) Organic — gas chromatography/tandem mass spectrometry (GC/MS/MS);

(E) Organic — gas chromatography/high resolution mass spectrometry (GC/HRMS);

(F) Organic — liquid chromatography/tandem mass spectrometry (LC/MS/MS);

(G) Inorganic — metals — inductively coupled plasma (ICP);

(H) Inorganic — metals — inductively coupled plasma/mass spectrometry (ICP/MS);

(I) Inorganic — ion chromatography/mass spectrometry (IC/MS);

(J) Microbiology — polymerase chain reaction (PCR);

(K) Sampling;

(L) X-ray.

(d) An additional fee of $10 for Basic Fields of Testing, $40 for Moderate Fields of Testing and $75 for Complex Fields of Testing will be charged to Oregon laboratories, and an additional fee of $11 for Basic Fields of Testing, $44 for Moderate Fields of Testing and $83 for Complex Fields of Testing will be charged to out-of-state laboratories for each additional matrix per field of testing for which the laboratory has requested accreditation. The matrices are:

(A) Air;

(B) Biological tissue;

(C) Drinking water;

(D) Non-potable water;

(E) Solids.

(e) Assessment fees must be paid before a routine on-site assessment will be performed.

(f) All laboratories must pay the appropriate on-site assessment fee per on-site assessment performed due to just cause according to TNI Standards.

(3) All Oregon environmental laboratories requesting primary accreditation through ORELAP where Oregon state assessor(s) will perform the on-site assessment must pay an on-site trip fee for each on-site assessment. For a mobile category 2 laboratory, the trip fees are waived if it is moved

to the Oregon State Public Health Laboratory for the on-site assessment, and reduced to the amount in excess of its fixed base facility when moved to the fixed base facility if both are to be assessed at the same time.

(a) On-site trip fees are $350 for Tier 1, $500 for Tier 2 and $1,000 for Tier 3 laboratories with the Tiers determined according to subsection (1)(a) of this rule.

(b) All laboratories must pay the appropriate on-site trip fee for performing each required on-site assessment and additional assessments as requested by the laboratory for accreditation for additional fields of testing and matrices.

(c) All laboratories must pay the appropriate on-site trip fee per on-site assessment performed due to just cause according to TNI Standards.

(4) All environmental laboratories located in Oregon requesting primary accreditation through ORELAP where ORELAP has determined that third party assessors will be used, must pay ORELAP application assessment fees plus all third party assessors costs. ORELAP may require the laboratory to pay the on-site assessment costs directly to the third party assessor according to the schedule of the assessor for all required on-site assessments.

(5) All out of-state environmental laboratories must pay all on-site assessment costs incurred by ORELAP approved assessors to perform the on-site assessment including but not limited to transportation, per diem and wages during travel. For a mobile category 2 laboratory, the travel costs are waived if it is moved to the Oregon State Public Health Laboratory for the on-site assessment, and reduced to the amount in excess of its fixed base facility when moved to the fixed base facility if both are to be assessed at the same time. The excess amount is to be determined by those fields of testing and matrices requested for accreditation by the mobile lab that have not been requested by its fixed based facility. If third party assessors are used, ORELAP may require the lab to pay the on-site assessment costs directly to the assessor according to the schedule of the assessor for all required inspections.

(6) Accredited laboratories requesting additions to their fields of accreditation during the accreditation period must pay:

(a) The difference in cost of the application fee with a minimum fee of $200;

(b) The difference in cost of the assessment fee;

(c) An on-site trip fee, as described in subsection (3)(a) and section (5) of this rule, based only on the additional parameters if ORELAP determines that an on-site assessment is required.

Stat. Auth.: ORS 438.605 - 438.620 & 448.280(1)(b) & (2)
Stats. Implemented: ORS 438.605 - 438.620
Hist.: OHD 7-1999, f. & cert. ef. 10-26-99; OHD 1-2001, f. & cert. ef. 1-17-01; OHD 16-2002, f. & cert. ef. 10-10-02; PH 13-2003(Temp), f. & cert. ef. 9-22-03 thru 3-20-04; PH 20-2003, f. 12-02-03, cert. ef. 12-08-03; PH 3-2006(Temp), f. & cert. ef. 2-8-06 thru 7-30-06; PH 5-2006, f. & cert. ef. 4-6-06; PH 6-2011, f. & cert. ef. 8-9-111; PH 31-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

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Rule Caption: Standards for reducing the sale of tobacco products and inhalant delivery systems to minors
Adm. Order No.: PH 32-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 333-015-0200, 333-015-0205, 333-015-0210, 333-015-0215, 333-015-0220
Subject: The Oregon Health Authority, Public Health Division is temporarily adopting administrative rules in chapter 333, division 15. The Oregon Health Authority has reorganized and rules for reducing the sale of tobacco products and inhalant delivery systems to minors are now implemented by the Public Health Division. The rules for reducing tobacco use by minors were previously implemented by the Oregon Health Authority, Addictions and Mental Health Division, and were located in chapter 415, division 60. This rulemaking amends those rules and adopts them under chapter 333 (Public Health Division).

The temporary rulemaking:

(1) Amends and adds definitions to bring the rules into line with statutes for reducing the sale of tobacco products and inhalant delivery systems to minors, to better reflect the purpose of the statute, and add clarity to the rules.

(2) Includes 'inhalant delivery systems' as part of laws prohibiting the distribution or sale of tobacco products to minors.

(3) Revises content of the Notice that retailers of inhalant delivery systems are required to post. The revised content applies to notices posted on or after January 1, 2016 per HB 2546, subsection (4)(2) (Oregon Laws 2015, chapter 158).
Rules Coordinator: Brittany Sande—(971) 673-1291

333-015-0200
Definitions

(1) "Authority" means the Oregon Health Authority.

(2) "Block Grant" means the Substance Abuse Prevention and Treatment Block Grant pursuant to 42 USC 300x21e et seq.

(3)(a) "Inhalant delivery system" means:

(A) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(B) A component of a device described in this subsection or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subsection, whether the component or substance is sold separately or is not sold separately.

(b) Inhalant delivery system does not include:

(A) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and

(B) Tobacco products.

(4) "Minor" means an individual under 18 years of age.

(5) "Outlet" means any location which sells at retail or otherwise distributes tobacco products or inhalant delivery systems to consumers including, but not limited to, locations that sell such products over the counter or through vending machines.

(6) "Secretary" means the Secretary of the United States Department of Health and Human Services.

(7) "Smoking Instrument" means any cigar, cigarette, pipe or other instrument used to smoke tobacco, marijuana, cocaine or other inhalant as defined in ORS 433.835 and ORS 163.575.

(8) "Tobacco Product" means bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cutting and sweepings of tobacco prepared in such a manner as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and smoking, and cigarettes as defined in ORS 431.840(2).

(9) "Vending Machine" means a mechanical, electronic or similar device that, upon the insertion of tokens, money or another form of payment, dispense tobacco products or inhalant delivery systems as defined in ORS 167.402.

Stat. Auth.: ORS 431.853
Stats. Implemented: ORS 431.853
Hist.: PH 32-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-015-0205
Notice Posting Requirement

(1) An outlet must post a notice substantially similar to the notice described in section (2) of this rule in a location that is clearly visible to the seller and the purchaser.

(2) Content of the Notice: NOTICE: The sale of tobacco products, smoking instruments and inhalant delivery systems to persons under 18 years of age is prohibited by law. Any person who sells, or allows to be sold, a tobacco product, smoking instrument or inhalant delivery system to a person under 18 years of age is in violation of Oregon law.

(3) The Authority may impose a civil penalty for each violation of this rule that is not less than $250 or more than $1,000.

Stat. Auth.: ORS 431.840, 431.845
Stats. Implemented: 431.840, 431.845
Hist.: PH 32-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-015-0210
Location of Tobacco Products Within a Retail Store

(1) A person having authority over the location of tobacco products, smoking instruments or inhalant delivery systems in a retail store may not locate the tobacco products, smoking instruments or inhalant delivery systems in a location where the tobacco products or inhalant delivery systems are accessible by store customers without assistance by a store employee.

(2) This rule does not apply to a person if the location at which the tobacco products, smoking instruments or inhalant delivery systems are sold is a store or other establishment at which persons under 18 years of age are prohibited.

Stat. Auth.: ORS 163.575, 167.400, 167.402, 167.407, 431.840, 431.853
Stats. Implemented: ORS 431.853
Hist.: PH 32-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-015-0215
Enforcement

(1) The Authority shall coordinate with law enforcement agencies to conduct random, unannounced inspections of wholesalers and retailers of tobacco products, smoking instruments or inhalant delivery systems to ensure compliance with, and to enforce, the laws of this state designed to discourage the sale of tobacco products, smoking instruments and inhalant delivery systems to minors. Nothing in these rules shall preempt local jurisdictions from passing ordinances to conduct unannounced inspections.

(2) Random Sample Procedures: Random, unannounced inspections will be based on the following methodological procedures:

(a) Cover a range of outlets, not to be preselected on the basis of prior violations, to measure overall levels of compliance as well as to identify violations;

(b) Be conducted in such a way as to provide a probability sample of outlets in order to estimate the success of enforcement actions being taken throughout the state;

(c) Use reliable methodological design and adequate sample design to reflect:

(A) Distribution of the population of those under 18 throughout the state; and

(B) Distribution of outlets throughout the state that are accessible to minors; and

(d) Be conducted at times when minors are likely to purchase tobacco products, smoking devices or inhalant delivery systems.

(3) Targeted Inspections: The Authority may conduct targeted inspections of outlets where a compliance problem exists or is suspected. Information gained in targeted inspections will not be included in data used to determine rate of offense in random inspections.

(4) Conducting Inspections: Inspections may take place:

(a) Only in areas open to the public;

(b) Only during the hours that tobacco products, smoking instruments or inhalant delivery systems are distributed or sold; and

(c) No more frequently than once a month in any single outlet unless a compliance problem exists or is suspected. For purposes of this rule, a "single outlet" refers to a specific address location of an outlet, regardless of ownership.

(5) The Authority may use minors to complete inspections to determine compliance with these rules.

Stat. Auth.: ORS 431.853
Stats. Implemented: ORS 431.853
Hist.: PH 32-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

333-015-0220
Annual Report

(1) Contents of Report: The Authority will annually submit a report to the Oregon Legislature and to the Secretary, along with the state's application for block grant funding. The report will include:

(a) A description of the state's activities to enforce the laws described in these rules during the fiscal year preceding the fiscal year for which the state is seeking the grant;

(b) A description outlining the overall success the state has achieved during the previous fiscal year in reducing the availability of tobacco products, smoking instruments and inhalant delivery systems to individuals under the age of 18, showing:

(A) Results of the random and targeted unannounced inspections;

(B) Results of over-the-counter and vending machine outlet inspections reported separately;

(c) A description of how the unannounced inspections were conducted and the methods used to identify outlets; and

(d) Strategies to be utilized by the state for enforcing such laws during the fiscal year for which the grant is sought.

(2) Public Comment Required: The annual report shall be made public and public comment shall be obtained and considered before submitting the report to the Secretary.

Stat. Auth.: ORS 431.853
Stats. Implemented: ORS 431.853
Hist.: PH 32-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 6-28-16

Rule Caption: Marijuana laboratory testing and medical marijuana grandfathered grow sites
Adm. Order No.: PH 33-2015(Temp)
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16 thru 2-29-16
Notice Publication Date:
Rules Adopted: 333-008-0499, 333-008-0500, 333-008-0510, 333-008-0520, 333-008-0530, 333-008-9000
Subject: The Oregon Health Authority, Public Health Division is temporarily adopting Oregon Administrative Rules in chapter 333, division 8 related to marijuana laboratory testing and grandfathered medical marijuana grow sites.

With the passage of HB 3400 (Oregon Laws 2015, chapter 614) during the 2015 legislative session, the Legislature established marijuana plant limits for medical marijuana grow sites. The plant limits take effect on March 1, 2016. Under the temporary rules a grower can petition for a grandfathered grow site beginning in January 2016.

In addition, in order to better ensure that marijuana is being tested appropriately for pesticides, OHA is adopting temporary rules to require laboratories that are testing marijuana to provide a quality control manual to OHA.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-008-0499
Definitions

For the purposes of OAR 333-008-0500 to 333-008-0530:

(1) "Grandfathered grow site" means a grow site registered by the Authority that has been approved by the Authority under OAR 333-008-0520 that can have up to:

(a) 24 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 96 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(2) "Grow site" means a location registered under ORS 475.304 where marijuana is produced for use by a patient or, with permission from a patient, for transfer to a registered processing site or dispensary.

(3) "Person responsible for a marijuana grow site," "person responsible for a grow site" or "PRMG" mean any individual designated by a patient to produce marijuana for the patient, including a patient who identifies him or herself as a person responsible for the marijuana grow site.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.304, 475.320
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

333-008-0500
Request for Grandfathered Grow Site

(1) On and after January 4, 2016, an individual or group of individuals may submit a petition, on a form prescribed by the Authority, requesting that a grow site address be approved as a grandfathered grow site.

(2) A petition submitted under section (1) of this rule must include:

(a) For all individuals currently growing at the grow site address:

(A) Names and contact information.

(B) Proof of residency in accordance with OAR 333-008-0025.

(C) Copies of legible and valid government issued photographic identification that includes last name, first name, and date of birth.

(D) Copies of all current grow site registration cards issued to the PRMG for the grow site address.

(E) An attestation that the PRMG was registered at the grow site address on December 31, 2014, and has continuously been registered at the grow site address since that date.

(b) The physical address of the grow site where marijuana is being produced or intending to be produced.

(c) Documentation from a local government that indicates whether the address is within city limits and if so, the zoning designation for the address.

(d) The names and registry identification card numbers for all patients for whom each PRMG is producing at the grow site address.

(e) How many patients each PRMG was growing for on December 31, 2014.

(3) A petition that does not contain all the required information or is not accompanied by all of the documentation required to be submitted in section (2) of this rule is incomplete and will be returned to the applicant.

(4) A petition that does not include all the PRMGs currently growing at the grow site address may be considered by the Authority to be incomplete and may be returned to the applicant.

(5) Acceptable forms of current government issued photographic identification include but are not limited to:

(A) Driver's license;

(B) State identification card;

(C) Passport; or

(D) Military identification card.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.304, 475.320
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

333-008-0510
Review of Petition For Grandfathered Grow Site

(1) Once the Authority has determined that a petition is complete it must:

(a) Conduct a criminal background check on all PRMGs listed on the application;

(b) Verify that:

(A) Each person listed on the application is 21 years of age or older;

(B) Each person meets the residency requirements in OAR 333-008-0025;

(C) Each person has a current valid registration card and is currently registered at the grow site address;

(D) All the patients listed on the application have valid cards; and

(E) All persons were registered with the Authority on December 31, 2014, at the grow site address listed on the application and have been continuously registered at the grow site since the petition was submitted; and

(c) Verify the number of patients each PRMG was producing marijuana for, at that address on December 31, 2014.

(2) If a PRMG listed on a petition does not meet the age or residency requirements, or is disqualified to be a PRMG based on criminal convictions, the Authority must notify:

(a) The PRMG by electronic mail, if possible, and by mail that her or his designation is revoked; and

(b) The patient by electronic mail, if possible, and by mail that the patient's PRMG is ineligible and that the patient may submit a change form, in accordance with OAR 333-008-0045 designating a new PRMG and grow site address.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.304, 475.320
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

333-008-0520
Approval of Petition for Grandfathered Grow Site

(1) The Authority will grant a petition for a grandfathered grow site if, based on the information in the petition and the Authority's review of the petition:

(a) The grow site address is currently registered with the Authority;

(b) The petition includes all PRMGs currently growing at the grow site address;

(c) With the exception of any PRMG whose designation was revoked the PRMGs listed in the petition are qualified to be a PRMG;

(d) All qualified PRMGs listed in the petition were registered at the grow site address on December 31, 2014, and were all continuously registered there at the time the petition was submitted; and

(e) The number of patients registered at the grow site address would not result in the grow site address exceeding:

(A) 24 mature marijuana plants if the location is within city limits and zoned residential; or

(B) 96 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

(2) The actual grow site address plant limit is based on the number of patients registered at the grow site address on December 31, 2014, assuming six mature plants per patient.

(3) If a grow site address is approved under this rule the Authority may not register any additional PRMG at that address unless the grandfathered grow site approval has been terminated.

(4) The grandfathered plant limits are effective on and after March 1, 2016.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.304, 475.320
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

333-008-0530
Denial of Petition for Grandfathered Grow Site

(1) The Authority must deny a petition for a grandfathered grow site if based on the information in the petition and the Authority's review of the petition:

(a) The grow site address is not currently registered with the Authority;

(b) The petition does not include all PRMGs currently producing marijuana at the grow site address;

(c) None of the PRMGs listed in the petition are qualified or the number of PRMGs eligible to produce marijuana at the grow site address would result in the grow site address exceeding the maximum plant limits, depending on the location of the grow site address;

(d) Not all of the qualified PRMGs listed in the petition were registered at the grow site address on December 31, 2014, or were not all continuously registered there at the time the petition was submitted; or

(e) The number of patients registered at the grow site address exceed the plant limits in section 82(3)(b) and 82(4)(b), chapter 614, Oregon Laws 2015.

(2) An individual or group of individuals whose petition is denied may resubmit a petition at any time.

(3) If a petition is denied the maximum plant limits at the grow site address for which the petition was filed, on and after March 1, 2016, are:

(a) 12 mature marijuana plants if the location is within city limits and zoned residential; or

(b) 48 mature marijuana plants if the location is within city limits but not zoned residential or not within city limits.

Stat. Auth.: ORS 475.338
Stats. Implemented: ORS 475.304, 475.320
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

333-008-9000
Test Results

(1) Between February 1, 2016, and February 29, 2016, for a marijuana item transferred to a dispensary on and after February 1, 2016, notwithstanding OAR 333-008-1190(8) a registered dispensary may only accept a test result report that complies with section (3) of this rule.

(2) A laboratory testing marijuana to meet the requirements in OAR 333-008-1190 must, prior to February 29, 2016, submit its quality control manual to the Authority.

(a) The manual may be mailed to the Authority at PO Box 14116, Portland, OR 97293, or may be sent electronically via the Authority's website, http://mmj.oregon.gov.

(b) The Authority will create a list of laboratories that have submitted a quality control manual by the deadline and post the list on Authority's website, http://mmj.oregon.gov.

(c) On and after March 1, 2016, a dispensary may only accept laboratory test results from a laboratory listed on the Authority's website.

(3) Testing Results. A laboratory test result must:

(a) Comply with the standards in TNI 2009, Volume 1, Module 2, Section 5.10, incorporated by reference;

(b) Include the following information:

(A) The name of each specific analyte tested;

(B) The limit of quantitation (LOQ) as that is defined in TNI 2009, Volume 1, Module 2, Section 3.1 and TNI 2009, Volume 1, Module 4, Section 1.5, incorporated by reference;

(C) The pesticide results as a numerical value in units of either parts per million or parts per billion if the analyte was detected or a statement that the level detected was less than the LOQ;

(D) The levels of THC and CBD calculated in accordance with OAR 333-064-0100; and

(E) The quality control results from the blank and quality control samples associated with the sample testing.

(c) Be signed by an official of the laboratory with an attestation that the results are accurate and that testing was done using valid testing methodologies and a quality system as required in OAR 333-008-1190.

(4) If the Authority determines that a laboratory is not using valid testing methodologies, does not have a quality system, or is not producing test result reports in accordance with this rule or OAR 333-008-1190 the Authority may remove the name of the laboratory from the list on the Authority's website.

(5) The Authority may do audit testing of a marijuana item in order to determine whether a dispensary is in compliance with this rule and OAR 333-008-1190.

Stat. Auth.: ORS 475.314 & 475.338
Stats. Implemented: ORS 475.314
Hist.: PH 33-2015(Temp), f. 12-29-15, cert. ef. 1-1-16 thru 2-29-16

Rule Caption: Tanning device registration fee
Adm. Order No.: PH 34-2015
Filed with Sec. of State: 12-29-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 333-103-0025
Subject: The Oregon Health Authority, Public Health Division, Center for Health Protection is permanently amending an Oregon Administrative Rule relating to the tanning device registration program within Radiation Protection Services (RPS).

The tanning program is permanently amending OAR 333-103-0025 to implement a 50% increase relating to the tanning device registration fee as outlined in Senate Bill 228 (Oregon Laws 2015, chapter 778) passed during the 2015 legislative session.

The fee increase raises the annual tanning device registration fee from $100 to $150 and will become effective January 1, 2016.
Rules Coordinator: Brittany Sande—(971) 673-1291

333-103-0025
Annual Fee for Tanning Devices

(1) Each tanning device must be validated annually by a tanning device fee of $150.

(2) The tanning device fee shall be due and payable for each tanning device on or before January 1 of each year.

(3) A certificate of validation or acknowledgment of validation for the then current fiscal year must be posted on or near the tanning device, by the registrant.

(4) In any case in which a registrant has submitted the proper fee prior to the expiration of a validation certificate, such existing validation certificate shall not expire until the issuance of a new validation certificate for the then current fiscal year.

(5) Upon written request and approval by the Authority, fees for new licenses or additional tanning devices may be prorated on a quarterly basis for the current fiscal year.

Stat. Auth.: ORS 453.729
Stats. Implemented: ORS 453.729
Hist.: HD 15-1991, f. & cert. ef. 10-1-91; HD 13-1993, f. & cert. ef. 9-27-93; HD 15-1994, f. & cert. ef. 5-6-94; PH 11-2006, f. & cert. ef. 6-16-06; PH 4-2007, f. & cert. ef. 3-1-07; PH 14-2008, f. & cert. ef. 9-15-08; PH 34-2015, f. 12-29-15, cert. ef. 1-1-16

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Oregon Liquor Control Commission
Chapter 845

Rule Caption: Aligns rules with House Bill 2567 statutory amendments to 471.230 (distillery license statute).
Adm. Order No.: OLCC 4-2015
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 2-1-16
Notice Publication Date: 11-1-2015
Rules Amended: 845-004-0101, 845-005-0413, 845-005-0431, 845-006-0452
Rules Repealed: 845-004-0105
Subject: HB 2567 passed in the 2015 Oregon legislative session with an effective date of June 25, 2015. It makes several changes to ORS 471.230 (the distillery license statute). The following amendments are required to align the rules with the statute changes.

845-005-0413 will be amended to allow a distillery licensee to hold a Special Events Distillery (SED) license at its annually licensed premises, change the number of license days for an SED at one address from a limit of 31 to a limit of 62, and allow a taste to contain liquids other than the distilled liquor manufactured by the distillery licensee.

845-005-0431 will be amended to allow more than one distillery to be licensed at a primary location to provide tastings.

845-006-0452 will be amended to allow a taste to contain liquids other than the distilled liquor manufactured by the distillery licensee.

In addition, the Commission needs to update how it controls the use of alcohol for scientific, pharmaceutical, manufacturing, mechanical, and industrial purposes.

845-004-0101 will be amended to change the name to an Industrial Alcohol Authority and create a process that will be less work for the industry and the Commission.

845-004-0105 will be repealed because creating the Industrial Alcohol Authority and clarifying its privileges eliminates the need for this rule.
Rules Coordinator: Bryant Haley—(503) 872-5136

845-004-0101
Industrial Alcohol Authority

(1) Definitions. For this rule:

(a) "Denatured alcohol" means ethanol (ethyl alcohol) with additives for the purpose of making it unfit for human consumption. Denatured alcohol is not considered an alcoholic beverage or alcoholic liquor under ORS 471.001(1).

(b) "Non-denatured alcohol" means alcohol as defined in ORS 471.001(1).

(2) Denatured alcohol may be imported into Oregon and stored, possessed, sold, purchased, transferred, shipped, delivered, and transported in Oregon without an Industrial Alcohol Authority or license from the Commission.

(3) A person without a distillery license issued under ORS 471.230 may not manufacture non-denatured alcohol but may obtain an Industrial Alcohol Authority to:

(a) Import into Oregon and store 190 to 200 proof non-denatured alcohol without a distillery licensed issued under ORS 471.230 if the person also holds a certificate of approval issued under ORS 471.251.

(b) Convert non-denatured alcohol into denatured alcohol.

(c) Sell or transfer 80 to 200 proof non-denatured alcohol to the holder of an Industrial Alcohol Authority.

(d) Acquire 80 to 200 proof non-denatured alcohol from the holder of an Industrial Alcohol Authority.

(e) Use 80 to 200 proof non-denatured alcohol for scientific, pharmaceutical, manufacturing, mechanical, and industrial purposes.

(4) Application. Applicants for an Industrial Alcohol Authority must apply in writing using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete or not accompanied by the documents or disclosures required by the form or the Commission.

(5) The Commission may refuse to issue an Industrial Alcohol Authority, and may cancel or revoke the Industrial Alcohol Authority, if the person makes a false statement to the Commission or uses or proposes to use the alcohol other than for scientific, pharmaceutical, manufacturing, mechanical, or industrial purposes.

(6) A person may hold both a distillery license issued under ORS 471.230 and an Industrial Alcohol Authority.

(7) A person with an Industrial Alcohol Authority must keep a record of all non-denatured alcohol imported into Oregon including the date and amount of all alcohol imported. These records must be kept for a minimum of two years from the date the alcohol was imported into Oregon. The authority holder must allow the Commission to audit the authority holder's records upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice.

Stat. Auth.: ORS 471, including 471.030 & 471.730(1) & (5)
Stats. Implemented: ORS 471.404 & 471.730(8)
Hist.: OLCC 25-1990, f. 12-19-90, cert. ef. 2-1-91; OLCC 16-1999, f. 11-2-99, cert.ef. 12-31-99; OLCC 13-2004, f. 11-18-04, cert. ef. 1-1-05; OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16; OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16

845-005-0413
Special Events Distillery License

ORS 471.230 authorizes the Commission to issue a Special Events Distillery (SED) license to an Oregon Distillery licensee. This rule sets the qualifications and requirements for a Special Events Distillery license.

(1) Definitions. For this rule:

(a) "Bar" means a counter at which the preparation, pouring, serving, sale, or consumption of alcoholic beverages is the primary activity;

(b) "Food counter" means a counter in an area in which minors are allowed and at which the primary activity at all times is the preparation, serving, sale, or consumption of food;

(c) "License day" means from 7:00 am until 2:30 am on the succeeding calendar day. The license fee is $10.00 per license day or any part of a license day.

(d) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product on the distillery licensed premises in Oregon.

(e) "Serious violation history" means:

(A) Two or more category III or IIIa administrative violations of any type, or category IV violations involving minors. However, if the circumstances of a violation include aggravation, one violation may be sufficient; or

(B) One category I, II, or IIa administrative violation; or

(C) Two or more crimes or offenses involving liquor laws.

(f) "Social game" means a game other than a lottery, if authorized by a local county or city ordinance pursuant to ORS 167.121, between players in a private business, private club, or place of public accommodation where no house player, house bank, or house odds exist and there is no house income from the operation of the social game.

(g) "Trade visitor" means a person whose job includes the purchase, or recommended purchase, of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(h) "Video lottery game" means a video lottery game terminal authorized by the Oregon State Lottery. Examples include but are not limited to video poker and video slots. Keno monitors are not considered a video lottery game.

(2) Only the holder of a Distillery license issued under ORS 471.230 may qualify for a Special Events Distillery license.

(a) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is not required to obtain a SED and is subject to OAR 845-013-0060.

(b) A distillery licensee providing tastings of distilled liquor at a retail liquor store must follow OAR 845-015-0155. A distillery licensee is not eligible for a SED at a retail liquor store.

(3) The Commission will not approve more than five license days on a single application. The Commission may limit approval of any application to a single license day or to any number of license days fewer than five days.

(4) Applicants must apply in writing for a Special Events Distillery license, using the application form provided by the Commission. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application not complete, not accompanied by the documents or disclosures required by the form or the Commission, or that does not allow the Commission sufficient time to investigate it. Sufficient time is typically one to three weeks prior to the event date. The Commission may give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceeding under ORS 183.310 to 183.550.

(5) The application for a SED license under this rule shall include:

(a) A written, dated, and signed plan. An application is not complete if this plan is not approved by the Commission. To approve a plan, the Commission must determine that the plan adequately manages:

(A) The event to prevent problems and violations;

(B) Patronage by minors as set out in subsection (6) of this rule; and

(C) Alcohol consumption by adults.

(b) Identification of the individuals to be employed by the licensee to manage events on the SED licensed premises;

(c) Identification of the premises or area proposed to be licensed;

(d) Statement of the type of event to be licensed, type and extent of entertainment to be offered, expected patronage overall and by minors, and proposed hours of operation;

(e) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags;

(f) The recommendation in writing of the local governing body where the licensed premises will be located; and

(g) License fees as established by ORS 471.311.

(h) If the licensee will provide distilled liquor by the drink, a written proposal showing compliance with the food service standards of OAR 845-006-0465.

(6) A plan for managing patronage by minors under subsection (5)(a) of this rule must meet the following requirements:

(a) If the SED license will be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will follow the minor posting and control plan, including any temporary relaxation of the minor posting, assigned to that premises, room, or area under the annual license. The Commission must also be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises prohibited to minors.

(b) If the SED license will not be on any part of a premises, room, or area with an annual license issued by the Commission, the Commission must be convinced that the plan will prevent minors from gaining access to alcoholic beverages and any portion of the licensed premises the Commission prohibits to minors.

(7) Minors are prohibited from the SED licensed premises or portions of the licensed premises as follows:

(a) Minors may not sit or stand at a bar; however, minors may sit or stand at a food counter;

(b) Minors may not be in an area where there are video lottery games, social games, or nude entertainment or where such activities are visible;

(c) Minors may not be in an area where the licensee's approved written plan designates that minors will be excluded.

(8) The Commission may deny, cancel or restrict a SED license for any reason for which the Commission may deny, cancel or restrict a regular license.

(9) The Commission may deny or restrict a SED license if the applicant has a serious violation history at events previously licensed with a special license within the past 36 months.

(10) The Commission shall limit the issuance of a SED license to the same applicant at the same location to no more than 62 license days from January 1 to December 31 of each year.

(11) The Commission may refund the SED license fee if the application is withdrawn by the applicant or denied by the Commission, or if the event does not take place because of circumstances beyond the licensees control, or if the Commission determines the applicant does not need a license for the event proposed in the application.

(12) When the Commission approves a written plan under subsection (5)(a) of this rule, the licensee must follow that written plan. Failure to follow that written plan is a Category III violation.

(13) If the licensee fails to prevent minors from gaining access to alcoholic beverages or fails to prevent minors from gaining access to any portion of the licensed premises prohibited to minors, the Commission may immediately prohibit minors from the licensed premises or portion(s) of the premises.

(14) A distillery licensee with a SED may:

(a) Permit tastings of distilled liquor approved by the Commission for sale in Oregon The taste must contain distilled liquor manufactured in Oregon by the distillery licensee. Once the taste contains distilled liquor manufactured in Oregon by the distillery licensee, the taste may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids.

(A) The distillery licensee must pay the Commission a processing fee for any distilled liquor in the taste that is manufactured by the distillery licensee and is obtained from the inventory of the Commission.

(B) The distillery licensee must purchase at the retail price set by the Commission any distilled liquor in the taste that was not manufactured by the distillery licensee.

(b) Permit sales by the drink of distilled liquor approved by the Commission for sale in Oregon. The drink must contain distilled liquor manufactured in Oregon by the distillery licensee. Once the drink contains distilled liquor manufactured in Oregon by the distillery licensee, the drink may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids. The distillery licensee must purchase the distilled liquor that the licensee uses for sales by the drink at the event at the retail price set by the Commission for the month in which the distilled liquor is sold by the drink.

(c) If the distillery licensee has been appointed as a distillery retail outlet agent, sell factory-sealed containers of distilled liquor manufactured by the licensee for consumption off the licensed premises of the event. The distillery licensee must purchase and sell the factory-sealed containers in accordance with the terms of the Distillery Retail Outlet Agent Agreement and the Commission's Distillery Retail Outlet Manual.

(15) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two

ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per license day.

(16) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public. For example, providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, using distinctive glassware for trade visitors, or using badges or name tags to identify trade visitors could be ways a licensee complies with this requirement.

Stat. Auth.: ORS 471, 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.230
Hist.: OLCC 1-2010, f. 2-22-10, cert. ef. 3-1-10; OLCC 2-2012(Temp), f. & cert. ef. 4-5-12 thru 10-1-12; OLCC 7-2012, f. 9-14-12, cert. ef. 10-1-12; OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16; OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16

845-005-0431
Qualifications for Distilled Liquor Tastings Provided by Oregon Distillery Licensee

ORS 471.230 allows an Oregon distillery licensee to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery licensee's premises and on no more than five other premises owned or leased by the distillery licensee. This rule sets the qualifications to obtain approval to provide these tastings.

(1) Definitions.

(a) "Identified tasting area" means a specific defined area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(b) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product in Oregon on the distillery's licensed premises.

(c) "Other premises owned or leased by the distillery licensee" means any other licensed location that is owned or leased by the distillery licensee and separate from its annually licensed location. To qualify under this definition, the distillery licensee must provide proof of ownership or a written contract entitling it to exclusive use and possession of the other location.

(d) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(e) "Primary location" means the location where distilled liquor is manufactured by the distillery licensee.

(f) "Trade visitor" means a person whose job includes the purchase or recommended purchase of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(2) A distillery licensee providing tastings of distilled liquor on its primary location and on no more than five other premises owned or leased by the distillery licensee must follow this rule and may only offer tastings of distilled liquor in accordance with the requirements of OAR 845-006-0452.

(3) A distillery licensee providing tastings of distilled liquor for retailers at an educational seminar that is not open to the public is subject to OAR 845-013-0060 and is not subject to this rule.

(4) A distillery licensee providing tastings of distilled liquor at a retail liquor store is subject to OAR 845-015-0155 and is not subject to this rule.

(5) A distillery licensee providing tastings of distilled liquor on a full on-premises licensed premises that is other than the distillery licensee's full on-premises licensed premises is subject to OAR 845-005-0428 and is not subject to this rule.

(6) If a distillery licensee also holds a full on-premises sales license as per ORS 471.175 on the distillery licensed premises or on any other premises owned or leased by the distillery licensee, then all sale or service of alcohol for on-premises consumption at the full on-premises licensed location, including tastings, is provided under the full on-premises license and is not subject to this rule.

(7) A distillery licensee holding a full on-premises sales license as per ORS 471.175 that provides alcohol service at a catered event that is on a premises approved as per OAR 845-005-0405 or 845-005-0410 is providing the alcohol service under the privilege of the full on-premises sales license and is not subject to this rule.

(8) More than one distillery licensee may be licensed at a primary location to use the same premises at the same time for conducting tastings if:

(a) The premises is a primary location and the licensees share the premises; or

(b) The premises is owned by the same entity.

(9) Application for tastings on the distillery licensee's primary location. A distillery licensee who intends to provide the service of distilled liquor tastings on the distillery's primary location must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. After the Commission has given its approval for the tastings, the distillery licensee must re-apply if it changes its identified tasting area. The application shall include:

(a) A floor plan showing the identified tasting area on a form provided by the Commission;

(b) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by the use of badges or name tags; and

(c) A statement that the licensee understands and will comply with the requirements of OAR 845-006-0452.

(10) Application for tastings on no more than five other premises owned or leased by the distillery licensee. A distillery licensee who intends to provide the service of distilled liquor tastings on no more than five other premises owned or leased by the distillery licensee must make application to the Commission upon forms to be furnished by the Commission and receive prior approval from the Commission before beginning the distilled liquor tasting service. After the Commission has given its approval for the tastings, the distillery licensee must re-apply if it changes its identified tasting area. The application shall include:

(a) A floor plan showing the identified tasting area on a form provided by the Commission;

(b) A description of how the licensee will distinguish trade visitors from members of the general public, such as by providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, by using distinctive glassware for trade visitors, or by using badges or name tags to identify trade visitors;

(c) A statement that the licensee understands and will comply with the requirements of OAR 845-006-0452; and

(d) Proof of ownership or a written contract that entitles the distillery licensee to exclusive use and possession of the other premises.

(11) Liquor liability insurance requirement. A distillery licensee providing only tastings under this rule and OAR 845-006-0452 is not required to obtain or maintain liquor liability insurance.

(12) The Commission may refuse to process any application required under this rule if the application is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth: ORS 471, 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.230
Hist.: OLCC 11-2009, f. 8-26-09 cert. ef. 11-1-09; OLCC 2-2014, f. 2-11-14, cert. ef. 3-1-14; OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16; OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16

845-006-0452
Requirements for Distilled Liquor Tastings Provided by Oregon Distillery Licensee

OAR 845-005-0431 sets the qualifications for an Oregon distillery licensee to obtain approval to provide tastings of distilled liquor manufactured by the distillery licensee for consumption on the distillery licensee's premises and on no more than five other premises owned or leased by the distillery licensee. This rule sets the requirements to provide these tastings.

(1) Definitions.

(a) "Identified tasting area" means a specific defined area where tastings of alcohol occur. The area must be of a size and design such that the person(s) serving the taste(s) can observe and control persons in the area to ensure no minors or visibly intoxicated persons possess or consume alcohol and that other liquor laws are followed.

(b) "Manufactured by the distillery licensee" means the licensee distills, rectifies, blends, or otherwise produces the distilled liquor product in Oregon on the distillery's licensed premises.

(c) "Other premises owned or leased by the distillery licensee" means any other licensed location that is owned or leased by the distillery licensee and separate from its annually licensed location. To qualify under this definition, the distillery licensee must provide proof of ownership or a written contract entitling it to exclusive use and possession of the other location.

(d) "Per day" means from 7:00 am until 2:30 am on the succeeding calendar day.

(e) "Primary Location" means the location where distilled liquor is manufactured by the distillery licensee.

(f) "Trade visitor" means a person whose job includes the purchase or recommended purchase of distilled spirits by a licensee of the Commission or distributors and others in the commercial distribution chain; or a person representing an agency of mass communication, such as television, radio, newspaper, magazine, and internet.

(2) Tastings of distilled liquor are allowed only within the identified tasting area or areas approved by the Commission. The identified tasting area or areas may be on the distillery licensee's primary location and on no more than five other premises owned or leased by the distillery licensee. Customers may not remove the tastings from the identified tasting area or areas.

(3) A distillery licensee may provide only tastings as described in this rule.

(4) The distilled liquor in a taste must be approved by the Commission for sale in Oregon. The taste must contain distilled liquor manufactured in Oregon by the distillery licensee or another distillery licensee. Once the taste contains distilled liquor manufactured in Oregon by the distillery licensee or another distillery licensee, the taste may contain other distilled liquor approved by the Commission for sale in Oregon and may also include malt beverages, wine, cider, and non-alcoholic liquids.

(a) The distillery licensee must pay the Commission a processing fee for any distilled liquor in the taste that is manufactured by the distillery licensee and is obtained from the inventory of the Commission.

(b) The distillery licensee must purchase at the retail price set by the Commission any distilled liquor that was not manufactured by the distillery licensee.

(5) Tastings provided to the general public.

(a) A tasting provided to the general public shall be no more than one-half fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than two ounces. A licensee may charge a member of the general public a fee for tastings.

(b) A distillery licensee shall not provide more than two and one-half fluid ounces of distilled liquor per person per day.

(6) Tastings provided to a trade visitor.

(a) A tasting provided to a trade visitor shall be no more than one fluid ounce of distilled liquor in a single container. The container may also contain malt beverage, wine, cider, and nonalcoholic beverages; however, the total amount of liquid in the container may be no more than three ounces. A licensee may not charge a trade visitor a fee for tastings.

(b) There is no daily limit on distilled liquor tastings provided to a trade visitor.

(c) Trade visitors must be distinguished from members of the general public. For example, providing tastings for trade visitors in separate areas or at separate times from tastings for the general public, using distinctive glassware for trade visitors, or using badges or name tags to identify trade visitors could be ways a licensee complies with this requirement.

(7) Minors are permitted in the identified tasting area only if allowed by the Commission's rule on minor postings (see OAR 845-006-0340).

(8) Alcohol servers who pour tastings must have valid service permits and be at least 21 years of age.

(9) Failing to obtain Commission approval as required by OAR 845-005-0431 prior to providing the service of distilled liquor tastings is a Category I violation. A violation of sections (1)–(8) of this rule is a Category III violation.

(10) A violation of a liquor law at any premises owned or leased by the distillery licensee is the responsibility of the distillery licensee.

Stat. Auth: ORS 471, 471.030, 471.040 & 471.730(1) & (5)
Stats. Implemented: ORS 471.230
Hist.: OLCC 11-2009 f. 8-26-09 cert. ef. 11-1-09; OLCC 2-2014, f. 2-11-14, cert. ef. 3-1-14; OLCC 2-2015(Temp), f. 8-4-15, cert. ef. 8-5-15 thru 1-31-16; OLCC 4-2015, f. 12-22-15, cert. ef. 2-1-16

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Rule Caption: The amendments and repeal align the rule with the statutory changes made in SB 583.

Adm. Order No.: OLCC 5-2015(Temp)
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 845-005-0417, 845-006-0392, 845-006-0396
Rules Suspended: 845-005-0420
Subject: Senate Bill 583 passed by the legislature has an effective date of January 1, 2016.

The amendments in the bill added to and revised the qualifications and requirements for the direct shipment of malt beverages, wine, and cider directly to a resident of Oregon.

The amendments and repeal align the rule with the statutory changes made in SB 583.

Rules Coordinator: Bryant Haley—(503) 872-5136

845-005-0417
Qualifications for Direct Shipment of Wine or Cider to a Resident of Oregon

ORS 471.282 allows a person with a Direct Shipper Permit to sell and deliver malt beverages, wine or cider directly to a resident of Oregon who is at least 21 years of age. 471.186 allows an off-premises sales licensee to deliver malt beverages, wine and cider to a resident of Oregon who is at least 21 years of age.

(1) A Direct Shipper Permit allows the delivery of only the type of alcohol allowed by the license that authorizes the person to hold a Direct Shipper Permit. Only the following persons may qualify for a Direct Shipper Permit:

(a) A person holding a brewery-public house license issued under ORS 471.200, a winery license issued under ORS 471.223, or a grower sales privilege license issued under 471.227. These licenses are issued with a Direct Shipper Permit.

(b) A person holding a temporary sales license issued under ORS 471.190 that is also a nonprofit trade association and that has a membership primarily composed of persons holding winery licenses issued under 471.223 and grower sales privilege licenses issued under 471.227.

(c) A person holding a license issued by another state within the United States that authorizes the manufacture of malt beverages, wine, or cider. The person in the other state may deliver malt beverages only if that state allows Oregon licensees to deliver malt beverages directly to a resident of that state.

(d) A person holding a license issued by another state within the United States that authorizes the sale of wine or cider produced only from grapes or other fruit grown under the control of the licensee.

(e) A person holding a license issued by another state within the United States that authorizes the sale of malt beverages, wine, or cider at retail for consumption off the licensed premises. The person in the other state may deliver malt beverages only if that state allows Oregon licensees to deliver malt beverages directly to a resident of that state.

(2) Application for a Direct Shipper Permit. A person described under subsections (1)(b)–(e) of this rule must make application to the Commission and receive a Direct Shipper Permit from the Commission before shipping any malt beverages, wine or cider directly to a resident of Oregon. Applicants must apply in writing using the forms provided by the Commission and submit the required fee. The Commission may require additional forms, documents, or information as part of the application. The Commission may refuse to process any application that is not complete or not accompanied by the documents or disclosures required by the form or the Commission.

(3) The Commission may revoke or refuse to issue or renew a Direct Shipper Permit if the permit holder or applicant fails to qualify for the permit under this rule or a refusal basis applies under ORS Chapter 471 or any other rule of the Commission and good cause does not overcome the refusal basis.

(4) A Direct Shipper Permit issued under subsections (1)(c)–(e) of this rule must be renewed annually.

(a) If the person holds the permit based on a license issued by another state, the permit may be renewed by applying in writing using the forms provided by the Commission and submitting the required fee. The Commission may require additional forms, documents, or information as part of the application.

(b) If the person holds the permit based on an annual license issued by this state, the permit may be renewed at the same time that the license is renewed.

(5) Same-Day and Next-Day Delivery.

(a) The privilege of next-day delivery of malt beverages, wine, and cider is included with a Direct Shipper Permit and an off-premises sales license.

(b) A person who holds, or is applying for, a Direct Shipper Permit or an off-premises sales license issued by the Commission who intends to provide the service of same-day delivery of malt beverages, wine, or cider to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application for same-day delivery approval shall include a statement that the person understands and will follow the same-day delivery requirements listed in OAR 845-006-0392 and 845-006-0396.

(6) The Commission may refuse to process any application required under this rule if the application is not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.186 & 471.730(1) & (5)
Stats. Implemented: ORS 471.155, 471.186, 471.282 & 471.305
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 5-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16

845-006-0392
Requirements for Direct Shipment of Wine and Cider to a Resident of Oregon

(1) A person may sell and ship wine or cider to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales license issued by the Commission.

(2) A person holding a Direct Shipper Permit must ship not more than a total of two cases of wine or cider containing not more than nine liters per case per month to a resident of Oregon who is at least 21 years of age.

(3) A person holding a Direct Shipper Permit or an off-premises sales license must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) A person holding a Direct Shipper Permit or an off-premises sales license must ship:

(a) Only wine or cider. A container must not hold more than two gallons.

(b) Only to a resident of Oregon who is at least 21 years of age and only if the wine or cider is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The product in a container that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the wine or cider that is received by the permit holder or licensee prior to shipment of the alcohol;

(f) Only for next-day delivery, unless the permit holder or licensee has been approved for same-day delivery; and

(g) Only to a home or business where the home or business has a permanent street address.

(h) If the container is a securely-covered container it must be an empty container supplied by the resident. The permit holder or licensee may sell an empty container to the resident prior to or at the time of filling the container.

(5) If the permit holder or licensee ships via a for-hire carrier, the permit holder and licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424 and must comply with sections (2), (3) and (4) of this rule, as applicable.

(6) If the permit holder or licensee does not use a for-hire carrier, in addition to complying with sections (2), (3) and (4) of this rule, as applicable, the person making the delivery of the wine or cider must:

(a) Be age 18 or over;

(b) Verify that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the permit holder or licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information that can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(7) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (2), (3), (4) and either (5) or (6) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day to a resident of Oregon (and must also follow section (2) of this rule).

(8) Same-day delivery for an off-premises sales licensee. If a licensee has also obtained approval to make same-day delivery of wine or cider, in addition to complying with sections (3), (4) and either (5) or (6) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of two cases of wine or cider containing not more than nine liters per case per day per Oregon residence;

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider if the alcohol accounts for no more than 25 percent of the retail cost of the order (i.e., at least 75 percent of the retail cost of the order must be items other than alcohol);

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and may deliver an unlimited amount of wine or cider;

(d) Receive the order from the resident no later than 7:00 pm on the day the order is delivered, ensure that the wine and cider is delivered before 9:00 pm, and deliver not more than a total of 1500 milliliters of wine or cider (approximately two standard bottles) per day per Oregon residence; or

(e) Receive the order from the resident between 7:01 pm and 9:00 pm on the day the order is delivered, ensure that the wine or cider is delivered before 10:00 pm, and deliver not more than a total of 750 milliliters of wine or cider (approximately one standard bottle) per day per Oregon residence.

(9) A permit holder must:

(a) Allow the Commission to audit the permit holder's records of wine and cider shipments to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all shipments of wine or cider made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on wine and cider sold and shipped directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all wine or cider sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping wine or cider without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.244.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.186 & 471.730(1) & (5)
Stats. Implemented: ORS 471.186, 471.282 & 473
Hist.: OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 4-2012, f. 4-10-12, cert. ef. 5-1-12; OLCC 4-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14; OLCC 13-2013, f. 12-12-13, cert. ef. 1-1-14; OLCC 5-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16

845-006-0396
Requirements for Same-Day and Next-Day Retail Delivery of Malt Beverages to a Resident of Oregon

(1) A person may sell and ship malt beverages to a resident of Oregon only if the person holds:

(a) A valid Direct Shipper Permit and holds a license issued by this state or another state that authorizes the person to hold a Direct Shipper Permit; or

(b) An off-premises sales license issued by the Commission.

(2) A person may ship:

(a) Only malt beverages. A container must not hold more than two gallons. Despite this requirement, a factory-sealed container from an off-premises sales licensee must not hold more than two and one-quarter gallons.

(b) Only to a resident of Oregon who is at least 21 years of age and only if the malt beverage is for personal use and not for the purpose of resale;

(c) Only for delivery to a resident who is not visibly intoxicated at the time of receiving the alcohol;

(d) The malt beverage in a package that is conspicuously labeled with the words "Contains alcohol: signature of person age 21 years or older required for delivery" or similar language approved by the Commission;

(e) Only pursuant to an order for the malt beverage that is received by the licensee prior to shipment of the alcohol;

(f) Only for next-day delivery unless the licensee has been approved for same-day delivery by the Commission; and

(g) Only to a home or business where the home or business has a permanent street address.

(h) If the container is a securely-covered container it must be an empty container supplied by the resident. The permit holder or licensee may sell an empty container to the resident prior to or at the time of filling the container.

(3) A licensee must retain a record for a minimum of eighteen months of the amount of alcohol contained in the shipment to the resident.

(4) If the licensee ships via a for-hire carrier, in addition to complying with sections (1), (2), and (3) of this rule, the licensee must use a for-hire carrier with a plan approved by the Commission under OAR 845-005-0424.

(5) If the licensee does not use a for-hire carrier, in addition to complying with sections (1), (2), and (3) of this rule, the person delivering the malt beverage must:

(a) Be age 18 or over;

(b) Verify that the person receiving the alcohol is at least 21 years of age;

(c) Determine that the person receiving the alcohol is not visibly intoxicated; and

(d) Collect information that must be retained by the licensee for a minimum of eighteen months from the date of delivery of the alcohol to the resident. The information retained must include:

(A) The date and time the alcohol was delivered to the resident;

(B) The name or information which can be used to determine the name of the person delivering the alcohol to the resident; and

(C) The name, signature, and delivery address of the person receiving the alcohol.

(6) Same-day delivery for a permit holder. If a permit holder has also obtained approval to make same-day delivery of malt beverages, in addition to complying with sections (2) and (3) and either (4) or (5) of this rule, the permit holder must receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of five gallons of malt beverage per day per Oregon residence.

(7) Same-day delivery for an off-premises sales licensee. If the licensee is approved to make same-day delivery of malt beverages, in addition to complying with sections (1), (2), and (3) and either (4) or (5) of this rule, the licensee must:

(a) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of five gallons of malt beverage per day per Oregon residence;

(b) Receive the order from the resident no later than 4:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage if the alcohol accounts for no more than 25 percent of the retail cost of the order (i.e., at least 75 percent of the retail cost of the order must be items other than alcohol);

(c) Receive the order from the resident no later than 9:00 am on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and may deliver an unlimited amount of malt beverage;

(d) Receive the order from the resident no later than 7:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 9:00 pm, and deliver not more than a total of 160 ounces of malt beverage (approximately two standard six-packs) per day per Oregon residence; or

(e) Receive the order from the resident between 7:01 pm and 9:00 pm on the day the order is delivered, ensure that the malt beverage is delivered before 10:00 pm, and deliver not more than a total of 80 ounces of malt beverage (approximately one standard six-pack) per day per Oregon residence.

(8) Sanction. A violation of any section of this rule is a Category III violation.

(9) A permit holder must:

(a) Allow the Commission to audit the permit holder's records of malt beverage shipments to Oregon residents upon request and shall make those records available to the Commission in Oregon no later than 60 days after the Commission mails the notice;

(b) Report to the Commission all shipments of malt beverage made to a resident of Oregon under the permit as required by ORS Chapter 473. The report must be made in a form prescribed by the Commission; and

(c) Timely pay to the Commission all taxes imposed under ORS Chapter 473 on malt beverage sold and shipped directly to a resident of Oregon under the permit. For the purpose of the privilege tax imposed under ORS Chapter 473, all malt beverage sold and shipped pursuant to a direct shipper permit is sold in this state. The permit holder, not the purchaser, is responsible for the tax.

(10) If the permit holder is located in a state outside of Oregon, it consents to the jurisdiction of the Commission and the courts of this state for the purpose of enforcing the provisions of this rule and any related laws or rules.

(11) A violation of section (9) of this rule is a Category IV violation. A violation of any other section of this rule is a Category III violation. In lieu of a criminal citation, the Commission may assess an administrative penalty for shipping malt beverage without a valid Direct Shipper Permit in violation of section (1) of this rule against any Oregon license held by the shipper, including a Certificate of Approval issued pursuant to ORS 471.244.

Stat. Auth.: ORS 471, 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 7-2003(Temp), f. & cert. ef. 5-20-03 thru 11-16-03; OLCC 12-2003, f. 9-23-03, cert. ef. 11-1-03; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 6-2008(Temp), f. & cert. ef. 4-18-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; OLCC 4-2012, f. 4-10-12, cert. ef. 5-1-12; OLCC 4-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14; OLCC 13-2013, f. 12-12-13, cert. ef. 1-1-14; OLCC 5-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16

845-005-0420

Qualifications for Same-Day and Next-Day Retail Delivery of Malt Beverages to Residents of Oregon

ORS 471.305 allows certain licensees of the Commission to deliver malt beverages to customers. This rule describes the qualifications to make same-day and next-day delivery of malt beverages to a resident of Oregon.

(1) Only a holder of one of the following licenses may qualify to deliver malt beverages to a resident of Oregon:

(a) An off-premises sales license issued under ORS 471.186.

(b) A brewery-public house license issued under ORS 471.200.

(2) Notice of Next-Day Delivery. A licensee that intends to provide the service of next-day delivery of malt beverages to a resident of Oregon must notify the Commission in writing prior to beginning the next-day delivery service that it intends to provide this service. All deliveries must meet the requirements set forth in OAR 845-006-0396 for next-day delivery.

(3)(a) Application for Same-Day Delivery. A licensee that intends to provide the service of same-day delivery of malt beverages to a resident of Oregon must make application to the Commission upon forms to be furnished by the Commission and receive approval from the Commission prior to beginning the same-day delivery service. The application shall include:

(b) A statement that the person understands and will follow the requirements for same-day delivery listed in OAR 845-006-0396.

(4) The Commission may refuse to process any application not complete and accompanied by the documents or disclosures required by the form. The Commission shall give applicants the opportunity to be heard if the Commission refuses to process an application. A hearing under this subsection is not subject to the requirements for contested case proceedings under ORS Chapter 183.

Stat. Auth.: ORS 471, including 471.030, 471.040, 471.730(1) & (5)
Stats. Implemented: ORS 471.305
Hist.: OLCC 19-2000, f. 12-6-00, cert. ef. 1-1-01; OLCC 14-2002, f. 10-25-02 cert. ef. 11-1-02; OLCC 23-2007(Temp), f. 12-14-07, cert. ef. 1-1-08 thru 6-28-08; OLCC 8-2008, f. 6-12-08, cert. ef. 6-29-08; Suspended by OLCC 5-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16

Rule Caption: Aligns the definition of lot or parcel with the statutory definition in HB 3400.
Adm. Order No.: OLCC 6-2015(Temp)
Filed with Sec. of State: 12-22-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Amended: 845-025-1115
Subject: On October 22, 2014, the Commission adopted temporary rules implementing the "Control, Regulation and Taxation of Marijuana and Industrial Hemp Act of 2014" ("Measure 91") and 2015 House Bill 3400 ("HB 3400"). The Commission amended certain sections of the temporary rules on November 20, 2015. Staff have recently identified another area of the rule that require revision.

845-025-1115(1)(d)(B) states that OLCC may deny a producer license if it is "On the same tax lot or parcel as another producer license under common ownership."

There are two problems with this rule. First, for outdoor growers it is not consistent with the statutory definition of a licensed premises. HB 3400 defines a licensed premises of an outdoor producer as "the entire lot or parcel." A tax lot is not the same as a lot as the term is used in statute. In fact the same lot or parcel may contain multiple tax lots. Because our rule is inconsistent with the statute for outdoor producers, the statute controls and the rule does not apply outdoors. Staff interpret the statute to mean that only one outdoor production license can be issued on the lot or parcel regardless of ownership.

Second, when applying this rule to indoor producers the rule as written is not consistent with the Commission's intent. Staff had intended to allow multiple indoor producers at the same location only if the producers were separately owned. However, the use of the term "tax lot" means that a single owner could have multiple indoor production licenses at the same location if they have designated separate tax lots on their property.

The suggested amendments address both these issues by removing the term "tax lot" from our rules and clarifying the different requirements for indoor and outdoor producers. The net result is that only one outdoor producer license may be issued on a lot or parcel, and that multiple indoor licenses may be issued on a lot or parcel only if those licenses are under separate ownership.
Rules Coordinator: Bryant Haley—(503) 872-5136

845-025-1115
Denial of Application

(1) The Commission must deny an initial or renewal application if:

(a) An applicant is under the age of 21 or, until January 1, 2020, has not been a resident or Oregon for at least two years. If the Commission determines that an applicant is a non-resident the Commission will hold that application under review until 30 days after the 2016 Oregon Legislature adjourns.

(b) The applicant's land use compatibility statement shows that the proposed land use is prohibited in the applicable zone.

(c) The proposed licensed premises is located:

(A) On federal property.

(B) At the same physical location or address as a:

(i) Medical marijuana grow site registered under ORS 475.304, unless the grow site is also licensed under section 116, chapter 614, Oregon laws 2015;

(ii) Medical marijuana processing site registered under section 85, chapter 614, Oregon Laws 2015; or

(iii) Medical marijuana dispensary registered under ORS 475.314.

(C) At the same physical location or address as a liquor licensee licensed under ORS Chapter 471 or as a retail liquor agent appointed by the Commission.

(d) The proposed licensed premises of a producer applicant who has applied to produce marijuana outdoors is:

(A) On public land;

(B) On the same lot or parcel, as defined in ORS 92.010, as another producer license; or

(C) On the same lot or parcel, as defined in ORS 92.010, as a retail, processor or wholesale license, unless all of the licenses on the lot or parcel are held or sought by the same applicant.

(e) The proposed licensed premises of a producer applicant who has applied to produce marijuana indoors is on the same lot or parcel, as defined in ORS 92.010, as another producer licensee under common ownership.

(f) The proposed licensed premises of a processor who has applied for an endorsement to process extracts is located in an area that is zoned exclusively for residential use.

(g) The proposed licensed premises of a retail applicant is located:

(A) Within 1,000 feet of:

(i) A public elementary or secondary school for which attendance is compulsory under ORS 339.020; or

(ii) A private or parochial elementary or secondary school, teaching children as described in ORS 339.030.

(B) In an area that is zoned exclusively for residential use.

(h) The proposed licensed premises of a wholesaler applicant is in an area zoned exclusively for residential use.

(i) A city or county has prohibited the license type for which the applicant is applying, in accordance with sections 133 or 134, chapter 614, Oregon Laws 2015.

(2) The Commission may deny an initial or renewal application, unless the applicant shows good cause to overcome the denial criteria, if it has reasonable cause to believe that:

(a) The applicant:

(A) Is in the habit of using alcoholic beverages, habit-forming drugs, marijuana, or controlled substances to excess.

(B) Has made false statements to the Commission.

(C) Is incompetent or physically unable to carry on the management of the establishment proposed to be licensed.

(D) Is not of good repute and moral character.

(E) Does not have a good record of compliance with sections 3 to 70, chapter 1, Oregon Laws 2015, chapter 614, Oregon Laws 2015, or these rules, prior to or after licensure including but not limited to:

(i) The giving away of marijuana items as a prize, premium or consideration for a lottery, contest, game of chance or skill, or competition of any kind, in violation of section 49, chapter 614, Oregon Laws 2015;

(ii) Providing marijuana items to an individual without checking that the individual is 21 or older;

(iii) Unlicensed transfer of marijuana items for financial consideration; or

(iv) Violations of local ordinances adopted under section 33, chapter 614, Oregon Laws 2015, pending or adjudicated by the local government that adopted the ordinance.

(F) Is not possessed of or has not demonstrated financial responsibility sufficient to adequately meet the requirements of the business proposed to be licensed.

(G) Is unable to understand the laws of this state relating to marijuana or these rules, including but not limited to ORS 475.300 to 475.346 and sections 91 to 99, chapter 614, Oregon Laws 2015. Inability to understand laws and rules of this state related to marijuana may be demonstrated by violations documented by the Oregon Health Authority.

(b) Any individual listed on the application has been convicted of violating a general or local law of this state or another state, or of violating a federal law, if the conviction is substantially related to the fitness and ability of the applicant to lawfully carry out activities under the license, except as specified in Section 29(3), chapter 1, Oregon Laws 2015.

(c) Any applicant is not the legitimate owner of the business proposed to be licensed, or other persons have an ownership interest in the business have not been disclosed to the Commission.

(3) The Commission may refuse to issue a license to any license applicant or refuse to renew the license of any licensee when conditions exist in relation to any person having a financial interest in the business or in the place of business which would constitute grounds for refusing to issue a license or for revocation or suspension of a license if such person were the license applicant or licensee. However, in cases where the financial interest is held by a corporation, only the officers and directors of the corporation, any individual or combination of individuals who own a controlling financial interest in the business shall be considered persons having a financial interest within the meaning of this subsection.

(4) The Commission will not deny an application under subsections (1)(c)(B) of this rule if the applicant surrenders the registration issued by the Authority prior to being issued an OLCC license.

(5) If the Commission denies an application because an applicant submitted false or misleading information to the Commission, the Commission may prohibit the applicant from re-applying for five years.

(6) A notice of denial must be issued in accordance with ORS 183.

Stat. Auth.: Sec. 2, Ch 614, OL 2015

Stats. Implemented: Sections 7, 8, 12, 14, 15, 16, 34, 93, 133, 134, Ch 614, OL 2015
Hist.: OLCC 3-2015(Temp), f. 12-3-15, cert. ef. 1-1-16 thru 6-28-16; OLCC 6-2015(Temp), f. 12-22-15, cert. ef. 1-1-16 thru 6-28-16

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Oregon Medical Board
Chapter 847

Rule Caption: Physician Assistant Committee
Adm. Order No.: OMB 1-2016
Filed with Sec. of State: 1-8-2016
Certified to be Effective: 1-8-16
Notice Publication Date: 11-1-2015
Rules Amended: 847-050-0025
Rules Repealed: 847-050-0063, 847-050-0065, 847-050-0025(T)
Subject: The rule amendment and rule repeals, which were temporarily adopted on 10/9/15 and effective on 1/1/16, permanently abolish the Physician Assistant Committee pursuant to Senate Bill 905 (2015), effective 1/1/16.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-050-0025
Interview and Examination

(1) In addition to all other requirements for licensure, the Board may require the applicant to appear for a personal interview regarding information received in the application process. Unless excused in advance, failure to appear before the Board for a personal interview violates ORS 677.190(17) and may subject the applicant to disciplinary action.

(2) The applicant is required to pass an open-book examination on the Medical Practice Act (ORS Chapter 677) and Oregon Administrative Rules (OAR) chapter 847, division 050. If an applicant fails the open-book examination three times, the applicant's application will be reviewed by the Board. An applicant who has failed the open-book examination three times must also attend an informal meeting with a Board member, a Board investigator and/or the Medical Director of the Board to discuss the applicant's failure of the examination, before being given a fourth and final attempt to pass the examination. If the applicant does not pass the examination on the fourth attempt, the applicant may be denied licensure.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.190, 677.265, 677.512
Hist.: ME 23(Temp), f. & ef. 1-12-71; ME 25, f. 1-20-72, ef. 2-1-72; ME 1-1979, f. & ef. 1-29-79; ME 5-1979. f. & ef. 11-30-79; ME 4-1980(Temp), f. 8-5-80, ef. 8-6-80; ME 7-1980, f. & ef. 11-3-80; ME 4-1981(Temp), f. & ef. 10-20-81; ME 2-1982, f. & ef. 1-28-82; ME 8-1985, f. & ef. 8-5-85; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 9-1995, f. & cert. ef. 7-28-95; BME 11-1998, f. & cert. ef. 7-22-98; BME 13-2003, f. & cert. ef. 7-15-03; BME 13-2006, f. & cert. ef. 5-8-06; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 6-2014, f. & cert. ef. 1-14-14; OMB 10-2015(Temp), f. 10-13-15, cert. ef. 1-1-16 thru 6-28-16; OMB 1-2016, f. & cert.ef. 1-8-16

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Rule Caption: Issuance of Final Orders
Adm. Order No.: OMB 2-2016
Filed with Sec. of State: 1-8-2016
Certified to be Effective: 1-8-16
Notice Publication Date: 11-1-2015
Rules Amended: 847-001-0015
Subject: The rule amendment provides an exemption to the Attorney General's Model Rule 137-003-0655(7) because the Board has determined that, due to the nature of the cases, 90 days is an insufficient time in which to issue an amended proposed or final order.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-001-0015
Delegation of Authority and Issuance of Final Order

(1) The Oregon Medical Board (Board) has delegated to the Executive Director the authority to make certain procedural determinations on its behalf on matters arising under the Attorney General's Model Rules for Contested Cases in OAR 137-003-0001 to 137-003-0700. The procedural functions include, but are not limited to:

(a) For discovery requests before the Board, to authorize or deny requested discovery in a contested case, to include specifying the methods, timing and extent of discovery;

(b) To review all requests to take a deposition of a witness and to authorize or deny any request for deposition. If a request to take a deposition is authorized, the Executive Director may specify the terms on which the deposition is taken, to include, but not limited to the location, the manner of recording, the time of day, the persons permitted to be present, and the duration of the deposition;

(c) Whether a request for hearing filed after the prescribed time will be accepted, based upon a finding of good cause. In making this determination, the Executive Director may require the request to be supported by an affidavit or other writing to explain why the request is late and may conduct such further inquiry as deemed appropriate. The Executive Director may authorize a hearing on whether the late filing should be accepted. If any party disputes the facts contained in the explanation as to why the request was late or the accuracy of the reason that the request was late, the requestor has a right to a hearing before an Administrative Law Judge (ALJ) on the reasons for that factual dispute;

(d) Whether the late filing of a document may be accepted based upon a finding of good cause;

(e) Whether to issue a subpoena for the attendance of witnesses or to produce documents at the hearing;

(f) Prior to the issuance of a proposed order issued by an ALJ, whether the Board will consider taking notice of judicially cognizable facts or of general, technical or scientific facts in writing which are within the specialized knowledge of the Board;

(g) Whether to submit to the Board prior to an ALJ's proposed final order the following issues:

(A) The Board's interpretation of its rules and applicable statutes;

(B) Which rules or statutes are applicable to a proceeding;

(C) Whether the Board will answer a question transmitted to it by the ALJ;

(h) In regard to a proposed order issued by an ALJ, whether the Board's legal representative will file exceptions and present argument to the Board; and

(i) Whether a request for delay of hearing on emergency suspension will be accepted.

(2) All actions taken under section (1) of this rule must be reported to the Board at the regularly scheduled meeting in which the Board deliberates on the proposed order in the case.

(3) The Board's disciplinary and suspension cases brought under ORS 677.205 are exempt from the requirements of OAR 137-003-0655(7), which requires an agency to give written notice to the ALJ and all parties of the date by which the agency expects to issue an amended proposed order or a final order if the agency will not issue an amended proposed order or final order within 90 days of the proposed order. Due to the complexity of Board cases and the infrequency of regularly scheduled Board meetings, 90 days is an insufficient time for the Board to issue an amended proposed order or a final order.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 183.335, 183.341, 677.275
Hist.: BME 13-2000, f. & cert. ef. 10-30-00; BME 13-2004, f. & cert. ef. 7-13-04; BME 14-2006, f. & cert. ef. 7-25-06; OMB 6-2011, f. & cert. ef. 4-25-11; OMB 1-2012(Temp), f. & cert. ef. 2-7-12 thru 8-5-12; OMB 12-2012, f. & cert. ef. 4-17-12; OMB 2-2015, f. & cert. ef. 1-8-16

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Rule Caption: Reactivation requirements for licensees who want to change their license status
Adm. Order No.: OMB 3-2016
Filed with Sec. of State: 1-8-2016
Certified to be Effective: 1-8-16
Notice Publication Date: 11-1-2015
Rules Amended: 847-008-0020, 847-008-0022, 847-008-0023, 847-008-0025, 847-008-0030, 847-008-0035, 847-008-0037, 847-008-0050, 847-008-0055, 847-050-0043, 847-070-0045
Rules Repealed: 847-008-0056
Subject: The rule amendments streamline the reactivation process so that OMB staff will collect much of the documentation previously required of the applicant. In addition, the amendments clarify which license statuses are required to reactivate and provides one comprehensive rule on the reactivation process. Finally, the rule amendments remove references to paper forms and affidavits in anticipation of moving the reactivation application to an online process. The amendments also contain minor grammar and housekeeping changes.
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-008-0020
Locum Tenens Registration

(1) Any licensee whose official state of residence is a state other than Oregon who proposes to practice intermittently within the State shall register and pay the biennial locum tenens registration fee.

(2) The licensee practicing in Oregon with a locum tenens registration status may practice for a period not longer than two hundred and forty consecutive days in the biennium, or a total of two hundred and forty days on an intermittent basis in the biennium. A licensee practicing in Oregon with a locum tenens registration status who wishes to reactivate to active registration status, may be granted an additional ninety days to complete the reactivation process.

(3) A volunteer camp physician, who provides medical care at a nonprofit camp, shall practice with locum tenens registration status. The volunteer camp physician with locum tenens status may practice in Oregon for a period not longer than fourteen days per year.

(4) A licensee who registers as locum tenens and who does not practice in Oregon during the biennium, shall be registered as inactive at the time of registration renewal, and shall be required to reactivate to locum tenens registration status prior to practicing in Oregon.

(5) Requirements, procedures, and fees for a Locum Tenens registration shall be the same as for active registration.

(6) Any licensee registered as locum tenens shall provide the Board with timely notification of the location and duration of each Oregon practice prior to beginning of such practice.

(7) The licensee with locum tenens status who wishes to practice under a different license status must submit the reactivation application and fee and satisfactorily complete the reactivation process.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.265
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 3-1993, f. & cert. ef. 4-22-93; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2001, f. & cert. ef. 7-18-01; BME 11-2002, f. & cert. ef. 10-25-02; BME 2-2009, f. & cert. ef. 1-22-09; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0022
Teleradiology Registration

(1) Teleradiology is the electronic transmission of radiological images from one location to another for the purposes of interpretation or consultation.

(2) A physician whose specialty is radiology or diagnostic radiology who practices in a location outside of Oregon and receives radiological images via teleradiology from an Oregon location for interpretation or consultation and who communicates his/her radiological findings back to the ordering physician is practicing teleradiology for Oregon. A physician practicing teleradiology for Oregon is not required to be licensed in Oregon. The Board, however, offers a license with Teleradiology active registration status for those physicians who require such for administrative reasons.

(3) Physicians granted Teleradiology active status must register and pay a biennial active registration fee.

(4) The physician with Teleradiology active status desiring to have active status to practice in Oregon must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172
Hist.: BME 14-2004, f. & cert. ef. 7-13-04; BME 2-2007, f. & cert. ef. 1-24-07; BME 8-2008, f. & cert. ef. 4-24-08; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0023
Telemonitoring Registration

(1) Telemonitoring is the intraoperative monitoring of data collected during surgery and electronically transmitted to a physician who practices in a location outside of Oregon via a telemedicine link for the purpose of allowing the monitoring physician to notify the operating team of changes that may have a serious effect on the outcome or survival of the patient. The monitoring physician is in communication with the operation team through a technician in the operating room.

(2) The facility where the surgery is to be performed must be a licensed hospital or ambulatory surgical center licensed by the Department of Human Services, must grant medical staff membership and/or clinical privileges to the monitoring physician, and must request the Board grant Telemonitoring active status to the monitoring physician to perform intraoperative telemonitoring on patients during surgery.

(3) Physicians granted Telemonitoring active status must register and pay a biennial active registration fee.

(4) The physician with Telemonitoring active status desiring to have active status to practice in Oregon must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.265
Hist.: BME 1-2006(Temp), f. & cert. ef. 2-8-06 thru 7-7-06; BME 8-2006, f. & cert. ef. 5-8-06; BME 2-2007, f. & cert. ef. 1-24-07; BME 8-2008, f. & cert. ef. 4-24-08; BME 2-2010, f. & cert. ef. 1-26-10; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0025
Inactive Registration

(1) Each licensee of the Board who is licensed, certified or registered but who does not practice within the State of Oregon, shall register and pay a biennial inactive registration fee prior to the last day of the registration period, except where the licensee is a physician in a qualified training program and elects to register on an annual basis.

(2) The licensee with inactive status who wishes to resume practice in Oregon must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning practice in Oregon.

Stat. Auth.: ORS 677
Stats. Implemented: ORS 677.172
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0030
Emeritus Registration

(1) A licensee who has retired from active practice, but does only volunteer, non-remunerative practice and receives no direct monetary compensation, may register and pay an annual emeritus registration fee.

(2) The licensee with emeritus status who wishes to practice under a different license status must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning practice in Oregon.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.175, 677.265
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; BME 6-2000, f. & cert. ef. 7-27-00; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0035
Retired Status

(1) A licensee who is fully retired and not practicing any form of medicine, whether paid, volunteer, or writing prescriptions in any state, may request retirement status and pay no biennial renewal fee. Prior to retirement a licensee shall notify the Board in writing of intent to retire.

(2) A licensee who returns to practice in any state may not hold retired status. If a licensee with retired status wishes to return to practice in Oregon, the licensee must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning practice in Oregon. If the license had lapsed prior to the change to retired status, the lapsed registration must be cleared by payment of the registration renewal late fee before reactivation can be completed.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.175, 677.265
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 11-1992, f. & cert. ef. 10-22-92; BME 6-2000, f. & cert. ef. 7-27-00; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0037
Administrative Medicine Registration

(1) A physician or podiatric physician who proposes to practice Administrative Medicine within the State shall apply for and obtain a license.

(2) A physician or podiatric physician with an Administrative Medicine license may not examine, care for or treat patients. A physician or podiatric physician with an Administrative Medicine license may advise organizations, both public and private, on healthcare matters; authorize and deny financial payments for care; organize and direct research programs; review care provided for quality; and other similar duties that do not require direct patient care.

(3) Physicians or podiatric physicians granted Administrative Medicine active status must register and pay a biennial active registration fee.

(4) The licensee with Administrative Medicine active status desiring to have active status to practice in Oregon must submit the reactivation application and fee and satisfactorily complete the reactivation process before beginning active practice in Oregon.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.265
Hist.: BME 2-2007, f. & cert. ef. 1-24-07; BME 21-2007(Temp), f. & cert. ef. 10-24-07 thru 4-7-08; BME 2-2008, f. & cert. ef. 1-22-08; BME 8-2008, f. & cert. ef. 4-24-08; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0050
Reinstatement or Reactivation of License Lapsed Due to Non-Renewal

(1) A licensee of the Board whose license has lapsed through failure to renew registration may:

(a) Reinstate within 90 days of the end of the registration period by paying a late registration fee, paying renewal fees for the lapsed registration period, completing and submitting the required forms, and meeting any

other requirements defined by Oregon law. The reinstatement will be effective on the date the renewal is processed.

(b) Reactivate after 90 days from the end of the registration period but within two biennia by completing and submitting the reactivation application and processing fee, paying a late registration fee, paying renewal fees for the lapsed registration periods, and meeting any other requirements per OAR 847-008-0055.

(2) A license will expire if it is not reinstated or reactivated within two biennia from the date the license lapsed. A previous licensee of the Board who wishes to be relicensed after the license has expired must apply as a new applicant by submitting the license application form and fee, meeting all current licensing requirements, and satisfactorily completing the application process.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.100, 677.172, 677.265
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 11-1990, f. & cert. ef. 11-15-90; ME 12-1993(Temp), f. & cert. ef. 10-27-93; ME 2-1994, f. & cert. ef. 1-24-94; BME 1-2002, f. & cert. ef. 1-28-02; BME 17-2003, f. & cert. ef. 12-8-03; OMB 12-2011, f. & cert. ef. 7-13-11; OMB 3-2015, f. & cert. ef. 1-8-16

847-008-0055
Reactivation Requirements

(1) A licensee of the Board who wishes to reactivate must provide the Board with the following:

(a) Completed reactivation application;

(b) Appropriate fees as listed in 847-005-0005;

(c) An evaluation of overall performance and specific beginning and ending dates of training, practice, or employment sent directly to the Board from the director, administrator, dean, or other official of each hospital, clinic, office, or training institute where the licensee was employed, practiced, had hospital privileges, or trained in any state, country, or territory since the time of licensee's last renewal or as directed by the Board.

(2) A licensee who wishes to reactivate from Military/Public Health active status must provide the Board with a completed reactivation application and a copy of the Active Duty Orders, Change of Duty Orders or Reassignment Orders.

(3) Any other documentation or explanatory statements as required by the Board.

(4) A personal appearance before the Board may be required.

(5) A licensee applying for reactivation may be required to demonstrate clinical competency per 847-020-0182, 847-020-0183, 847-050-0043, 847-070-0045, or 847-080-0021.

(6) The Board may deny reactivation based on grounds for denial of licensure provided in Oregon Revised Statutes chapter 677 or Oregon Administrative Rules chapter 847.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.190, 677.265, 677.512, 677.759, 677.825, 677.830
Hist.: ME 5-1990, f. & cert. ef. 4-25-90; ME 2-1997, f. & cert. ef. 7-28-97; BME 6-2000, f. & cert. ef. 7-27-00; BME 7-2002, f. & cert. ef. 7-17-02; BME 2-2004, f. & cert. ef. 1-27-04; BME 14-2004, f. & cert. ef. 7-13-04; BME 25-2006, f. & cert. ef. 10-23-06; BME 2-2008, f. & cert. ef. 1-22-08; OMB 12-2011, f. & cert. ef. 7-13-11; OMB 28-2013, f. & cert. ef. 10-15-13; OMB 3-2015, f. & cert. ef. 1-8-16

847-050-0043
Inactive Registration and Re-Entry to Practice

(1) Any physician assistant licensed in this state who changes location to some other state or country, or who is not in a current supervisory relationship with a licensed physician for six months or more, will be listed by the Board as inactive.

(2) If the physician assistant wishes to resume active status to practice in Oregon, the physician assistant must submit the reactivation application and fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the physician assistant during the period of inactive registration to be such that the physician assistant would have been denied a license if applying for an initial license.

(4) If a physician assistant applicant has ceased practice for a period of 12 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification by the National Commission on the Certification of Physician Assistants (N.C.C.P.A.);

(b) Provide documentation of current N.C.C.P.A. certification;

(c) Complete 30 hours of Category I continuing medical education acceptable to the Board for every year the applicant has ceased practice;

(d) Agree to increased chart reviews upon re-entry to practice.

(5) The physician assistant applicant who has ceased practice for a period of 24 or more consecutive months may be required to complete a re-entry plan to the satisfaction of the Board. The re-entry plan must be reviewed and approved through a Consent Agreement prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section (4) of this rule and such additional requirements as determined appropriate by the Board.

Stat. Auth.: ORS 677.265
Stats. Implemented: ORS 677.172, 677.175, 677.512
Hist.: ME 12-1986, f. & ef. 7-31-86; ME 2-1990, f. & cert. ef. 1-29-90; ME 10-1992, f. & cert. ef. 7-17-92; ME 5-1996, f. & cert. ef. 7-26-96; BME 11-1998, f. & cert. ef. 7-22-98; BME 2-2000, f. & cert. ef. 2-7-00; BME 25-2008, f. & cert. ef. 10-31-08; [OMB 21-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; Suspend temporary by OBDD 28-2011(Temp), f. & cert. ef. 10-26-11 thru 4-10-12]; OMB 29-2011, f. & cert. ef. 10-27-11; OMB 32-2011(Temp), f. 12-15-11, cert. ef. 1-1-12 thru 6-29-12; OMB 7-2012, f. & cert. ef. 2-10-12; OMB 11-2014, f. & cert. ef. 4-9-14; OMB 3-2015, f. & cert. ef. 1-8-16

847-070-0045
Inactive Registration and Re-Entry to Practice

(1) Any acupuncturist licensed in this state who changes location to some other state or country shall be listed by the Board as inactive.

(2) If the acupuncturist wishes to resume active status, the acupuncturist must file an reactivation application and fee, satisfactorily complete the reactivation process and be approved by the Board before beginning active practice in Oregon.

(3) The Board may deny active registration if it judges the conduct of the acupuncturist during the period of inactive registration to be such that the acupuncturist would have been denied a license if applying for an initial license.

(4) If an acupuncturist applicant has ceased practice for a period of 24 or more consecutive months immediately preceding the application for licensure or reactivation, the applicant may be required to do one or more of the following:

(a) Obtain certification or re-certification in Acupuncture or Oriental Medicine by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM);

(b) Provide documentation of current NCCAOM Acupuncture or Oriental Medicine certification;

(c) Complete 15 hours of continuing education acceptable to the Board for every year the applicant has ceased practice;

(d) Complete a mentorship of at least 20 hours under a Board-approved mentor who must individually supervise the licensee. The mentor must report the successful completion of the mentorship to the Board.

(5) The acupuncturist applicant who has ceased practice for a period of five or more consecutive years may be required to complete a re-entry plan to the satisfaction of the Board. The re-entry plan must be reviewed and approved through a Consent Agreement prior to the applicant beginning the re-entry plan. Depending on the amount of time out of practice, the re-entry plan may contain one or more of the requirements listed in section (4) of this rule and such additional requirements as determined appropriate by the Board.

Stat. Auth.: ORS 677.265 & 677.759
Stats. Implemented: ORS 677.175 & 677.759
Hist.: ME 24-1987, f. & ef. 10-29-87; ME 6-1993, f. & cert. ef. 4-22-93; ME 10-1996, f. & cert. ef. 10-29-96; BME 16-1999, f. & cert. ef. 10-28-99; BME 12-2005, f. & cert. ef. 10-12-05; BME 5-2009, f. & cert. ef. 1-22-09; OMB 8-2012, f. & cert. ef. 2-10-12; OMB 11-2014, f. & cert. ef. 4-9-14; OMB 3-2015, f. & cert. ef. 1-13-15; OMB 3-2015, f. & cert. ef. 1-8-16

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Rule Caption: Removing the physician assistant surcharge and correcting the statute citation authorizing criminal records check fees
Adm. Order No.: OMB 4-2016
Filed with Sec. of State: 1-8-2016
Certified to be Effective: 1-8-16
Notice Publication Date: 11-1-2015
Rules Amended: 847-005-0005
Subject: The rule amendment removes the reference to the Physician Assistant Surcharge assessed for the 2014-2015 licensing period because it is no longer needed and corrects the citation to the statutory authority for assessing a criminal records check fee. The rule amendment also makes a housekeeping correction to update "Doctor of Osteopathy" to "Doctor of Osteopathic Medicine."
Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-005-0005
Fees

(1) Licensing Fees:

(a) Doctor of Medicine/Doctor of Osteopathic Medicine (MD/DO) Initial License Application — $375.

(b) MD/DO Registration: Active, Administrative Medicine, Inactive, Locum Tenens, Military/Public Health, Telemedicine, Telemonitoring and Teleradiology — $253/year+*.

(c) MD/DO Registration: Emeritus — $50/year.

(d) MD/DO Limited License, SPEX/COMVEX, Visiting Professor, Fellow, Medical Faculty, Postgraduate Application — $185.

(e) MD/DO Application to Supervise a Physician Assistant — $100.

(f) Acupuncture Initial License Application — $245.

(g) Acupuncture Registration: Active, Inactive, Locum Tenens and Military/Public Health — $161/year*.

(h) Acupuncture Registration: Emeritus — $50/year.

(i) Acupuncture Limited License, Visiting Professor, Pending Examination Application — $75.

(j) Physician Assistant Initial License Application — $245.

(k) Physician Assistant Registration: Active, Inactive, Locum Tenens and Military/Public Health — $191/year*.

(L) Physician Assistant Registration: Emeritus — $50/year.

(m) Physician Assistant Limited License, Pending Examination Application — $75.

(n) Podiatrist Initial Application — $340.

(o) Podiatrist Registration: Active, Administrative Medicine, Inactive, Locum Tenens, Military/Public Health, Telemedicine and Telemonitoring — $243/year*.

(p) Podiatrist Registration: Emeritus — $50/year.

(q) Podiatrist Limited License, Postgraduate Application — $185.

(r) Reactivation Application Fee — $50.

(s) Electronic Prescription Drug Monitoring Program — $25/year**.

(t) Workforce Data Fee — $5/license period***.

(u) Criminal Records Check Fee — $52****.

(v) Oral Specialty or Competency Examination ($1,000 deposit required) — Actual costs.

(2) Delinquent Registration Renewals:

(a) Delinquent MD/DO Registration Renewal — $195.

(b) Delinquent Acupuncture Registration Renewal — $80.

(c) Delinquent Physician Assistant Registration Renewal — $80.

(d) Delinquent Podiatrist Registration Renewal — $195.

(3) Licensee Information Request Charges:

(a) Verification of Licensure — Individual Requests (1-4 Licenses) — $10 per license.

(b) Verification of Licensure — Multiple (5 or more) — $7.50 per license.

(c) Malpractice Report — Individual Requests — $10 per license.

(d) Malpractice Report — Multiple (monthly report) — $15 per report.

(e) Disciplinary — Individual Requests — $10 per license.

(4) Base Service Charges for Copying — $5 + .20/page.

(5) Record Search Charges (+ copy charges in section (4) of this rule):

(a) Clerical — $20 per hour.

(b) Administrative — $40 per hour.

(c) Executive — $50 per hour.

(d) Medical — $75 per hour.

(6) Data Order Charges:

(a) Standard Licensee Data Order — $75 each.

(b) Custom Licensee Data Order — $75 + $40.00 per hour Administrative time.

(c) Address Label Disk — $50 each.

(7) All Board fees and fines are non-refundable and non-transferable.

(8) The Board may waive or reduce fees for public records upon written request if the Board determines that making the record available primarily benefits the general public.

+Per ORS 677.290(3), fee includes $10.00 for the Oregon Health and Science University Library.

*Collected biennially excepted where noted in the Administrative Rules.

**Per ORS 431.960-431.978, fee is assessed to licensees authorized to prescribe or dispense controlled substances in Oregon for the purpose of creating and maintaining the Prescription Drug Monitoring Program administered by the Oregon Health Authority.

***Per ORS 676.410, fee is assessed for the purpose of creating and maintaining a healthcare workforce data base administered by the Oregon Health Authority.

****Per ORS 181.534(9)(e), fee is the actual cost of acquiring and furnishing criminal offender information.

+Per ORS 677.290(3), fee includes $10.00 for the Oregon Health and Science University Library.

*Collected biennially excepted where noted in the Administrative Rules.

**Per ORS 431.960-431.978, fee is assessed to licensees authorized to prescribe or dispense controlled substances in Oregon for the purpose of creating and maintaining the Prescription Drug Monitoring Program administered by the Oregon Health Authority.

***Per ORS 676.410, fee is assessed for the purpose of creating and maintaining a healthcare workforce data base administered by the Oregon Health Authority.

****Per ORS 181.534(9)(g), fee is the actual cost of acquiring and furnishing criminal offender information.

Stat. Auth.: ORS 181.534, 431.972, 676.410, 677.265 & 677.290

Stats. Implemented: ORS 181.534, 192.440, 431.972, 676.410, 677.265 & 677.290

Hist.: ME 7-1984, f. & ef. 1-26-84; ME 17-1984, f. & ef. 11-5-84; ME 6-1985, f. & ef. 7-30-85; ME 3-1986(Temp), f. & ef. 4-23-86; ME 4-1986, f. & ef. 4-23-86; ME 9-1986, f. & ef. 7-31-86; ME 2-1987, f. & ef. 1-10-87; ME 7-1987(Temp), f. & ef. 1-26-87; ME 9-1987, f. & ef. 4-28-87; ME 25-1987, f. & ef. 11-5-87; ME 9-1988, f. & cert. ef. 8-5-88; ME 14-1988, f. & cert. ef. 10-20-88; ME 1-1989, f. & cert. ef. 1-25-89; ME 5-1989 (Temp), f. & cert. ef. 2-16-89; ME 6-1989, f. & cert. ef. 4-27-89; ME 9-1989(Temp), f. & cert. ef. 8-1-89; ME 17-1989, f. & cert. ef. 10-20-89; ME 4-1990, f. & cert. ef. 4-25-90; ME 9-1990, f. & cert. ef. 8-2-90; ME 5-1991, f. & cert. ef. 7-24-91; ME 11-1991(Temp), f. & cert. ef. 10-21-91; ME 6-1992, f. & cert. ef. 5-26-92; ME 1-1993, f. & cert. ef. 1-29-93; ME 13-1993, f. & cert. ef. 11-1-93; ME 14-1993(Temp), f. & cert. ef. 11-1-93; ME 1-1994, f. & cert. ef. 1-24-94; ME 6-1995, f. & cert. ef. 7-28-95; ME 7-1996, f. & cert. ef. 10-29-96; ME 3-1997, f. & cert. ef. 11-3-97; BME 7-1998, f. & cert. ef. 7-22-98; BME 7-1999, f. & cert. ef. 4-22-99; BME 10-1999, f. 7-8-99, cert. ef. 8-3-99; BME 14-1999, f. & cert. ef. 10-28-99; BME 4-2000, f. & cert. ef. 2-22-00; BME 6-2001(Temp), f. & cert. ef. 7-18-01 thru 11-30-01; BME 10-2001, f. & cert. ef. 10-30-01; BME 8-2003, f. & cert. ef. 4-24-03; BME 16-2003, f. & cert. ef. 10-23-03; BME 17-2004, f. & cert. ef. 9-9-04; BME 6-2005, f. & cert. ef. 7-20-05; BME 15-2006, f. & cert. ef. 7-25-06; BME 1-2007, f. & cert. ef. 1-24-07; BME 1-2008, f. & cert. ef. 1-22-08; BME 15-2008, f. & cert. ef. 7-21-08; BME 1-2009, f. & cert. ef. 1-22-09; BME 15-2009(Temp), f. & cert. ef. 9-11-09 thru 3-8-10; BME 1-2010, f. & cert. ef. 1-26-10; OMB 10-2011(Temp), f. & cert. ef. 7-13-11 thru 1-4-12; OMB 18-2011(Temp), f. & cert. ef. 10-13-11 thru 4-10-12; OMB 22-2011, f. & cert. ef. 10-18-11; OMB 33-2011(Temp), f. 12-28-11, cert. ef. 1-1-12 thru 6-29-12; OMB 3-2012, f. & cert. ef. 2-10-12; OMB 9-2012(Temp), f. & cert. ef. 3-2-12 thru 8-29-12; OMB 20-2012, f. & cert. ef. 8-3-12; OMB 27-2012(Temp), f. 10-12-12 thru 4-10-13; OMB 5-2013, f. & cert. ef. 4-5-13; OMB 13-2013(Temp), f. 7-12-13, cert. ef. 7-15-13 thru 1-11-14; OMB 26-2013, f. & cert. ef. 10-15-13; OMB 10-2014, f. & cert. ef. 4-9-14; OMB 4-2016, f. & cert. ef. 1-8-16

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Rule Caption: Updates to the definitions of sexual misconduct and licensee impairment

Adm. Order No.: OMB 5-2016

Filed with Sec. of State: 1-8-2016

Certified to be Effective: 1-8-16

Notice Publication Date: 11-1-2015

Rules Amended: 847-010-0073

Subject: The rule amendment revises the definition of "sexual misconduct" to include electronic forms of communication such as text message and e-mail under the "sexual impropriety heading" and clarifies that sexual misconduct results from inappropriate behavior with a patient or a patient's immediate family. The amendment also clarifies that the use of alcohol or other substances, including the legal use of recreational marijuana, should not be used while a licensee is working in any capacity or used while off duty if it may cause impairment while on duty. The rule amendment also removes section (8), which allows a civil penalty to be issued through an administrative process to licensees who fail to report as required by statute and this rule.

Rules Coordinator: Nicole Krishnaswami—(971) 673-2667

847-010-0073

Reporting Requirements

(1) Board licensees and health care facilities must report to the Board as required by ORS 676.150, 677.092, 677.190, and 677.415. These reports include, but are not limited to, the following:

(a) A licensee must self-report to the Board:

(A) Any conviction of a misdemeanor or felony or any arrest for a felony crime to the Board within 10 days after the conviction or arrest;

(B) Any adverse action taken by another licensing jurisdiction or any peer review body, health care institution, professional or medical society or association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in ORS chapter 677;

(C) Any official action taken against the licensee within 10 business days of the official action; or

(D) A voluntary withdrawal from practice, voluntary resignation from the staff of a health care facility or voluntary limitation of the licensee's staff privileges at a health care facility if the licensee's voluntary action occurs while the licensee is under investigation by the health care facility or its committee for any reason related to possible medical incompetence, unprofessional conduct or physical incapacity or impairment.

(b) A licensee who has reasonable cause to believe that another state licensed health care professional has engaged in prohibited or unprofessional conduct must report the conduct within 10 working days to the board responsible for the other professional unless disclosure is prohibited by state or federal laws relating to confidentiality or protection of health information.

(c) A licensee must report within 10 business days to the Board any information that appears to show that a licensee is or may be medically incompetent or is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with a physical incapacity.

(d) A health care facility must report to the Board:

(A) Any official action taken against a licensee within 10 business days of the date of the official action; or

(B) A licensee's voluntary withdrawal from practice, voluntary resignation from the staff of a health care facility or voluntary limitation of the licensee's staff privileges at a health care facility if the licensee's voluntary action occurs while the licensee is under investigation by the health care facility or its committee for any reason related to possible medical incompetence, unprofessional conduct or physical incapacity or impairment.

(2) For purposes of the statutes, reporting to the Board means making a report to the Board's Investigation Unit or the Board's Executive Director or the Board's Medical Director. Making a report to the Board's Health Professionals' Services Program (HPSP) or HPSP's Medical Director does not satisfy the duty to report to the Board.

(3) For the purposes of the statutes, the terms medical incompetence, unprofessional conduct, and impaired licensee have the following meanings:

(a) Medical Incompetence: A licensee who is medically incompetent is one who is unable to practice medicine with reasonable skill or safety due to lack of knowledge, ability, or impairment. Evidence of medical incompetence shall include:

(A) Gross or repeated acts of negligence involving patient care.

(B) Failure to achieve a passing score or satisfactory rating on a competency examination or program of evaluation when the examination or evaluation is ordered or directed by a health care facility.

(C) Failure to complete a course or program of remedial education when ordered or directed to do so by a health care facility.

(b) Unprofessional conduct: Unprofessional conduct includes the behavior described in ORS 677.188 (4) and is conduct which is unbecoming to a person licensed by the Board or detrimental to the best interest of the public and includes:

(A) Any conduct or practice contrary to recognized standards of ethics of the medical, podiatric or acupuncture professions or any conduct which does or might constitute a danger to the public, to include a violation of patient boundaries.

(B) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards.

(C) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies, administration of unnecessary treatment, employment of outmoded, unproved, or unscientific treatments, except as allowed in ORS 677.190 (1)(b), failing to obtain consultations when failing to do so is not consistent with the standard of care, or otherwise utilizing medical service for diagnosis or treatment which is or may be considered unnecessary or inappropriate.

(D) Committing fraud in the performance of, or the billing for, medical procedures.

(E) Engaging in repeated instances of disruptive behavior in the health care setting that could adversely affect the delivery of health care to patients.

(F) Any conduct related to the practice of medicine that poses a danger to the public health or safety.

(G) Sexual misconduct: Licensee sexual misconduct is behavior that exploits the licensee-patient relationship in a sexual way. The behavior is non-diagnostic and non-therapeutic, may be verbal, physical or other behavior, and may include expressions of thoughts and feelings or gestures that are sexual or that reasonably may be construed by a patient as sexual. Sexual misconduct includes but is not limited to:

(i) Sexual violation: Licensee-patient sex, whether or not initiated by the patient, and engaging in any conduct with a patient or the patient's immediate family that is sexual or may be reasonably interpreted as sexual, including but not limited to:

(I) Sexual intercourse;

(II) Genital to genital contact;

(III) Oral to genital contact;

(IV) Oral to anal contact;

(V) Genital to anal contact;

(VI) Kissing in a romantic or sexual manner;

(VII) Touching breasts, genitals, or any sexualized body part for any purpose other than appropriate examination or treatment, or where the patient has refused or has withdrawn consent;

(VIII) Encouraging the patient to masturbate in the presence of the licensee or masturbation by the licensee while the patient is present; or

(IX) Offering to provide practice-related services, such as medications, in exchange for sexual favors.

(ii) Sexual impropriety: Behavior, gestures, or expressions that are seductive, sexually suggestive, or sexually demeaning to a patient or the patient's immediate family, to include:

(I) Sexually exploitative behavior, to include taking, transmitting, viewing, or in any way using photos or any other image of a patient, their family or associates for the prurient interest of others.

(II) Intentional viewing in the health care setting of any sexually explicit conduct for prurient interests.

(III) Having any involvement with child pornography, which is defined as any visual depiction of a minor (a child younger than 18) engaged in sexually explicit conduct.

(IV) Sexually explicit communication in person, by mail, by telephone, or by other electronic means, including but not limited to text message, e-mail, video or social media.

(c) Licensee Impairment: A licensee who is impaired is a licensee who is unable to practice medicine with reasonable skill or safety due to factors which include, but are not limited to:

(A) The use of alcohol, drugs, prescribed medication, or other substances while on or off duty which causes impairment when on duty, including taking call or supervising other healthcare professionals, regardless of practice setting.

(B) Mental or emotional illness.

(C) Physical deterioration or long term illness or injury which adversely affects cognition, motor, or perceptive skills.

(4) For the purposes of the reporting requirements of this rule and ORS 677.415, licensees shall be considered to be impaired if they refuse to undergo an evaluation for mental or physical competence or chemical impairment, or if they resign their privileges to avoid such an evaluation, when the evaluation is ordered or directed by a health care facility or by this Board.

(5) A report made by a board licensee or the Oregon Medical Association or other health professional association, to include the Osteopathic Physicians and Surgeons of Oregon, Inc, or the Oregon Podiatric Medical Association to the Board under ORS 677.415 shall include the following information:

(a) The name, title, address and telephone number of the person making the report;

(b) The information that appears to show that a licensee is or may be medically incompetent, is or may be guilty of unprofessional or dishonorable conduct or is or may be a licensee with an impairment.

(6) A report made by a health care facility to the Board under ORS 677.415 (5) and (6) shall include:

(a) The name, title, address and telephone number of the health care facility making the report;

(b) The date of an official action taken against the licensee or the licensee's voluntary action withdrawing from practice, voluntary resignation or voluntary limitation of licensee staff privileges; and

(c) A description of the official action or the licensee's voluntary action, as appropriate to the report, including:

(A) The specific restriction, limitation, suspension, loss or denial of the licensee's medical staff privileges and the effective date or term of the restriction, limitation, suspension, loss or denial; or

(B) The fact that the licensee has voluntarily withdrawn from the practice of medicine or podiatry, voluntarily resigned from the staff of a health care facility or voluntarily limited the licensee's privileges at a health care facility and the effective date of the withdrawal, resignation or limitation.

(7) A report made under ORS 677.415 Section 2 may not include any information that is privileged peer review data, see ORS 41.675.

(8) All required reports shall be made in writing.

(9) Any person who reports or provides information in good faith as required by the statutes is immune from civil liability for making the report.

Stat. Auth.: ORS 676.150, 677.205 & 677.265

Stats. Implemented: ORS 676.150, 677.092, 677.190, 677.205, 677.265 & 677.415

Hist.: BME 5-2004, f. & cert. ef. 4-22-04; BME 9-2006, f. & cert. ef. 5-8-06; BME 3-2007, f. & cert. ef. 1-24-07; BME 3-2008, f. & cert. ef. 1-22-08; BME 9-2009, f. & cert. ef. 5-1-09; BME 3-2010, f. & cert. ef. 1-26-10; OMB 4-2015, f. & cert. ef. 4-3-15; OMB 5-2016, f. & cert. ef. 1-8-16

Oregon State Library
Chapter 543

Rule Caption: Administrative rule update based on legislative changes in 2015 HB 3523.
Adm. Order No.: OSL 1-2016(Temp)
Filed with Sec. of State: 1-11-2016
Certified to be Effective: 1-11-16 thru 7-6-16
Notice Publication Date:
Rules Adopted: 543-010-0026, 543-020-0050, 543-020-0055, 543-020-0060, 543-020-0070, 543-020-0080
Rules Amended: 543-001-0010, 543-010-0003, 543-010-0016, 543-010-0021, 543-010-0030, 543-060-0020, 543-060-0030, 543-060-0040, 543-060-0070
Rules Suspended: 543-010-0022, 543-010-0032, 543-020-0010, 543-020-0025, 543-020-0026, 543-020-0030
Subject: In response to the passage of HB 3523 passed in the 2015 Legislative Session rules are being adopted, suspended, and amended. Rules are being amended to reflect the abolishment of the Oregon State Library Board of Trustees and the creation of the Oregon State Library Board and other small grammatical changes.

The State Library will also be moving and renumbering rule 543-010-0022 (eligible recipients of research services) to Division 20 and 543-020-0010 (copying charges) to Division 10. The State Library will be suspending rules 543-010-0032, 543-020-0025, 543-020-0026, and 543-020-0030 due to being obsolete.

Division 20 will be rename from "Fees" to "Government Information Services" and adopting rules that will address the process and procedures relating to state agency use of State Library resources, the approval, negotiation and maintenance of subscriptions and reference-related databases for state government, and the certification of state agency libraries excluding the State Archives and the Supreme Court Law Library.
Rules Coordinator: MaryKay Dahlgreen—(503) 378-4367

543-001-0010
Confidentiality and Inadmissibility of Mediation Communications

(1) Words and phrases used in this rule have the same meaning as given to them in ORS 36.110 and 36.234.

(2) Nothing in this rule affects any confidentiality created by other law. Nothing in this rule relieves a public body from complying with the Public Meetings Law, ORS 192.610 to 192.690. Whether or not they are confidential under this or other rules of the agency, mediation communications are exempt from disclosure under the Public Records Law to the extent provided in 192.410 to 192.505.

(3) This rule applies only to mediations in which the agency is a party or is mediating a dispute as to which the agency has regulatory authority. This rule does not apply when the agency is acting as the "mediator" in a matter in which the agency also is a party as defined in ORS 36.234.

(4) To the extent mediation communications would otherwise be compromise negotiations under ORS 40.190 (OEC Rule 408), those mediation communications are not admissible as provided in ORS 40.190 (OEC Rule 408), notwithstanding any provisions to the contrary in section (9) of this rule.

(5) Mediations Excluded. Sections (6)–(10) of this rule do not apply to:

(a) Mediation of workplace interpersonal disputes involving the interpersonal relationships between this agency's employees, officials or employees and officials, unless a formal grievance under a labor contract, a tort claim notice or a lawsuit has been filed; or

(b) Mediation in which the person acting as the mediator will also act as the hearings officer in a contested case involving some or all of the same matters;

(c) Mediation in which the only parties are public bodies;

(d) Mediation involving two or more public bodies and a private party if the laws, rule or policies governing mediation confidentiality for at least one of the public bodies provide that mediation communications in the mediation are not confidential;

(e) Mediation involving 15 or more parties if the agency has designated that another mediation confidentiality rule adopted by the agency may apply to that mediation; or

(6) Disclosures by Mediator. A mediator may not disclose or be compelled to disclose mediation communications in a mediation and, if disclosed, such communications may not be introduced into evidence in any subsequent administrative, judicial or arbitration proceeding unless:

(a) All the parties to the mediation and the mediator agree in writing to the disclosure; or

(b) The mediation communication may be disclosed or introduced into evidence in a subsequent proceeding as provided in subsections (c)–(d), (j)–(l) or (o)–(p) of section (9) of this rule; or

(7) Confidentiality and Inadmissibility of Mediation Communications. Except as provided in sections (8)–(9) of this rule, mediation communications are confidential and may not be disclosed to any other person, are not admissible in any subsequent administrative, judicial or arbitration proceeding and may not be disclosed during testimony in, or during any discovery conducted as part of a subsequent proceeding, or introduced as evidence by the parties or the mediator in any subsequent proceeding.

(8) Written Agreement. Section (7) of this rule does not apply to a mediation unless the parties to the mediation agree in writing, as provided in this section, that the mediation communications in the mediation will be confidential and/or nondiscoverable and inadmissible. If the mediator is the employee of and acting on behalf of a state agency, the mediator or an authorized agency representative must also sign the agreement. The parties' agreement to participate in a confidential mediation must be in substantially the following form. This form may be used separately or incorporated into an "agreement to mediate." [Form not included. See ED. NOTE.]

(9) Exceptions to confidentiality and inadmissibility.

(a) Any statements, memoranda, work products, documents and other materials, otherwise subject to discovery that were not prepared specifically for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding.

(b) Any mediation communications that are public records, as defined in ORS 192.410(4), and were not specifically prepared for use in the mediation are not confidential and may be disclosed or introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential or privileged under state or federal law.

(c) A mediation communication is not confidential and may be disclosed by any person receiving the communication to the extent that person reasonably believes that disclosing the communication is necessary to prevent the commission of a crime that is likely to result in death or bodily injury to any person. A mediation communication is not confidential and may be disclosed in a subsequent proceeding to the extent its disclosure may further the investigation or prosecution of a felony crime involving physical violence to a person.

(d) Any mediation communication related to the conduct of a licensed professional that is made to or in the presence of a person who, as a condition of his or her professional license, is obligated to report such communication by law or court rule is not confidential and may be disclosed to the extent necessary to make such a report.

(e) The parties to the mediation may agree in writing that all or part of the mediation communications are not confidential or that all or part of the mediation communications may be disclosed and may be introduced into evidence in a subsequent proceeding unless the substance of the communication is confidential, privileged or otherwise prohibited from disclosure under state or federal law.

(f) A party to the mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS chapter 40 or other provision of law. A party to the mediation may disclose confidential mediation communications to a person for the purpose of obtaining advice concerning the subject matter of the mediation, if all the parties agree.

(g) An employee of the agency may disclose confidential mediation communications to another agency employee so long as the disclosure is necessary to conduct authorized activities of the agency. An employee receiving a confidential mediation communication under this subsection is bound by the same confidentiality requirements as apply to the parties to the mediation.

(h) A written mediation communication may be disclosed or introduced as evidence in a subsequent proceeding at the discretion of the party who prepared the communication so long as the communication is not otherwise confidential under state or federal law and does not contain confidential information from the mediator or another party who does not agree to the disclosure.

(i) In any proceeding to enforce, modify or set aside a mediation agreement, a party to the mediation may disclose mediation communica-

tions and such communications may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agreements to persons other than the parties to the agreement.

(j) In an action for damages or other relief between a party to the mediation and a mediator or mediation program, mediation communications are not confidential and may be disclosed and may be introduced as evidence to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of the mediation communications or agreements.

(k) When a mediation is conducted as part of the negotiation of a collective bargaining agreement, the following mediation communications are not confidential and such communications may be introduced into evidence in a subsequent administrative, judicial or arbitration proceeding:

(A) A request for mediation; or

(B) A communication from the Employment Relations Board Conciliation Service establishing the time and place of mediation; or

(C) A final offer submitted by the parties to the mediator pursuant to ORS 243.712; or

(D) A strike notice submitted to the Employment Relations Board.

(l) To the extent a mediation communication contains information the substance of which is required to be disclosed by Oregon statute, other than ORS 192.410 to 192.505, that portion of the communication may be disclosed as required by statute.

(m) Written mediation communications prepared by or for the agency or its attorney are not confidential and may be disclosed and may be introduced as evidence in any subsequent administrative, judicial or arbitration proceeding to the extent the communication does not contain confidential information from the mediator or another party, except for those written mediation communications that are:

(A) Attorney-client privileged communications so long as they have been disclosed to no one other than the mediator in the course of the mediation or to persons as to whom disclosure of the communication would not waive the privilege; or

(B) Attorney work product prepared in anticipation of litigation or for trial; or

(C) Prepared exclusively for the mediator or in a caucus session and not given to another party in the mediation other than a state agency; or

(D) Prepared in response to the written request of the mediator for specific documents or information and given to another party in the mediation; or

(E) Settlement concepts or proposals, shared with the mediator or other parties.

(n) A mediation communication made to the agency may be disclosed and may be admitted into evidence to the extent the Oregon State Library Board determines that disclosure of the communication is necessary to prevent or mitigate a serious danger to the public's health or safety, and the communication is not otherwise confidential or privileged under state or federal law.

(o) The terms of any mediation agreement are not confidential and may be introduced as evidence in a subsequent proceeding, except to the extent the terms of the agreement are exempt from disclosure under ORS 192.410 to 192.505, a court has ordered the terms to be confidential under ORS 30.402 or state or federal law requires the terms to be confidential.

(p) The mediator may report the disposition of a mediation to the agency at the conclusion of the mediation so long as the report does not disclose specific confidential mediation communications. The agency or the mediator may use or disclose confidential mediation communications for research, training or educational purposes, subject to the provisions of ORS 36.232(4).

(10) When a mediation is subject to section (7) of this rule, the agency will provide to all parties to the mediation and the mediator a copy of this rule or a citation to the rule and an explanation of where a copy of the rule may be obtained. Violation of this provision does not waive confidentiality or inadmissibility.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 36.224

Stats. Implemented: ORS 36.224, 36.228, 36.230 & 36.232

Hist.: OSL 1-1999(Temp), f. & cert. ef. 2-22-99 thru 8-1-99; OSL 2-1999, f. & cert. ef. 6-21-99; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0003
Definitions

The following words, when used in Administrative Rules adopted by the Oregon State Library Board, shall mean the following:

(1) "Board" means the Oregon State Library Board.

(2) "Chair" means the presiding officer of the Board.

(3) "State Library Resources" are library materials and services to support the informational needs of state government employees, Oregonians with print disabilities and local libraries.

Stat. Auth.: Ch. 328 (4) OL 2015

Stats. Implemented: Ch. 328 (4) OL 2015

Hist.: OSL 55, f. & ef. 1-12-76; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0016
Meetings and Notice

(1) The State Librarian shall follow the procedures established by the Attorney General's Public Meetings and Records Manual, as amended from time to time, for providing notices of Board meetings. Unless the meeting is called exclusively for the purpose of holding an executive session as set forth in ORS 192.660, copies of the meeting notices shall be sent to organizations and individuals designated by the Board.

(2) A copy of the notice shall be sent to any organization or individual previously notifying the Chair or the State Librarian of interest in the subject matter to be considered at the meeting.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 357

Stats. Implemented: ORS 357.050

Hist.: OSL 55, f. & ef. 1-12-76; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-2000, f. & cert. ef. 4-13-00; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0021
Eligible Borrowers

The State Library will lend library materials to:

(1) Legally established public libraries.

(2) Educational institution libraries.

(3) State agencies and their employees.

(4) Print-disabled individuals who are eligible to borrow library materials from the Talking Book and Braille Library.

(5) Individuals with current Oregon addresses who request materials in person at the State Library.

(6) Special libraries (as listed in directories as maintained by Oregon State Library or other standard library directories).

Stat. Auth.: Ch.r 328 (7) (OL 2015)

Stats. Implemented: Ch.r 328 (2) (OL 2015)

Hist.: OSL 55, f. & ef. 1-12-76; OSL 2-1980, f. & ef. 10-2-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1992, f. 2-11-92, cert. ef. 2-17-92; OSL 1-1993, f. & cert. ef. 11-10-93; OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0022
Eligible Recipients of Research Services

In addition to research services defined in OAR 543-010-0032, the State Library provides resource materials and research services to the following:

(1) State officials, including legislators;

(2) State employees;

(3) Former statewide-elected government officials.

Stat. Auth.: ORS 357.015(2)

Stats. Implemented: ORS 357.005(2)(c), (2)(f) & 357.003(2)

Hist.: OSL 55, f. & ef. 1-12-76; OSL 2-1980, f. & ef. 10-2-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0026
Copying Charges

The State Library Board authorizes the State Library to charge current rates for the following types of copying. The fee schedule will be available to the public in a State Library policy.

(1) Photocopies from print publications.

(2) Photocopies from microfilm.

(3) Copies of photographs using a library approved vendor.

(4) Print-outs from electronic resources. Copying charges for state employees and officials on state business are covered by its agency assessments. Fees based on current rates may be charged for copying beyond reasonable levels.

Stat. Auth.: Ch. 328 (7) (OL 2015)

Stats. Implemented: Ch. 328 (7) (OL 2015)

Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0030
Overdue and Lost Materials

(1) Borrowers will:

(a) Return library materials no later than the due date;

(b) Make full payment for lost materials within 30 days of the date of the bill notice.

(c) Materials borrowed through Interlibrary Loan will be billed in amounts to be determined by the lending library.

(2) The State Library will suspend service to those individuals and libraries who abuse borrowing provisions of Oregon State Library or Interlibrary Loan materials until all overdue material or payment for replacement is received by the State Library.

(3) The State Library Board authorizes the State Librarian to set fees for overdue or lost materials, whether circulated by the State Library directly or through interlibrary loan. The fee schedule shall be available to the public in a State Library policy.

Stat. Auth.: Ch. 328 (7) (OL 2015)
Stats. Implemented: Ch. 328 (7) (OL 2015)
Hist.: OSL 14, f. 5-5-61, ef. 6-10-61; OSL 55, f. & ef. 1-12-76; OSL 2-1980, f. & ef. 10-2-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-010-0032
Genealogical and Oregoniana Services

(1) Genealogical Services provided by library employees shall be limited to reasonable assistance to visitors to the State Library.

(2) Oregoniana services provided by library employees shall be limited to access and reasonable assistance in using the Library's unique Oregoniana materials for walk-in patrons.

Stat. Auth.: ORS 357.015(2)
Stats. Implemented: ORS 357.005(2)(f)
Hist.: OSL 55, f. & ef. 1-12-76; OSL 1-1992, f. 2-11-92, cert. ef. 2-17-92; OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0010
Copying Charges

The State Library Board authorizes the State Library to charge current rates for the following types of copying. The fee schedule will be available to the public in a State Library policy.

(1) Photocopies from print publications. Copy cards are available.

(2) Photocopies from microfilm.

(3) Copies of machine readable files for the cost of a diskette purchased from the library.

(4) Copies of photographs using a library approved vendor.

(5) Print-outs from electronic resources. Copying charges for state employees and officials on state business are covered by its agency assessments. Fees based on current rates may be charged for copying beyond reasonable levels.

Stat. Auth.: ORS 357.015(2)
Stats. Implemented: ORS 357.015(2)
Hist.: LIB 1, f. 9-10-47; LIB 1A, f. 8-12-48; LIB 4, f. 4-18-49; LIB 6, f. 12-9-55; LIB 13, f. 12-18-59; LIB 14, f. 5-5-61, ef. 6-10-61; OSL 20, f. 9-17-63, ef. 10-11-63; OSL 51, f. 5-8-72, ef. 6-1-72; OSL 55, f. & ef. 1-12-76; OSL 2-1980, f. & ef. 10-2-80; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1992, f. 2-11-92, cert. ef. 2-17-92; OSL 2-1992, f. & cert. ef. 11-2-92; OSL 1-1993, f. & cert. ef. 11-10-93; OSL 1-1995, f. & cert. ef. 10-27-95; OSL 1-2000, f. & cert. ef. 4-13-00; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0025
Charge for Publications Issued by the Oregon State Library

(1) A charge to recover production costs for publications of the State Library may be made to:

(a) Commercial firms;

(b) Individuals, in-state and out-of-state;

(c) Libraries outside Oregon except those with which the State Library has a reciprocal arrangement;

(d) Out-of-state associations and organizations.

(2) No charge will be made for first copies of publications requested by:

(a) Librarians and library trustees in Oregon;

(b) State and provincial libraries.

Stat. Auth.: ORS 357.015(2)
Stats. Implemented: ORS 357.015(2)
Hist.: LIB 1, f. 9-10-47; LIB 1A, f. 8-12-48; LIB 4, f. 4-18-49; LIB 6, f. 12-9-55; LIB 13, f. 12-18-59; OSL 14, f. 5-5-61, ef. 6-10-61; OSL 20, f. 9-17-63, ef. 10-11-63; OSL 51, f. 5-8-72, ef. 6-1-72; OSL 55, f. & ef. 1-12-76; OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1995, f. & cert. ef. 10-27-95; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0026
Charge for Library Mailing Labels

(1) A charge to recover production costs for labels that are a by-product of the Oregon State Library's maintainance of directories of Oregon libraries will be made to individuals, commercial firms, profit, and not-for-profit organizations when the use of the labels will be for profit-making ventures, or political purposes.

(2) Library, literary, cultural, and education-related not-for-profit organizations in Oregon shall not be charged for labels when proposing to mail information about events, conferences, workshops, or information products to libraries.

Stat. Auth.: ORS 357.015(2)
Stats. Implemented: ORS 357.015(2)
Hist.: OSL 1-1995, f. & cert. ef. 10-27-95; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0030
Charge for Database Search Costs

A charge, to be determined by the State Librarian, for recovery of database search costs may be made, billable by the State Library Business Office. Charges will be established on a per search basis, contingent on the cost of the database being queried.

Stat. Auth.: ORS 357. 015(2)
Stats. Implemented: ORS 357.015(2)
Hist.: OSL 1-1989, f. 4-18-89, cert. ef. 4-17-89; OSL 1-1992, f. 2-11-92, cert. ef. 2-17-92; OSL 1-1995, f. & cert. ef. 10-27-95; Suspended by OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0050
Scope

OAR Chapter 543, division 20, applies only to the Government Information Services and to carry out the provisions of Chapter 328 (2015 Oregon Laws)

Stat. Auth.: Ch. 328 (OL 2015)
Stats. Implemented: Ch. 328 (8) (OL 2015)
Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0055
Definitions

The following definitions apply to the terms used in this division:

(1) "Government Information Services" means the physical collections, online resources and professional library staff that support the information needs of Oregon State Government.

(2) "Terms of Service" means the provisions that patrons consent to in order to access Government Information Services.

(3) "State agency libraries and resource centers" include libraries, resource centers or any other entity housed within a state agency that supports the mission of the agency by selecting, purchasing, managing and sharing information resources.

(4) "State agency library" does not include the State of Oregon Law Library, a county law library, or the State Archives

(5) "Reference-related databases" means authoritative, informational resources in electronic format.

(6) "Physical and digital subscription licenses" means serial publications in either print or electronic formats (such as a newspaper or journal) accessible for a designated period of time or for a prescribed number of successive issues.

(7) "Reference-related databases or physical and digital subscription licenses" does not include:

(a) Newsletters connected to professional association memberships

(b) Software licenses

(c) Free of charge subscriptions

(d) Databases, information resources, subscription licenses or other services or resources provided by the State Archives;

(e) Legal databases, legal information resources, legal subscription licenses or other law-related services or resources

Stat. Auth.: Ch. 328 (8) (OL 2015)
Stats. Implemented: Ch. 328 (8) (OL 2015)
Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0060
Eligible Recipients of Government Information Services

The State Library provides Government Information Services that pertain to the business of state government according to its Terms of Service for these recipients:

(1) State officials, including legislators;

(2) State employees;

(3) Former statewide-elected government officials;

(4) Contract employees and interns at the request of the state agency.

Stat. Auth.: Ch. 328 (8) (OL 2015)
Stats. Implemented: Ch. 328 (8) (OL 2015)
Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0070
Certification of State Agency Libraries

(1) The certification process applies to all state agency libraries and resource centers.

(2) Intent and Purpose

(a) The intent of library certification is to increase awareness of state agency library resources and services that improve customer service, build a structure for partnerships and interagency coordination, reduce duplication, and create cost efficiencies through shared purchasing of library resources.

(b) The purpose of these rules is to establish the certification process and review criteria.

(3) Process

(a) The lead librarian or staff member/manager responsible for the state agency library or resource center shall be responsible for carrying out the agency's obligations under this section. Each state agency library will notify the State Librarian of the name of the library staff person who will be the contact person for the state agency library or resource center.

(b) The State Library will maintain a list of state agency libraries and resource centers. All state agency libraries and resource centers on the list will go through the certification process.

(c) The State Library will certify state agency libraries once each biennium.

(d) Biennially, the State Librarian shall conduct a review of each state agency library's compliance with State Agency Library Standards of Operation and report the findings to the legislature.

(e) State agency libraries and resource centers meeting State Agency Library Standards of Operation shall be certified. In determining certification, the State Library shall apply the following criteria:

(A) The contact person regularly consults with agency management in developing collection resources that meet the information needs of agency staff and align with the strategic plans of the agency.

(B) The contact person consults with the State Library on the purchase and licensing of needed information products and services per State Library administrative rules to assure the best possible price agreement

(C) The contact person partners with other state agency libraries to promote shared resources and programs that increase efficiencies across state government

(D) The contact person develops and uses metrics to continually measure the use, quality and value of the agency library/resource center. Results are reported to agency management and the State Library on an annual basis.

(E) The state agency library or resource center is staffed by personnel whose library responsibility is a substantial component of the position description and the agency has a dedicated budget for purchasing information resources.

(f) The State Library will send written notification of the state agency library's certification status.

(g) An agency may file an appeal of the decision directly to the State Librarian if it is not satisfied with the decision. The contact person must file any appeal within ten (10) business days from the date of the notice.

Stat. Auth.: Ch. 328 (19) (OL 2015)
Stats. Implemented: Ch. 328 (19) (OL 2015)
Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-020-0080
Database and Subscriptions Licenses

(1) The approval process for database and subscriptions licenses applies to all state agencies except the State of Oregon Law Library, a county law library and the State Archives.

(2) Intent and Purpose

(a) The intent of establishing a review and approval process for reference databases and subscriptions is to build awareness of state agency subscriptions statewide, reduce duplication and create cost efficiencies through cooperative purchasing of library resources, and reduce subscription costs for state agencies.

(b) The purpose of these rules is to outline procedures for the state agency to obtain approval from the State Library for the purchase of reference databases and subscription licenses, and to establish the review, approval, and appeal process.

(3) Process

(a) The head of each agency, or a designee, shall be the subscriptions liaison for the agency. Each agency shall notify the State Librarian of the name of the agency's subscriptions liaison. The subscriptions liaison is responsible for carrying out the agency's obligations under this section. The subscriptions liaison serves in a consultative and advisory role in cooperation with the State Library.

(b) Prior to purchasing reference-related databases or physical and digital subscriptions, the subscriptions liaison shall submit title, publisher, vendor and other pertinent subscription information to the State Library requesting approval. The information must be submitted at least sixty (60) days prior to the agency's desired subscription start date. If the materials could meet the definitions in 543-020-0055 (8)(d) and (e) the request will be reviewed by the Reference Coordinating Council to determine the disposition of the request.

(c) Prior to renewing reference-related databases or physical and digital subscriptions, the subscriptions liaison shall notify the State Library of its desire to renew an existing subscription at least sixty (60) days prior to the vendor's purchase deadline.

(d) In the event there is a situation requiring expedited approval, the subscriptions liaison shall notify the State Library of its urgency and provide subscription information as early as possible. Rush requests shall receive highest priority in the approval process.

(e) In evaluating each request for approval, the State Library may apply the following criteria:

(A) The State Library has a subscription to the database and provides unrestricted access to all state agency staff.

(B) The State Library has coordinated a cooperative purchase for the database or print/digital subscription for a group of state agencies.

(C) There is broad interest across state government in the database or physical/digital subscription and it meets the State Library collection development policy.

(D) There is interest in the database or physical/digital subscription among a select group of state agencies

(E) No other state agency subscribes to the database or physical/digital subscription; however there is potential high demand for the subscription.

(F) No other state agency subscribes to the database or physical/digital subscription, it is a specialized resource and it would have minimal use by other state agencies.

(f) The State Library will send written notification of its decision to approve or deny the request to purchase the subscription within thirty (30) days of receipt of request.

(g) An agency may file an appeal of the decision directly to the State Librarian if it is not satisfied with the decision. The subscriptions liaison must file any appeal within ten (10) business days from the date of the notice.

Stat. Auth.: Ch. 328 (16) (OL 2015)
Stats. Implemented: Ch. 328 (16) (OL 2015)
Hist.: OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-060-0020
Authorized Activities

(1) Oregon State Library is authorized to negotiate and contract with commercial database providers on behalf of public, school, academic, and tribal libraries to provide access to electronic databases. The statewide database subsidy program is established under the provisions of this division to assist eligible public, academic, school and tribal libraries to participate in the statewide electronic database program. The Oregon State Library is authorized to collect and administer funds from public and academic libraries in payment for such databases.

(2) Oregon State Library is authorized to provide a statewide cooperative reference service that enables all Oregonians to obtain information from library staff at cooperating libraries using advanced Internet technologies. The statewide cooperative reference service program is established under the provisions of this division to provide this cooperative service and to provide other assistance to public, academic, school and tribal libraries to improve their reference services using advanced Internet technologies. The Oregon State Library is authorized to collect and administer funds from public and academic libraries to provide partial support for the statewide cooperative reference service program in an amount to be determined annually by the State Library Board. The Oregon State Library is authorized to provide a statewide cooperative reference service directly or by contracting with one or more libraries to provide the service.

Stat. Auth.: Ch. 328(7) OL 2015
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 3-2006, f. & cert. ef. 2-14-06; OSL 1-2009, f. 2-25-09, cert. ef. 3-2-09; OSL 1-2010, f. 10-19-10, cert. ef. 10-25-10; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-060-0030
Statewide Database Licensing Program

(1) Eligibility: Any public, school, academic, tribal library or resource sharing system as defined above is eligible to participate in the program if the following criteria are met:

(a) The library or resource sharing system provides interlibrary loans without charge to requesting in-state public, academic, school, and tribal libraries and resource sharing systems.

(b) The public, academic library or resource sharing system is a signatory to and abides by the "Interlibrary Loan Code for Oregon Libraries."

(c) The library or resource sharing system certifies the above criteria are met and agrees to participate in the Statewide Database Licensing Program and the Statewide Cooperative Reference Service Program.

(2) The Statewide Database Licensing Advisory Committee shall be appointed by the Library Services and Technology Act (LSTA) Advisory Council.

(a) Role: The Statewide Database Licensing Advisory Committee shall advise the LSTA Advisory Council and the Oregon State Library staff in request for proposal development and database product evaluation, and provide ongoing database product assessment and customer feedback. The Statewide Database Licensing Advisory Committee shall also advise the LSTA Advisory Council on the appropriate percentage allocation of electronic database costs to public, academic and school libraries.

(b) Membership of the Statewide Database Licensing Advisory Committee: One representative from the LSTA Advisory Council; three public library representatives, one each from libraries serving populations over 100,000, between 25,000–100,000, and 25,000 or less; three academic library representatives, one each from a community college, public academic institution, and private academic institution; one representative from a resource sharing system; one tribal library representative, and, two school library representatives. Orbis Cascade Alliance and the Organization for Educational Technology and Curriculum (OETC) will each have one representative serving in a non-voting, ex officio capacity. In making appointments the LSTA Advisory Council will seek representatives with experience in database licensing and the use of databases.

(c) Terms of appointment: Terms shall be for three years, except initial terms shall be staggered. The LSTA Advisory Council representative shall serve a two year term.

(d) Meetings: The Statewide Database Licensing Advisory Committee shall meet at least twice each calendar year, and may meet more often as needed.

(3) Request for proposal process: The Oregon State Library shall be the fiscal agent for the program and shall use Federal funds under the Library Services and Technology Act to subsidize the program. Oregon State Library shall work with the Department of Administrative Services to procure electronic databases.

(4) Database subsidy process:

(a) The Oregon State Library administers the database subsidy process.

(b) Participating public and academic libraries and resource sharing systems shall be billed annually, in July, for electronic database charges for the upcoming service year. Invoices to participants represent the difference in the subsidized annual costs paid by the State Library and the cost to the participants.

(5) Formula for electronic database subsidy to public, academic libraries or resource sharing systems: Once a determination has been made of the percentage allocation of electronic database cost among school, public and academic libraries, the costs will be further allocated to participants in the following manner:

(a) The public library or resource sharing system cost is based on the population served during the previous year, as determined by the State Library.

(b) The academic library cost is based on the student enrollment during the previous academic year, as determined by official sources, such as the Integrated Postsecondary Education Data System (IPEDS), and the Oregon Community College Unified Reporting System (OCCURS). Community college FTE will be adjusted for terms to arrive at an average annual full time enrollment.

(c) Any public library with a service population of less than 20,000 and any academic library with an enrollment of less than 1,000 will be subsidized in full by the State Library.

(d) Electronic database costs per year of any public library with a service population of more than 20,000 and any academic library with an enrollment of more than 1,000 will be subsidized at 50% of the total annual electronic database costs. Participants will be billed for the 50% unsubsidized portion of total annual electronic database costs.

(6) Formula for electronic database costs to school libraries: The annual database contract costs to school libraries will be supported with LSTA funds as determined by the State Library Board, with a recommendation from the LSTA Advisory Council.

(7) Formula for electronic database costs to tribal libraries: The annual database contract costs to tribal libraries will be supported with LSTA funds as determined by the State Library Board, with a recommendation from the LSTA Advisory Council.

(8) Statewide database expenditure plan: An annual budget for the Statewide Database Licensing Program shall be recommended by the Library Services and Technology Act Advisory Council to the State Library Board and shall be adopted by the State Library Board.

Stat. Auth.: ORS 357.209
Stats. Implemented: ORS 357.206
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 1-2004, f. 8-17-04 cert. ef. 9-1-04; OSL 3-2006, f. & cert. ef. 2-14-06; OSL 1-2009, f. 2-25-09, cert. ef. 3-2-09; OSL 1-2010, f. 10-19-10, cert. ef. 10-25-10; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-060-0040
Calendar for Statewide Database License Procurement

The Statewide Database Licensing Program in Request for Proposal years shall follow a calendar of events as listed below:

(1) The Request for Proposal shall be issued no later than January in a year requiring proposal development, and responses shall be received no later than March.

(2) Request for Proposal evaluations shall be completed by the Statewide Database Licensing Advisory Committee within 60 days of receipt of responses.

(3) Recommendations by the Statewide Database Licensing Advisory Committee to the Library Services and Technology Act Advisory Council shall be made prior to its May meeting.

(4) The Library Services and Technology Act Advisory Council shall review the database recommendations at its May meeting, and make recommendations to the State Library Board in June.

(5) Participating libraries shall be notified of anticipated costs for that subscription year after the Board meeting, invoiced in July, and payments shall be due in August or as determined by the vendor contract. Annual invoicing in non-Request for Proposal years shall follow a calendar of events as listed below: Recommendations by the Statewide Database Licensing Advisory Committee to the Library Services and Technology Act Advisory Council shall be made prior to its May meeting. Participating libraries will be notified of anticipated costs for that subscription year after the meeting. The Library Services and Technology Act Advisory Council shall review the database recommendations at its May meeting, and make recommendations to the Board in June. Participating libraries shall be invoiced in July, and payments shall be due in August or as determined by the vendor contract.

Stat. Auth.: ORS 357.209
Stats. Implemented: ORS 357.206, 357.209 & 357.212
Hist.: OSL 1-2003(Temp), f. 8-22-03, cert. ef. 9-1-03 thru 1-30-04; OSL 2-2003, f. 12-15-03 cert. ef. 1-1-04; OSL 1-2004, f. 8-17-04 cert. ef. 9-1-04; OSL 1-2009, f. 2-25-09, cert. ef. 3-2-09; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

543-060-0070
Statewide Cooperative Reference Service Program

(1) Eligibility: Any public, school, academic, tribal library or resource sharing system as defined above is eligible to participate in the program.

(2) Partial Support by Public and Academic Libraries:

(a) The State Library Board shall, in the last quarter of every calendar year, determine the total amount of partial support that will be billed to public and academic libraries in the following calendar year. They shall also determine the proportion of the total amount that will be billed to public libraries and to academic libraries.

(b) Participating public and academic libraries and resource sharing systems shall be billed annually, in July, for partial support for the upcoming service year.

(3) Formula for allocating partial support to public and academic libraries: Once the Board has determined the proportional allocation of partial support among public and academic libraries, the costs will be further allocated to participants in the following manner:

(a) The public library or resource sharing system cost is based on the population served during the previous year, as determined by the State Library.

(b) The academic library cost is based on the student enrollment during the previous academic year, as determined by official sources, such as

the Integrated Postsecondary Education Data System (IPEDS), and the Oregon Community College Unified Reporting System (OCCURS). Community college FTE will be adjusted for terms to arrive at an average annual full time enrollment.

(c) Any public library with a service population of less than 20,000 and any academic library with an enrollment of less than 1,000 will be exempt from partial support payments for the Statewide Cooperative Reference Services Program.

(4) Statewide Cooperative Reference Services expenditure plan: An annual budget for the Statewide Cooperative Reference Services Program shall be recommended by the Library Services and Technology Act Advisory Council to the State Library Board and shall be adopted by the Board.

Stat. Auth.: ORS 357.209
Stats. Implemented: ORS 357.206
Hist.: OSL 1-2009, f. 2-25-09, cert. ef. 3-2-09; OSL 1-2010, f. 10-19-10, cert. ef. 10-25-10; OSL 1-2016(Temp), f. & cert. ef. 1-11-16 thru 7-6-16

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Oregon State Lottery
Chapter 177

Rule Caption: Adopts rule for public assistance overpayments recovery from certain Lottery prizes; prioritizes child support
Adm. Order No.: LOTT 4-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 11-1-2015
Rules Adopted: 177-010-0094
Subject: The Oregon State Lottery has initiated permanent rulemaking to adopt OAR 177-010-0094 regarding the recovery of certain public assistance overpayments from Lottery prizes greater than $600 when a Lottery ticket or share is presented at the Lottery for payment.

The rule implements HB 2393 (2015) effective January 1, 2016. Priority is given to past due child support payments when a claimant owes both public assistance and child support.

Public assistance includes:

(a) Medical assistance as defined in ORS 411.025.

(b) Public assistance as defined in ORS 411.010.

(c) Supplemental nutrition assistance provide under ORS 411.806 to 411.845.

(d) Any other benefit, aid, or assistance for which the Department of Human Services or the Oregon Health Authority is authorized to issue a final order for an overpayment under ORS Chapter 183.
Rules Coordinator: Mark W. Hohlt—(503) 540-1417

177-010-0094
Overpayments Recovery Validation Check

The Lottery will use the following procedures as part of the validation process before paying any portion of a Lottery prize in excess of $600. These procedures are in addition to any other procedures set forth in OAR Chapter 177, including the child support validation check contained in OAR 177-010-0090.

(1) Database: The Lottery shall work with the Department of Human Services and the Oregon Health Authority to establish and operate a data match system using automated data exchanges with the Department of Human Services and the Oregon Health Authority that identifies persons that have received an overpayment of assistance for which a final order for overpayment has been issued by the Department of Human Services or the Oregon Health Authority under ORS Chapter 183. Any information necessary to identify the person and hold a payment on a Lottery prize must be available to the Lottery's central computer system through the data match system.

(2) Searching the Database: When a Lottery ticket or share is presented at the Lottery for payment for a prize that is in excess of $600, or when a prize winner claims any other prize payment at the Lottery that is in excess of $600, the Lottery shall enter the prize claimant's name, social security number, and any other available identifying information into the Lottery's central computer system. The computer shall search the database containing the names of the persons that have received an overpayment of assistance as described in section (1) of this rule for a possible match.

(3) 30 Day Hold: When a claimant is listed in the database, the Lottery will place a 30-day hold on any prize payment to the claimant. The Lottery will inform the claimant of the hold, notify the Department of Human Services or the Oregon Health Authority that a recipient of an overpayment of assistance has won a Lottery prize in excess of $600 or is entitled to payment in excess of $600 on a Lottery prize.

(a) If Lottery has questions concerning a match, Lottery will confirm the match with the Department of Human Services or the Oregon Health Authority before proceeding. If the department or the authority confirms that the claimant is the obligor on an overpayment of assistance, Lottery will proceed as provided herein.

(4) Garnishment: If the Lottery receives a notice or writ of garnishment under ORS 18.600 to 18.857 within the 30-day hold period, the Lottery must continue to hold any payment to the claimant pending disposition of the garnishment. Thereafter, the Lottery shall make payment to the garnishor. If the prize claim exceeds the amount of the garnishment, the Lottery will pay the claimant the balance remaining after deduction of the garnishment and applicable taxes. If the garnishment exceeds the amount of the prize claim, the Lottery will inform the claimant that the entire amount of the prize claim was used to respond to the garnishment.

(5) Payment of Prize: If a garnishment is not received within the 30-day hold period, the Lottery shall pay the prize to the claimant at the end of the 30-day hold period or when the Department of Human Services or the Oregon Health Authority notifies the Lottery that a garnishment will not be issued, whichever is sooner.

(6) Voluntary Release: Nothing in this section is intended to prevent a prize claimant from voluntarily releasing payment of all or any portion of the claimant's prize towards payment of the claimant's overpayment of assistance.

(7) Priorities: If the Lottery receives multiple garnishments against the same claimant while it is holding the prize claim, it will honor the garnishments in the order that they were received pursuant to ORS 18.627(1), provided however that payment of any past-due child support under OAR 177-010-0090 has priority over the recovery of any overpayment of assistance from a Lottery prize under this rule.

(8) Definitions: As used herein,

(a) "Assistance" includes:

(A) Medical assistance as defined in ORS 414.025.

(B) Public assistance as defined in ORS 411.010.

(C) Supplemental nutrition assistance provided under ORS 411.806 to 411.845.

(D) Any other benefit, aid, or assistance for which the Department of Human Services or the Oregon Health Authority is authorized to issue a final order for an overpayment under ORS Chapter 183.

(b) "Garnishor" means:

(A) The creditor, if the writ of garnishment is issued by a court administrator.

(B) The person or entity that issued the notice or writ of garnishment, if the garnishment was issued by any person other than a court administrator.

Stat. Auth.: ORS Ch. 461
Stats. Implemented: ORS 461, 2015 OL Ch. 711
Hist.: LOTT 4-2015, f. 12-18-15, cert. ef. 1-1-16

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Oregon State Marine Board
Chapter 250

Rule Caption: Amend scenic waterway boating rules for consistency with federal regulations.
Adm. Order No.: OSMB 1-2016
Filed with Sec. of State: 1-11-2016
Certified to be Effective: 2-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 250-030-0100, 250-030-0110, 250-030-0120, 250-030-0130, 250-030-0140, 250-030-0150, 250-030-0160, 250-030-0170, 250-010-0180
Rules Repealed: 250-030-0010, 250-030-0020, 250-030-0030, 250-030-0041
Subject: The Oregon Scenic Waterways rules in Division 030 were reviewed and, as necessary, amended to ensure concurrence with existing federal regulations.
Rules Coordinator: June LeTarte—(503) 378-2617

250-030-0100
Restrictions for the Chetco River

A person must not use a motor for propelling a boat for any purpose above the Rogue-Siskiyou National Forest Boundary, as marked.

Stat. Auth.: ORS 830.110 & 830.175

Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0110
Restrictions for the Deschutes River

(1) A person must not use a motor for propelling a boat for any purpose:

(a) On the portion of the river bordering the Warm Springs Reservation, year round (ORS 830.180);

(b) Between the northern boundary of the Warm Springs Reservation and the mouth of Buckhollow Creek (downstream from Sherars Falls), year round;

(c) Between the mouth of Buckhollow Creek and Macks Canyon Campground from June 15 to September 30.

(2) In the area between Macks Canyon Campground and the Heritage Landing boat ramp:

(a) Use of motors is prohibited on alternating Thursday, Friday, Saturday and Sunday periods beginning with the first Thursday-Sunday period that falls on or after June 15 and continuing through September 30;

(b) There are no daily restrictions on motorized use from October 1 to June 14.

(3) A person must not operate a motorboat in excess of a "slow-no wake speed on the Deschutes River from the confluence with the Columbia River upstream to a point approximately 1,500 feet (500 yards) as marked.

(4) A person must not operate more than two round trips from Heritage Landing Boat Ramp or Macks Canyon Boat Ramp per day, except for emergencies.

(5) A person must not operate a motorboat with more than seven persons on board including the operator. The passenger capacity restriction does not apply to:

(a) Persons operating under a landowner ingress/egress permit;

(b) U.S. Coast Guard certified tour boat with a maximum of 16 persons operating under BLM Special Use Permit between the confluence with the Columbia River and Sherars Falls.

(6) A special "pass through" zone is established from the "slow-no wake" zone below Moody Rapids and the upstream end of Rattlesnake Rapids, as posted. A person must not stop or anchor any boat for the purpose of picking up or discharging passengers in this zone, except in an emergency.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0120
Restrictions for the Illinois River

A person must not use a motor for propelling a boat for any purpose from Deer Creek downstream to Nancy Creek, which is located in the area immediately upstream of Oak Flat.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0130
Restrictions for the John Day River System

(1) A person must not use a motor for propelling a boat for any purpose:

(a) Between Service Creek and Clarno Bridge on State Highway 218 from May 1 to September 30 except for 250-030-0130(2);

(b) Between Clarno Bridge on State Highway 218 to Cottonwood Bridge on State Highway 206 year round;

(c) Between Cottonwood Bridge on State Highway 206 and Tumwater Falls from May 1 to September 30;

(d) On the South Fork John Day River year round.

(2) Electric motors with 40 lbs. of trust or less may be used between Service Creek and Clarno Bridge on State Highway 218 year around.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0140
Restrictions for the Minam River

A person must not use a motor for propelling a boat for any purpose from Minam Lake downstream to the Wallowa River.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0150
Restrictions for the Owyhee River System

A person must not use a motor for propelling a boat for any purpose on the West Little Owyhee, North Fork Owyhee and the mainstem Owyhee River above approximately river mile 70 at Pinnacle Rock, as marked.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0160
Restrictions for the Rogue River

(1) A person must not use a motor for propelling a boat for any purpose from Grave Creek downstream to the lowermost portion of Blossom Bar Rapids, approximately 250 feet upstream of the top of Devil's Staircase Rapids, as marked, between May 15 and November 15.

(2) A person must not anchor a boat, except within ten feet of the shoreline, in the following river segments, which are designated "anchoring prohibited" zones, during the period August 1 to September 30:

(a) From a point approximately 100 yards upstream of the confluence with the Applegate River to a point approximately 450 yards downstream of that confluence at River Mile (RM) 94.8 as marked;

(b) From RM 93.5 to 94.5, as marked.

(c) Highway Hole — A 200 foot segment located approximately 1/2 mile upstream of Robertson Bridge (RM 86.7), as marked;

(3) A person must not anchor, stop or otherwise hold their boat's position in such a manner as to impede the safe navigation of any other craft in the Brushy Chutes "pass through" zone, from a point approximately 200 feet upstream of the island at RM 88 to a point approximately 750 feet downstream of that island, as marked, during the period August 1 to September 30.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0170
Restrictions for the Salmon River in Clackamas County

A person must not use a motor for propelling a boat for any purpose on the Salmon River in Clackamas County.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

250-030-0180
Restrictions for the Sandy River

A person must not use a motor for propelling a boat for any purpose From Dodge Park downstream to Dabney State Park.

Stat. Auth.: ORS 830.110 & 830.175
Stats. Implemented: ORS 830.110
Hist.: OSMB 1-2015, f. 1-11-16, cert. ef. 2-1-16

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Secretary of State, Elections Division
Chapter 165

Rule Caption: Process for registering qualified individuals to vote using DMV data
Adm. Order No.: ELECT 9-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 8-1-2015
Rules Adopted: 165-005-0170
Subject: This rule implements Oregon Laws 2015, chapter 8, which requires the Secretary to establish a rule by which DMV transfers specific information about qualified individuals for voter registration purposes and other updates to the voter registration process.

The rule adopts the Oregon Motor Voter (OMV) Registration manual as rule. The OMV Registration Manual addresses initiating the OMV process, data transfers between DMV and the Elections Division, registration and registration updates through the OMV process, public and protected records and instructions for completing the OMV Card.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-005-0170
Designating the Oregon Motor Voter Registration Manual

The Secretary of State designates the *Oregon Motor Voter Registration Manual* as the procedures to be used for voter registration and voter updates of qualified individuals from certain DMV interactions.

Stat. Auth.: ORS 247 & OL 2015 Ch. 8 Sec. 1 (HB 2177)
Stats. Implemented: ORS 247.012 & OL 2015 Ch. 8 Sec. 1 (HB 2177)
Hist.: ELECT 9-2015, f. 12-18-15, cert. ef. 1-1-16

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Rule Caption: Designating Ballot Request Forms
Adm. Order No.: ELECT 10-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-007-0035
Subject: Replaces reference to "Federal Absentee Ballot Request Form" with "Federal Post Card Application". "Federal Post Card Application" is the current name for the federal form military and overseas voters must submit to request an absentee ballot.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-007-0035
Designating Ballot Request Forms

(1) The Secretary of State designates form SEL 111, Absentee Ballot Request Form, as the form an elector who will be away during an election, may submit to a county elections official to request an absentee ballot, except that if the elector is serving in the Armed Forces, the Merchant Marine or is temporarily living outside the territorial limits of the United States, the elector must submit a Federal Post Card Application.

(2) The Secretary of State designates form SEL 111A, Absentee Ballot Request Form, as the form an elector who is 17 years old who will be away during an election may submit to a county elections official to request an absentee ballot, except that if the elector is serving in the Armed Forces, the Merchant Marine or is temporarily living outside the territorial limits of the United States, the elector must submit a Federal Post Card Application. The elector will not receive a ballot until an election occurs on or after their eighteenth birthday.

(3) The Secretary of State designates form SEL 113, Provisional Ballot Request Form, as the form an individual whose eligibility as a voter is in question may use to request a ballot. The provisional ballot will not be counted until the individual's eligibility is determined.

Stat. Auth.: ORS 246.150, 254.465, 254.470, Help America Vote Act P.L. 107-252
Stats. Implemented: ORS 247, 253.03 & 254
Hist.: ELECT 5-2006, f. & cert. ef. 4-18-06; ELECT 22-2009, f. & cert. ef. 12-31-09; ELECT 10-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Adopts revisions to the State and Local Candidate Manuals and Political Party Manual
Adm. Order No.: ELECT 11-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-010-0005
Subject: The proposed rule amendment adopts current revisions to the:

(1) State Candidate's Manual as the procedures and forms to be used by candidates filing and running for federal or state office as that term is defined in ORS 249.002(10);

(2) County, City and District Candidate's Manual as the procedures and forms to be used by candidates filing and running for elected office in a county, city or district; and

(3) Political Party Manual as the procedures and forms to be used to form a minor political party and nominate candidates for elective office.

This manual also includes information on qualifying as a major political party and a party's obligation to file organizational documents.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-010-0005
Designating the Candidate's Manual, Minor Political Party Manual and Forms

(1) The Secretary of State designates the *State Candidate's Manual* revised 01/2016 and associated forms as the procedures and forms to be used by candidates filing and running for a federal or state office as that term is defined in ORS 249.002(10).

(2) The Secretary of State designates the *County, City and District Candidate's Manual* and associated forms as the procedures and forms to be used by candidates filing and running for elected office in a county, city or district.

(3) The Secretary of State designates the *Political Party Manual* revised 01/2016 and associated forms as the procedures and forms to be used to form a minor political party and nominate candidates for elective office. This manual also includes information on qualifying as a major political party and a party's obligation to file organizational documents.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 246.120, 246.150 & 249.009
Stats. Implemented: ORS 246.120, 246.150 & 249.009
Hist.: SD 35-1980, f. & ef. 3-6-80; SD 31-1983, f. & ef. 12-20-83; SD 5-1986, f. & ef. 2-26-86; ELECT 9-1992(Temp), f. & cert. ef. 4-9-92; ELECT 32-1992, f. & cert. ef. 10-8-92; ELECT 33-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 6-1998, f. & cert. ef. 5-8-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 18-2003, f. & cert. ef. 12-5-03; ELECT 2-2004(Temp), f. & cert. ef. 4-9-04 thru 10-6-04; Administrative correction 10-22-04; ELECT 9-2005, f. & cert. ef. 12-14-05; ELECT 11-2007, f. & cert. ef. 12-31-07; ELECT 25-2009, f. & cert. ef. 12-31-09; ELECT 1-2011, f. & cert. ef. 2-4-11; ELECT 16-2011(Temp), f. & cert. ef. 8-16-11 thru 12-31-11; ELECT 4-2012, f. & cert. ef. 1-3-12; ELECT 6-2014, f. & cert. ef. 1-2-14; ELECT 11-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: NVRA Agency Registration Procedures and Reporting Requirements
Adm. Order No.: ELECT 12-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-005-0055, 165-005-0065, 165-005-0070
Subject: These rules are proposed for amendment to:

(1) Appropriately identify designated Voter Registration Agencies after organizational name change;

(2) Designate CCare as a Voter Registration Agency;

(3) Remove the requirement for the Secretary of State to print Voter Registration Agency reporting forms and instead allow for the Secretary to designate a print or electronic form that Voter Registration Agencies must use to report the number of registration cards submitted to county elections officials; and

(4) Fix a grammatical error.

Rules Coordinator: Brenda Bayes—(503) 986-1518

165-005-0055
Designating NVRA Voter Registration Agencies

(1) "Voter Registration Agency" means one of the following:

(a) Armed Forces recruitment offices operated by the U.S. Department of Defense;

(b) Commission for the Blind;

(c) Department of Human Services, Aging and People with Disabilities (APD);

(d) Department of Human Services, Child Welfare;

(e) Department of Human Services, Self Sufficiency;

(f) Oregon Health Authority, CCare Program;

(g) Oregon Health Authority, Health Systems Division;

(h) Oregon Health Authority, Women, Infants and Children Nutrition Program (WIC);

(i) Office of Vocational Rehab Services;

(j) Oregon Department of Transportation;

(k) Public universities, as defined in ORS 352.002

(2) "Agency Site" means any voter registration location named by a voter registration agency designated in section (1) of this rule.

(3) "County Elections Official" means the official responsible for voter registration in any county.

(4) Some voter registration agencies are not required under the National Voter Registration Act to be designated as voter registration agencies. Because their status as Voter Registration Agencies is voluntary, public universities are exempt from the requirements of ORS 247.208(2) and (4).

(5) The Armed Forces recruitment offices, operated by the U.S. Department of Defense, are exempt from reporting statistical information to the Secretary of State and report directly to the Election Assistance Commission.

Stat. Auth.: ORS 246.150 & 247.208
Stats. Implemented: ORS 247.208
Hist.: ELECT 10-1991(Temp), f. & cert. ef. 9-27-91; ELECT 18-1992, f. & cert. ef. 7-1-92; ELECT 25-1994, f. & cert. ef. 10-27-94; ELECT 20-2000, f. & cert. ef. 12-8-00; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 11-2011, f. & cert. ef. 7-12-11; ELECT 12-2015, f. 12-31-15, cert. ef. 1-1-16

165-005-0065
Compiling and Reporting Registrations

(1) The Secretary of State shall provide to Voter Registration Agencies a print or electronic form to use to report the number of voter registration cards sent to the County Elections Official.

(2) At least monthly, on the form or in the manner provided by the Secretary of State, each agency site shall report to the Secretary of State the number of voter registration cards sent to the county elections office since the last report.

(3) County Elections Officials shall record the following voter registration information in the Oregon Centralized Voter Registration System (OCVR) allowing the Secretary of State to compile the information and report to the Election Assistance Commission:

(a) The number of voters registered "active" and the number of voters registered "inactive" at the close of the previous general election;

(b) The number of registrations cancelled between the two most recent federal general elections;

(c) The number of confirmation notices mailed out between the two most recent federal general elections and the number of responses to these notices received during that same period;

(d) The number of valid registrations for people not previously registered to vote in Oregon or who is currently cancelled (New);

(e) The number of registration applications that update an existing registration including the residential address from one county to another (Update); and

(f) The number of registration applications submitted by persons already registered to vote at the same address, under the same name, with the same personal information and the same political party (Duplicate).

(4) New, updated or duplicate registrations shall be recorded in the following categories:

(a) By mail all cards received from individuals that arrive by United States Postal Service;

(b) By other means all cards received from individuals arriving in person or another method, other than by United States Postal Service;

(c) From the Department of Transportation (DMV) — all cards received from DMV offices regardless of how the cards arrive;

(d) From a #3 — agency all cards received from a #3 agency regardless of how the cards arrive. #3 agencies include Addictions and Mental Health Division, Children, Adults & Families Division; and the Office of Family Health Services — WIC;

(e) From a #4 — agency all cards received from a #4 agency regardless of how the cards arrive. #4 agencies include the Commission for the Blind; Seniors & People with Disabilities; and the Office of Vocational Rehab Services;

(f) From Armed Forces Recruitment offices — all cards received from Armed Forces offices regardless of how the cards arrive;

(g) From all other designated voter registration agencies — all cards received from the Oregon University System, Secretary of State or other County Elections Office regardless of how the cards arrive; and

(h) Received on a Federal Voting Assistance Program (FVAP) registration application regardless of how the cards arrive.

Stat. Auth.: ORS 246.150, 247.012 & 247.208
Stats. Implemented: ORS 247.208
Hist.: ELECT 10-1991(Temp), f. & cert. ef. 9-27-91; ELECT 18-1992, f. & cert. ef. 7-1-92; ELECT 25-1994, f. & cert. ef. 10-27-94; ELECT 22-2000, f. & cert. ef. 12-8-00; ELECT 11-2011, f. & cert. ef. 7-12-11; ELECT 12-2015, f. 12-31-15, cert. ef. 1-1-16

165-005-0070
Agency Registration Procedures

(1) Personnel at agency sites shall stamp or write on the reverse side of the voter registration card, below the postage area, the date the card is received by voter registration agency personnel.

(2) Voter registration agencies shall provide written notice to the Secretary of State of any change, to the following information within 30 days of the change:

(a) The identity of the NVRA coordinator for the voter registration agency;

(b) The location of each agency site that will offer voter registration; and

(c) The nature of voter registration procedures within the voter registration agency.

(3) Voter registration agency personnel shall not influence or attempt to influence a person to choose or not choose a particular political party or preference, or to register or to vote in any particular manner. Items which personnel shall not wear or display in the presence of clients while offering the opportunity to register to vote include materials that:

(a) Identify past, present, or future holders or seekers of partisan elective office;

(b) Contain logos or other graphics that may be identified with a political party or other party preference;

(c) Would reasonably be understood to be associated with a political party or other political party preference; or

(d) Would reasonably be understood to be advocating support or opposition to a ballot measure or candidate for elective office.

Stat. Auth.: ORS 246.150 & 247.208
Stats. Implemented: ORS 247.208
Hist.: ELECT 4-1992(Temp), f. & cert. ef. 2-26-92; ELECT 18-1992, f. & cert. ef. 7-1-92; ELECT 25-1994, f. & cert. ef. 10-27-94; ELECT 15-2001, f. & cert. ef. 6-15-01; ELECT 8-2003, f. & cert. ef. 9-3-03; ELECT 12-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Adopts revisions to the State Voters' Pamphlet Manual
Adm. Order No.: ELECT 13-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-016-0000
Subject: The proposed rule amendment adopts current revisions to the Voters' Pamphlet Manual and associated forms as the procedures by which statements, photos, or arguments must be filed as well as the order in which they will appear in the state voters' pamphlet, allowable formatting and provides a process for contacting statement or argument filers regarding required revisions.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-016-0000
Designating the State Voters' Pamphlet Manual and Forms

The Secretary of State designates the *State Voters' Pamphlet Manual*, revised 01/2016 and associated forms as the procedures and forms to be used to submit candidate statements, measure arguments, statements of arguments by any political party or assembly of electors, arguments in support of a legislative referral, explanatory statements, financial estimates and statements, statements prepared by the Legislative Counsel Committee under ORS 251.225 and county or metropolitan service district measures submitted under ORS 251.285.

Stat. Auth.: ORS 246.150, 251.014, 251.065, 251.075, 251.255
Stats. Implemented: ORS 251.046, 251.065, 251.075, 251.085, 251.087 & 251.095, 251.115, 251.255, 251.285
Hist.: ELECT 9-2014, f. & cert. ef. 3-11-14; ELECT 13-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Adopts 2016 Campaign Finance Manual and amends process for administratively discontinuing a political committee
Adm. Order No.: ELECT 14-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-012-0005, 165-012-0240
Subject: OAR 165-012-0005 is proposed for amendment to adopt the 2016 Campaign Finance Manual and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

OAR 165-012-0240 is proposed for amendment to expand the manner in which a person may respond to a Notice of Discontinuation.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-012-0005
Designating the Campaign Finance Manual and Forms; Late Penalty Matrix

Pursuant to ORS 260.156, the Secretary of State designates the *2016 Campaign Finance Manual* and associated forms as the procedures and guidelines to be used for compliance with Oregon campaign finance regulations.

[Publications: Publications and Forms referenced are available from the agency.]
Stat. Auth.: ORS 246.120, 246.150, 260.156 & 260.200
Stats. Implemented: ORS 246.120, 246.150, 260.156 & 260.200
Hist.: SD 101, f. & ef. 12-3-75; SD 120, f. & ef. 12-21-77; SD 34-1980, f. & ef. 3-6-80; SD 28-1983, f. & ef. 12-20-83; SD 3-1986, f. & ef. 2-26-86; ELECT 32-1988(Temp), f. & cert. ef. 8-26-88; ELECT 22-1989(Temp), f. & cert. ef. 11-9-89; ELECT 19-1990, f. & cert. ef. 6-4-90; ELECT 14-1992 (Temp), f. & cert. ef. 6-10-92; ELECT 37-1992, f. & cert. ef. 12-15-92; ELECT 34-1993, f. & cert. ef. 11-1-93; ELECT 1-1995(Temp), f. & cert. ef. 2-23-95; ELECT 15-1995, f. & cert. ef. 12-18-95; ELECT 9-1996, f. & cert. ef. 7-26-96; ELECT 5-1997, f. & cert. ef. 3-24-97; ELECT 6-1997(Temp), f. & cert. ef. 4-18-97; ELECT 15-1997, f. & cert. ef. 12-31-97; ELECT 5-1998, f. & cert. ef. 2-26-98; ELECT 8-1998, f. & cert. ef. 6-2-98; ELECT 9-1998, f. & cert. ef 9-11-98; ELECT 13-1998(Temp), f. & cert. ef. 12-15-98 thru 6-13-99; ELECT 2-1999(Temp), f. & cert. ef. 1-15-99 thru 7-14-99; ELECT 3-1999, f. & cert. ef. 3-1-99; ELECT 1-2000, f. & cert. ef. 1-3-00; ELECT 3-2002, f. & cert. ef. 3-13-02; ELECT 23-2003, f. & cert. ef. 12-12-03; ELECT 13-2005, f. & cert. ef. 12-30-05; ELECT 1-2007, f. & cert. ef. 1-5-07; ELECT 2-2007(Temp), f. & cert. ef. 5-2-07 thru 10-29-07; ELECT 4-2007(Temp), f. & cert. ef. 7-16-07 thru 12-31-07; ELECT 13-2007, f. & cert. ef. 12-31-07; ELECT 8-2009, f. & cert. ef. 5-4-09; ELECT 16-2009, f. & cert. ef. 7-30-09; ELECT 27-2009, f. & cert. ef. 12-31-09; ELECT 3-2010, f. & cert. ef. 4-22-10; ELECT 8-2011, f. & cert. ef. 4-8-11; ELECT 12-2011, f. & cert. ef. 7-12-11; ELECT 21-2011(Temp), f. & cert. ef. 9-30-11 thru 12-30-11; ELECT 5-2012, f. & cert. ef. 1-3-12; ELECT 2-2-14, f. & cert. ef. 1-2-14; ELECT 14-2015, f. 12-31-15, cert. ef. 1-1-16

165-012-0240
Administrative Discontinuation of a Political Committee

(1) The Elections Division may administratively discontinue a political or petition committee when:

(a) The committee has not filed any transactions under ORS 260.057 for one calendar year; and

(b) The committee's ending cash balance reflected in ORESTAR is not more than $3500.

(2) Not later than 30 days before administratively discontinuing a committee under this section, the Elections Division shall attempt to inform the committee of the proposed discontinuation.

(a) For a candidate committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the candidate and by first class mail to the most recent mailing address for the candidate reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(b) For a political committee notice will be sent by first class mail sent to the mailing address reported on the most recent Statement of Organization for the treasurer and by first class mail to the most recent mailing address for the treasurer reported in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent.

(c) For a petition committee:

(A) By first class mail sent to the mailing address reported on the most recent Statement of Organization for the chief petitioner(s) and by first class mail to the most recent address for the chief petitioner(s) in the Oregon Centralized Voter Registration System. If both addresses are the same, only one letter shall be sent; and

(B) By first class mail to the mailing address reported on the most recent Statement of Organization for the treasurer, if applicable.

(3) The notice shall inform the committee that it will be discontinued by the Elections Division unless the committee notifies the Elections Division of reasons why the committee does not meet the criteria of this rule for administrative discontinuation; notification from the committee must be received not later than 20 days after the service date of the letter. "Notification" means contact in writing, via mail, email, fax transmission, or making contact with the Elections Division by phone. The written notice from the Elections Division shall also include:

(a) Notification that the statement of organization will be administratively discontinued 30 days from the date of the letter; and

(b) The applicable reasons for discontinuation listed in subsection (1) of this section.

Stat. Auth.: ORS 246.150, 260.046
Stats. Implemented: ORS 260.046
Hist.: ELECT 14-2005, f. & cert. ef. 12-30-05; ELECT 6-2007, f. & cert. ef. 8-27-07; ELECT 29-2009, f. & cert. ef. 12-31-09; ELECT 5-2012, f. & cert. ef. 1-3-12; ELECT 2-2-14, f. & cert. ef. 1-2-14; ELECT 14-2015, f. 12-31-15, cert. ef. 1-1-16

Rule Caption: Updates hearing request form references, clarifies deadlines and establishes transmittal of written exceptions, complaint requirements
Adm. Order No.: ELECT 15-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Adopted: 165-001-0095
Rules Amended: 165-001-0016, 165-001-0025, 165-001-0034, 165-001-0050
Subject: OAR 165-001-0016, 165-001-0025, 165-001-0034 and 165-001-0050 are proposed for amendment to update references to the hearing request form number; to incorporate deadlines for issuing a default final order when no hearing is requested, a hearing request is cancelled or a person does not show up at the hearing; and to establish where and when written exceptions to a proposed order must be filed.

OAR 165-001-0095 is proposed for adoption to establish the requirements for complaints filed with the State Elections Division and establish procedures for complaints filed with other elections filing officers.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-001-0016
Requesting a Hearing

(1) If a party wishes to request an in-person or telephone hearing to contest the allegations in the charging document, they must submit to the Agency a signed Hearing Request Form and an "answer," to the allegations in the charging document not later than the deadline to request a hearing stated in the charging document.

(a) The answer must include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance that may apply and indicate specifically what facts or transactions the mitigating circumstance applies to.

(b) A general denial is not sufficient to constitute an answer.

(c) The person must choose whether they want the hearing by telephone or in-person. If no choice is indicated on the form, the hearing will be held by telephone.

(d) Any evidence of a mitigating circumstance or other relevant evidence may be submitted with the answer as exhibits.

(2) An answer not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no answer had been filed.

(3) Except for good cause shown to the administrative law judge, factual matters alleged in the charging document and not denied in the answer will be deemed admitted by the party.

(4) The failure of the party to raise a mitigating circumstance in the answer is a waiver of such mitigating circumstance.

(5) The party bears the burden of proof to show that all or part of the penalty should be mitigated based on a mitigating circumstance.

(6) Any new facts or defenses alleged in the answer will be deemed denied by the Agency.

(7) Evidence will not be taken at the contested case hearing on any factual or legal issue not raised in the charging document or the answer as filed.

(8) The Secretary of State hereby adopts by reference and designates the SEL 850 as the Hearing Request Form, Campaign Finance Transactions to be used to request an in-person or telephone hearing, or submit notarized testimony to contest campaign finance transaction violations.

(9) The Secretary of State hereby adopts by reference and designates the SEL 851 as the Hearing Request Form, Other Campaign Finance Violations to be used to request an in-person or telephone hearing, or submit notarized testimony to contest campaign finance violations, other than those violations relating to late or insufficient campaign finance transactions.

(10) The Secretary of State hereby adopts by reference and designates the SEL 852 as the Hearing Request Form to be used to request an in-person or telephone hearing to contest non-campaign finance violations.

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.232 & 260.995
Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 1-2012, f. & cert. ef. 1-3-12; ELECT 15-2015, f. 12-31-15, cert. ef. 1-1-16

165-001-0025
Orders When No Hearing Requested, Hearing is Cancelled, or Failure to Appear at Hearing

(1) When a party has been given an opportunity to request a hearing and fails to request a hearing in writing within the specified time, or having requested a hearing fails to appear at the specified time and place, the agency shall, subject to section (2) of this rule, enter an order by default which supports the agency action.

(2) The time provided by statute to request a hearing under ORS 260.995 is calculated from the delivery date indicated on the certified letter's postal confirmation. If the certified letter is refused or left unclaimed at the post office, the time shall be calculated from the date the post office indicates it has given first notice of a certified letter. If the certified card is not returned to the Secretary of State by the United States Postal Service (USPS), the Secretary shall use the date recorded on the official USPS website utilizing the Track and Confirm delivery service.

(3) The time provided by statute to request a hearing under ORS 260.232 is 20 calendar days after the service date on the charging document.

(4) An order adverse to a party may be issued on default only if the agency record demonstrates a prima facie case justifying the order. The Administrative Law Judge will declare a party to be in default if the party which requested the hearing does not appear within 15 minutes of the time set for the hearing, unless the party gives notice of a reason for the inability to appear at the designated time and requests and receives a continuance. A continuance shall be granted only if the reason for the inability to appear is beyond the reasonable control of the party.

(5) The prima facie record upon default may be made at a scheduled hearing on the matter, or, if the notice of intended action states that the order will be issued or become effective upon the failure of the party to timely request a hearing, when the order is issued.

(6) The record may consist of oral (transcribed, recorded, or reported) or written evidence or a combination of oral and written evidence. When the record is made at the time the notice or order is issued, the agency file may be designated as the record. In all cases, the record must contain substantial evidence to support the findings of fact.

(7) When the Administrative Law Judge has set a specified time and place for a hearing and the party subsequently notifies the agency or the Administrative Law Judge assigned to the case that the party will not appear at such specified time and place, the agency may cancel the hearing and follow the procedure described in subsections (2), (3) and (4) of this rule.

(8) The deadline to issue a Final Order by Default if there is no hearing request, the hearing is cancelled or the party fails to appear at the hearing is not later than the 90th day after the deadline to request a hearing.

(9) When a party requests a hearing after the time specified by the agency, but before entry of a final order by default, or, if a final order by default is entered, on or before 30 calendar days after entry of the order, the agency may accept the late request only if the cause for failure to timely request the hearing was beyond the reasonable control of the party. In determining whether to accept a late hearing request, the agency may require the request to be supported by an affidavit and may conduct such further inquiry, including holding a hearing, that it deems appropriate. The agency shall enter an order granting or denying the request.

(10) When a party requests a hearing after entry of a default order, the party must file the request within a reasonable time. If the request is received more than 30 days after the agency mailed the default order to the party or the party's attorney (based on the service date of the order), it is presumed that the request is not timely. The request shall state why the party should be relieved of the default order. If the request is allowed by the agency, it shall enter an order granting the request and schedule the hearing in due course. If the request is denied, the agency shall enter an order setting forth its reasons for the denial.

(11) The agency shall notify a defaulting party of the entry of a default order by mailing a copy of the order as required by ORS 183.470.

(12) Notwithstanding the provisions of this rule relating to late requests for a hearing, no hearing may be held if the timing of the request would cause the agency to miss the statutory deadlines established for the conduct of hearings in ORS 260.232(4) or 260.995(6).

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995
Stats. Implemented: ORS 183.470, 260.232 & 260.995
Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 27-1993, f. & cert. ef. 7-1-93; ELECT 15-1994, f. & cert. ef. 7-26-94; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 1-2012, f. & cert. ef. 1-3-12; ELECT 15-2015, f. 12-31-15, cert. ef. 1-1-16

165-001-0034
Notarized Testimony in lieu of Hearing

(1) If a party wishes to contest the allegations in the charging document, but does not wish to request an in person or telephone hearing, the party may submit notarized testimony in lieu of a hearing.

(2) The notarized testimony must be filed with the Agency not later than the deadline to request a hearing stated in the charging document.

(3) The notarized testimony must:

(a) Include an admission or denial of each factual matter alleged in the charging document and a statement of each relevant defense to the allegations, including any relevant mitigating circumstance. A general denial is not sufficient. Notarized testimony not including the information required by this rule may be disregarded and a notice of default may be issued in accordance with OAR 165-001-0025 as if no notarized testimony had been filed.

(b) Include a signed and completed Hearing Request Form.

(c) Be notarized by a commissioned Notary Public.

(4) After the party submits notarized testimony, the Agency may submit notarized testimony and any exhibits to the Office of Administrative Hearings and to the individual who submitted notarized testimony. If the Agency submits notarized testimony, it will be transmitted via e-mail to the Office of Administrative Hearings and the party. The Agency may mail its notarized testimony to the party's last known address if the party's e-mail address is unknown or the e-mail is returned as undeliverable.

(5) The party may, but is not required to, respond to the Agency testimony by submitting rebuttal notarized testimony.

(a) Rebuttal notarized testimony is limited to issues raised in the original notarized testimony and the Agency's testimony.

(b) Rebuttal notarized testimony must be notarized by a commissioned Notary Public.

(c) The rebuttal notarized testimony must be received by the Agency not later than five business days from the date of service of the Agency's testimony (the date the testimony was e-mailed or mailed).

(d) The notarized testimony hearing record is deemed closed the day after the deadline for the person to submit rebuttal testimony.

(6) If a person submits notarized testimony in lieu of requesting an in person or telephone hearing, the person is waiving their right to an in person or telephone hearing.

(7) The deadline to issue a final order when notarized testimony is submitted in lieu of an in-person or telephone hearing is not later than 90 days after the hearing record is closed.

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.232 & 260.995
Hist.: ELECT 7-2011, f. & cert. ef. 4-8-11; ELECT 1-2012, f. & cert. ef. 1-3-12; ELECT 15-2015, f. 12-31-15, cert. ef. 1-1-16

165-001-0050
Proposed Orders in Contested Cases, Filing of Exceptions, Argument, and Adoption of Order

(1) The administrative law judge shall prepare a proposed order and serve the proposed order on the agency and each party. The proposed order shall be served not later than 30 calendar days after the hearing is adjourned. The proposed order shall also include information about when and where written exceptions to the proposed order must be filed to be considered by the agency.

(2) The exceptions must be received by the Elections Division not later than 30 calendar days after the service date of the proposed order. The date of service is the day the proposed order is mailed, not the date the party receives the proposed order.

(3) If the administrative law judge's proposed order recommended a decision favorable to a party and the agency intends to reject that recommendation and issue an order adverse to that party, the agency shall issue an amended proposed order. When the agency serves an amended proposed order on the party, the agency shall, at the same time notify the party when and where written exceptions for the amended order must be filed to be considered by the agency.

(4) Written exceptions filed under (2) or (3) may be scanned and attached to an email and sent to elec-hearings.sos@state.or.us, transmitted by fax (503-373-7414), mailed or hand-delivered to 255 Capitol St NE, Ste 501, Salem OR 97310.

(5) The agency decision maker, after considering any of the written exceptions may adopt the proposed order, amended proposed order or prepare a new order.

Stat. Auth.: ORS 183.090, 183.470, 246.150, 260.232 & 260.995
Stats. Implemented: ORS 183.470, 260.232 & 260.995
Hist.: ELECT 15-1988(Temp), f. & cert. ef. 1-27-88; ELECT 26-1988, f. & cert. ef. 8-1-88; ELECT 7-2003, f. & cert. ef. 9-3-03; ELECT 19-2009, f. & cert. ef. 12-31-09; ELECT 10-

2011, f. & cert. ef. 7-12-11; ELECT 4-2014, f. & cert. ef. 1-2-14; ELECT 15-2015, f. 12-31-15, cert. ef. 1-1-16

165-001-0095
Complaint Requirements

(1) Any complaint filed pursuant to ORS 260.345 must be signed by an elector of the State of Oregon.

(2) A complaint filed pursuant to ORS 260.345 which is filed with an elections filing officer other than the State Elections Division shall be delivered by the filing officer to the State Elections Division within one business day.

(3) The complaint may be delivered by electronic mail to elections.sos@state.or.us, by facsimile to 503-373-7414 or by mail or personal delivery to 255 Capitol Street NE, Suite 501, Salem, OR 97310.

Stat. Auth.: ORS 246.150, 260.345
Stats. Implemented: ORS 246.232, 260.345, 260.995
Hist.: ELECT 15-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Amends incorrect quote; clarifies minimum penalty for paying by signature and deadline for specified accounts
Adm. Order No.: ELECT 16-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-014-0100, 165-014-0260
Subject: OAR 165-014-0100 — This rule amendment establishes that the deadline for the first submittal of chief petitioner accounts is not until after the sponsorship phase, and that the first accounts submittal of the primary signature gathering effort should include the accounts for the sponsorship phase.

OAR 165-014-0260 — This rule amendment corrects an incorrect quote of Article IV, Section 1b of the Oregon Constitution and to clarify the minimum penalty for violations of Article IV, Section 1b of the Oregon Constitution.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0100
Review of Specified Chief Petitioner Accounts

(1) Each chief petitioner of an initiative, referendum or prospective petition who pays any person money or other valuable consideration to obtain signatures on the petition shall keep detailed accounts in accordance with ORS 260.262. The Elections Division will review these accounts in the manner and in accordance with the schedule set out in paragraphs (2) and (3) of this rule.

(2) Chief petitioners shall submit digital copies of the applicable accounts described on the SEL 320 unless they receive prior written approval from the Elections Division to submit paper copies.

(a) Acceptable digital formats include pdf files, Excel files, or Word files submitted on CD-ROM or via electronic mail.

(b) The Elections Division may request original documentation of chief petitioner accounts, in addition to or in lieu of copies.

(c) The Elections Division may choose to conduct on-site reviews of chief petitioner accounts.

(3) Detailed copies of the applicable accounts described on the SEL 320, must be submitted by the 10th business day of each month after any month in which circulators were paid to collect signatures for the primary signature gathering effort. Accounts for the sponsorship phase must be included with the first submittal of accounts for the primary signature gathering effort. The Elections Division may require accounts to be submitted in shortened time frame depending on the circumstances of each petition.

(4) The Elections Division reserves the right to demand all accounts described under ORS 260.262, including all circulated signature sheets.

(5) Chief petitioners, or their authorized agent, must submit a completed SEL 320, each time accounts are provided, detailing the nature of the accounts provided under ORS 260.262.

(6) The Elections Division shall review accounts to determine whether all of the required information appears to have been provided. If after review it is determined that the accounts submitted are incomplete or the chief petitioners fail to submit the requested accounts, the Elections Division may find that a violation of section 1b, Article IV of the Oregon Constitution, has occurred, suspend the petition from obtaining additional signatures, and/or issue a civil penalty under OAR 165-013-0020.

(7) If the Elections Division takes action under ORS 260.262(6) the chief petitioners may file notarized written explanation contesting the suspension and providing evidence that the accounts submitted are complete.

(8) If a petition is suspended under ORS 260.262(6) the chief petitioners are prohibited from obtaining any additional signatures on the petition until it has been determined by the Elections Division that the accounts are complete. Any signatures gathered in violation of the suspension will not be accepted for signature verification.

(9) If the petition has multiple chief petitioners, only one set of copies of the detailed accounts for each petition need to be produced by the deadline.

(10) Accounts must be kept current as of not later than the 7th calendar day after the date a payment is made to a person for obtaining signatures on a petition.

(11) The Elections Division reserves the right to conduct a review of all chief petitioner accounts in accordance with ORS 260.262(4).

Stat. Auth.: ORS 246.150, 260.262
Stats. Implemented: ORS 260.262
Hist.: ELECT 21-2007, f. & cert. ef. 12-31-07; ELECT 3-2008(Temp), f. & cert. ef. 3-14-08 thru 5-2-08; ELECT 6-2008(Temp), f. & cert. ef. 5-2-08 thru 9-10-08; ELECT 8-2008, f. & cert. ef. 8-12-08; ELECT 33-2009, f. & cert. ef. 12-31-09; ELECT 13-2011, f.. & cert. ef. 8-1-11; ELECT 6-2013, f. & cert. ef. 11-8-13; ELECT 16-2015, f. 12-31-15, cert. ef. 1-1-16

165-014-0260
Prohibition on Paying or Receipt of Payment based on the Number of Signatures Obtained on an Initiative, Referendum, Candidate Nominating Petition or Voter Registration Cards

(1) The purpose of this rule is to interpret Article IV, section 1b of the Oregon Constitution and ORS 260.569. Article IV, section 1b of the Oregon Constitution provides: "It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, either directly or indirectly, on the number of signatures obtained." ORS 260.569 provides: "A person may not pay or receive money or another thing of value based on the number of: signatures a person obtains for purposes of nominating a candidate for elective public office or signed voter registration cards a person collects.

(2) Section 1b and ORS 260.569 bans the practice of paying circulators or others involved in an initiative, referendum, candidate nominating petition or voter registration card collection effort if the basis for payment is the number of signatures obtained. This means that payment cannot be made on a per signature basis. Employment relationships that do not base payment on the number of signatures collected are allowed. Allowable practices include: paying an hourly wage or salary, using express minimum signature requirements (quota), terminating those who do not meet the productivity requirements, adjusting salaries prospectively relative to productivity, and paying discretionary bonuses based on reliability, longevity and productivity, provided no payments are made on a per signature basis. The use of express minimum signature requirements (quota) for an initiative or referendum petition is allowable so long as that requirement is disclosed to the Elections Division on the SEL 320 as part of accounts.

(3) If a circulator is carrying a petition subject to Section 1b or ORS 260.569 and another petition not subject to Section 1b or ORS 260.569 (for example, a state initiative petition and a local recall petition), the circulator may be paid by the signature only for signatures collected on the petition not subject to Section 1b or ORS 260.569. Any payment for collecting signatures on the petition subject to Section 1b or ORS 260.569 must comply with Section 1b or ORS 260.569.

(4) The phrase "directly or indirectly" in Section 1b means that the chief petitioners who are responsible for the circulation and submission of the initiative or referendum petition cannot directly pay for signature gathering based on the number of signatures obtained, and cannot contract or delegate to another person or entity to obtain signatures and allow the third party to pay circulators on the basis of the number of signatures obtained. However, chief petitioners may contract with a person or entity to manage the signature gathering, and pay the person or entity for services, including the service of qualifying the petition for the ballot, so long as the individuals who actually circulate the petition are not paid based on the number of signatures obtained. The chief petitioners are responsible for insuring that agents of the chief petitioner (anyone who is delegated the task of obtaining signatures on the initiative or referendum petition) do not violate Section 1b.

(5) Violations of Section 1b or ORS 260.569 will be processed under 260.995 as civil penalties. Penalties may be assessed against chief petitioners or any other persons who either directly or indirectly pay based on the number of signatures or voter registration cards obtained. Liability may be imposed on chief petitioners as provided in 260.561. Violations of Section 1b or 260.569 will be calculated by deeming each individual signature sheet or voter registration card that contains signatures that were collected in violation of Section 1b or 260.569 as a single occurrence.

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 250.045 & 260.995
Hist.: ELECT 15-2003, f. & cert. ef. 10-15-03; ELECT 22-2007, f. & cert. ef. 12-31-07; ELECT 15-2011, f. & cert. ef. 8-11-11; ELECT 16-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Adopts revisions to the Initiative and Referendum Manuals, Circulator Training Manual, Recall and Referral Manuals
Adm. Order No.: ELECT 17-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-014-0005
Rules Repealed: 165-014-0280
Subject: 165-014-0005 — The proposed rule amendment adopts current revisions to the:

(1) State Initiative and Referendum Manual as the procedures and forms to be used for the state initiative and referendum process;

(2) County, City and District Initiative and Referendum Manual as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local initiative and referendum process;

(3) Circulator Training Manual as the curriculum, procedures and forms to be used to register as required under ORS 250.048 by a person who will be paid to gather signatures on a state prospective initiative, initiative, referendum or recall petition;

(4) Recall Manual as the procedures and forms to be used for the recall process; and

(5) County, City and District Referral Manual as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

165-014-0280 — This rule is proposed for repeal because the adoption of current revisions to the Circulator Training Manual is proposed under 165-014-0005.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-014-0005
Designating the Initiative, Referendum and Recall Manuals and Forms

(1) The Secretary of State designates the *State Initiative and Referendum Manual*, revised 01/2016 and associated forms as the procedures and forms to be used for the state initiative and referendum process.

(2) The Secretary of State designates the *Recall Manual*, revised 01/2016 and associated forms as the procedures and forms to be used for the recall process.

(3) The Secretary of State designates the *County, City and District Initiative and Referendum Manual*, revised 01/2016 and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local initiative and referendum process.

(4) The Secretary of State designates the *County, City and District Referral Manual*, revised 01/2016 and associated forms as the procedures, except where state law permits the procedure to be otherwise under local charter or ordinance, and forms to be used for the local referral process.

(5) The Secretary of State designates the *Circulator Training and Registration Manual*, revised 01/2016 and associated forms as the curriculum, procedures and forms to be used to register as required under ORS 250.048 by a person who will be paid to gather signatures on a state initiative, referendum or recall petition.

(6) For purposes of subsection (5) of this rule, initiative is meant to include each phase of the petition's signature gathering effort including the sponsorship phase, the primary signature gathering effort and any supplemental signature gathering efforts.

[Publications: Publications referenced are available from the agency.]
Stat. Auth.: ORS 264.120, 246.150 & 250.015
Stats. Implemented: ORS 246.120, 246.150 & 250.015
Hist.: SD 120, f. & ef. 12-21-77; SD 7-1979(Temp), f. & ef. 11-5-79; SD 31-1980, f. & ef. 3-6-80; SD 10-1984, f. & ef. 6-19-84; SD 21-1984(Temp), f. & ef. 10-8-84; SD 4-1986, f. & ef. 2-26-86; ELECT 33-1988(Temp), f. & cert. ef. 8-26-88; ELECT 4-1989(Temp), f. & cert. ef. 8-11-89; ELECT 4-1991 (Temp), f. & cert. ef. 3-18-91; ELECT 10-1992(Temp), f. & cert. ef. 4-9-92; ELECT 19-1992(Temp), f. & cert. ef. 7-1-92; ELECT 39-1992, f. & cert. ef. 12-17-92; ELECT 3-1993 (Temp), f. & cert. ef. 1-22-93; ELECT 10-1993, f. & cert. ef. 3-25-93; ELECT 35-1993, f. & cert. ef. 11-1-93; ELECT 1-1996, f. & cert. ef. 1-3-96; ELECT 8-1997, f. & cert. ef. 10-3-97; ELECT 3-1998, f. & cert. ef. 2-11-98; ELECT 10-1999, f. & cert. ef. 10-18-99; ELECT 3-2002, f. & cert. ef. 3-13-02; Elect 9-2002(Temp), f. & cert. ef. 12-5-02 thru 6-3-03; ELECT 4-2003, f. & cert. ef. 4-25-03; ELECT 20-2003, f. & cert. ef. 12-5-03; ELECT 10-2005, f. & cert. ef. 12-14-05; ELECT 3-2007(Temp), f. & cert. ef. 5-14-07 thru 11-10-07; Administrative correction 11-17-07; ELECT 16-2007, f. & cert. ef. 12-31-07; ELECT 32-2009, f. & cert. ef. 12-31-09; ELECT 7-2012, f. & cert. ef. 1-3-12; ELECT 5-2014, f. & cert. ef. 1-2-14; ELECT 17-2015, f. 12-31-15, cert. ef. 1-1-16

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Rule Caption: Adopts revisions to the Restrictions on Political Campaigning by Public Employees, ORS 260.432 Manual
Adm. Order No.: ELECT 18-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-2-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-013-0030
Subject: The proposed rule adopts the current revisions to the Restrictions on Political Campaigning by Public Employees, ORS 260.432 Manual. This manual provides guidance on ORS 260.432 and informs the public of permissible and impermissible activities by public employees.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0030
Designating Restrictions on Political Campaigning by Public Employees

In addition to, and not in lieu of, any other election processes contained in ORS Chapters 246 through 260 and OAR chapter 165, the Secretary of State adopts the manual *Restrictions on Political Campaigning by Public Employees*, ORS 260.432 revised 01/2016. This manual provides guidance on ORS 260.432 and informs the public of permissible and impermissible activities by public employees.

Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.432
Hist.: ELECT 12-2012, f. & cert. ef. 9-13-12; ELECT 18-2015, f. 12-31-15, cert. ef. 1-2-16

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Rule Caption: Updates mitigating circumstances for Other Campaign Finance Violations and amends Non-Campaign Finance Penalty Matrix
Adm. Order No.: ELECT 19-2015
Filed with Sec. of State: 12-31-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 12-1-2015
Rules Amended: 165-013-0010, 165-013-0020
Subject: 165-013-0010 is proposed for amendment to add an alternate transaction filer and independent expenditure filer to mitigating circumstances the Secretary may consider in reducing or waiving a penalty for Other Campaign Finance Violations.

165-013-0020 is proposed for amendment to clarify when an offense is considered to be a single or multiple violations, clarifies the minimum penalty for violations of Article IV, section 1b of the Oregon Constitution, clarifies the minimum penalty for violations of ORS 260.569 and removes certain mitigating circumstances for violations of ORS 260.432.
Rules Coordinator: Brenda Bayes—(503) 986-1518

165-013-0010
Penalty Matrix for Other Campaign Finance Violations

(1) This penalty matrix applies to civil penalties for campaign finance violations not covered by the penalty matrices in the Campaign Finance Manual.

(2) Mitigating Circumstances. The only mitigating circumstances that will be considered in a campaign finance violation covered by this rule include:

(a) The violation is a direct result of a valid personal emergency of the candidate, treasurer, alternate transaction filer, or independent expenditure filer. A valid personal emergency is an emergency, such as a serious personal illness or death in the immediate family of the candidate or treasurer which caused the violation to occur. A valid personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by the elections filing officer;

(c) The violation is the direct result of clearly-established fraud, embezzlement, or other criminal activity against the committee, committee treasurer, candidate, alternate transaction filer, or independent expenditure

filer, as determined in a criminal or civil action in a court of law or independently corroborated by a report of a law enforcement agency or insurer or the sworn testimony or affidavit of an accountant or bookkeeper or the person who actually engaged in the criminal activity. This mitigating circumstance is not available to the committee treasurer, candidate, alternate transaction filer, or independent expenditure filer who was the perpetrator of the wrongdoing described above;

(d) The violation is the direct result of fire, flood, utility failure or other calamitous event, resulting in physical destruction of, or inaccessibility to, campaign finance records. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(e) The violation is the direct result of failure of a professional delivery service to deliver documents in the time guaranteed for delivery by written receipt of the service provider. Tthis does not include delivery by fax.

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by the elections filing officer, the violation is waived and no penalty is assessed.

(b) Omitted or insufficient information for a violation of ORS 260.039(4), 260.042(4) or 260.118(3) submitted prior to the deadline for a candidate or treasurer to request a hearing will result in a 50% reduction of the penalty. If a public hearing is requested, the omitted or insufficient information may be submitted up to the date of the hearing. In such an event, the treasurer, candidate, alternate transaction filer or independent expenditure filer will be entitled to a 50% reduction of the assessed penalty.

(c) For the purpose of issuing a proposed penalty notice and subsequent imposition of a civil penalty for any violation in Appendix A of this rule, the candidate of a principal campaign committee, the treasurer of a political action committee, or the chief petitioner of a petition committee, is the party named in a proposed penalty notice and is the party responsible for the payment of any civil penalty if a penalty is assessed.

(d) For purposes of determining penalty amounts for violations of campaign finance violations covered by this rule Appendix A of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendix referenced is available from the agency.]
Stat. Auth.: ORS 246.150, 260.200
Stats. Implemented: ORS 260.200, 260.215, 260.232, 260.995
Hist.: ELECT 13-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 1-2004, f. & cert. ef. 2-13-04; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 10-2006(Temp), f. & cert. ef. 7-6-06 thru 1-2-07; ELECT 17-2006, f. & cert. ef. 12-29-06; ELECT 14-2007, f. & cert. ef. 12-31-07; ELECT 30-2009, f. & cert. ef. 12-31-09; ELECT 9-2011, f. & cert. ef. 4-8-11; ELECT 6-2012, f. & cert. ef. 1-3-12; ELECT 1-2013, f. & cert. ef. 2-4-13; ELECT 1-2014, f. & cert. ef. 1-2-14; ELECT 19-2015, f. 12-31-15, cert. ef. 1-1-16

165-013-0020
Penalty Matrix for Non-Campaign Finance Civil Penalty Election Law Violations

(1)(a) This penalty matrix applies to civil penalties for violations of election laws that are not covered by the penalty matrices in the Campaign Finance Manual (late and insufficient campaign finance reports and new transactions to campaign finance reports), or other campaign finance violations as outlined in 165-013-0010.

(b) The penalty amount will be calculated against the same person, candidate or entity as described below for a period of four years from the date the violation occurs, for any election law violation, other than campaign finance violations covered in the penalty matrices in the Campaign Finance Manual and other campaign finance violations as outlined in 165-013-0010.

(c) In determining whether the offense is to be considered against the same person, candidate or entity, the following factors are to be considered:

(A) A person is considered the same candidate, regardless of the office(s) for which the person runs within this state, or whether there is a lapse in time between candidacies.

(B) A political committee is considered the same, regardless of who the treasurer is, or if the political committee has changed names but is established by the same group of persons.

(C) The same individual.

(d) When determining whether the offense is to be considered a single or multiple violations, the following factors are to be considered:

(A) One occurrence is considered one violation.

(B) Violations of Article IV, Section 1(b) will be calculated by deeming each individual signature sheet that contains signatures that were collected in violation of Section 1(b) as a single occurrence.

(C) Violations of ORS 260.569, will be calculated by deeming each individual signature sheet that contains a signature a violation of ORS 260.569 or each signed voter registration card in violation of ORS 260.569 as a single occurrence.

(2) Mitigating Circumstances: The burden is on the person alleged to have committed the election law violation to show that a mitigating circumstance exists and caused the election law violation. The only mitigating circumstances which will be considered, if applicable to the specific situation, include:

(a) The violation is a direct result of a valid personal emergency of the involved person(s). A valid personal emergency is an emergency such as a serious personal illness or death in the immediate family of the involved person(s). Personal emergency does not include a common cold or flu, or a long-term illness where other arrangements could have been made. In this case, independent written verification must be provided;

(b) The violation is the direct result of an error by an elections officer;

(c) The violation is the direct result of fire, flood or other calamitous event, resulting in physical destruction of, or inaccessibility to, any records required to be kept to document compliance with Oregon election law. ("Calamitous event" means a phenomenon of an exceptional character, the effects of which could not have been reasonably prevented or avoided by the exercise of due care or foresight);

(3)(a) Penalty Matrix. These mitigating circumstances may be considered in reducing, in whole or in part, the civil penalty. If the violation is a direct result of an error by an elections officer, the violation is waived and no penalty is assessed.

(b) For purposes of determining penalty amounts for violations of non-campaign finance civil penalty election law violations, Appendix B of this rule will apply. [Appendix not included. See ED. NOTE.]

[ED. NOTE: Appendices referenced are available from the agency.]
Stat. Auth.: ORS 246.150
Stats. Implemented: ORS 260.995
Hist.: ELECT 14-2000, f. 7-31-00, cert. ef. 8-4-00; ELECT 22-2003, f. & cert. ef. 12-5-03; ELECT 16-2005, f. & cert. ef. 12-30-05; ELECT 15-2007, f. cert ef. 12-31-07; ELECT 9-2009, f. & cert. ef. 5-4-09; ELECT 31-2009, f. & cert. ef. 12-31-09; ELECT 6-2012, f. & cert. ef. 1-3-12; ELECT 19-2015, f. 12-31-15, cert. ef. 1-1-16

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Teacher Standards and Practices Commission
Chapter 584

Rule Caption: Updates and suspends rules related to teaching license redesign.
Adm. Order No.: TSPC 14-2015(Temp)
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16 thru 6-28-16
Notice Publication Date:
Rules Adopted: 584-200-0004
Rules Amended: 584-200-0010, 584-200-0050
Rules Suspended: 584-010-0090, 584-018-0110
Subject: Updates fee rule to add legacy license fee, EFT transfers, clarifies reinstatement fees; suspends rule related to program standards for professional teaching license. This rule has been moved to new division 420. Suspends rule for Fast Track provisions.
Rules Coordinator: Victoria Chamberlain—(503) 378-6813

584-200-0004
Transition to Online Application System

(1) Due to the transition and data migration to the online application system, the Teacher Standards and Practices Commission is suspending the acceptance of new applications for licenses, certificates or registrations from January 1, 2016 to January 18, 2016. The new application suspension is necessary to maintain application process integrity and to minimize effect on applicants. Any new application and fee payment received from January 1, 2016 to January 18, 2016 will be returned to the applicant with information of how to apply online on or after January 19, 2016. The agency will continue to process applications that are received prior to December 31, 2015 at 5:00 pm during the January 1, 2016 to January 18, 2016 period.

(2) All applications received prior to December 31, 2015 at 5:00 pm will be processed in accordance with TSPC administrative rules in effect prior to January 1, 2016.

(3) All licenses with expiration dates or grace periods that expire from January 1, 2016 to January 18, 2016 will have their expiration date or grace period administratively extended to March 31, 2016.

(4) The Commission grants authority to the Executive Director or the Director of Licensure to administratively extend, renew or issue a license, certificate or registration from January 1, 2016 to January 18, 2016 if circumstances require the license, registration, or certificate to be issued during this period. It is within the discretion of the Executive Director or the Director of Licensure to determine if the circumstances merit an administratively issued license, registration or certificate.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120–342.430; 342.455–342.495; 342.533
Hist.: TSPC 14-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

584-200-0010
Definitions for Licensure, Certification and Registration

(1) "Application:" A request for an Oregon license authorizing service in public schools or a request for reinstatement or renewal of such license.

(2) "Appropriately Assigned:" Assignments for administrator, teacher, school counselor, school psychologist, school social worker or school nurse duties for which the person involved holds the proper license, certificate or endorsements. (See OAR 584-210-0150 for License for Conditional Assignment.)

(3) "Approved Institution:" A U.S. regionally accredited institution of higher education approved to prepare education-licensed personnel by a U.S. governmental jurisdiction in which the institution is located.

(4) "Approved Programs:" An Oregon program of educator preparation approved by TSPC and offered by a regionally accredited Oregon institution or other legally approved provider. As it applies to out-of-state programs, a program approved by the licensure body of any U.S. governmental jurisdiction or member of the National Association of State Directors of Teacher Education and Certification (NASDTEC) authorized to approve educator preparation programs.

(5) "Completion of Approved Program:" The applicant has met the institution's academic requirements and any additional state or federal requirements and has obtained the institution's recommendation for licensure.

(6) "Endorsement:" The subject matter or specialty education field in which the individual is licensed to teach.

(7) "National Board for Professional Teaching Standards (NBPTS):" A professional board established to award a National Teaching Certificate or National Teacher Leader Certificate to qualified educators.

(8) "Non-Provisional License or Certificate:" Full state certification of licensure issued following completion of a state approved teacher preparation program and valid for full-time teaching assignments.

(a) Non-provisional Oregon teaching licenses include:

(A) Preliminary Teaching License;

(B) Professional Teaching License:

(C) Teacher Leader License;

(D) Reciprocal Teaching License;

(E) Legacy Teaching License; and

(F) Substitute Teaching License.

(b) Non-provisional out-of-state teaching licenses or certificates may include initial state licenses that require additional preparation or other requirements to move to the next-stage license if the initial license is issued following state approved teacher preparation program and is valid for full-time teaching assignments.

(9) Out of State/International Evaluation: Evaluation for the issuance of a license, endorsement or certificate that includes review of one or more of the following:

(a) A license or certificate issued by a NASDTEC jurisdiction;

(b) A license or certificate issued by an international body;

(c) Completion of an educator preparation program for licensure, certification or endorsement that is not Commission-approved to recommend candidates directly for Oregon licensure or endorsement;

(d) Any other out of state or international credential, coursework, or other supporting documentation that is essential for the issuance of an Oregon license or certificate.

(e) The out of state or international evaluation is not related to the domicile of the applicant. The need for an out of state or international evaluation is based on the documentation submitted with an application for licensure, endorsement or certificate.

(10) "Out of State Licenses or Certificates:" Any educator license or certificate issued from:

(a) A National Association of State Directors of Teacher Education and Certification (NASDTEC) jurisdiction;

(b) A U.S. Territory (American Samoa, Commonwealth of Northern Marianas, District of Columbia, Guam, Puerto Rico, and Virgin Islands); or

(c) The U.S. Department of Defense.

(11) "Personal Qualifications:" Personal qualifications for licensure including attainment of at least eighteen years of age and possessing good moral character and mental and physical health necessary for employment as an educator.

(12) "Private Schools:" A privately funded school, preprimary through grade twelve, approved, regionally accredited or registered by another U.S. jurisdiction or government.

Stat. Auth.: ORS 342
Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553
Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 14-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

584-200-0050
Fees

(1) Pursuant to ORS 342.127, the Commission has established fees for the processing of applications.

(2) All fees are non-refundable.

(3) Effective January 19, 2016, all fees must be paid by Electronic Funds Transfer (EFT) through the TSPC online payment process. Electronic Funds Transfer (EFT) is defined as the movement of funds by non-paper means usually through a payment system, including but not limited, an automated clearinghouse or the Federal Reserve's Fedwire system.

(4) Application fees for first licensure, registration or certification are as follows:

(a) American Indian Language Teaching license: $140

(b) Career and technical education licenses: $140

(c) Charter school registrations: $140

(d) Emergency licenses: $140

(e) Exceptional Administrator license: $140

(f) ESEA Alternative Route Teaching license: $140

(g) International Visiting Teacher: $190 (The $190 fee includes the $50 out-of-state evaluation fee.)

(h) Legacy licenses: $140

(i) License for Conditional Assignment: $140

(j) Limited licenses: $140

(k) Preliminary licenses: $140

(l) Professional licenses: $140

(m) Reciprocal licenses: $190 (The $190 fee includes the $50 out-of-state evaluation fee.)

(n) Restricted licenses: $140

(o) School nurse certificates: $140

(p) Substitute licenses: $140

(q) Teacher Leader: $140

(r) Teacher Associate: $140

(5) Out-of-state/international application evaluation fee: $50 (The evaluation fee is in addition to all required application and background clearance fees unless otherwise noted in this rule.)

(6) Renewals, Reissues and Reauthorizations: All renewals, reissues and reauthorizations of licenses, certificates, and registrations: $140 except as follows:

(a) International Visiting Teacher License (Renewal): $50

(b) License for Conditional Assignment (Reauthorization): $50

(c) Career and Technical Education I Teaching License (Renewal): $50

(d) Restricted teaching, administrator, school counselor and school social worker licenses (Reissue): $50

(7) Late Fees: Pursuant to ORS 342.127, the Commission has established the following late fee process:

(a) An applicant will pay $40 per month late fee for each portion of a month following expiration of the license, registration or certificate for a maximum of $200.

(b) Late fees are in addition to all other required fees.

(c) Late fees may only be imposed one time following the expiration of a license or school nurse certificate. If the applicant does not initially qualify for the license or certificate the applicant is seeking to reinstate, no additional late fees will be imposed upon application for subsequent licenses so long as the applicant has a current active license, registration or certification in effect at the time of application.

(8) Reinstatement of licenses, registrations, and certificates:

(a) Expired: $200 (The fee includes the application fee but does not include background clearance fee.)

(b) Suspended: $290 (The fee includes the application fee but does not include background clearance fee.)

(c) Revoked: $340 (The fee includes the application fee but does not include background clearance fee.)

(9) Endorsements and Specializations:

(a) Adding or removing an endorsement outside of licensure renewal application process: $140

(b) Adding a specialization outside of licensure renewal application process: $140

(10) Other Fees:

(a) Background clearance: $57

(b) Expedited service: $149

(c) Gold-seal paper license: $50 [Note: Gold seal paper license are only available for current licenses.]

(d) Extensions to provisional license: $50

(e) Non-Sufficient Funds (NSF): $25

(11) Online Portal Provider Fee: In addition to the Commission-established fees under this subsection, applicants must pay a fee associated with accessing the online application system that is collected by the operators of the online system. This fee is collected and assessed according to agreements with the Commission, Department of Administrative Services and the operators of the online application system.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 - 342.430, 342.455 - 342.495 & 342.553

Hist.: TSPC 13-2015(Temp), f. 11-13-15, cert. ef. 1-1-16 thru 6-28-16; TSPC 14-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

584-010-0090

Program Completion Fast Track — Field Operation Audit

(1) The Commission will provide a program completion fast-track option to units. The fast-track option will grant an expedited license to completers of Commission-approved programs.

(2) The license will be granted so long as it is evident that all requirements of the license have been met.

(3) For participating units, the Commission will schedule biennial field operation audits of the program completion process of each unit.

(a) The review shall audit five (5) percent of the files of program completers at the unit;

(b) A minimum of fifteen (15) files will be reviewed regardless of the number of program completers recommended by a unit for licensure; and

(c) In the event there are less than fifteen (15) files total, all files will be reviewed.

(4) The audit review team will be composed of Commission staff, including at least one (1) licensure evaluator.

(5) The review shall examine files and documents for each Commission-approved program. These files and documents include:

(a) Documentation of degrees identified on the Program Completion Report, including:

(A) Degree level;

(B) Institution granting degree;

(C) Date degree granted; and

(D) Major, if specified;

(b) Coursework completion date;

(c) Evidence of subject-matter mastery. Preferred documentation is passing scores on subject-matter test(s). In the alternative, completion of alternative assessment process, per OAR 584-052-0031;

(d) Evidence of basic skills mastery. Preferred documentation is passing scores on one of Commission-approved basic skills tests;

(e) Evidence of civil rights knowledge. Document is passing score on a Commission-approved test of knowledge of U.S. and Oregon civil rights and professional ethics;

(f) Evidence of fingerprint clearance prior to placement into any practicum experience pursuant to OAR 584-017-0055; and

(g) Basis for recommendation of program completion requirements.

(6) As part of the audit, the review team shall examine the following Commission agency files and documents for randomly chosen audited candidates:

(a) PA1 forms submitted;

(b) Evidence of fingerprint clearance;

(c) Notices of Noncompliance issued to programs;

(d) C1 Educator application forms;

(e) Appropriate test score records;

(f) Fees;

(g) License issued, based on C-2 request and information; and

(h) Any appropriate correspondence based on licensure.

(7) All results of these audits shall be reported to the Commission by Commission staff at the next regularly scheduled meeting following the unit's audit.

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120—342.430; 342.455-342.495 & 342.553

Hist.: TSPC 9-2006, f. & cert. ef. 6-15-06; TSPC 2-2008, f. & cert. ef. 4-15-08; TSPC 10-2010, f. 12-30-10, cert. ef. 1-1-11; TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15; Suspended by TSPC 14-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

584-018-0110

Knowledge, Skills, Abilities and Professional Dispositions for Continuing Teaching Licensure

The unit assures that candidates for a Professional Teaching License have sufficient evidence to show a higher level of performances, essential knowledge and critical dispositions in each of the following ten (10) teaching standards than is expected to achieve the Initial I Teaching License found in OAR 584-018-0100.

(1) The Learner and Learning:

(a) Learner Development: The teacher understands how children learns grow and develop, recognizing that patterns of learning and development vary individually within and across the cognitive, linguistic, social, emotional, and physical areas, and designs and implements developmentally appropriate and challenging learning experiences. [InTASC Standard #1]

(b) Learning Differences: The teacher uses understanding of individual differences and diverse cultures and communities to ensure inclusive learning environments that enable each learner to meet high standards. [InTASC Standard #2]

(c) Learning Environments: The teacher works with others to create environments that support individual and collaborative learning, and that encourage positive social interaction, active engagement in learning, and self-motivation. [InTASC Standard #3]

(2) Content:

(a) Content Knowledge: The teacher understands the central concepts, tools of inquiry, and structures of the discipline(s) he or she teaches and creates learning experiences that make these aspects of the discipline accessible and meaningful for learners to assure mastery of the content. [InTASC Standard #4]

(b) Application of Content: The teacher understands how to connect concepts and use differing perspectives to engage learners in critical thinking, creativity, and collaborative problem solving related to authentic local and global issues. [InTASC Standard #5]

(3) Instructional Practice:

(a) Assessment: The teacher understands and uses multiple methods of assessment to engage learners in their own growth, to monitor learner progress, and to guide the teacher's and learner's decision making. [InTASC Standard #6]

(b) Planning for Instruction: The teacher plans instruction that supports every student in meeting rigorous learning goals by drawing upon knowledge of content areas, curriculum, cross-disciplinary skills and pedagogy, as well as learners and the community context. [InTASC Standard #7]

(c) Instructional Strategies: The teacher understands and uses a variety of instructional strategies to encourage learners to develop deep understanding of content areas and their connections, and to build skills to apply knowledge in meaningful ways. [InTASC Standard #8]

(4) Professional Responsibility:

(a) Professional Learning and Ethical Practice: The teacher engages in ongoing professional learning and uses evidence to continually evaluate his or her practice, particularly the effects of his/her choices and actions on others (learners, families, other professionals, and the community), and adapts practice to meet the needs of each learner. [InTASC Standard #9]

(b) Leadership and Collaboration: The teacher demonstrates leadership by taking responsibility for student learning and by collaborating with learners, families, colleagues, other school professionals, and community members to ensure learner growth and development, learning, and well-being. [InTASC Standard #10]

Stat. Auth.: ORS 342

Stats. Implemented: ORS 342.120 – 342.430; 342.455-342.495; 342.553

Hist.: TSPC 3-2012, f. & cert. ef. 3-9-12; TSPC 1-2015, f. & cert. ef. 2-10-15; Suspended by TSPC 14-2015(Temp), f. 12-18-15, cert. ef. 1-1-16 thru 6-28-16

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Water Resources Department
Chapter 690

Rule Caption: Amendments to Division 51 of Oregon Administrative Rules Chapter 690 related to Hydroelectric Projects
Adm. Order No.: WRD 8-2015
Filed with Sec. of State: 12-18-2015
Certified to be Effective: 1-1-16
Notice Publication Date: 7-1-2015
Rules Amended: 690-051-0000, 690-051-0010, 690-051-0020, 690-051-0030, 690-051-0050, 690-051-0060, 690-051-0090, 690-051-

0095, 690-051-0130, 690-051-0140, 690-051-0150, 690-051-0160, 690-051-0170, 690-051-0180, 690-051-0190, 690-051-0200, 690-051-0210, 690-051-0220, 690-051-0230, 690-051-0240, 690-051-0250, 690-051-0280, 690-051-0290, 690-051-0320, 690-051-0350, 690-051-0380, 690-051-0400
Rules Repealed: 690-051-0270, 690-051-0310, 690-051-0330, 690-051-0340, 690-051-0360, 690-051-0370
Subject: The rules are being amended for 5 purposes:

Sections of the Rule that require burdensome financial accounting for utilities or other developers are being repealed in keeping with the repeal of certain related statutes. Other references in the rule to statutes or rules that have been repealed are being updated or eliminated.

To define the process for adjusting fees for annual inflation in keeping with the recommendations of a fee advisory review panel appointed under ORS 543.085.

To provide specific examples of how to meet the natural resources standards.

To streamline the process for issuing proposed final orders and to eliminate the requirement for a contested case hearing if no protest is filed.

To allow the Director to handle exceptions to a proposed order after a contested case hearing and to issue a final order.
Rules Coordinator: Diana Enright—(503) 986-0874

690-051-0000
Purpose

These rules establish definitions, information requirements, filing procedures, hearing requirements, fees, and standards for hydroelectric development. The Water Resources Commission and the Director shall use these rules to process applications for permits to appropriate water for hydroelectric projects, Preliminary Permits and hydroelectric licenses under ORS Chapters 537 and 543.

Stat. Auth.: ORS 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0010
Definitions

Terms used in ORS 537.170, 543.015, 543.017, 543.220, 543.225, 543.255, and in these rules are given the following meanings:

(1) "Affected Local Government" means any local government, as defined in OAR 690 005 0015, within whose jurisdiction the use of water for hydroelectric purposes, or the construction of all or part of proposed or existing project facilities would be located.

(2) "Anadromous Salmon and Steelhead" means an individual fish, or a run, stock, or population of any species of salmon or any steelhead trout that:

(a) Is naturally or hatchery spawned in freshwater;

(b) Spends a portion of its life in the ocean; and

(c) Returns to fresh water to spawn.

(3) "Approved Project" means a Permit application filed under ORS Chapter 537 for hydroelectric power use or a Preliminary Permit or License application filed under ORS Chapter 543 which has been approved by the Water Resources Commission or Director.

(4) "Available Water" means water not subject to statutory limits on use and which would not interfere with amounts needed for existing water right permits, certificates, or decrees including minimum perennial streamflows, and instream water rights as established under ORS 537.332 through 537.360 and OAR 690-077. Available water shall be based on stream gage records or, if stream gage records are not available, flow estimates using generally accepted methods of hydrologic analysis. At the location where water from a hydroelectric project would be returned to the stream and is available for other instream or consumptive uses downstream, it is not considered to be contributing to over-appropriation of any downstream water availability sub-basin.

(5) "Commission" means Water Resources Commission.

(6) "Compensate" means to recover, replace, or substitute for loss from unavoidable or unforeseen adverse impacts of an action.

(7) "Cumulative Impact" means the collective effect resulting from incremental actions of past, present, or pending projects, developments or facilities.

(8) "Director" means the Water Resources Director or staff authorized by the Director to administer these rules.

(9) "Enhance" means to improve natural resource conditions over pre project levels.

(10) "Existing Facility" means any permanent physical structure for the diversion, conveyance, control, or use of water, whether or not in current use.

(11) "Governmental Entity" means any federal or state agency and local government as defined in ORS 294.004, irrigation district formed under ORS Chapter 545 and a water control district formed under ORS Chapter 553.

(12) "Agency Representatives" means any representatives of the following state agencies and other agencies as necessary that may be consulted by the Water Resources Department on the particular natural resources for which each is responsible:

(a) Department of Agriculture;

(b) Water Resources Department;

(c) Department of Environmental Quality;

(d) Department of Energy;

(e) Department of Fish and Wildlife;

(f) Department of Forestry;

(g) Department of State Lands;

(h) Parks and Recreation Department;

(i) Department of Land Conservation and Development.

(13) "Improve" means to enhance.

(14) "License" means a hydroelectric license containing a time-limited water right issued to non-municipal applicants as provided in ORS 543.210 543.320.

(15) "Major Hydroelectric Project" means any hydroelectric project greater than 100 theoretical horsepower.

(16) "Minor Hydroelectric Project" means any hydroelectric project less than or equal to 100 theoretical horsepower.

(17) "Maximum Economic Development" means achievement of the greatest net practical economic gain to the people of the state.

(18) "Minimum Perennial Streamflow", also minimum streamflow, means the minimum flow in a stream designated by an administrative rule adopted in a basin program by the Water Resources Commission or its predecessors to implement ORS 536.235, 536.300(2), and 536.310(7) to support aquatic life, to minimize pollution and to maintain recreation values.

(19) "Mitigation" means taking action or measures that avoid, minimize, rectify, reduce or compensate for impact.

(20) "Modify" means to alter the appearance, character, structure, function or operation of an existing facility.

(21) "Net Loss" means that the magnitude, quality or type of natural resource lost, exceeds the magnitude, quality or type of natural resource provided by mitigation, restoration or enhancement.

(22) "Permit" means a Permit to appropriate water for hydroelectric development issued to municipal corporations as provided in ORS Chapter 537.

(23) "Preliminary Permit" means a Preliminary Permit issued to non-municipal hydroelectric applicants as provided in ORS 543.210 543.320.

(24) "Project" means any hydroelectric power project as defined in ORS 543.010.

(25) "Project Facilities" means all parts of the project necessary for or related to power generation. Project facilities shall include dams, diversion structures, reservoirs, forebays, conveyance structures, penstocks, turbines, tailraces, navigation locks, fish ladders, fish screens, recreation facilities, tunnels, transmission lines, substations, buildings, structures and other such works necessary or related to the project.

(26) "Project Vicinity" means:

(a) All lands and waters required for project facilities; and

(b) All lands and waters which project construction or operation could reasonably be expected to affect.

(27) "Proposed Project" means a project for which an application has been received but not acted on by the Commission or Director.

(28) "Protected Area" means an area where the Northwest Power and Conservation Council believes hydroelectric development would have unacceptable risks of loss to fish and wildlife species of concern, their productive capacity or their habitat as designated in the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted on August 10, 1988, and subsequently amended (September 14, 1988 and August 8, 1990, August 13, 1992) pursuant to P.L. 96-501.

(29) "Public Facilities" means private and public lands and structures that provide for transportation, power, communication, water supply, waste treatment, drainage, flood control, recreation and community services to meet public needs for health, safety and welfare.

(30) "Public Utility" means a utility regulated by the Public Utility Commission, under ORS Chapter 757, that provides electric power to consumers.

(31) "Restoration" means to return the condition of a natural resource to its pre project state.

(32) "River Basin" means:

(a) A subbasin designated by the Commission; or

(b) A major river drainage not otherwise divided by the Commission.

(33) "Significant" means having importance in terms of the context and intensity of an action and its result.

(34) "Study Plan" means a document prepared by or on the behalf of the applicant which provides detailed descriptions of proposed methods for evaluating project impacts and effectiveness of potential mitigation measures.

(35) "THP" means theoretical horsepower, computed by multiplying the flow in cubic feet per second by the amount of fall in feet and dividing the product by 8.8.

(36) "Wasteful, Uneconomic, Impracticable or Unreasonable" as used in ORS 537.170 and 543.225 shall have the following meanings:

(a) A use of water in greater quantities or at greater rates than necessary to achieve proposed project purposes;

(b) A use of water for which quantifiable public and private economic costs exceed quantifiable public and private economic benefits over the life of the project as demonstrated in the record;

(c) A use of water which could not reasonably be developed with the available means or methods;

(d) A use of water which would preclude present beneficial uses or other uses with a reasonable expectation of being developed during the proposed life of the project, which have a greater value to the public.

(37) "Water Dependent Recreational Opportunity" means a recreational opportunity that can occur only on or in water, such as swimming, boating, water skiing, and fishing.

(38) "Water Dependent Recreational Opportunity of Statewide Significance" means a recreation opportunity that, combined with natural qualities of the water resource involved, has exceptional value. Factors that may contribute to statewide significance include special designation, high demand, uniqueness, outstanding or unusual natural surroundings, irreplaceable qualities or relatively limited availability. Recreation opportunities readily available on other waters shall not be considered of statewide significance.

(39) "Wild Game Fish" means any fish, run, stock or population of fish belonging to a family of fish listed in ORS 496.009 and which is sustained through natural reproduction.

Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0020
Projects to be Considered by the Commission

(1) The Commission or Director where designated by these rules or separate order, shall consider projects for which applications for Permits to appropriate water for hydroelectric purposes under ORS 537.140 and applications for Preliminary Permits or Licenses under ORS 543.010 to 543.620 have been filed.

(2) Projects shall be further classified as minor and major projects. For the purpose of these rules, a minor project shall be any project proposing to develop 100 THP or less. All other shall be major projects.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0030
Restriction on Filing

(1) Whenever a proposed project is located within one of the following designated resource areas, the Department shall provide notice of the application to the managing agency:

(a) National parks;

(b) National monuments;

(c) Wilderness areas established by federal law;

(d) Bureau of Land Management areas of critical environmental concern established under federal law;

(e) Wild and scenic rivers established by federal law;

(f) Estuarine sanctuaries established under Public Law 92-583;

(g) Federal research natural areas established under federal regulation;

(h) State parks and waysides;

(i) Scenic waterways designated under ORS Chapter 390;

(j) State wildlife refuges; or

(k) State dedicated natural heritage areas established under ORS Chapter 273.

Stat. Auth.: ORS 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0050
Applications: Filing Procedure

(1) All applications to use water for hydroelectric purposes shall be filed with the Director at Salem, Oregon. Applications shall be typed so that the paragraphs and headings correspond with the information required. All applications shall be accompanied by the documents specified in OAR 690-051-0070, or 690-051-0100, and shall be dated and designated as "**Exhibit A**", "**Exhibit B**", etc.

(2) If the information required by these rules does not apply to the proposed project, it shall be noted on the application with a brief statement why the information does not apply.

(3) Information required to file an application is listed in the rules reference in section (1) of this rule. At any time, the Director may require additional information from the applicant.

(4) Applications on which no hearing has been held, shall meet all the requirements in these rules.

(5) Any municipal corporation of this state or utility district organized under section 12, Article XI, Oregon Constitution who has applied to the Federal Energy Regulatory Commission (FERC) for a preliminary permit, an exemption from licensing, or a notice of intent to construct a qualifying conduit hydropower facility shall, at the same time, apply to the Water Resources Department for:

(a) A permit under ORS 537.140 to appropriate water for a hydroelectric project, or

(b) For a certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right under ORS 543.765.

(6) Any person other than in (5) above who has applied to the FERC for a preliminary permit, a license, an exemption from licensing, or a notice of intent to construct a qualifying conduit hydropower facility shall, at the same time apply to the Water Resources Department for:

(a) A state preliminary permit under ORS 543.210,

(b) A license under ORS 543.260, or

(c) A certificate to use water for hydroelectric purposes within an artificial delivery system under the applicant's existing water right under ORS 543.765.

(7) An applicant for a new hydroelectric project shall submit to the Department a complete copy of any application filed with FERC or similar application to another federal agency responsible for authorizing the project.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0060
Consultation

All applicants shall consult with appropriate government entities. Consultation shall occur before an application for a License or Permit is filed. The first consultation may occur with the agency representatives after the Preliminary Permit application has been accepted. Evidence of the consultation shall be filed with the License or Permit application. At a minimum, applicants shall consult with the Water Resources Department and affected local governments and the agencies under each heading listed below:

(1) Fish and Wildlife Resources:

(a) Oregon Department of Fish and Wildlife (ODFW);

(b) U.S. Fish and Wildlife Service (USF&WS);

(c) National Marine Fisheries Service (NMFS);

(d) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian services; and

(e) Northwest Power and Conservation Council (NPCC), if the proposed project is within a Protected Area designated by the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted August 10, 1988, as subsequently amended (September 14, 1988 and August 8, 1990, August 13, 1992).

(2) Water Quality: Oregon Department of Environmental Quality (DEQ).

(3) Historic, Cultural and Archaeological Resources:
(a) State Historic Preservation Officer (SHPO); and
(b) Appropriate Indian tribe(s) identified by the Legislative Commission on Indian Services.
(4) Forestlands:
(a) U.S. Forest Service;
(b) U.S. Bureau of Land Management; and
(c) Oregon Department of Forestry.
(5) Wetlands:
(a) Oregon Department of State Lands (DSL);
(b) Oregon Parks and Recreation Department (OPRD); and
(c) U.S. Army Corps of Engineers.
(6) Scenic — Aesthetic Resources,
(a) Planning department of each affected local government;
(b) DEQ (re: noise standards);
(c) Federal managing agency, if public land or a national Wild and Scenic River; and
(d) Oregon Parks and Recreation Department.
(7) Recreation Resources:
(a) Oregon Parks and Recreation Department;
(b) Federal managing agency, if public land or a national Wild and Scenic River; and
(c) Planning department of each affected local government.
(8) Land Use and Access:
(a) Planning department of each affected local government;
(b) Appropriate state land management agencies;
(c) Federal managing agency, if public land; and
(d) Landowner(s), if private land.
(9) Threatened and Endangered Species:
(a) ODFW;
(b) USF&WS; and
(c) NMFS.
(10) Natural Areas: OPRD.
Stat. Auth.: ORS 197, 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 12-1990, f. & cert. ef. 8-8-90; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0090
Applications for Minor Projects: Contents, Scope of Evaluation and Application of Standards

(1) An application shall be filed for each minor License or Permit. An application must contain the information in OAR 690-051-0070. No application shall be filed for a project in a designated resource area described in OAR 690 051 0030 without the consent of the managing agency.

(2) The Department shall receive the application together with the filing fee and date stamp the application which will thereafter serve as the priority date of the application. If the application is for an area withdrawn from hydroelectric development by the Commission the application and filing fee may be returned.

(3) The Department may schedule a site visit to the proposed project with other agency representatives. A public hearing shall be held only if the Director deems it in the public interest to do so. The hearing may be limited to specific issues. Notice of the hearing shall meet the requirements specified in OAR 690-051-0130(3). Upon acceptance of a minor hydroelectric application, the following review process shall apply:

(a) Upon filing of a minor hydroelectric application, the Director shall notify the following groups and individuals of the information described in subsection (b) of this section:

(A) Affected local, state and federal agencies, including the planning departments of affected local governments with a request that a copy of said notice be posted in a conspicuous location in the county courthouse;

(B) Property owners within 300 feet of the proposed powerhouse;

(C) Affected Indian tribes; and

(D) All persons on the Department's weekly notice list.

(b) The notice shall include but is not limited to the following information:

(A) Application file number;

(B) Applicant name and address;

(C) Amount of proposed water use;

(D) Common name of water source;

(E) Location of the proposed point of diversion and point of power generation;

(F) Purpose for which the power would be used;

(G) Total amount of power to be developed;

(H) If a pond or reservoir is part of the project, how much water will be impounded.

(c) A 30 day comment period shall commence on the day the Department sends the notice. The notice shall state the date comments must be received by the Department;

(d) Following the comment period, the Department shall prepare a proposed final order with findings to address whether the proposed project together with any recommended measures to protect, mitigate, or enhance the natural resources of the State is consistent with the minimum standards in ORS 543.017 and the requirements in OAR 690 051 0160 through 690 051 0270 and whether the project would impair or be detrimental to the public interest as provided in ORS 543.225. The proposed final order shall include the action proposed to be taken on the minor hydroelectric application;

(e) The proposed final order shall be distributed to the applicant and all individuals, including all governmental agencies, who have filed timely comments with the Department. The report shall state the date by which protests must be received by the Director (60 days from the date it was distributed);

(f) Comments or protests must state facts which support the allegation that the proposed minor hydroelectric use should not be acted upon as proposed by the proposed final order. Upon receiving a protest, the Director shall:

(A) Transmit copies of any protest timely filed to the applicant and all commentors;

(B) Evaluate the protest to determine whether significant issues are raised and if so shall refer the application, with accompanying protest, to the Office of Administrative Hearings (OAH) established under ORS 183.605 to 183.685 for a contested case hearing. If the Director determines the protests do not raise significant issues, the Director shall issue a final order. A final order issued pursuant to this section is a final order in other than a contested case subject to judicial review under ORS 183.484.

(4) If the application is referred for a contested case hearing, a proposed order shall be issued by the Administrative Law Judge (ALJ) after the hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 days of the order. If no exceptions are filed to the ALJ's proposed order within 30 days, the Director shall issue a final order consistent with subsection (6) below.

(5) If exceptions are filed to the ALJ's proposed order, the Director shall review/hear argument (written or oral, at his/her discretion) and make the final determination for the final order.

(6) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would not comply with the standards of ORS 543.017 and the requirements of OAR 690-051-0160 through 690-051-0290 or would otherwise impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order rejecting the application or modifying the proposed order to comply with ORS 543.017 and the public interest. If, after the contested case hearing the Director determines that the proposed use would comply with the standards of ORS 543.017 and would not impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order approving the application or otherwise modifying the proposed order.

(7) A final order may set forth any of the provisions or restrictions to be included in the permit or minor License concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(8) If the project is approved a Permit or minor License shall then be issued after any balance due on the application filing fee has been paid.
Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0095
Applications for Major Projects: Scope of Evaluation and Application of Standards

This rule establishes the process the applicant, the Department and those participating in the process must follow and defines the stages of application review and processing as required by ORS 543.280(4). The fee for each stage must be paid at the beginning of each stage of project review. If an applicant submits an application in any stage other than stage one, the total fees due up to an including that stage will be due upon submittal.

Municipal corporations and utility districts follow the consultation requirements described however, no Preliminary Permit is required.

(1) Stage One 20 Percent of Fee: Preliminary Permit and Consultation:

(a) The Department shall receive the application together with the filing fee and date stamp the application which will thereafter serve as the priority date of the application (if the application is for an area withdrawn from hydroelectric development by the Commission the application and filing fee will be returned):

(A) The application shall be returned for correction or completion if defective. Additional information may be requested;

(B) Upon receipt of an application that is complete and not defective, notice of the application shall be printed in the Department weekly notice.

(b) The Department shall distribute copies of the application to the other agency representatives. The Department shall set a meeting date with the applicant to appear before the other agency representatives to give a presentation of the project;

(c) The applicant shall prepare a draft study plan for the project and distribute it to the appropriate agencies listed in OAR 690 051 0060 as applicable. For each of the resources that may be impacted, the written study plan should include the following major study elements and phases:

(A) Objectives;

(B) Resource background;

(C) Rationale or justification for proposed approach;

(D) Study area;

(E) Methodology;

(F) Sampling location and number, frequency and timing of sampling;

(G) Data treatment and analysis;

(H) Report preparation;

(I) Schedule; and

(J) Review of draft and final technical reports by resource agencies.

(d) The Department shall schedule a site visit and a public hearing for the purpose of providing information and receiving public questions and comment on the proposed project. Notice of the public hearing shall conform to OAR 690-051-0130;

(e) The Department shall establish a comment period during which the other affected agencies or the public shall review and comment on the draft study plan supplied by the applicant;

(f) The Director shall issue an order to modify, approve or reject the Preliminary Permit application based upon the standard set out at OAR 690-051-0080;

(g) The Preliminary Permit is denied or issued by the Director.

(2) Stage Two 30 Percent of Fee: Study and Draft Application:

(a) The applicant shall modify the study plan based upon the requirements imposed by the Preliminary Permit and submit it to the agencies and the Director for review. Notice of submittal shall appear in the Department weekly notice;

(b) An agency, tribe or the public may file a request with the Director for additional specific studies within 30 days of receipt of the final study plan;

(c) The applicant must file a response to a study request within 30 days of receiving notice from the Director of the request;

(d) The Director shall inform all participants of requests and responses to study requests that are received.

(e) The applicant shall conduct the studies in coordination with state and federal agencies;

(f) The applicant shall prepare a draft License or Permit application which it submits to the state and federal agencies and Indian tribes and makes available for public review. Notice of the opportunity to review the draft application shall be posted in the Department's weekly public notice;

(g) Comments on the studies and draft License or Permit application shall be submitted within a time specified by the Director who shall forward all responses to the other agency representatives and the applicant.

(3) Stage Three 30 Percent of Fee: Final Application, Cumulative Impact and Public Interest Reviews, Determinations and Hearings Process:

(a) The applicant shall file the Final License or Permit application with the Water Resources Department. Permit applications filed by municipal corporations or utility districts under ORS 537.140 for hydroelectric purposes and final license applications that are not following a preliminary permit application are also subject to the requirements of a public site visit and public hearing as in OAR 690-051-0095(1)(d). The Department shall distribute the application to the appropriate consultation agencies. The Department shall send notice of the application and of the filing to the local planning authority, affected property owners and public interest groups on record at the Water Resources Department as requesting such notices. The application shall be made available to the public by the project applicant and the Department;

(b) An agency, Indian tribe or member of the public who requests additional information shall notify the Director within 60 days after the application is so filed;

(c) The applicant shall file a response to additional information request(s) within 30 days of receiving notice from the Director of the request;

(d) The Director shall either accept or reject the applicant's position on additional studies and notify the affected parties accordingly;

(e) Once the application issues are resolved, a "ready for final review" notice shall be sent to agencies and interested parties by the Director (comments must be submitted within 60 days of the final review notice);

(f) The Director shall prepare a proposed final order that determines whether the proposed Project together with the recommended measures to protect, mitigate or enhance the natural resources of the State is consistent with the minimum standards of ORS 543.017, and the requirements of OAR 690-051-0160 through 690-051-0290 and whether the Project would impair or be detrimental to the public interest as provided in ORS 543.225. The proposed final order shall also provide findings on whether the proposed project may contribute to cumulative impacts with other existing, proposed or approved hydroelectric projects in the same river basin and whether consolidated review is required under ORS 543.255 and OAR 690-051-0290.

(g) The proposed final order shall be distributed to state and federal agencies, Indian tribes, owners of other proposed, approved or existing hydroelectric projects in the same river basin and other participants. Notice of the proposed final order shall be published in the Department's weekly public notice.

(h) If the Director determines that consolidated review is required, the Department shall refer the matter to the OAH to conduct a contested case hearing only after the period to file protests has passed in order to allow for all issues regarding the proposed project to be addressed in one contested case hearing. Such hearing may be consolidated or bifurcated as the Department directs.

(i) If one or more protests are filed within 30 days after issuance of a proposed final order the Department shall refer the matter to the OAH for a contested case hearing as provided in ORS 543.230(2) and/or 543.255(3). All issues regarding the proposed project may be addressed in one hearing. The hearing may be consolidated or bifurcated as the Department directs. If no protest is filed the Director shall issue a final order consistent with subsection (l) below.

(j) A proposed order shall be issued by the ALJ after a contested case hearing. Any party to the contested case hearing may file exceptions to the ALJ's proposed order. Exceptions must be filed with the Department within 30 days of the order. If no exceptions are filed to the ALJ's proposed order within 30 days, the Director shall issue a final order consistent with subsection (l) below.

(k) If exceptions are filed to the ALJ's proposed order, the Director shall review/hear argument (written or oral, at his/her discretion) and make the final determination for the final order.

(l) If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use does not comply with the minimum standards of ORS 543.017 and the requirements of OAR 690-051-0160 through 690-051-0290 or would otherwise impair or be detrimental to the public interest as provided in ORS 543.225, the Director shall issue a final order rejecting the application or modifying the proposed final order to comply with ORS 543.017 and the public interest. If, after the contested case hearing or, if a hearing is not held, after the close of the period allowed to file a protest, the Director determines that the proposed use would comply with the standards of ORS 543.017 and would not impair or be detrimental to the public interest of ORS 543.225, the Director shall issue a final order approving the application or otherwise modifying the proposed final order. A final order may set forth any of the provisions or restrictions to be included in the permit or final License concerning the use, control and management of the water to be appropriated for the project, including, but not limited to, a specification of reservoir operation and minimum releases to protect the public interest.

(m) If the project is approved a Permit or final License shall then be issued per OAR 690-051-0095(4).

(4) Stage Four 20 Percent of Fee: Final Plan Review and Inspection:

(a) The License or Permit shall be issued or denied with conditions that the Director deems necessary;

(b) The applicant shall submit construction specifications to the Director:

(A) The Director shall distribute the plans and specification to appropriate agencies and collate issues to be addressed by the applicant;

(B) The plans shall be approved by the Director or modified by the applicant and approved or denied.

(c) The applicant shall submit a construction schedule to the Director and construction bond documentation;

(d) The Director shall issue a Notice to Proceed;

(e) The applicant shall notify the Director of the beginning of construction;

(f) The Director shall conduct a final inspection of the constructed Project. For permits issued for applications filed under ORS 537.140 a water right certificate may be acquired according to ORS 537.250.

Stat. Auth.: ORS 536.025 & 536.027
Stats. Implemented:
Hist.: WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0130
Hearings Requirements for Preliminary Permits, Licenses and Permits; Notice of Hearings

(1) A public hearing shall be held on each application for a Preliminary Permit or as required under 690-051-0095(3)(a). The public hearing shall be held in a community near the proposed project with notice provided pursuant to section (2) of this rule.

(2) Notice of hearing shall be given to:

(a) The applicant;

(b) Interested parties;

(c) Property owners within the project vicinity;

(d) The affected tribe(s) as identified by the Legislative Commission on Indian Services;

(e) The governing body(ies) of any affected county(ies) or city(ies); and

(f) The planning department(s) of the affected county(ies) or city(ies) as provided by ORS Chapters 183, 537 and 543.

(3) The Director, through press releases or additional notices, also shall endeavor to provide general notice to individuals or organizations who have expressed an interest in the outcome of the proceedings.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; ; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0140
Time and Place of Hearings

The conduct of contested hearings shall be as provided in OAR 137-003-0501 through -0700. The contested case hearing may be heard at the Director's office in Salem.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0150
Filing of Protest and Remonstrances

(1) All protest and requests for standing must be filed with the Director within the time specified in the notice. To become a party to a contested case hearing the fees required under ORS 536.050(1) (j), (n), and/or (o) as appropriate must also be submitted by the notice date.

(2) Any person may submit a protest against a proposed final order. A protest shall be in writing and shall include:

(a) The name, address and telephone number of the protestant;

(b) A description of the protestant's interest in the proposed final order and, if the protestant claims to represent the public interest, a precise statement of the public interest represented;

(c) A detailed description of how the action proposed in the proposed final order would impair or be detrimental to the protestant's interest;

(d) A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;

(e) Any citation of legal authority supporting the protest, if known; and

(f) For persons other than the applicant, the protest fee required under ORS 536.050.

(3) Any person who supports the proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. The request for standing must be in writing, signed by the requester, and include the following:

(a) The requester's name, mailing address and telephone number;

(b) If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

(c) A statement that the requester supports the proposed final order as issued;

(d) A detailed statement of how the requester would be harmed if the proposed final order is modified; and

(e) The fee established under ORS 536.050.

(4) Any person who has filed a timely request for standing may later file a petition for party status in any contested case hearing subsequently held on the matter for which standing was requested, in the manner described in OAR 137-003-0535.

(5) Each person submitting a protest or a request for standing shall raise all reasonably ascertainable issues and submit all reasonably available arguments supporting the person's position by the close of the protest period.

(6) The Department shall send a copy of all protests and requests for standing received to the applicant, the protestant(s), if any, and to each person who requested standing.

Stat. Auth.: ORS 536.027, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86 WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0160
Standards for Evaluation

The standards in OAR 690-051-0170 to 690-051-0290 implement the provisions of ORS 537.160, 537.170, 543.017, 543.225 and 543.255 for the review of all hydroelectric applications. To be approved, a project must comply with the minimum standards in ORS 543.017 and the requirements of OAR 690-051-0170 to 690- 051-0290, and must not impair or be detrimental to the public interest as provided in ORS 543.225.

Stat. Auth.: ORS 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0170
Protection of Designated Resource Areas and Special Management Areas

(1) The Director shall consult with the managing agency for any proposed projects having effects on a designated resource area listed in OAR 690-051-0030(1) or a special management area listed in section (2) of this rule to determine conditions that may be required to ensure the proposed use is consistent with the authorized use of the area.

(2) Section (1) of this rule applies to the following special management areas:

(a) National wildlife refuges;

(b) National recreation areas;

(c) State wildlife management areas;

(d) State forests;

(e) County parks;

(f) City parks;

(g) Special district parks;

(h) Sites listed in or determined eligible for inclusion on the National Register of Historic Places;

(i) Areas managed by federal agencies for study, inclusion or designation as a special management area under federal law or regulation; and

(j) Areas under study by state agencies for inclusion in or designation as a special management area under state statute or regulation.

(k) Protected areas designated by the Columbia River Basin Fish and Wildlife Program (2014); including Protected Areas adopted on August 10, 1988, and subsequently amended (September 14, 1988 and August 8, 1990, August 13, 1992).

(3) All applications for projects in or affecting the Columbia Gorge shall be consistent with the policy in the Columbia River Gorge National Scenic Area. P.L. 99-663.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0180
Mitigation, No Net Loss

(1) The following standards on mitigation and no net loss are minimums. They apply to all natural resources in the project vicinity. Resource specific rules may impose stricter standards. In order to approve an application, the Director must determine the natural resources of the state will be

maintained or enhanced. In making such a determination, the following standards must be applied:

(a) No activity may be approved that may result in the net loss of natural resources. In determining whether a proposed activity may result in a net loss of natural resources, the department may consider mitigation.

(b) Proposed mitigation must be in the project vicinity and determined as acceptable to the Director or Commission;

(c) All mitigation measures which reasonably can, shall be fully functional when the project begins operation; and

(d) The Collective benefits of all mitigation measures must equal or exceed the collective adverse impacts on natural resources so there is no net loss of natural resources.

(2) In applying the standards in section (1) of this rule, the Commission or Director shall:

(a) Consult with federal, state, and local resource agencies, and the appropriate affected tribe(s); and

(b) Prefer mitigation that benefits the natural resource(s) affected, over mitigation that benefits some other natural resource(s). If mitigation that benefits the affected natural resource(s) is unacceptable or not possible, mitigation that benefits some other natural resource(s) may be considered.

(3) The standards in section (1) of this rule shall apply to the following natural resources: water quality; wildlife; scenic and aesthetic resources; historic, cultural, and archaeologic; agricultural lands; forest resources; wetlands; plant life; fish life; recreation; soils; and natural communities and geologic features.

(4) At the Director's discretion, the standards in section (1) of this rule may apply to natural resource(s) not identified in section (3) of this rule that an applicant or interested party can demonstrate to be a natural resource of value to the public. Anyone making a showing of value for a natural resource not listed in section (3) of this rule shall also propose, for consideration, a standard for the protection of the natural resource. If agreed by the Director and upon acceptable showing of public value, an applicant may propose enhancement or other mitigation of an unlisted natural resource to offset impacts on natural resources listed in section (3) of this rule.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0190
Water Resources

The Director and Commission shall determine whether the proposed project would impair or be detrimental to the public interest so far as the coordinated, integrated state water resources policy is concerned. In order to approve an application, the Director shall have due regard for:

(1) The amount of waters available for appropriation for beneficial use.

(2) Whether the proposed use will preclude or interfere with any existing rights or permits for the use of water.

(3) Whether the proposed use is consistent with the applicable State Water Resources Policies in OAR chapter 690, divisions 400, 410 and the Basin Program in OAR chapter 690, divisions 500 through 520 or, in the absence of a policy, the proposed use is consistent with the policies set forth in ORS 536.300 through 536.350.

(4) Whether the project is consistent with achieving maximum economic development of the waters involved.

(5) Whether the project is consistent with making the fullest practical use of the stream's hydroelectric potential in the project vicinity.

(6) Whether the project will constitute wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

(7) Whether the project, including mitigation and enhancement measures, is consistent with conserving the highest use of the waters of the state for all beneficial purposes.

(8) Whether the project is consistent with controlling the waters of the state for all beneficial purposes, including, drainage, sanitation and flood control.

(9) Whether construction and operation of the proposed project complies with water quality standards established in OAR chapter 340, division 41. Exceptions to this standard may be allowed if permitted by Division 41 rules, and granted by the DEQ.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0200
Fish Resources

(1) Per ORS 543.017, anadromous salmon and steelhead resources and habitats shall be preserved. It is the policy of the State to protect the natural resources of the state from possible adverse impacts of a project (ORS 543.015). In order to approve an application, the Director or Commission may require that applicants implement, operate and maintain measures to mitigate for possible adverse impacts specific to a Project. The Department shall consider the need for the following mitigation measures to protect fish habitats and/or fish resources including but not limited to:

(a) Providing for fish passage around diversion structures, dams or reservoirs with appropriate bypass flows, ladders and/or other measures as may be required by ODFW under ORS 509.580 to 509.585;

(b) Screening of intakes to prevent juvenile entrainment through turbines as may be required by ODFW under ORS 498.301 to 498.321;

(c) Preventing false attraction water from guiding fish into turbines at the tailrace;

(d) Controlling ramping rates to prevent stranding of fish;

(e) Avoiding delay of upstream or downstream migration;

(f) Managing wood and gravel through the project to maintain or enhance habitat conditions; and/or other impacts.

(2) Evidence of a fish screening agreement or waiver with ODFW; a fish passage waiver, exemption or agreement with the ODFW or the Oregon Fish and Wildlife Commission; and/or an agreement to implement final terms and conditions recommended by ODFW to the FERC under Section 10(j) or 30(c) of the Federal Power Act shall satisfy these standards, as applicable.

(3) All projects which divert water away from a portion of a stream, excepting those processed under ORS 543.765, may be conditioned to provide bypass flows for aquatic habitat protection before water may be diverted for power production.

(4) Unavoidable adverse impacts on fish or to fish management programs will be mitigated;

(a) Project construction, timing and procedures are designed to minimize fishery impacts from instream construction work and premature or unnecessary land clearing and disturbances;

(b) All fishery protective measures are scheduled to be fully functional when the project commences operations; and

(c) The proposed project is consistent with ODFW management programs in force on the effective date of these rules.

(5) No project shall be approved that would result in a net loss of wild game fish. In order to approve an application, the Director shall apply the following standards:

(a) A project, any part of which is located on a river or stream reach used by wild game fish, or that would adversely affect wild game fish, shall include acceptable mitigation measures which:

(A) Are located in the project vicinity;

(B) Are in effect at the time of adverse impact or start of project operation, whichever comes first;

(C) Will prevent a net loss to individual species of wild game fish;

(D) Will prevent conversion of a wild game fish population and fishery to a hatchery dependent resource;

(E) Are consistent with ODFW management plans and programs in force on the effective date of these rules; and

(F) Employ workable and generally accepted methods and techniques of mitigation best suited to the affected fish resource(s).

(6) No project shall be approved that may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat. In order to approve an application, the Director shall apply the following standards:

(a) If proposed at an undeveloped site, it is not reasonably foreseeable that the location, design, construction or operation of the project may result in mortality or injury to an individual anadromous salmon or steelhead or loss of any salmon or steelhead habitat; and

(b) Modification of an existing facility or project on a stream reach used by anadromous salmon or steelhead or providing anadromous salmon or steelhead habitat shall include acceptable measures that:

(A) Are reasonably certain to restore, enhance or improve existing salmon and steelhead populations in the affected river;

(B) Comply with wild game fish standards in paragraphs (5)(a)(C) and (D) of this rule if the affected salmon or steelhead populations contain wild fish;

(C) Are consistent with ODFW Fishery management plans and programs in force on the effective date of these rules;

(D) Employ workable and generally accepted methods and techniques best suited to the fish resources affected by the proposed project; and

(E) Are in effect at the time of adverse impact or start of project operation, whichever comes first.

(7) In order to approve an application for a project within the Columbia River Basin, the Director shall find that the proposed project complies with the fish protection, mitigation and enhancement requirements of the Northwest Power and Conservation Council (NPCC) Columbia River Basin Fish and Wildlife Program.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. 3f. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0210
Wildlife

Wildlife and wildlife habitats in the project vicinity shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

(1) The location, design, construction or operation of the proposed project shall not jeopardize the continued existence of animal species which have been:

(a) Designated, or officially proposed by the USF&WS, or the NMFS as threatened or endangered pursuant to the Endangered Species Act of 1973; or

(b) Identified by the Oregon Fish and Wildlife Commission or ODFW as threatened, endangered, limited or sensitive in Oregon.

(2) The location, design, construction and operation of project facilities will minimize adverse impacts on wildlife habitat, nesting and wintering grounds, and wildlife migratory routes.

(3) Project construction methods and scheduling will minimize disruption of wildlife and avoid premature or unnecessary land clearing in the project vicinity.

(4) Unavoidable adverse impacts on wildlife or wildlife habitat will be mitigated in the project vicinity by acceptable methods such as replacement of vegetation, regulation of reservoir levels, creation of aquatic habitat, improvements in wildlife carrying capacity in the project vicinity or acquisition of land or management rights.

(5) The project is consistent with applicable ODFW management programs in force on the effective date of these rules;

(6) If, within the Columbia River Basin, the project is consistent with the provisions of the NPCC's Columbia River Basin Fish and Wildlife Program and the Northwest Conservation and Electric Power Plan.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0220
Plant Life

In order to approve an application, the Director shall apply the following standard: that the location, design, construction or operation of the proposed project shall not jeopardize the continued existence of plant species which are:

(1) Designated or officially proposed by the USF&WS as threatened or endangered pursuant to the Endangered Species Act of 1973.

(2) Identified by the Oregon Department of Agriculture as endangered, threatened or candidate species in Oregon.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0230
Recreation

No project may be approved that would result in a net loss of recreation opportunities. Scenic and aesthetic values shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

(1) Project facilities will be designed, located and operated to substantially avoid visible or audible intrusion on the natural setting integral to existing recreational facilities, activities or opportunities.

(2) The proposed project will not reduce the abundance or variety of recreational facilities or opportunities available in the project vicinity.

(3) Unavoidable adverse impacts on nonwater dependent recreation facilities, activities or opportunities will be mitigated in the project vicinity by providing acceptable replacement facilities or opportunities of the same or similar nature and abundance.

(4) The project will not have significant adverse impacts on any unique, unusual or distinct natural feature which provides the focus or attraction for non water dependent recreational facilities or activities.

(5) Unavoidable adverse impacts on any water dependent recreational opportunity will be mitigated with acceptable replacement by or enhancement or another water dependent recreational opportunity available in the project vicinity.

(6) The proposed project will not cause the loss of or significant adverse impact to any water dependent recreational opportunities of statewide significance.

(7) Adverse impacts on any specific elements, such as flow regime, length of reach, access, season of use, degree of difficulty, of a water dependent recreational opportunity of statewide significance, will be offset by acceptable enhancement to other element(s) of the same water dependent recreational opportunity in the project vicinity.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0240
Historic, Cultural and Archaeological Resources

(1) Historic, cultural and archaeological resources shall be maintained or enhanced. In order to approve an application, the Director shall apply the following standards:

(a) The project will not result in significant adverse impact(s) on any historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places;

(b) The project will comply with state laws to protect Indian graves (ORS 97.740 97.760), historical materials (ORS 273 .705 273.711) and archaeological objects and sites (ORS 358.905 358.955);

(c) Unavoidable adverse impacts on historic, cultural and archaeological resources will be mitigated in accordance with generally accepted professional standards; and

(d) Archaeological data of significance associated with a site not eligible for inclusion in the National Register of Historic Places will be recovered in accordance with generally accepted professional standards.

(2) Before filing an application for a License or Permit, developers shall consult with the State Historic Preservation Office, the State Legislative Commission on Indian Services and appropriate tribes about Indian historic and cultural resources in the project vicinity.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0250
Land Resources

In order to approve an application, the Director shall apply the following standards:

(1) Adverse impacts on high value or important farmlands or agricultural land as identified in OAR Chapter 660, Division 33, shall be avoided, minimized or offset by acceptable mitigation.

(2) Adverse impacts on prime forestlands as defined by the city or county and by the Oregon Forestry Department shall be avoided, minimized, or offset by acceptable mitigation.

(3) Adverse impacts on wetlands as defined by OAR 141 085 or identified by the Department of State Lands will be avoided, minimized, or offset by acceptable mitigation.

(4) Project facilities shall be designed and located to avoid or minimize adverse impacts on:

(a) Outstanding scenic and aesthetic views and sights inventoried in city and county comprehensive plans as required by Statewide Planning Goal 5; and

(b) Scenic and aesthetic resources identified by state or federal agencies as outstanding, significant or deserving special protection including natural areas designated under ORS 273.563 to 273.591.

(5) Project facilities will be designed and located to blend with adjacent features.

(6) Mechanical noise caused by the project complies with applicable noise standards in OAR Chapter 340, Division 35.

(7) The location, design, construction or operation of the project will not:

(a) Disturb fragile or unstable soils; or

(b) Cause soil erosion which would impair other water uses.

(8) Project facilities located in geologically unstable areas are designed with appropriate safeguards.

(9) Project facilities located in areas subject to naturally occurring conditions or hazards, such as flooding or ice formation are designed to withstand damage to project facilities and allow reasonable access for project maintenance or operation under such conditions.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0280
Need for Power

In order to approve an application, the Director, shall make a finding on the need for power. In making this finding the Director shall consider the present and future power needs, taking into consideration:

(1) Whether there is a need for project power based upon:

(a) Consultation with the Oregon Department of Energy on the most current regional power plan for an analysis of need for development of hydropower or renewable energy resources within the Columbia River region; or

(b) Evidence of a contract for the sale of power, and

(c) For projects greater than 25 MW, any recommendation by the Energy Facility Siting Council based on information contained in the hearing record for the application.

(2) Section (1) of this rule shall not apply to applications for the following types of projects:

(a) Small facilities intended to supply power for on site uses;

(b) Projects which primarily use existing storage, diversion or water conveyance facilities where the operation of the power project will foster reductions in water losses or increases in the efficiency of water use;

(c) Multiple purpose projects where the project is based primarily on other uses and in which power is a compatible project purpose; or

(d) Projects by public or municipal utilities which will serve only the applicant utility's customers.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0290
Consolidated Review

(1) The Director shall enter an order on the potential that the proposed project may contribute to cumulative impacts with other existing, approved or proposed hydroelectric projects in the same river basin. It is presumed that if there are other existing, approved or proposed projects, in the same river basin, there is a potential for cumulative impacts. This presumption may be rebutted by showing the impacts of the proposed project are so small in extent, short termed or localized that there is no reasonable likelihood of cumulative impacts. The Director shall consult with the agencies listed in OAR 690-051-0060 on cumulative impacts. Natural resources on which the potential for cumulative impacts will be considered are listed in OAR 690-051-0190 through 690-051-0250.

(2) If the Director determines the proposed project may have unacceptable cumulative impacts, a consolidated review shall be conducted. The review will cover all existing, approved and proposed projects in the same river basin. Existing and approved projects shall not be subject to any action by the Director or the Commission resulting from the consolidated review. If an applicant for a proposed project does not wish to be included in the consolidated review, the application may be withdrawn and refiled at a later date. The application may be subject to a later consolidated review if refiled.

(3) If two or more of the applications are competing for the same site, only one will be chosen to proceed in the consolidated review. Preference will be given to the project best suited to the site. Suitability shall be based on the criteria in OAR 690-051-0320.

(4) The consolidated review shall be conducted as a contested case hearing. Applicants and owners of all existing, approved and proposed projects in the affected basin will be advised of the need for a consolidated review contested case hearing. Applicants and owners shall be advised not less that 90 days before the hearing so they may prepare. Notice advising of the need for a consolidated review shall be sent by registered or certified mail. Separate notice will be given when the hearing actually is to take place. This notice will be as required by ORS 183.415.

(5) The consolidated review shall include a study of the individual and cumulative impacts each project would cause on the natural resources discussed in OAR 690-051-0190 through 690-051-0250. Cumulative impacts on any given natural resource shall be considered unacceptable if the level of impact would exceed any of the natural resource standards set forth in OAR 690-051-0190 through 690 051 0250.

(6) The purpose of the consolidated review will be to determine if the individual and cumulative impacts of proposed projects meet the natural resource standards in OAR 690-051-0190 through 690-051-0250. If the individual impacts of the applicant's project would exceed any of the resource standards, the application shall be rejected. When cumulative impacts on a natural resource would violate the natural resource standards, proposed projects in the consolidated review will be chosen for further consideration on the basis of the following criteria:

(a) Contribution to cumulative impact(s) Projects exhibiting lesser potential contribution to cumulative impact(s) will be preferred over projects exhibiting greater potential contribution to cumulative impact(s);

(b) Individual impacts on natural resources Projects potentially causing impact on a lesser number of natural resources and/or having a lesser degree of impact on a given resource shall be preferred over projects potentially affecting a greater number of natural resources or having a greater degree of impact on a given resource;

(c) Project suitability Projects making more efficient use of water, developing more capacity, having greater annual output or producing more revenue will be preferred over projects that are less efficient, develop less capacity, have less annual output or produce less revenue;

(d) Mitigation Projects proposing more desirable mitigation in terms of restoration, improvement or enhancement will be preferred over projects proposing less desirable mitigation; and

(e) If no distinction can be made on the criteria in subsections (a) through (d) of this section, the final basis of decision will be priority of filing.

(7) Following the conclusion of the consolidated review contested case hearing, the Director will enter an order stating the findings on each proposed project included in the review. Applications for projects not selected for further consideration on the basis of criteria in section (5) of this rule, shall be rejected.

(8) Any application not filed in time to be included in the notice of contested case hearing for a consolidated review shall not be reviewed until after the Director has entered the final order on the proceeding.

(9) If there is only one proposed project in the river basin, the Director may initiate consolidated review proceedings at the applicant's request.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0320
Competing Applications

(1) When filed with the Director, a notice of competing application shall also be served on other applicants for the same site.

(2) A competing application shall be filed with the Director within 180 days of the time the original application is filed. If a hearing notice for the original application has been published before 180 days have passed, a notice of intent to file a competing application shall be filed. The notice of intent shall be filed prior to the closing date for comments as stated in the hearing notice. The competing application itself shall be filed within 60 days of the comment closing date.

(3) When determining which competing application should be given preference, the Director shall consider:

(a) Conservation of the waterpower involved including:

(A) Efficiency within the system;

(B) Effect on instream fisheries;

(C) Water quality; and

(D) Other factors as the Director may deem appropriate.

(b) Use of the waterpower involved including:

(A) Availability of water;

(B) Existing rights;

(C) Development of the available hydroelectric potential; and

(D) Other factors as the Director may deem appropriate.

(4) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and are equal in every other way, preference shall be given to the application with the earliest filing date.

(5) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is a municipal corporation and the other is a private developer, preference shall be given to the municipal corporation.

(6) If the Director finds that both applications are equally well adapted to conserve and utilize the waterpower involved and one applicant is the

holder of a valid Preliminary Permit and has priority under ORS 543.250, preference shall be given to the holder of the Preliminary Permit.

(7) Where one application is determined to be best adapted to conserve and utilize the water power involved and the other applicant is either a municipal corporation or has priority as the holder of a Preliminary Permit, the municipal corporation or holder of the Preliminary Permit shall be informed of specific reasons why its application is not as well adapted and shall be afforded a reasonable period of time to amend its application to be at least as well adapted as the competing application. If its application is amended to be at least as well adapted within the time allowed, preference will be given to the municipal corporation or holder of the Preliminary Permit.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0350
Minor Projects, Waiver of Provisions of Act Where the Licensee is Not a Public Utility

For minor projects of not more than 100 THP, the Director in issuing Licenses waives the following conditions, provisions, and requirements of ORS Chapter 543:

(1) ORS 543.530 which relates to the issuance of bonds or other evidence of indebtedness and the control thereof by the Commission.

(2) ORS 543.550 relating to liens against the project and providing that any sale shall be of the whole property embraced in the project unless a partial sale is approved by the Director.

(3) ORS 543.560 which requires the Licensee to execute to the State of Oregon a bond to the effect that the Licensee shall promptly make payment to all persons supplying labor, material, machinery, etc.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0380
Water Rights

The right to the use of the waters of the State of Oregon in connection with the development of any water power project for the generation of electricity under a License issued by the Director shall be vested in the Licensee while the License or any lawful extension is in force. Each License shall be conditioned so the right to use water is expressly made inferior in right and subsequent in time to any future appropriation of water upstream for beneficial consumptive use. On termination of the License, the right to use water may be converted as provided in ORS 543A.305. In case a project is taken over by the state or a municipality under the provisions of ORS 543.610, the right to use the waters previously used by the project shall continue in the state or the municipality until lawfully terminated, transferred, or converted as provided in ORS 543A.305.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86 ; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

690-051-0400
Fees: Filing and Annual

(1) An applicant for a Preliminary Permit or License for a project or for a Permit to appropriate water for power purposes shall pay to the state a project fee based on the capacity of the project to cover costs of recording, publishing notices, conducting the hearing required by ORS 543.225 and making investigations necessary to determine whether a Permit should be granted.

(2) The amount of the total project fee required under section (1) of this rule shall be:

(a) For a project of less than 100 theoretical horsepower, $1,000;

(b) For any project of 100 theoretical horsepower or more, an amount equal to $5,000 plus $1,000 per megawatt for each megawatt of capacity in excess of five megawatts, up to a maximum of $100,000;

(3) The project fee shall be payable in advance of each of four stages of project review as described in OAR 690 051 0095 as follows:

(a) For minor projects less than 100 theoretical horsepower, fifty percent of the fee at the time the application is filed and the fifty percent remaining fee charge when the License is issued;

(b) For major projects, the fee shall be collected as follows:

(A) Stage One 20 percent; not to exceed $2,500;

(B) Stage Two 30 percent;

(C) Stage Three 30 percent;

(D) Stage Four 20 percent.

(c) If any stage is skipped, the fee at the time of submittal shall be the total application fee due up to and including the stage of current application review.

(4) In addition to the project fee required under this section, any applicant for a project to be sited at a location where anadromous fish or threatened or endangered species are present shall pay a surcharge of 30 percent of the total project fee. The surcharge shall be collected in conjunction with the project fee at each stage of the project review.

(5) An annual fee as described in ORS 543.710 shall be required for each Permit issued under ORS Chapter 537.

(6) Each License issued shall be conditioned to require the payment of an annual fee as follows:

(a) For the first 25 THP or fraction thereof, $1 per THP; and

(b) For each THP in excess of 25, 20 cents.

(7) (a) For fees assessed under ORS 543.078(2) each holder of a hydroelectric right shall pay an amount, in 1998 dollars, equal to $0.405 per theoretical horsepower covered by the water right for the project. The annual fee shall be adjusted annually for inflation according to (c) below.

(b) For fees assessed under ORS 543.088 each holder of a hydroelectric right shall pay an amount, in 1998 dollars, equal to $0.125 per theoretical horsepower covered by the water right for the project. The annual fee shall be adjusted annually for inflation according to (c) below.

(c) Fees shall be adjusted using the "GDP-IPD", Gross Domestic Product - Implicit Price Deflator published by the U.S. Department of Commerce, Bureau of Economic Analysis in the publication Survey of Current Business (See Table 1.1.9 line 1.) for September of each year prior to the January due date for the fees. If this index ceases to be published, any reasonably equivalent index published by the Bureau of Economic Analysis may be substituted. If the base year for GDP-IPD is changed or if publication of the index is discontinued, the Department shall make adjustments or, if necessary, select an appropriate alternative index to achieve the same economic effect.

Stat. Auth.: ORS 536.025, 536.027, 537 & 543
Stats. Implemented:
Hist.: WRD 14-1986, f. & ef. 10-13-86; WRD 2-1993, f. & cert. ef. 5-19-93; WRD 8-2015, f. 12-18-15, cert. ef. 1-1-16

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250-030-0020	2-1-2016	Repeal	2-1-2016
250-030-0030	2-1-2016	Repeal	2-1-2016
250-030-0041	2-1-2016	Repeal	2-1-2016
250-030-0100	2-1-2016	Adopt	2-1-2016
250-030-0110	2-1-2016	Adopt	2-1-2016
250-030-0120	2-1-2016	Adopt	2-1-2016
250-030-0130	2-1-2016	Adopt	2-1-2016
250-030-0140	2-1-2016	Adopt	2-1-2016
250-030-0150	2-1-2016	Adopt	2-1-2016
250-030-0160	2-1-2016	Adopt	2-1-2016
250-030-0170	2-1-2016	Adopt	2-1-2016
259-008-0005	1-1-2016	Amend	2-1-2016
259-008-0010	1-1-2016	Amend	2-1-2016
259-008-0025	1-1-2016	Amend	2-1-2016
259-008-0040	1-1-2016	Amend	2-1-2016
259-008-0060	1-1-2016	Amend	2-1-2016
259-008-0100	1-1-2016	Amend	2-1-2016
259-009-0059	1-1-2016	Amend	2-1-2016
259-009-0062	12-22-2015	Amend	2-1-2016
259-009-0070	1-1-2016	Amend	2-1-2016
259-060-0010	12-22-2015	Amend	2-1-2016
259-060-0015	12-22-2015	Amend	2-1-2016
259-060-0145	12-22-2015	Amend	2-1-2016
259-061-0120	12-22-2015	Amend	2-1-2016
274-005-0040	12-28-2015	Amend	2-1-2016
274-005-0046	12-28-2015	Adopt	2-1-2016

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291-209-0020	1-1-2016	Amend(T)	2-1-2016
291-209-0030	1-1-2016	Amend(T)	2-1-2016
291-209-0040	1-1-2016	Amend(T)	2-1-2016
291-209-0050	1-1-2016	Suspend	2-1-2016
291-209-0060	1-1-2016	Suspend	2-1-2016
291-209-0070	1-1-2016	Amend(T)	2-1-2016
309-012-0130	11-25-2015	Amend(T)	1-1-2016
309-012-0210	11-25-2015	Amend(T)	1-1-2016
309-012-0220	11-25-2015	Amend(T)	1-1-2016
309-114-0005	11-24-2015	Amend(T)	1-1-2016
330-135-0055	1-1-2016	Amend	2-1-2016
330-140-0020	12-23-2015	Amend	2-1-2016
330-140-0060	12-23-2015	Amend	2-1-2016
330-140-0070	12-23-2015	Amend	2-1-2016
330-140-0140	12-23-2015	Amend	2-1-2016
331-710-0050	1-1-2016	Amend	2-1-2016
333-008-0499	1-1-2016	Adopt(T)	2-1-2016
333-008-0500	1-1-2016	Adopt(T)	2-1-2016
333-008-0510	1-1-2016	Adopt(T)	2-1-2016
333-008-0520	1-1-2016	Adopt(T)	2-1-2016
333-008-0530	1-1-2016	Adopt(T)	2-1-2016
333-008-9000	1-1-2016	Adopt(T)	2-1-2016
333-012-0500	1-1-2016	Am. & Ren.	2-1-2016
333-015-0030	1-1-2016	Amend	2-1-2016
333-015-0035	1-1-2016	Amend	2-1-2016
333-015-0040	1-1-2016	Amend	2-1-2016
333-015-0045	1-1-2016	Amend	2-1-2016
333-015-0064	1-1-2016	Amend	2-1-2016
333-015-0068	1-1-2016	Amend	2-1-2016
333-015-0070	1-1-2016	Amend	2-1-2016
333-015-0075	1-1-2016	Amend	2-1-2016
333-015-0078	1-1-2016	Amend	2-1-2016
333-015-0085	1-1-2016	Amend	2-1-2016
333-015-0200	1-1-2016	Adopt(T)	2-1-2016
333-015-0205	1-1-2016	Adopt(T)	2-1-2016
333-015-0210	1-1-2016	Adopt(T)	2-1-2016
333-015-0215	1-1-2016	Adopt(T)	2-1-2016
333-015-0220	1-1-2016	Adopt(T)	2-1-2016
333-016-2000	1-1-2016	Adopt	2-1-2016
333-016-2010	1-1-2016	Adopt	2-1-2016
333-016-2020	1-1-2016	Adopt	2-1-2016
333-016-2030	1-1-2016	Adopt	2-1-2016
333-052-0040	1-1-2016	Amend	1-1-2016
333-052-0043	1-1-2016	Amend	1-1-2016
333-052-0080	1-1-2016	Amend	1-1-2016
333-052-0120	1-1-2016	Amend	1-1-2016
333-053-0040	1-1-2016	Amend	1-1-2016
333-053-0050	1-1-2016	Amend	1-1-2016
333-053-0080	1-1-2016	Amend	1-1-2016
333-054-0010	1-1-2016	Amend	1-1-2016
333-054-0020	1-1-2016	Amend	1-1-2016
333-054-0050	1-1-2016	Amend	1-1-2016
333-054-0060	1-1-2016	Amend	1-1-2016
333-054-0070	1-1-2016	Amend	1-1-2016
333-061-0060	1-1-2016	Amend	1-1-2016
333-061-0072	1-1-2016	Amend	1-1-2016
333-061-0073	1-1-2016	Amend	1-1-2016
333-061-0076	1-1-2016	Amend	1-1-2016
333-061-0265	1-1-2016	Amend	1-1-2016
333-064-0005	1-1-2016	Amend(T)	2-1-2016
333-064-0010	1-1-2016	Amend(T)	2-1-2016
333-064-0025	1-1-2016	Amend(T)	2-1-2016
333-064-0060	1-1-2016	Amend(T)	2-1-2016
333-103-0025	1-1-2016	Amend	2-1-2016
333-200-0000	1-1-2016	Amend	1-1-2016
333-200-0010	1-1-2016	Amend	1-1-2016
333-200-0020	1-1-2016	Amend	1-1-2016
333-200-0030	1-1-2016	Amend	1-1-2016
333-200-0035	1-1-2016	Amend	1-1-2016
333-200-0040	1-1-2016	Amend	1-1-2016
333-200-0050	1-1-2016	Amend	1-1-2016
333-200-0060	1-1-2016	Amend	1-1-2016
333-200-0070	1-1-2016	Amend	1-1-2016
333-200-0080	1-1-2016	Amend	1-1-2016
333-200-0090	1-1-2016	Amend	1-1-2016
333-200-0235	1-1-2016	Adopt	1-1-2016
333-200-0245	1-1-2016	Adopt	1-1-2016
333-200-0250	1-1-2016	Adopt	1-1-2016
333-200-0255	1-1-2016	Adopt	1-1-2016
333-200-0265	1-1-2016	Adopt	1-1-2016
333-200-0275	1-1-2016	Adopt	1-1-2016
333-200-0285	1-1-2016	Adopt	1-1-2016
333-200-0295	1-1-2016	Adopt	1-1-2016
333-200-0300	1-1-2016	Adopt	1-1-2016
333-205-0000	1-1-2016	Amend	1-1-2016
333-205-0010	1-1-2016	Amend	1-1-2016
333-205-0020	1-1-2016	Amend	1-1-2016
333-205-0040	1-1-2016	Amend	1-1-2016
333-205-0050	1-1-2016	Amend	1-1-2016
340-012-0054	1-1-2016	Amend	1-1-2016
340-012-0135	1-1-2016	Amend	1-1-2016
340-012-0140	1-1-2016	Amend	1-1-2016
340-039-0001	12-10-2015	Adopt	1-1-2016
340-039-0003	12-10-2015	Adopt	1-1-2016
340-039-0005	12-10-2015	Adopt	1-1-2016
340-039-0015	12-10-2015	Adopt	1-1-2016
340-039-0017	12-10-2015	Adopt	1-1-2016
340-039-0020	12-10-2015	Adopt	1-1-2016
340-039-0025	12-10-2015	Adopt	1-1-2016
340-039-0030	12-10-2015	Adopt	1-1-2016
340-039-0035	12-10-2015	Adopt	1-1-2016
340-039-0040	12-10-2015	Adopt	1-1-2016
340-039-0043	12-10-2015	Adopt	1-1-2016
340-045-0075	1-1-2016	Amend	1-1-2016
340-071-0140	1-1-2016	Amend	1-1-2016
340-200-0040	12-10-2015	Amend	1-1-2016
340-215-0010	12-10-2015	Amend	1-1-2016
340-215-0020	12-10-2015	Amend	1-1-2016
340-215-0030	12-10-2015	Amend	1-1-2016
340-215-0040	12-10-2015	Amend	1-1-2016
340-215-0060	12-10-2015	Amend	1-1-2016

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340-248-0270	1-1-2016	Amend(T)	1-1-2016
340-253-0000	1-1-2016	Amend	1-1-2016
340-253-0040	1-1-2016	Amend	1-1-2016
340-253-0060	1-1-2016	Amend	1-1-2016
340-253-0100	1-1-2016	Amend	1-1-2016
340-253-0200	1-1-2016	Amend	1-1-2016
340-253-0250	1-1-2016	Amend	1-1-2016
340-253-0310	1-1-2016	Amend	1-1-2016
340-253-0320	1-1-2016	Amend	1-1-2016
340-253-0330	1-1-2016	Amend	1-1-2016
340-253-0340	1-1-2016	Amend	1-1-2016
340-253-0400	1-1-2016	Amend	1-1-2016
340-253-0450	1-1-2016	Amend	1-1-2016
340-253-0500	1-1-2016	Amend	1-1-2016
340-253-0600	1-1-2016	Amend	1-1-2016
340-253-0620	1-1-2016	Amend	1-1-2016
340-253-0630	1-1-2016	Amend	1-1-2016
340-253-0650	1-1-2016	Amend	1-1-2016
340-253-1000	1-1-2016	Amend	1-1-2016
340-253-1010	1-1-2016	Amend	1-1-2016
340-253-1020	1-1-2016	Amend	1-1-2016
340-253-1030	1-1-2016	Amend	1-1-2016
340-253-1050	1-1-2016	Amend	1-1-2016
340-253-2000	1-1-2016	Amend	1-1-2016
340-253-2100	1-1-2016	Amend	1-1-2016
340-253-2200	1-1-2016	Amend	1-1-2016
340-253-8010	1-1-2016	Amend	1-1-2016
340-253-8020	1-1-2016	Amend	1-1-2016
340-253-8030	1-1-2016	Amend	1-1-2016
340-253-8040	1-1-2016	Amend	1-1-2016
340-253-8050	1-1-2016	Amend	1-1-2016
340-253-8060	1-1-2016	Amend	1-1-2016
340-253-8070	1-1-2016	Amend	1-1-2016
340-253-8080	1-1-2016	Amend	1-1-2016
407-007-0000	1-14-2016	Amend(T)	2-1-2016
407-007-0010	1-14-2016	Amend(T)	2-1-2016
407-007-0020	1-14-2016	Amend(T)	2-1-2016
407-007-0030	1-14-2016	Amend(T)	2-1-2016
407-007-0050	1-14-2016	Amend(T)	2-1-2016
407-007-0060	1-14-2016	Amend(T)	2-1-2016
407-007-0065	1-14-2016	Amend(T)	2-1-2016
407-007-0070	1-14-2016	Amend(T)	2-1-2016
407-007-0075	1-14-2016	Suspend	2-1-2016
407-007-0080	1-14-2016	Amend(T)	2-1-2016
407-007-0090	1-14-2016	Amend(T)	2-1-2016
407-007-0200	1-14-2016	Amend(T)	2-1-2016
407-007-0210	1-14-2016	Amend(T)	2-1-2016
407-007-0220	1-14-2016	Amend(T)	2-1-2016
407-007-0230	1-14-2016	Amend(T)	2-1-2016
407-007-0240	1-14-2016	Amend(T)	2-1-2016
407-007-0250	1-14-2016	Amend(T)	2-1-2016
407-007-0275	1-14-2016	Amend(T)	2-1-2016
407-007-0277	1-14-2016	Amend(T)	2-1-2016
407-007-0280	1-14-2016	Suspend	2-1-2016
407-007-0290	1-14-2016	Amend(T)	2-1-2016
407-007-0300	1-14-2016	Amend(T)	2-1-2016
407-007-0315	1-14-2016	Amend(T)	2-1-2016
407-007-0320	1-14-2016	Amend(T)	2-1-2016
407-007-0325	1-14-2016	Suspend	2-1-2016
407-007-0330	1-14-2016	Amend(T)	2-1-2016
407-007-0350	1-14-2016	Amend(T)	2-1-2016
407-007-0370	1-14-2016	Amend(T)	2-1-2016
407-007-0400	1-14-2016	Suspend	2-1-2016
409-025-0100	1-5-2016	Amend	2-1-2016
409-025-0110	1-5-2016	Amend	2-1-2016
409-025-0120	1-5-2016	Amend	2-1-2016
409-025-0130	1-5-2016	Amend	2-1-2016
409-025-0140	1-5-2016	Amend	2-1-2016
409-025-0150	1-5-2016	Amend	2-1-2016
409-025-0160	1-5-2016	Amend	2-1-2016
409-025-0170	1-5-2016	Amend	2-1-2016
409-035-0020	11-24-2015	Amend	1-1-2016
409-035-0020(T)	11-24-2015	Repeal	1-1-2016
409-055-0010	1-1-2016	Amend(T)	2-1-2016
409-055-0030	1-1-2016	Amend(T)	2-1-2016
409-055-0040	1-1-2016	Amend(T)	2-1-2016
409-055-0060	1-1-2016	Amend(T)	2-1-2016
409-055-0070	1-1-2016	Amend(T)	2-1-2016
410-120-0006	1-1-2016	Amend	1-1-2016
410-120-1340	1-1-2016	Amend(T)	2-1-2016
410-121-0000	1-1-2016	Amend	2-1-2016
410-121-0030	12-27-2015	Amend	2-1-2016
410-121-0030	1-1-2016	Amend(T)	2-1-2016
410-121-0030(T)	12-27-2015	Repeal	2-1-2016
410-121-0040	12-27-2015	Amend	2-1-2016
410-121-0040	1-1-2016	Amend(T)	2-1-2016
410-121-0040(T)	12-27-2015	Repeal	2-1-2016
410-121-0135	1-1-2016	Amend	2-1-2016
410-121-0146	1-1-2016	Amend	2-1-2016
410-121-4000	1-1-2016	Am. & Ren.	2-1-2016
410-121-4005	1-1-2016	Am. & Ren.	2-1-2016
410-121-4010	1-1-2016	Am. & Ren.	2-1-2016
410-121-4015	1-1-2016	Renumber	2-1-2016
410-121-4020	1-1-2016	Renumber	2-1-2016
410-123-1240	12-1-2015	Amend	1-1-2016
410-123-1240(T)	12-1-2015	Repeal	1-1-2016
410-123-1260	1-1-2016	Amend(T)	2-1-2016
410-123-1510	1-1-2016	Adopt(T)	2-1-2016
410-130-0200	12-1-2015	Amend(T)	1-1-2016
410-130-0200	1-1-2016	Amend	2-1-2016
410-130-0200(T)	1-1-2016	Repeal	2-1-2016
410-136-3040	1-1-2016	Amend	2-1-2016
410-141-0000	12-10-2015	Amend	1-1-2016
410-141-0080	12-10-2015	Amend	1-1-2016
410-141-0085	12-10-2015	Repeal	1-1-2016
410-141-0160	12-10-2015	Amend	1-1-2016
410-141-0220	12-10-2015	Amend	1-1-2016
410-141-0320	12-10-2015	Amend	1-1-2016
410-141-0340	12-10-2015	Amend	1-1-2016
410-141-0410	12-10-2015	Repeal	1-1-2016
410-141-0420	12-10-2015	Amend	1-1-2016

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410-141-0680	12-10-2015	Repeal	1-1-2016
410-141-0700	12-10-2015	Repeal	1-1-2016
410-141-0720	12-10-2015	Repeal	1-1-2016
410-141-0740	12-10-2015	Repeal	1-1-2016
410-141-0760	12-10-2015	Repeal	1-1-2016
410-141-0780	12-10-2015	Repeal	1-1-2016
410-141-0800	12-10-2015	Repeal	1-1-2016
410-141-0820	12-10-2015	Repeal	1-1-2016
410-141-0840	12-10-2015	Repeal	1-1-2016
410-141-0860	12-10-2015	Amend	1-1-2016
410-141-3040	1-7-2016	Adopt	2-1-2016
410-141-3040(T)	1-7-2016	Repeal	2-1-2016
410-141-3060	1-1-2016	Amend(T)	2-1-2016
410-141-3080	12-10-2015	Amend	1-1-2016
410-141-3080	1-1-2016	Amend(T)	2-1-2016
410-141-3150	1-1-2016	Adopt	2-1-2016
410-141-3150(T)	1-1-2016	Repeal	2-1-2016
410-141-3267	12-27-2015	Adopt	2-1-2016
410-141-3267(T)	12-27-2015	Repeal	2-1-2016
410-141-3345	1-1-2016	Amend(T)	2-1-2016
410-141-3440	1-1-2016	Amend	2-1-2016
410-200-0015	12-22-2015	Amend(T)	2-1-2016
410-200-0100	12-22-2015	Amend(T)	2-1-2016
410-200-0105	12-22-2015	Amend(T)	2-1-2016
410-200-0110	12-22-2015	Amend(T)	2-1-2016
410-200-0111	12-22-2015	Amend(T)	2-1-2016
410-200-0115	12-22-2015	Amend(T)	2-1-2016
410-200-0120	12-22-2015	Amend(T)	2-1-2016
410-200-0125	12-22-2015	Amend(T)	2-1-2016
410-200-0130	12-22-2015	Amend(T)	2-1-2016
410-200-0135	12-22-2015	Amend(T)	2-1-2016
410-200-0140	12-22-2015	Amend(T)	2-1-2016
410-200-0200	12-22-2015	Amend(T)	2-1-2016
410-200-0215	12-22-2015	Amend(T)	2-1-2016
410-200-0230	12-22-2015	Amend(T)	2-1-2016
410-200-0235	12-22-2015	Amend(T)	2-1-2016
410-200-0240	12-22-2015	Amend(T)	2-1-2016
410-200-0310	12-22-2015	Amend(T)	2-1-2016
410-200-0407	12-18-2015	Adopt(T)	2-1-2016
410-200-0415	12-22-2015	Amend(T)	2-1-2016
410-200-0425	12-22-2015	Amend(T)	2-1-2016
410-200-0440	12-22-2015	Amend(T)	2-1-2016
410-200-0500	12-22-2015	Suspend	2-1-2016
410-200-0505	12-22-2015	Amend(T)	2-1-2016
410-200-0510	12-22-2015	Amend(T)	2-1-2016
411-004-0000	1-1-2016	Adopt	1-1-2016
411-004-0010	1-1-2016	Adopt	1-1-2016
411-004-0020	1-1-2016	Adopt	1-1-2016
411-004-0020	1-1-2016	Amend	2-1-2016
411-004-0030	1-1-2016	Adopt	1-1-2016
411-004-0040	1-1-2016	Adopt	1-1-2016
411-020-0002	1-1-2016	Amend(T)	2-1-2016
411-032-0050	12-27-2015	Amend	1-1-2016
411-032-0050(T)	12-27-2015	Repeal	1-1-2016
411-050-0602	1-1-2016	Amend(T)	2-1-2016
411-050-0615	1-1-2016	Amend(T)	2-1-2016
411-050-0630	1-1-2016	Amend(T)	2-1-2016
411-050-0632	1-1-2016	Amend(T)	2-1-2016
411-050-0635	1-1-2016	Amend(T)	2-1-2016
411-050-0642	1-1-2016	Amend(T)	2-1-2016
411-050-0645	1-1-2016	Amend(T)	2-1-2016
411-050-0650	1-1-2016	Amend(T)	2-1-2016
411-050-0655	1-1-2016	Amend(T)	2-1-2016
411-050-0662	1-1-2016	Amend(T)	2-1-2016
411-050-0665	1-1-2016	Amend(T)	2-1-2016
411-050-0670	1-1-2016	Amend(T)	2-1-2016
411-050-0685	1-1-2016	Amend(T)	2-1-2016
411-054-0000	1-1-2016	Amend(T)	2-1-2016
411-054-0005	1-1-2016	Amend(T)	2-1-2016
411-054-0012	1-1-2016	Amend(T)	2-1-2016
411-054-0025	1-1-2016	Amend(T)	2-1-2016
411-054-0027	1-1-2016	Amend(T)	2-1-2016
411-054-0036	1-1-2016	Amend(T)	2-1-2016
411-054-0038	1-1-2016	Adopt(T)	2-1-2016
411-300-0110	1-1-2016	Amend(T)	2-1-2016
411-300-0130	1-1-2016	Amend(T)	2-1-2016
411-300-0150	1-1-2016	Amend(T)	2-1-2016
411-300-0155	1-1-2016	Amend(T)	2-1-2016
411-300-0170	1-1-2016	Amend(T)	2-1-2016
411-308-0020	1-1-2016	Amend(T)	2-1-2016
411-308-0050	1-1-2016	Amend(T)	2-1-2016
411-308-0080	1-1-2016	Amend(T)	2-1-2016
411-308-0100	1-1-2016	Amend(T)	2-1-2016
411-308-0110	1-1-2016	Amend(T)	2-1-2016
411-308-0120	1-1-2016	Amend(T)	2-1-2016
411-308-0130	1-1-2016	Amend(T)	2-1-2016
411-317-0000	1-1-2016	Amend(T)	2-1-2016
411-318-0000	1-1-2016	Amend(T)	2-1-2016
411-318-0005	1-1-2016	Amend(T)	2-1-2016
411-318-0010	1-1-2016	Amend(T)	2-1-2016
411-320-0020	1-1-2016	Amend(T)	2-1-2016
411-320-0040	1-1-2016	Amend(T)	2-1-2016
411-320-0060	1-1-2016	Amend(T)	2-1-2016
411-320-0080	1-1-2016	Amend(T)	2-1-2016
411-320-0090	1-1-2016	Amend(T)	2-1-2016
411-320-0110	1-1-2016	Amend(T)	2-1-2016
411-320-0120	1-1-2016	Amend(T)	2-1-2016
411-323-0010	1-1-2016	Amend(T)	2-1-2016
411-323-0020	1-1-2016	Amend(T)	2-1-2016
411-323-0030	1-1-2016	Amend(T)	2-1-2016
411-323-0035	1-1-2016	Amend(T)	2-1-2016
411-323-0060	1-1-2016	Amend(T)	2-1-2016
411-325-0010	1-1-2016	Amend(T)	2-1-2016
411-325-0020	1-1-2016	Amend(T)	2-1-2016
411-325-0040	1-1-2016	Amend(T)	2-1-2016
411-325-0130	1-1-2016	Amend(T)	2-1-2016
411-325-0140	1-1-2016	Amend(T)	2-1-2016
411-325-0150	1-1-2016	Amend(T)	2-1-2016
411-325-0170	1-1-2016	Amend(T)	2-1-2016
411-325-0220	1-1-2016	Amend(T)	2-1-2016

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411-325-0390	1-1-2016	Amend(T)	2-1-2016
411-325-0430	1-1-2016	Amend(T)	2-1-2016
411-328-0550	1-1-2016	Amend(T)	2-1-2016
411-328-0560	1-1-2016	Amend(T)	2-1-2016
411-328-0625	1-1-2016	Adopt(T)	2-1-2016
411-328-0630	1-1-2016	Amend(T)	2-1-2016
411-328-0650	1-1-2016	Amend(T)	2-1-2016
411-328-0720	1-1-2016	Amend(T)	2-1-2016
411-328-0750	1-1-2016	Amend(T)	2-1-2016
411-328-0790	1-1-2016	Amend(T)	2-1-2016
411-330-0020	1-1-2016	Amend(T)	2-1-2016
411-330-0050	1-1-2016	Amend(T)	2-1-2016
411-330-0060	1-1-2016	Amend(T)	2-1-2016
411-330-0070	1-1-2016	Amend(T)	2-1-2016
411-330-0080	1-1-2016	Amend(T)	2-1-2016
411-330-0110	1-1-2016	Amend(T)	2-1-2016
411-340-0020	1-1-2016	Amend(T)	2-1-2016
411-340-0030	1-1-2016	Amend(T)	2-1-2016
411-340-0120	1-1-2016	Amend(T)	2-1-2016
411-340-0130	1-1-2016	Amend(T)	2-1-2016
411-340-0140	1-1-2016	Amend(T)	2-1-2016
411-340-0150	1-1-2016	Amend(T)	2-1-2016
411-340-0160	1-1-2016	Amend(T)	2-1-2016
411-340-0170	1-1-2016	Amend(T)	2-1-2016
411-345-0010	1-1-2016	Amend(T)	2-1-2016
411-345-0020	1-1-2016	Amend(T)	2-1-2016
411-345-0025	1-1-2016	Amend(T)	2-1-2016
411-345-0030	1-1-2016	Amend(T)	2-1-2016
411-345-0085	1-1-2016	Amend(T)	2-1-2016
411-345-0110	1-1-2016	Amend(T)	2-1-2016
411-345-0160	1-1-2016	Amend(T)	2-1-2016
411-350-0020	1-1-2016	Amend(T)	2-1-2016
411-350-0030	1-1-2016	Amend(T)	2-1-2016
411-350-0040	1-1-2016	Amend(T)	2-1-2016
411-350-0050	1-1-2016	Amend(T)	2-1-2016
411-350-0055	1-1-2016	Adopt(T)	2-1-2016
411-350-0080	1-1-2016	Amend(T)	2-1-2016
411-350-0100	1-1-2016	Amend(T)	2-1-2016
411-355-0000	12-28-2015	Amend	1-1-2016
411-355-0000(T)	12-28-2015	Repeal	1-1-2016
411-355-0010	12-28-2015	Amend	1-1-2016
411-355-0010	1-1-2016	Amend(T)	2-1-2016
411-355-0010(T)	12-28-2015	Repeal	1-1-2016
411-355-0020	12-28-2015	Amend	1-1-2016
411-355-0020(T)	12-28-2015	Repeal	1-1-2016
411-355-0030	12-28-2015	Amend	1-1-2016
411-355-0030	1-1-2016	Amend(T)	2-1-2016
411-355-0030(T)	12-28-2015	Repeal	1-1-2016
411-355-0040	12-28-2015	Amend	1-1-2016
411-355-0040	1-1-2016	Amend(T)	2-1-2016
411-355-0040(T)	12-28-2015	Repeal	1-1-2016
411-355-0045	12-28-2015	Adopt	1-1-2016
411-355-0045(T)	12-28-2015	Repeal	1-1-2016
411-355-0050	12-28-2015	Amend	1-1-2016
411-355-0050	1-1-2016	Amend(T)	2-1-2016
411-355-0050(T)	12-28-2015	Repeal	1-1-2016
411-355-0060	12-28-2015	Repeal	1-1-2016
411-355-0070	12-28-2015	Repeal	1-1-2016
411-355-0075	12-28-2015	Adopt	1-1-2016
411-355-0075(T)	12-28-2015	Repeal	1-1-2016
411-355-0080	12-28-2015	Amend	1-1-2016
411-355-0080(T)	12-28-2015	Repeal	1-1-2016
411-355-0090	12-28-2015	Amend	1-1-2016
411-355-0090(T)	12-28-2015	Repeal	1-1-2016
411-355-0100	12-28-2015	Amend	1-1-2016
411-355-0100(T)	12-28-2015	Repeal	1-1-2016
411-355-0110	12-28-2015	Repeal	1-1-2016
411-355-0120	12-28-2015	Repeal	1-1-2016
411-360-0010	1-1-2016	Amend(T)	2-1-2016
411-360-0020	1-1-2016	Amend(T)	2-1-2016
411-360-0050	1-1-2016	Amend(T)	2-1-2016
411-360-0055	1-1-2016	Amend(T)	2-1-2016
411-360-0060	1-1-2016	Amend(T)	2-1-2016
411-360-0130	1-1-2016	Amend(T)	2-1-2016
411-360-0140	1-1-2016	Amend(T)	2-1-2016
411-360-0170	1-1-2016	Amend(T)	2-1-2016
411-360-0190	1-1-2016	Amend(T)	2-1-2016
411-370-0010	1-1-2016	Amend(T)	2-1-2016
411-375-0010	1-1-2016	Amend(T)	2-1-2016
411-375-0050	1-1-2016	Amend(T)	2-1-2016
411-375-0055	1-1-2016	Adopt(T)	2-1-2016
411-375-0070	1-1-2016	Amend(T)	2-1-2016
411-375-0080	1-1-2016	Amend(T)	2-1-2016
411-380-0010	1-1-2016	Adopt(T)	2-1-2016
411-380-0020	1-1-2016	Adopt(T)	2-1-2016
411-380-0030	1-1-2016	Adopt(T)	2-1-2016
411-380-0040	1-1-2016	Adopt(T)	2-1-2016
411-380-0050	1-1-2016	Adopt(T)	2-1-2016
411-380-0060	1-1-2016	Adopt(T)	2-1-2016
411-380-0070	1-1-2016	Adopt(T)	2-1-2016
411-380-0080	1-1-2016	Adopt(T)	2-1-2016
411-380-0090	1-1-2016	Adopt(T)	2-1-2016
413-015-0115	1-1-2016	Amend	2-1-2016
413-015-0115(T)	1-1-2016	Repeal	2-1-2016
413-015-0205	1-1-2016	Amend	2-1-2016
413-015-0211	1-1-2016	Amend	2-1-2016
413-015-0211(T)	1-1-2016	Repeal	2-1-2016
413-015-0415	1-1-2016	Amend	2-1-2016
413-015-0415(T)	1-1-2016	Repeal	2-1-2016
413-015-0460	1-1-2016	Amend	2-1-2016
413-015-0470	1-1-2016	Amend	2-1-2016
413-015-1220	1-1-2016	Amend	2-1-2016
413-015-9000	1-1-2016	Amend	2-1-2016
413-015-9000(T)	1-1-2016	Repeal	2-1-2016
413-030-0400	11-24-2015	Amend(T)	1-1-2016
413-040-0000	1-1-2016	Amend(T)	2-1-2016
413-040-0010	11-24-2015	Amend(T)	1-1-2016
413-040-0145	1-1-2016	Amend(T)	2-1-2016
413-040-0150	1-1-2016	Amend(T)	2-1-2016
413-070-0551	11-24-2015	Amend(T)	1-1-2016
413-080-0050	11-24-2015	Amend(T)	1-1-2016

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413-080-0050(T)	11-24-2015	Suspend	1-1-2016
413-080-0050(T)	1-1-2016	Repeal	2-1-2016
413-080-0053	1-1-2016	Adopt	2-1-2016
413-080-0053(T)	1-1-2016	Repeal	2-1-2016
413-080-0054	1-1-2016	Amend	2-1-2016
413-080-0054(T)	1-1-2016	Repeal	2-1-2016
413-090-0085	1-1-2016	Amend	2-1-2016
413-090-0085(T)	1-1-2016	Repeal	2-1-2016
413-090-0087	1-1-2016	Adopt	2-1-2016
413-090-0087(T)	1-1-2016	Repeal	2-1-2016
413-100-0400	12-21-2015	Amend	2-1-2016
413-100-0410	12-21-2015	Amend	2-1-2016
413-100-0420	12-21-2015	Amend	2-1-2016
413-100-0435	12-21-2015	Amend	2-1-2016
413-100-0457	12-21-2015	Repeal	2-1-2016
413-120-0925	1-1-2016	Amend(T)	2-1-2016
413-130-0000	1-1-2016	Amend(T)	2-1-2016
413-130-0300	1-1-2016	Amend(T)	2-1-2016
413-130-0310	1-1-2016	Amend(T)	2-1-2016
413-130-0320	1-1-2016	Amend(T)	2-1-2016
413-130-0330	1-1-2016	Amend(T)	2-1-2016
413-130-0340	1-1-2016	Amend(T)	2-1-2016
413-130-0350	1-1-2016	Amend(T)	2-1-2016
413-130-0355	1-1-2016	Amend(T)	2-1-2016
413-130-0360	1-1-2016	Amend(T)	2-1-2016
413-130-0365	1-1-2016	Adopt(T)	2-1-2016
413-130-0400	1-1-2016	Suspend	2-1-2016
413-130-0420	1-1-2016	Suspend	2-1-2016
413-130-0430	1-1-2016	Suspend	2-1-2016
413-130-0440	1-1-2016	Suspend	2-1-2016
413-130-0450	1-1-2016	Suspend	2-1-2016
413-130-0455	1-1-2016	Suspend	2-1-2016
413-130-0460	1-1-2016	Suspend	2-1-2016
413-130-0480	1-1-2016	Suspend	2-1-2016
413-130-0490	1-1-2016	Suspend	2-1-2016
413-130-0500	1-1-2016	Suspend	2-1-2016
413-130-0510	1-1-2016	Suspend	2-1-2016
413-130-0520	1-1-2016	Suspend	2-1-2016
415-060-0010	1-5-2016	Suspend	2-1-2016
415-060-0020	1-5-2016	Suspend	2-1-2016
415-060-0030	1-5-2016	Suspend	2-1-2016
415-060-0040	1-5-2016	Suspend	2-1-2016
415-060-0050	1-5-2016	Suspend	2-1-2016
418-040-0000	1-1-2016	Adopt(T)	2-1-2016
418-040-0010	1-1-2016	Adopt(T)	2-1-2016
418-040-0020	1-1-2016	Adopt(T)	2-1-2016
418-040-0030	1-1-2016	Adopt(T)	2-1-2016
418-040-0040	1-1-2016	Adopt(T)	2-1-2016
418-040-0050	1-1-2016	Adopt(T)	2-1-2016
418-040-0060	1-1-2016	Adopt(T)	2-1-2016
418-040-0070	1-1-2016	Adopt(T)	2-1-2016
418-040-0080	1-1-2016	Adopt(T)	2-1-2016
418-040-0090	1-1-2016	Adopt(T)	2-1-2016
431-121-2005	12-7-2015	Amend	1-1-2016
436-001-0003	1-1-2016	Amend	1-1-2016
436-001-0004	1-1-2016	Amend	1-1-2016
436-001-0009	1-1-2016	Amend	1-1-2016
436-001-0019	1-1-2016	Amend	1-1-2016
436-001-0027	1-1-2016	Amend	1-1-2016
436-001-0030	1-1-2016	Amend	1-1-2016
436-001-0170	1-1-2016	Amend	1-1-2016
436-001-0240	1-1-2016	Amend	1-1-2016
436-001-0246	1-1-2016	Amend	1-1-2016
436-001-0259	1-1-2016	Amend	1-1-2016
436-001-0410	1-1-2016	Amend	1-1-2016
436-001-0420	1-1-2016	Amend	1-1-2016
436-001-0435	1-1-2016	Adopt	1-1-2016
436-001-0500	1-1-2016	Adopt	1-1-2016
436-009-0004	1-1-2016	Amend(T)	1-1-2016
436-009-0010	1-1-2016	Amend(T)	1-1-2016
436-050-0003	1-1-2016	Amend	2-1-2016
436-050-0175	1-1-2016	Amend	2-1-2016
438-005-0035	1-1-2016	Amend	2-1-2016
438-015-0010	1-1-2016	Amend	2-1-2016
438-015-0019	1-1-2016	Amend	2-1-2016
438-015-0025	1-1-2016	Amend	2-1-2016
438-015-0033	1-1-2016	Adopt	2-1-2016
438-015-0045	1-1-2016	Amend	2-1-2016
438-015-0048	1-1-2016	Adopt	2-1-2016
438-015-0055	1-1-2016	Amend	2-1-2016
438-015-0065	1-1-2016	Amend	2-1-2016
438-015-0070	1-1-2016	Amend	2-1-2016
438-015-0110	1-1-2016	Amend	2-1-2016
440-001-9000	1-1-2016	Adopt(T)	2-1-2016
441-710-0305	1-1-2016	Adopt	2-1-2016
441-855-0114	1-1-2016	Adopt	1-1-2016
441-865-0060	12-14-2015	Amend	1-1-2016
459-005-0001	11-20-2015	Amend	1-1-2016
459-005-0310	11-20-2015	Amend	1-1-2016
459-005-0350	11-20-2015	Amend	1-1-2016
459-010-0012	11-20-2015	Amend	1-1-2016
459-011-0500	11-20-2015	Amend	1-1-2016
459-013-0060	11-20-2015	Amend	1-1-2016
459-013-0310	11-20-2015	Amend	1-1-2016
459-080-0150	1-1-2016	Amend	1-1-2016
461-001-0000	1-1-2016	Amend	2-1-2016
461-001-0000(T)	1-1-2016	Repeal	2-1-2016
461-001-0025	12-28-2015	Amend	2-1-2016
461-115-0016	1-1-2016	Amend(T)	2-1-2016
461-115-0651	1-1-2016	Amend	2-1-2016
461-115-0700	1-1-2016	Amend	2-1-2016
461-120-0125	1-1-2016	Amend	2-1-2016
461-125-0830(T)	1-1-2016	Repeal	2-1-2016
461-130-0310	1-1-2016	Amend	2-1-2016
461-130-0310	1-1-2016	Amend(T)	2-1-2016
461-130-0330	1-1-2016	Amend	2-1-2016
461-135-0400	1-1-2016	Amend	2-1-2016
461-135-0405	1-1-2016	Amend	2-1-2016
461-135-0405(T)	1-1-2016	Repeal	2-1-2016
461-135-0407	1-1-2016	Amend	2-1-2016
461-135-0407(T)	1-1-2016	Repeal	2-1-2016

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461-135-0750	12-15-2015	Amend(T)	1-1-2016
461-140-0020	1-1-2016	Amend	2-1-2016
461-140-0120	1-1-2016	Amend	2-1-2016
461-140-0250	1-1-2016	Amend	2-1-2016
461-145-0010	1-1-2016	Amend	2-1-2016
461-145-0020	1-1-2016	Amend	2-1-2016
461-145-0040	1-1-2016	Amend	2-1-2016
461-145-0050	1-1-2016	Amend	2-1-2016
461-145-0080	1-1-2016	Amend	2-1-2016
461-145-0089	1-1-2016	Amend	2-1-2016
461-145-0220	1-1-2016	Amend	2-1-2016
461-145-0240	1-1-2016	Amend	2-1-2016
461-145-0252	1-1-2016	Amend	2-1-2016
461-145-0259	1-1-2016	Adopt	2-1-2016
461-145-0260	1-1-2016	Amend	2-1-2016
461-145-0280	1-1-2016	Amend	2-1-2016
461-145-0300	1-1-2016	Amend	2-1-2016
461-145-0310	1-1-2016	Amend	2-1-2016
461-145-0320	1-1-2016	Amend	2-1-2016
461-145-0330	1-1-2016	Amend	2-1-2016
461-145-0360	1-1-2016	Amend	2-1-2016
461-145-0365	1-1-2016	Amend	2-1-2016
461-145-0380	1-1-2016	Amend	2-1-2016
461-145-0410	1-1-2016	Amend	2-1-2016
461-145-0420	1-1-2016	Amend	2-1-2016
461-145-0430	1-1-2016	Amend	2-1-2016
461-145-0460	1-1-2016	Amend	2-1-2016
461-145-0490	1-1-2016	Amend	2-1-2016
461-145-0510	1-1-2016	Amend	2-1-2016
461-145-0540	1-1-2016	Amend	2-1-2016
461-145-0600	1-1-2016	Amend	2-1-2016
461-145-0910	1-1-2016	Amend	2-1-2016
461-145-0910(T)	1-1-2016	Repeal	2-1-2016
461-150-0050	1-1-2016	Amend	2-1-2016
461-150-0090	1-1-2016	Amend	2-1-2016
461-155-0030	1-1-2016	Amend	2-1-2016
461-155-0035	1-1-2016	Amend	2-1-2016
461-155-0150	1-1-2016	Amend(T)	2-1-2016
461-155-0575	1-1-2016	Amend	2-1-2016
461-160-0010	1-1-2016	Amend	2-1-2016
461-160-0015	1-1-2016	Amend	2-1-2016
461-160-0040	1-1-2016	Amend	2-1-2016
461-160-0040(T)	1-1-2016	Repeal	2-1-2016
461-160-0300	1-1-2016	Amend	2-1-2016
461-160-0300(T)	1-1-2016	Repeal	2-1-2016
461-160-0550	1-1-2016	Amend	2-1-2016
461-160-0551	1-1-2016	Amend	2-1-2016
461-160-0552	1-1-2016	Amend	2-1-2016
461-165-0030	1-1-2016	Amend	2-1-2016
461-170-0011	1-1-2016	Amend	2-1-2016
461-170-0101	1-1-2016	Amend	2-1-2016
461-170-0103	1-1-2016	Amend	2-1-2016
461-170-0103(T)	1-1-2016	Repeal	2-1-2016
461-170-0150	1-1-2016	Amend	2-1-2016
461-170-0150(T)	1-1-2016	Repeal	2-1-2016
461-170-0160	1-1-2016	Amend	2-1-2016
461-170-0160(T)	1-1-2016	Repeal	2-1-2016
461-175-0200	1-1-2016	Amend	2-1-2016
461-175-0200(T)	1-1-2016	Repeal	2-1-2016
461-175-0220	1-1-2016	Amend	2-1-2016
461-175-0222	1-1-2016	Amend	2-1-2016
461-175-0222(T)	1-1-2016	Repeal	2-1-2016
461-175-0250	1-1-2016	Amend	2-1-2016
461-175-0300	1-1-2016	Amend	2-1-2016
461-175-0300(T)	1-1-2016	Repeal	2-1-2016
461-175-0305	1-1-2016	Amend	2-1-2016
461-175-0310	1-1-2016	Amend	2-1-2016
461-175-0340	1-1-2016	Amend	2-1-2016
461-180-0010	12-15-2015	Amend(T)	1-1-2016
461-180-0090	12-15-2015	Amend(T)	1-1-2016
461-180-0140	12-15-2015	Amend(T)	1-1-2016
461-190-0211	12-28-2015	Amend	2-1-2016
461-190-0360	11-30-2015	Amend(T)	1-1-2016
461-195-0521	1-1-2016	Amend	2-1-2016
461-195-0621	1-1-2016	Amend	2-1-2016
543-001-0010	1-11-2016	Amend(T)	2-1-2016
543-010-0003	1-11-2016	Amend(T)	2-1-2016
543-010-0016	1-11-2016	Amend(T)	2-1-2016
543-010-0021	1-11-2016	Amend(T)	2-1-2016
543-010-0022	1-11-2016	Suspend	2-1-2016
543-010-0026	1-11-2016	Adopt(T)	2-1-2016
543-010-0030	1-11-2016	Amend(T)	2-1-2016
543-010-0032	1-11-2016	Suspend	2-1-2016
543-020-0010	1-11-2016	Suspend	2-1-2016
543-020-0025	1-11-2016	Suspend	2-1-2016
543-020-0026	1-11-2016	Suspend	2-1-2016
543-020-0030	1-11-2016	Suspend	2-1-2016
543-020-0050	1-11-2016	Adopt(T)	2-1-2016
543-020-0055	1-11-2016	Adopt(T)	2-1-2016
543-020-0060	1-11-2016	Adopt(T)	2-1-2016
543-020-0070	1-11-2016	Adopt(T)	2-1-2016
543-020-0080	1-11-2016	Adopt(T)	2-1-2016
543-060-0020	1-11-2016	Amend(T)	2-1-2016
543-060-0030	1-11-2016	Amend(T)	2-1-2016
543-060-0040	1-11-2016	Amend(T)	2-1-2016
543-060-0070	1-11-2016	Amend(T)	2-1-2016
575-001-0000	12-18-2015	Amend	2-1-2016
575-001-0005	12-18-2015	Amend	2-1-2016
575-001-0010	12-18-2015	Amend	2-1-2016
575-001-0015	12-18-2015	Amend	2-1-2016
575-001-0030	12-18-2015	Amend	2-1-2016
575-001-0035	12-18-2015	Amend	2-1-2016
575-007-0210	12-18-2015	Amend	2-1-2016
575-007-0240	12-18-2015	Amend	2-1-2016
575-007-0280	12-18-2015	Amend	2-1-2016
575-007-0310	12-18-2015	Amend	2-1-2016
575-007-0330	12-18-2015	Amend	2-1-2016
575-007-0340	12-18-2015	Amend	2-1-2016
575-007-0380	12-18-2015	Amend	2-1-2016
575-030-0005	12-18-2015	Amend	2-1-2016

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575-031-0020	12-18-2015	Amend	2-1-2016
575-031-0022	12-18-2015	Amend	2-1-2016
575-031-0023	12-18-2015	Amend	2-1-2016
575-031-0025	12-18-2015	Amend	2-1-2016
575-031-0045	12-18-2015	Amend	2-1-2016
575-035-0005	12-18-2015	Amend	2-1-2016
575-035-0010	12-18-2015	Amend	2-1-2016
575-035-0015	12-18-2015	Amend	2-1-2016
575-035-0020	12-18-2015	Amend	2-1-2016
575-035-0025	12-18-2015	Amend	2-1-2016
575-035-0030	12-18-2015	Amend	2-1-2016
575-035-0040	12-18-2015	Amend	2-1-2016
575-035-0045	12-18-2015	Amend	2-1-2016
575-035-0046	12-18-2015	Amend	2-1-2016
575-035-0050	12-18-2015	Amend	2-1-2016
575-035-0051	12-18-2015	Amend	2-1-2016
575-035-0055	12-18-2015	Amend	2-1-2016
575-037-0005	12-18-2015	Amend	2-1-2016
575-037-0010	12-18-2015	Amend	2-1-2016
575-037-0020	12-18-2015	Amend	2-1-2016
575-037-0030	12-18-2015	Amend	2-1-2016
575-037-0040	12-18-2015	Amend	2-1-2016
575-038-0000	12-18-2015	Amend	2-1-2016
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575-038-0020	12-18-2015	Amend	2-1-2016
575-038-0030	12-18-2015	Amend	2-1-2016
575-038-0040	12-18-2015	Amend	2-1-2016
575-045-0005	12-18-2015	Amend	2-1-2016
575-050-0005	12-18-2015	Amend	2-1-2016
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575-050-0015	12-18-2015	Amend	2-1-2016
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575-050-0025	12-18-2015	Amend	2-1-2016
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575-050-0042	12-18-2015	Amend	2-1-2016
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575-071-0040	12-18-2015	Amend	2-1-2016
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575-075-0008	12-18-2015	Amend	2-1-2016
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575-075-0030	12-18-2015	Amend	2-1-2016
575-075-0040	12-18-2015	Amend	2-1-2016
575-075-0043	12-18-2015	Amend	2-1-2016
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575-075-0047	12-18-2015	Amend	2-1-2016
575-075-0049	12-18-2015	Amend	2-1-2016
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575-075-0055	12-18-2015	Amend	2-1-2016
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575-080-0100	12-18-2015	Amend	2-1-2016
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575-090-0050	12-18-2015	Amend	2-1-2016
575-095-0005	12-18-2015	Amend	2-1-2016
581-015-2200	12-21-2015	Amend	2-1-2016
581-015-2595	12-18-2015	Amend	2-1-2016
581-015-2930	12-22-2015	Amend	2-1-2016
581-017-0287	12-18-2015	Adopt	2-1-2016
581-017-0291	12-18-2015	Adopt	2-1-2016
581-017-0294	12-18-2015	Adopt	2-1-2016
581-017-0297	12-18-2015	Adopt	2-1-2016
581-017-0321	12-28-2015	Amend(T)	2-1-2016
581-017-0324	12-28-2015	Amend(T)	2-1-2016
581-017-0327	12-28-2015	Amend(T)	2-1-2016
581-017-0330	12-28-2015	Amend(T)	2-1-2016
581-017-0333	12-28-2015	Amend(T)	2-1-2016
581-017-0465	12-28-2015	Adopt(T)	2-1-2016
581-017-0469	12-28-2015	Adopt(T)	2-1-2016

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581-017-0477	12-28-2015	Adopt(T)	2-1-2016
581-017-0481	12-28-2015	Adopt(T)	2-1-2016
581-017-0485	12-28-2015	Adopt(T)	2-1-2016
581-018-0130	12-18-2015	Amend	2-1-2016
581-018-0145	12-18-2015	Amend	2-1-2016
581-018-0148	12-18-2015	Amend	2-1-2016
581-020-0530	12-28-2015	Adopt(T)	2-1-2016
581-020-0533	12-28-2015	Adopt(T)	2-1-2016
581-020-0536	12-28-2015	Adopt(T)	2-1-2016
581-020-0539	12-28-2015	Adopt(T)	2-1-2016
581-020-0541	12-28-2015	Adopt(T)	2-1-2016
581-022-0102	12-18-2015	Amend	2-1-2016
581-022-0421	12-22-2015	Amend	2-1-2016
581-022-0610	12-21-2015	Amend	2-1-2016
581-022-1420	12-22-2015	Amend	2-1-2016
581-022-1910	12-18-2015	Amend	2-1-2016
581-024-0275	12-22-2015	Amend	2-1-2016
581-026-0210	12-18-2015	Amend	2-1-2016
581-044-0250	12-18-2015	Amend	2-1-2016
584-010-0090	1-1-2016	Suspend	2-1-2016
584-018-0110	1-1-2016	Suspend	2-1-2016
584-200-0004	1-1-2016	Adopt(T)	2-1-2016
584-200-0010	1-1-2016	Amend(T)	2-1-2016
584-200-0050	1-1-2016	Amend(T)	2-1-2016
603-025-0190	12-2-2015	Amend	1-1-2016
603-052-0052	11-18-2015	Adopt(T)	1-1-2016
603-057-0107	1-1-2016	Adopt(T)	1-1-2016
603-057-0155	1-1-2016	Adopt(T)	1-1-2016
603-057-0157	1-1-2016	Adopt(T)	1-1-2016
632-030-0016	1-14-2016	Amend(T)	2-1-2016
632-030-0022	1-14-2016	Amend(T)	2-1-2016
635-001-0030	12-9-2015	Adopt	1-1-2016
635-001-0341	1-6-2016	Adopt	2-1-2016
635-004-0275	11-25-2015	Amend(T)	1-1-2016
635-004-0275(T)	11-25-2015	Suspend	1-1-2016
635-005-0290	1-1-2016	Amend	1-1-2016
635-005-0305	1-1-2016	Amend	1-1-2016
635-005-0310	1-1-2016	Amend	1-1-2016
635-005-0350	1-1-2016	Amend	1-1-2016
635-005-0355	1-1-2016	Amend	1-1-2016
635-005-0385	1-1-2016	Amend	1-1-2016
635-005-0387	1-1-2016	Adopt	1-1-2016
635-005-0465	11-20-2015	Amend(T)	1-1-2016
635-005-0465	1-1-2016	Amend(T)	2-1-2016
635-005-0465(T)	1-1-2016	Suspend	2-1-2016
635-008-0123	11-25-2015	Amend	1-1-2016
635-008-0123(T)	11-25-2015	Repeal	1-1-2016
635-010-0015	11-25-2015	Amend	1-1-2016
635-011-0100	1-1-2016	Amend	2-1-2016
635-013-0004	1-1-2016	Amend	2-1-2016
635-014-0080	1-1-2016	Amend	2-1-2016
635-014-0090	1-1-2016	Amend	2-1-2016
635-016-0080	1-1-2016	Amend	2-1-2016
635-016-0090	1-1-2016	Amend	2-1-2016
635-017-0080	1-1-2016	Amend	2-1-2016
635-017-0090	1-1-2016	Amend	2-1-2016
635-017-0095	1-1-2016	Amend	2-1-2016
635-018-0080	1-1-2016	Amend	2-1-2016
635-018-0090	1-1-2016	Amend	2-1-2016
635-019-0080	1-1-2016	Amend	2-1-2016
635-019-0090	1-1-2016	Amend	2-1-2016
635-021-0080	1-1-2016	Amend	2-1-2016
635-021-0090	1-1-2016	Amend	2-1-2016
635-023-0080	1-1-2016	Amend	2-1-2016
635-023-0090	1-1-2016	Amend	2-1-2016
635-023-0095	1-1-2016	Amend	2-1-2016
635-023-0125	1-1-2016	Amend	2-1-2016
635-023-0128	1-1-2016	Amend	2-1-2016
635-023-0130	1-1-2016	Amend	2-1-2016
635-023-0134	1-1-2016	Amend	2-1-2016
635-023-0140	1-1-2016	Amend	2-1-2016
635-039-0080	1-1-2016	Amend	2-1-2016
635-039-0090	1-1-2016	Amend	2-1-2016
635-044-0200	12-9-2015	Repeal	1-1-2016
635-044-0205	12-9-2015	Repeal	1-1-2016
635-044-0210	12-9-2015	Repeal	1-1-2016
635-044-0215	12-9-2015	Repeal	1-1-2016
635-044-0240	12-9-2015	Repeal	1-1-2016
635-044-0245	12-9-2015	Repeal	1-1-2016
635-044-0250	12-9-2015	Repeal	1-1-2016
635-044-0255	12-9-2015	Repeal	1-1-2016
635-044-0280	12-9-2015	Repeal	1-1-2016
635-044-0300	12-9-2015	Repeal	1-1-2016
635-044-0305	12-9-2015	Repeal	1-1-2016
635-044-0310	12-9-2015	Repeal	1-1-2016
635-045-0000	11-25-2015	Amend	1-1-2016
635-045-0002	11-25-2015	Amend	1-1-2016
635-060-0000	11-25-2015	Amend	1-1-2016
635-060-0005	11-25-2015	Amend	1-1-2016
635-060-0018	11-25-2015	Amend	1-1-2016
635-062-0000	12-9-2015	Adopt	1-1-2016
635-062-0005	12-9-2015	Adopt	1-1-2016
635-062-0010	12-9-2015	Adopt	1-1-2016
635-062-0015	12-9-2015	Adopt	1-1-2016
635-062-0020	12-9-2015	Adopt	1-1-2016
635-062-0025	12-9-2015	Adopt	1-1-2016
635-062-0030	12-9-2015	Adopt	1-1-2016
635-062-0035	12-9-2015	Adopt	1-1-2016
635-062-0040	12-9-2015	Adopt	1-1-2016
635-062-0045	12-9-2015	Adopt	1-1-2016
635-062-0050	12-9-2015	Adopt	1-1-2016
635-062-0055	12-9-2015	Adopt	1-1-2016
635-062-0060	12-9-2015	Adopt	1-1-2016
635-067-0027	12-1-2015	Amend(T)	1-1-2016
635-435-0000	12-9-2015	Amend	1-1-2016
635-435-0005	12-9-2015	Amend	1-1-2016
635-435-0010	12-9-2015	Amend	1-1-2016
635-435-0010	12-9-2015	Amend(T)	1-1-2016
635-435-0015	12-9-2015	Amend	1-1-2016
635-435-0020	12-9-2015	Amend	1-1-2016
635-435-0025	12-9-2015	Amend	1-1-2016

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635-435-0040	12-9-2015	Amend	1-1-2016
635-435-0045	12-9-2015	Amend	1-1-2016
635-435-0050	12-9-2015	Amend	1-1-2016
635-435-0055	12-9-2015	Amend	1-1-2016
635-435-0060	12-9-2015	Amend	1-1-2016
660-015-0000	1-1-2016	Amend	2-1-2016
660-024-0000	1-1-2016	Amend	2-1-2016
660-024-0050	1-1-2016	Amend	2-1-2016
660-024-0060	1-1-2016	Amend	2-1-2016
660-024-0065	1-1-2016	Adopt	2-1-2016
660-024-0067	1-1-2016	Adopt	2-1-2016
660-024-0070	1-1-2016	Amend	2-1-2016
660-038-0000	1-1-2016	Adopt	2-1-2016
660-038-0010	1-1-2016	Adopt	2-1-2016
660-038-0020	1-1-2016	Adopt	2-1-2016
660-038-0030	1-1-2016	Adopt	2-1-2016
660-038-0040	1-1-2016	Adopt	2-1-2016
660-038-0050	1-1-2016	Adopt	2-1-2016
660-038-0060	1-1-2016	Adopt	2-1-2016
660-038-0070	1-1-2016	Adopt	2-1-2016
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660-038-0100	1-1-2016	Adopt	2-1-2016
660-038-0110	1-1-2016	Adopt	2-1-2016
660-038-0120	1-1-2016	Adopt	2-1-2016
660-038-0130	1-1-2016	Adopt	2-1-2016
660-038-0140	1-1-2016	Adopt	2-1-2016
660-038-0150	1-1-2016	Adopt	2-1-2016
660-038-0160	1-1-2016	Adopt	2-1-2016
660-038-0170	1-1-2016	Adopt	2-1-2016
660-038-0180	1-1-2016	Adopt	2-1-2016
660-038-0190	1-1-2016	Adopt	2-1-2016
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690-051-0250	1-1-2016	Amend	2-1-2016
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690-051-0360	1-1-2016	Repeal	2-1-2016
690-051-0370	1-1-2016	Repeal	2-1-2016
690-051-0380	1-1-2016	Amend	2-1-2016
690-051-0400	1-1-2016	Amend	2-1-2016
690-079-0010	12-2-2015	Amend(T)	1-1-2016
690-079-0160	12-2-2015	Adopt(T)	1-1-2016
715-013-0005	12-14-2015	Amend(T)	1-1-2016
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731-035-0020	12-17-2015	Amend	2-1-2016
731-035-0030	12-17-2015	Amend	2-1-2016
731-035-0040	12-17-2015	Amend	2-1-2016
731-035-0050	12-17-2015	Amend	2-1-2016
731-035-0060	12-17-2015	Amend	2-1-2016
731-035-0070	12-17-2015	Amend	2-1-2016
731-035-0080	12-17-2015	Amend	2-1-2016
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734-020-0019	11-20-2015	Amend	1-1-2016
734-074-0027	12-17-2015	Amend	2-1-2016
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734-082-0070	12-17-2015	Amend	2-1-2016
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735-062-0035	1-1-2016	Amend	2-1-2016
735-062-0110	1-1-2016	Amend	2-1-2016
735-062-0120	1-1-2016	Amend	2-1-2016
735-064-0070	1-1-2016	Amend	2-1-2016
735-070-0080	1-1-2016	Amend	2-1-2016
735-070-0082	1-1-2016	Amend	2-1-2016
735-118-0000	1-1-2016	Amend	2-1-2016
735-118-0050	1-1-2016	Amend	2-1-2016
735-150-0010	1-1-2016	Amend	2-1-2016
735-150-0015	1-1-2016	Amend	2-1-2016
735-150-0017	1-1-2016	Amend	2-1-2016
735-150-0020	1-1-2016	Amend	2-1-2016
735-150-0037	1-1-2016	Amend	2-1-2016
735-150-0047	1-1-2016	Amend	2-1-2016
735-150-0055	1-1-2016	Amend	1-1-2016
735-150-0110	1-1-2016	Amend	2-1-2016
735-150-0110	1-1-2016	Amend	2-1-2016
735-150-0140	1-1-2016	Amend	1-1-2016
738-001-0035	12-15-2015	Amend	1-1-2016
738-010-0025	12-15-2015	Amend	1-1-2016
738-010-0035	12-15-2015	Amend	1-1-2016
738-010-0040	12-15-2015	Repeal	1-1-2016
738-010-0050	12-15-2015	Amend	1-1-2016
738-010-0060	12-15-2015	Amend	1-1-2016

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738-080-0010	12-15-2015	Amend	1-1-2016
738-080-0015	12-15-2015	Adopt	1-1-2016
738-080-0020	12-15-2015	Amend	1-1-2016
738-080-0030	12-15-2015	Amend	1-1-2016
738-080-0040	12-15-2015	Repeal	1-1-2016
738-080-0045	12-15-2015	Adopt	1-1-2016
738-140-0005	12-15-2015	Adopt	1-1-2016
738-140-0010	12-15-2015	Adopt	1-1-2016
738-140-0015	12-15-2015	Adopt	1-1-2016
738-140-0020	12-15-2015	Adopt	1-1-2016
738-140-0025	12-15-2015	Adopt	1-1-2016
738-140-0030	12-15-2015	Adopt	1-1-2016
738-140-0035	12-15-2015	Adopt	1-1-2016
738-140-0040	12-15-2015	Adopt	1-1-2016
741-520-0010	11-17-2015	Repeal	1-1-2016
801-001-0035	1-1-2016	Amend(T)	2-1-2016
806-010-0010	12-14-2015	Amend	1-1-2016
806-010-0020	12-14-2015	Amend	1-1-2016
806-010-0035	12-14-2015	Amend	1-1-2016
808-002-0020	1-1-2016	Amend	2-1-2016
808-002-0200	1-1-2016	Amend	2-1-2016
808-002-0250	1-1-2016	Repeal	2-1-2016
808-002-0300	1-1-2016	Amend	2-1-2016
808-002-0320	1-1-2016	Amend	2-1-2016
808-002-0338	1-1-2016	Amend	2-1-2016
808-002-0455	1-1-2016	Amend	2-1-2016
808-002-0480	1-1-2016	Amend	2-1-2016
808-002-0490	1-1-2016	Amend	2-1-2016
808-002-0500	1-1-2016	Amend	2-1-2016
808-002-0730	1-1-2016	Amend	2-1-2016
808-002-0780	1-1-2016	Amend	2-1-2016
808-002-0810	1-1-2016	Repeal	2-1-2016
808-002-0884	1-1-2016	Repeal	2-1-2016
808-002-0920	1-1-2016	Amend	2-1-2016
808-003-0015	1-1-2016	Amend	2-1-2016
808-003-0018	1-1-2016	Amend	2-1-2016
808-003-0040	1-1-2016	Amend	2-1-2016
808-003-0060	1-1-2016	Amend	2-1-2016
808-003-0095	1-1-2016	Amend	2-1-2016
808-003-0125	1-1-2016	Amend	2-1-2016
808-003-0126	1-1-2016	Amend	2-1-2016
808-003-0230	1-1-2016	Amend	2-1-2016
808-003-0610	1-1-2016	Amend	2-1-2016
808-003-0610(T)	1-1-2016	Repeal	2-1-2016
808-003-0611	1-1-2016	Amend	2-1-2016
808-003-0613	1-1-2016	Amend	2-1-2016
808-004-0180	1-1-2016	Amend	2-1-2016
808-004-0211	1-1-2016	Amend	2-1-2016
808-004-0320	1-1-2016	Amend	2-1-2016
808-040-0020	1-1-2016	Amend	2-1-2016
808-040-0080	1-1-2016	Amend	2-1-2016
813-013-0001	11-30-2015	Amend(T)	1-1-2016
813-013-0005	11-30-2015	Amend(T)	1-1-2016
813-013-0010	11-30-2015	Amend(T)	1-1-2016
813-013-0015	11-30-2015	Amend(T)	1-1-2016
813-013-0020	11-30-2015	Amend(T)	1-1-2016
813-013-0035	11-30-2015	Amend(T)	1-1-2016
813-013-0040	11-30-2015	Amend(T)	1-1-2016
813-013-0050	11-30-2015	Amend(T)	1-1-2016
813-013-0054	11-30-2015	Amend(T)	1-1-2016
820-010-3020	1-14-2016	Adopt	2-1-2016
820-010-5000	1-15-2016	Amend(T)	2-1-2016
820-020-0040	1-14-2016	Amend	2-1-2016
820-025-0015	1-15-2016	Amend(T)	2-1-2016
830-011-0000	1-1-2016	Amend	2-1-2016
830-011-0020	1-1-2016	Amend	2-1-2016
830-011-0040	1-1-2016	Amend	2-1-2016
830-011-0065	1-1-2016	Adopt	2-1-2016
830-020-0000	1-1-2016	Amend	2-1-2016
830-020-0030	1-1-2016	Amend	2-1-2016
830-020-0040	1-1-2016	Amend	2-1-2016
830-030-0004	1-1-2016	Amend	2-1-2016
830-030-0090	1-1-2016	Amend	2-1-2016
830-040-0095	1-1-2016	Adopt	2-1-2016
836-051-0150	1-1-2016	Adopt	2-1-2016
836-051-0153	1-1-2016	Adopt	2-1-2016
836-051-0156	1-1-2016	Adopt	2-1-2016
836-052-0142	1-1-2016	Amend	2-1-2016
836-053-0002	12-17-2015	Amend(T)	2-1-2016
836-053-0004	12-17-2015	Adopt(T)	2-1-2016
836-053-0008	12-17-2015	Amend(T)	2-1-2016
836-053-0009	12-17-2015	Amend(T)	2-1-2016
836-053-0012	12-17-2015	Adopt(T)	2-1-2016
836-053-0013	12-17-2015	Adopt(T)	2-1-2016
836-053-0600	1-1-2016	Adopt	2-1-2016
836-053-0600(T)	1-1-2016	Repeal	2-1-2016
836-053-0605	1-1-2016	Adopt	2-1-2016
836-053-0605(T)	1-1-2016	Repeal	2-1-2016
836-053-0610	1-1-2016	Adopt	2-1-2016
836-053-0610(T)	1-1-2016	Repeal	2-1-2016
836-053-0615	1-1-2016	Adopt	2-1-2016
836-053-0615(T)	1-1-2016	Repeal	2-1-2016
836-053-1020	12-17-2015	Amend(T)	2-1-2016
836-053-1404	12-17-2015	Amend(T)	2-1-2016
836-053-1405	12-17-2015	Amend(T)	2-1-2016
836-054-0000	1-1-2016	Amend	2-1-2016
836-054-0000(T)	1-1-2016	Repeal	2-1-2016
836-054-0020	1-1-2016	Adopt	2-1-2016
836-071-0354	1-1-2016	Adopt	2-1-2016
836-071-0355	1-1-2016	Amend	2-1-2016
836-071-0370	1-1-2016	Amend	2-1-2016
836-071-0380	1-1-2016	Amend	2-1-2016
837-012-0305	1-1-2016	Amend	2-1-2016
837-012-0310	1-1-2016	Amend	2-1-2016
837-012-0315	1-1-2016	Amend	2-1-2016
837-012-0320	1-1-2016	Amend	2-1-2016
837-012-0325	1-1-2016	Amend	2-1-2016
837-012-0330	1-1-2016	Amend	2-1-2016
837-012-0340	1-1-2016	Amend	2-1-2016
837-012-0350	1-1-2016	Amend	2-1-2016
837-012-0360	1-1-2016	Amend	2-1-2016
837-012-0370	1-1-2016	Amend	2-1-2016

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837-012-0510	1-1-2016	Amend	2-1-2016
837-012-0515	1-1-2016	Amend	2-1-2016
837-012-0520	1-1-2016	Amend	2-1-2016
837-012-0525	1-1-2016	Amend	2-1-2016
837-012-0530	1-1-2016	Amend	2-1-2016
837-012-0535	1-1-2016	Amend	2-1-2016
837-012-0540	1-1-2016	Amend	2-1-2016
837-012-0545	1-1-2016	Amend	2-1-2016
837-012-0550	1-1-2016	Amend	2-1-2016
837-012-0555	1-1-2016	Amend	2-1-2016
837-012-0560	1-1-2016	Amend	2-1-2016
837-012-0565	1-1-2016	Amend	2-1-2016
837-012-0570	1-1-2016	Amend	2-1-2016
837-012-0600	1-1-2016	Amend	2-1-2016
837-012-0610	1-1-2016	Amend	2-1-2016
837-012-0615	1-1-2016	Amend	2-1-2016
837-012-0620	1-1-2016	Amend	2-1-2016
837-012-0625	1-1-2016	Amend	2-1-2016
837-012-0630	1-1-2016	Amend	2-1-2016
837-012-0635	1-1-2016	Amend	2-1-2016
837-012-0640	1-1-2016	Amend	2-1-2016
837-012-0645	1-1-2016	Amend	2-1-2016
837-012-0650	1-1-2016	Amend	2-1-2016
837-012-0655	1-1-2016	Amend	2-1-2016
837-012-0660	1-1-2016	Amend	2-1-2016
837-012-0665	1-1-2016	Amend	2-1-2016
837-012-0670	1-1-2016	Amend	2-1-2016
837-012-0675	1-1-2016	Amend	2-1-2016
837-012-0700	1-1-2016	Amend	2-1-2016
837-012-0710	1-1-2016	Amend	2-1-2016
837-012-0720	1-1-2016	Amend	2-1-2016
837-012-0730	1-1-2016	Amend	2-1-2016
837-012-0740	1-1-2016	Amend	2-1-2016
837-012-0750	1-1-2016	Amend	2-1-2016
837-012-0760	1-1-2016	Amend	2-1-2016
837-012-0770	1-1-2016	Amend	2-1-2016
837-012-0780	1-1-2016	Amend	2-1-2016
837-012-0790	1-1-2016	Amend	2-1-2016
837-012-0800	1-1-2016	Amend	2-1-2016
837-012-0810	1-1-2016	Amend	2-1-2016
837-012-0820	1-1-2016	Amend	2-1-2016
837-012-0830	1-1-2016	Amend	2-1-2016
837-012-0835	1-1-2016	Amend	2-1-2016
837-012-0840	1-1-2016	Amend	2-1-2016
837-012-0850	1-1-2016	Amend	2-1-2016
837-012-0855	1-1-2016	Amend	2-1-2016
837-012-0860	1-1-2016	Amend	2-1-2016
837-012-0865	1-1-2016	Amend	2-1-2016
837-012-0870	1-1-2016	Amend	2-1-2016
837-012-0875	1-1-2016	Amend	2-1-2016
837-012-0880	1-1-2016	Amend	2-1-2016
837-012-0890	1-1-2016	Amend	2-1-2016
837-012-0900	1-1-2016	Amend	2-1-2016
837-012-0910	1-1-2016	Amend	2-1-2016
837-012-0920	1-1-2016	Amend	2-1-2016
837-012-0940	1-1-2016	Amend	2-1-2016
837-012-0950	1-1-2016	Amend	2-1-2016
837-012-0960	1-1-2016	Amend	2-1-2016
837-012-0970	1-1-2016	Amend	2-1-2016
837-012-1000	1-1-2016	Amend	2-1-2016
837-012-1010	1-1-2016	Amend	2-1-2016
837-012-1020	1-1-2016	Amend	2-1-2016
837-012-1030	1-1-2016	Amend	2-1-2016
837-012-1040	1-1-2016	Amend	2-1-2016
837-012-1050	1-1-2016	Amend	2-1-2016
837-012-1060	1-1-2016	Amend	2-1-2016
837-012-1070	1-1-2016	Amend	2-1-2016
837-012-1080	1-1-2016	Amend	2-1-2016
837-012-1090	1-1-2016	Amend	2-1-2016
837-012-1100	1-1-2016	Amend	2-1-2016
837-012-1110	1-1-2016	Amend	2-1-2016
837-012-1120	1-1-2016	Amend	2-1-2016
837-012-1130	1-1-2016	Amend	2-1-2016
837-012-1140	1-1-2016	Amend	2-1-2016
837-012-1150	1-1-2016	Amend	2-1-2016
837-012-1160	1-1-2016	Amend	2-1-2016
839-005-0003	1-1-2016	Amend	2-1-2016
839-005-0400	1-1-2016	Amend	2-1-2016
839-007-0000	1-1-2016	Adopt	1-1-2016
839-007-0005	1-1-2016	Adopt	1-1-2016
839-007-0007	1-1-2016	Adopt	1-1-2016
839-007-0010	1-1-2016	Adopt	1-1-2016
839-007-0012	1-1-2016	Adopt	1-1-2016
839-007-0015	1-1-2016	Adopt	1-1-2016
839-007-0020	1-1-2016	Adopt	1-1-2016
839-007-0025	1-1-2016	Adopt	1-1-2016
839-007-0030	1-1-2016	Adopt	1-1-2016
839-007-0032	1-1-2016	Adopt	1-1-2016
839-007-0035	1-1-2016	Adopt	1-1-2016
839-007-0040	1-1-2016	Adopt	1-1-2016
839-007-0045	1-1-2016	Adopt	1-1-2016
839-007-0050	1-1-2016	Adopt	1-1-2016
839-007-0055	1-1-2016	Adopt	1-1-2016
839-007-0060	1-1-2016	Adopt	1-1-2016
839-007-0065	1-1-2016	Adopt	1-1-2016
839-007-0100	1-1-2016	Adopt	1-1-2016
839-007-0120	1-1-2016	Adopt	1-1-2016
839-009-0270	1-1-2016	Amend	2-1-2016
839-020-0030	1-1-2016	Amend	2-1-2016
839-020-0042	1-1-2016	Amend	2-1-2016
839-020-0052	1-1-2016	Adopt	2-1-2016
839-020-0125	1-1-2016	Amend	2-1-2016
839-020-1010	1-1-2016	Amend	2-1-2016
839-025-0700	1-1-2016	Amend	1-1-2016
845-004-0101	2-1-2016	Amend	2-1-2016
845-004-0105	2-1-2016	Repeal	2-1-2016
845-005-0413	2-1-2016	Amend	2-1-2016
845-005-0417	1-1-2016	Amend(T)	2-1-2016
845-005-0420	1-1-2016	Suspend	2-1-2016
845-005-0431	2-1-2016	Amend	2-1-2016
845-006-0392	1-1-2016	Amend(T)	2-1-2016

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845-006-0452	2-1-2016	Amend	2-1-2016
845-025-1000	1-1-2016	Adopt(T)	1-1-2016
845-025-1015	1-1-2016	Adopt(T)	1-1-2016
845-025-1030	1-1-2016	Adopt(T)	1-1-2016
845-025-1045	1-1-2016	Adopt(T)	1-1-2016
845-025-1060	1-1-2016	Adopt(T)	1-1-2016
845-025-1070	1-1-2016	Adopt(T)	1-1-2016
845-025-1080	1-1-2016	Adopt(T)	1-1-2016
845-025-1090	1-1-2016	Adopt(T)	1-1-2016
845-025-1100	1-1-2016	Adopt(T)	1-1-2016
845-025-1115	1-1-2016	Adopt(T)	1-1-2016
845-025-1115	1-1-2016	Amend(T)	2-1-2016
845-025-1130	1-1-2016	Adopt(T)	1-1-2016
845-025-1145	1-1-2016	Adopt(T)	1-1-2016
845-025-1160	1-1-2016	Adopt(T)	1-1-2016
845-025-1175	1-1-2016	Adopt(T)	1-1-2016
845-025-1190	1-1-2016	Adopt(T)	1-1-2016
845-025-1200	1-1-2016	Adopt(T)	1-1-2016
845-025-1215	1-1-2016	Adopt(T)	1-1-2016
845-025-1230	1-1-2016	Adopt(T)	1-1-2016
845-025-1245	1-1-2016	Adopt(T)	1-1-2016
845-025-1260	1-1-2016	Adopt(T)	1-1-2016
845-025-1275	1-1-2016	Adopt(T)	1-1-2016
845-025-1290	1-1-2016	Adopt(T)	1-1-2016
845-025-1295	1-1-2016	Adopt(T)	1-1-2016
845-025-1300	1-1-2016	Adopt(T)	1-1-2016
845-025-1400	1-1-2016	Adopt(T)	1-1-2016
845-025-1410	1-1-2016	Adopt(T)	1-1-2016
845-025-1420	1-1-2016	Adopt(T)	1-1-2016
845-025-1430	1-1-2016	Adopt(T)	1-1-2016
845-025-1440	1-1-2016	Adopt(T)	1-1-2016
845-025-1450	1-1-2016	Adopt(T)	1-1-2016
845-025-1460	1-1-2016	Adopt(T)	1-1-2016
845-025-1470	1-1-2016	Adopt(T)	1-1-2016
845-025-1600	1-1-2016	Adopt(T)	1-1-2016
845-025-1620	1-1-2016	Adopt(T)	1-1-2016
845-025-2000	1-1-2016	Adopt(T)	1-1-2016
845-025-2020	1-1-2016	Adopt(T)	1-1-2016
845-025-2030	1-1-2016	Adopt(T)	1-1-2016
845-025-2040	1-1-2016	Adopt(T)	1-1-2016
845-025-2050	1-1-2016	Adopt(T)	1-1-2016
845-025-2060	1-1-2016	Adopt(T)	1-1-2016
845-025-2070	1-1-2016	Adopt(T)	1-1-2016
845-025-2080	1-1-2016	Adopt(T)	1-1-2016
845-025-2400	1-1-2016	Adopt(T)	1-1-2016
845-025-2800	1-1-2016	Adopt(T)	1-1-2016
845-025-2820	1-1-2016	Adopt(T)	1-1-2016
845-025-2840	1-1-2016	Adopt(T)	1-1-2016
845-025-2860	1-1-2016	Adopt(T)	1-1-2016
845-025-2880	1-1-2016	Adopt(T)	1-1-2016
845-025-2890	1-1-2016	Adopt(T)	1-1-2016
845-025-3200	1-1-2016	Adopt(T)	1-1-2016
845-025-3210	1-1-2016	Adopt(T)	1-1-2016
845-025-3220	1-1-2016	Adopt(T)	1-1-2016
845-025-3230	1-1-2016	Adopt(T)	1-1-2016
845-025-3240	1-1-2016	Adopt(T)	1-1-2016
845-025-3250	1-1-2016	Adopt(T)	1-1-2016
845-025-3260	1-1-2016	Adopt(T)	1-1-2016
845-025-3280	1-1-2016	Adopt(T)	1-1-2016
845-025-3290	1-1-2016	Adopt(T)	1-1-2016
845-025-3500	1-1-2016	Adopt(T)	1-1-2016
845-025-5000	1-1-2016	Adopt(T)	1-1-2016
845-025-5030	1-1-2016	Adopt(T)	1-1-2016
845-025-5045	1-1-2016	Adopt(T)	1-1-2016
845-025-5060	1-1-2016	Adopt(T)	1-1-2016
845-025-5075	1-1-2016	Adopt(T)	1-1-2016
845-025-5300	1-1-2016	Adopt(T)	1-1-2016
845-025-5350	1-1-2016	Adopt(T)	1-1-2016
845-025-5500	1-1-2016	Adopt(T)	1-1-2016
845-025-5520	1-1-2016	Adopt(T)	1-1-2016
845-025-5540	1-1-2016	Adopt(T)	1-1-2016
845-025-5560	1-1-2016	Adopt(T)	1-1-2016
845-025-5580	1-1-2016	Adopt(T)	1-1-2016
845-025-5590	1-1-2016	Adopt(T)	1-1-2016
845-025-5700	1-1-2016	Adopt(T)	1-1-2016
845-025-5720	1-1-2016	Adopt(T)	1-1-2016
845-025-5740	1-1-2016	Adopt(T)	1-1-2016
845-025-5760	1-1-2016	Adopt(T)	1-1-2016
845-025-7000	1-1-2016	Adopt(T)	1-1-2016
845-025-7020	1-1-2016	Adopt(T)	1-1-2016
845-025-7040	1-1-2016	Adopt(T)	1-1-2016
845-025-7060	1-1-2016	Adopt(T)	1-1-2016
845-025-7500	1-1-2016	Adopt(T)	1-1-2016
845-025-7520	1-1-2016	Adopt(T)	1-1-2016
845-025-7540	1-1-2016	Adopt(T)	1-1-2016
845-025-7560	1-1-2016	Adopt(T)	1-1-2016
845-025-7580	1-1-2016	Adopt(T)	1-1-2016
845-025-7590	1-1-2016	Adopt(T)	1-1-2016
845-025-7700	1-1-2016	Adopt(T)	1-1-2016
845-025-7750	1-1-2016	Adopt(T)	1-1-2016
845-025-8000	1-1-2016	Adopt(T)	1-1-2016
845-025-8020	1-1-2016	Adopt(T)	1-1-2016
845-025-8040	1-1-2016	Adopt(T)	1-1-2016
845-025-8060	1-1-2016	Adopt(T)	1-1-2016
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845-025-8500	1-1-2016	Adopt(T)	1-1-2016
845-025-8520	1-1-2016	Adopt(T)	1-1-2016
845-025-8540	1-1-2016	Adopt(T)	1-1-2016
845-025-8560	1-1-2016	Adopt(T)	1-1-2016
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847-008-0023	1-8-2016	Amend	2-1-2016
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847-050-0063	1-8-2016	Repeal	2-1-2016
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851-056-0000	11-30-2015	Amend(T)	1-1-2016
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